

and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

4. By soliciting employees to reveal information concerning union activities of their fellow employees and to reveal the identity of employees who have engaged in activities in behalf of the Union, the Respondent has engaged 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.

6. The allegations of the complaint with respect to unlawful discrimination against Peggy J. Denny and Roma J. Wells have not been sustained.

[Recommendations omitted from publication.]

Argentum Mining Company of Nevada and Hod Carriers, Laborers, Miners, Maintenance and Production Workers, Local Union No. 169, International Union of Hod Carriers and Common Laborers, AFL-CIO, and International Union of Operating Engineers, Local Union No. 12, AFL-CIO, Jointly. *Case No. 20-CA-1693. October 25, 1960*

DECISION AND ORDER

On February 11, 1960, Trial Examiner Eugene K. Kennedy issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.¹

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, insofar as they are consistent with our decision herein.

The essential facts are as follows:

For approximately 2 years prior to the instant hearing, the Respondent was engaged in the mill processing of silver from ore at its mining location near Mina, Nevada. The ore that was processed originated mainly from a large stockpile located on the premises near the mill.

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

On July 14, 1959, Robert Westfall, a representative of the Operating Engineers, visited Respondent's premises and informed General Superintendent James Goldsworthy that he intended to organize the employees. There was no objection from Goldsworthy. On July 21, 1959, Westfall returned with another representative of the Operating Engineers and a representative of the Laborers Union. It was their intention to organize the Respondent's employees within their respective jurisdictions. On this July 21 visit, the representatives talked with Goldsworthy and informed him of their plans to obtain authorization cards from the employees. Again Goldsworthy made *no objection*.

The union representatives first went to the mill area. Seeing only one employee at work there, they proceeded on to the Northern Belle mine shaft which the Respondent was then in the process of enlarging. At the mine shaft, the union representatives obtained authorization cards from seven of the nine persons at work at the mine site that day.² Those who signed were Mine Superintendent John Glennon, Engineer Earl Treloar, and laborers William Schjoth (a hoist man), Ray L. Skaggs, Fred Mappin, Ted R. Deal, and LeRoy Goodhue. Laborers Hunter and Kunde were asked to sign authorization cards, but they refused. With the exception of Treloar, all signed their cards in the presence of Glennon.

Later that day, the union representatives obtained authorization cards from 10 other employees, 8 of whom were apparently at work on the Respondent's mill expansion construction program. These eight were welders Willard Edison (who also served as a supervisor over the construction employees in Glennon's absence), Alfred Barry, and Paul Jones, and laborers LeRoy Taylor, John A. Phillips, Louis Allen Penrod, Maurice Adams, and Harold Huff. The other two employees who signed authorization cards were John J. Manfredi and David Millard, both of whom worked on the crusher operation under the supervision of Mill Superintendent Williams.

The number of authorization cards thus obtained on July 21 totaled 17. That evening, Hancock, a special assistant to Eugene S. Gates, the general manager, called the latter in Salt Lake City, Utah, and informed him that the Unions were organizing the employees.

The following day, July 22, Gates arrived at the mine from Utah by chartered plane. A meeting was held in an office on the premises, attended by Gates, Goldsworthy, Mine Superintendent Glennon, Mill Superintendent Williams, Carl Earl (a company official), and Hancock. Following the meeting, Gates had final paychecks prepared for 12 employees—Manfredi, Schjoth, Taylor, Millard, Phillips,

² A 10th employee—Clark—who apparently worked at the mine shaft, was off that day and it does not appear that any attempt was made to obtain an authorization card from him.

Skaggs, Mappin, Deal, Penrod, Adams, Goodhue, and Huff. As indicated above, all 12 were among the 17 who had signed authorization cards. All 12 were discharged later that day.

Three of the twelve—Manfredi, Taylor, and Adams—were rehired almost immediately. Adams was given a job in the mill; Manfredi was rehired when he told Gates he was satisfied with his job; and Taylor was rehired when he explained to Gates that his dissatisfaction with his job was that he had not been getting the pay promised him. Gates not only gave him the promised higher rate, but made that rate retroactive.³

For the most part, the 12 discharged employees were given economic reasons as the cause for their discharge. However, one employee—David Millard—credibly testified that he was told by Gates that “he [Gates] didn’t want anybody that wasn’t satisfied” and that he “didn’t want no union and wasn’t going to have no union.”

That evening, Mine Superintendent Glennon told dischargeses Mappin, Deal, and Goodhue that Gates’ decision to discharge them “just dropped out of the clear sky” and that he “didn’t have any inkling” there would be a layoff.

It is the position of the Respondent that the discharges of the Northern Belle mine and the construction employees were for economic reasons, and that David Millard was discharged because he was an unsatisfactory employee. Goldsworthy testified that he was employed by the Respondent on June 25, 1959, as general superintendent. At that time, the Respondent’s mill had a 165-ton capacity and was being supplied with ore coming entirely from stockpiles accumulated during earlier mining operations. When Goldsworthy was employed, the Respondent had underway (1) a construction program which would enlarge substantially the mill’s capacity, and (2) a program of reopening, repairing, and enlarging the Northern Belle shaft. According to Goldsworthy, he decided around July 1 that the Northern Belle mine would not produce sufficient quantities of ore to justify its reopening. It was Goldsworthy’s opinion that the Respondent should undertake an open-pit operation, and he recommended this to Gates. Also according to Goldsworthy, around July 14, Gates “indicated” his agreement with Goldsworthy on the open-pit operation. Again according to Goldsworthy, about this same time he recommended to Gates that the construction work be contracted out. It is the Respondent’s contention that on July 22 the final decision to close down the mine shaft and to curtail construction was made, and that this decision

³ As to Manfredi, Taylor, and Adams, the complaint alleged that the Respondent discriminatorily threatened them with discharge in violation of Section 8(a)(1). The Trial Examiner found that while the record would support a finding that these three were actually discharged, it would not support a finding of threatened discharge as alleged. As no exceptions were taken to the Trial Examiner’s findings in this respect, we adopt them *pro forma*.

necessitated the discharge of the mine and construction employees. As to Millard, who on July 22 was working on the crusher in the mill operation, the Respondent contends that this employee was discharged because he failed to maintain his equipment properly.

It is the position of the General Counsel that the reasons advanced by the Respondent for the discharges are in each instance a pretext, and these employees were in fact discharged to thwart the Union's organizational efforts and discourage membership in those labor organizations. As did the Trial Examiner, we find that the record clearly supports the General Counsel's position.

As to the reasons advanced by the Respondent for halting work on the mine shaft and undertaking an open-pit operation, it is to be noted that as of July 22 Goldsworthy only had an opinion that an open-pit operation would be possible. It was not until after July 22 that the Respondent established a drilling program to determine whether open-pit mining would be economically feasible. It is also to be noted that as of July 22 the Respondent had expended approximately \$19,000, exclusive of wages, in the development of the mine shaft. Notwithstanding this sizable investment, and notwithstanding the unproved worth of open-pit mining, the Respondent suddenly decided to abandon the one project and undertake the other. It is to be still further noted that the mine superintendent himself had neither been consulted nor advised prior to July 22 of any intended change in operations. As noted above, Glennon told employees that "it just dropped out of the clear sky." In these circumstances, we reject the Respondent's contention that the mine closing decision made on July 22 was motivated by economic considerations.

As to the decision affecting the construction workers, the Respondent offered no explanation other than Goldsworthy's bare opinion that the Respondent would probably be better off if the construction work were contracted out. Presumably, the Respondent still intended to complete the mill expansion program under plans then formulated, yet it had not undertaken to have that work done by independent contractors when the July 22 decision was made.

There is another factor which makes implausible the Respondent's assertion that it was motivated by economic considerations. In the case of construction laborer LeRoy Taylor, Gates first discharged, then not only immediately rehired him at a higher rate of pay, but made that higher rate retroactive. The singular treatment of Taylor evidences that Gates was not so much concerned with economy as he was with correcting what was obviously the reason for Taylor's dissatisfaction with the Respondent.

With respect to the discharge of Millard, Gates assigned the frequent breakdowns of cat loader equipment due to faulty maintenance as the reason therefor. However, Gates admittedly did not know

whether Millard was the one responsible for those breakdowns. Moreover, as to one incident of faulty maintenance stressed by Gates as provoking Millard's discharge because it resulted in costly repairs, Goldsworthy testified that the claimed damage did not occur until *after* Millard's discharge.

In these circumstances, we are convinced that the reasons advanced by the Respondent for the discharges were not the real reasons. On the other hand, the record clearly establishes, as contended by the General Counsel, that in directing the discharges Gates was motivated by a desire to quash the employees' efforts to obtain union representation.

As indicated above, when the Unions undertook their organizing efforts on July 21, no objection was raised by top supervisory officials. In fact, Mine Superintendent Glennon himself signed a card, and a number of employees signed theirs in Glennon's presence. However, when Gates learned of the Unions' efforts, he chartered a plane, flew to the mine site, and held a hurried meeting. This meeting resulted in Gates' discharge of most of those who had signed authorization cards. Only five out of all who had signed cards were not involved in Gates' discharge action, and it is also to be noted that one of these five was the mine superintendent and the other four, unlike the discharges, were relatively skilled employees. On the other hand, employees who had not signed were retained. Thus, Hunter, Kunde, and Clarke, who were then working at the Northern Belle mine shaft but who had not signed cards, were not discharged. It should also be noted that subsequent to the discharges other employees were hired for work under Glennon's supervision. One (Buffrem) was hired 8 days after the date of the discharges and two others (Webber and Bovard) were hired about 2 weeks later. We think it significant that these new hires apparently possessed no more skills than those discharged on July 22. All of these circumstances, the quickness with which Gates moved upon learning of the Union's activities, the fact that only union card signers were discharged, and the fact that other employees were hired shortly after the discharges, strongly evidences that Gates' real purpose was to defeat the Unions. Particularly enlightening as to this unlawful purpose is Gates' statement to Millard at the time of Millard's termination interview that Gates did not want and was not going to have a union. On the basis of the entire record, including this clear expression of union animus, we are convinced that the Respondent discharged these employees because they had signed union authorization cards. Accordingly, we find, in agreement with the Trial Examiner, that the Respondent discriminatorily discharged John Phillips, Ted R. Deal, William Schjoth, David Millard, Ray L. Skaggs, Fred Mappin, Louis Penrod, LeRoy Goodhue, and Harold Huff, and thereby violated Section 8(a) (3) and (1) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we have found that the Respondent discriminated against John Phillips, Ted R. Deal, William Schjoth, David Millard, Ray L. Skaggs, Fred Mappin, Louis Penrod, LeRoy Goodhue, and Harold Huff in order to discourage union activities. We shall, therefore, order that the Respondent offer them immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, and make each whole for any loss he may have suffered because of the discrimination against him, by payment of a sum of money equal to the amount he normally would have earned as wages from the date of his discharge to the date of offer of reinstatement, less his net earnings during said period, with backpay computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. We shall also order the Respondent to make available, upon request, payroll and other records to facilitate the checking of the amounts of backpay due.

Since the violations of the Act which the Respondent has committed are related to other unfair labor practices proscribed by the Act, and the danger of their commission in the future is reasonably to be anticipated from its past conduct, we shall order that the Respondent cease and desist from infringing in any other manner upon the rights guaranteed by the Act.

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Argentum Mining Company of Nevada, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in, or lawful activities on behalf of, Hod Carriers, Laborers, Miners, Maintenance and Production Workers, Local Union No. 169, International Union of Hod Carriers and Common Laborers, AFL-CIO, and International Union of Operating Engineers, Local Union No. 12, AFL-CIO, or any other labor organization, by discriminatorily discharging any of its employees, or in any like or related manner discriminating in regard to their hire or tenure of employment or any terms or conditions of their employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form or join labor organizations, to assist the above-named or any other

labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from all such activities.

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

(a) Offer to John Phillips, Ted Deal, LeRoy Goodhue, Harold Huff, Fred Mappin, David Millard, Louis Penrod, William J. Schjoth, and Ray Lewis Skaggs immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

(b) Make whole the above-named for any loss of wages in accordance with the Board's policy set forth in *F. W. Woolworth Company*, 90 NLRB 289, in the manner set forth in the section herein entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due under the terms of this Order.

(d) Post at its premises where the milling and mining operations are carried on, copies of the notice attached hereto marked "Appendix."⁴ Copies of said notice, to be furnished by the Regional Director for the Twentieth 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 employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

⁴ 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 Act, as amended, we hereby notify our employees that :

WE WILL NOT discourage membership in, or lawful activities on behalf of, Hod Carriers, Laborers, Miners, Maintenance and

Production Workers, Local Union No. 169, International Union of Hod Carriers and Common Laborers, AFL-CIO, and International Union of Operating Engineers, Local Union No. 12, AFL-CIO, or any other labor organization, by discriminatorily discharging any of our employees, or in any like or related manner discriminating in regard to their hire or tenure of employment or any terms or conditions of their employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form or join labor organizations, to assist the above-named 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.

WE WILL offer to the following named employees immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges:

John Phillips	David Millard
Ted Deal	Louis Penrod
LeRoy Goodhue	William J. Schjoth
Harold Huff	Ray Lewis Skaggs
Fred Mappin	

WE WILL make whole the above-named employees for any loss of pay incurred by them as a result of their discriminatory discharge.

ARGENTUM MINING COMPANY OF NEVADA,
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

STATEMENT OF THE CASE

This proceeding was held in Hawthorne, Nevada, on November 19 and 20, 1959. The issues concern the threatened discharge of three employees for union activities and the discharge of nine additional ones for allegedly participating in concerted activities with the labor organizations involved. The Argentum Mining Company of Nevada herein is called Respondent, and the two unions designated as Hod Carriers, Laborers, Miners, Maintenance and Production Workers, Local Union No. 169, International Union of Hod Carriers and Common Laborers, AFL-CIO, and International Union of Operating Engineers, Local Union No. 12, AFL-CIO, are herein sometimes called the Union.¹

¹ Prior to the close of the hearing it was agreed between the General Counsel and counsel for Respondent that the Respondent might submit documentary material which

From my observation of the witnesses, consideration of Respondent's brief, and upon the entire record in the case, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Respondent is an Arizona corporation with its principal office in Phoenix, Arizona. At all times material herein Respondent has been engaged in the mining and milling of silver ore in its mine-mill operation southwest of Mina, Nevada. During the calendar year ending December 31, 1958, Respondent purchased materials of a value in excess of \$50,000 which originated outside the State of Nevada. Respondent is engaged in commerce within the meaning of the Act.

II. LABOR ORGANIZATIONS INVOLVED

Hod Carriers, Laborers, Miners, Maintenance and Production Workers, Local Union No. 169, International Union of Hod Carriers and Common Laborers, AFL-CIO, and International Union of Operating Engineers, Local Union No. 12, AFL-CIO, are labor organizations within the meaning of the Act.²

III. THE UNFAIR LABOR PRACTICES

A. Background events

For approximately 2 years prior to the hearing Respondent has been engaged in mining and processing of silver ore near Mina, Nevada. The ore to be processed in Respondent's mill originates mainly from a large stockpile of ore which is presently on the premises of Respondent. Ore is also available from a vertical mine shaft as well as open-pit mining which commenced some 2 or 3 weeks prior to the inception of this present hearing.

On July 14, 1959, Robert Westfall, a representative of the operating engineers, visited Respondent's premises and informed Superintendent James Goldsworthy that he intended to organize the employees. On July 21, 1959, Westfall returned with Louis Paley, a representative of the Laborers Union, and also a Mr. Baldwin, who was a member of the executive board of the Operating Engineers. The record reflects that the Operating Engineers and the Laborers would jointly organize operations within their jurisdictions and also would jointly submit petitions for representation or an election to the National Labor Relations Board.

On this occasion the Operating Engineers representative obtained 10 authorization cards and the representative of the Laborers Union obtained 7.

On July 27, 1959, Eugene S. Gates, general manager of Respondent, flew into the premises where the mine and mill are located and on this day discharged John Phillips, Ted Deal, LeRoy Goodhue, Harold Huff, Fred Mappin, David Millard, Louis Penrod, William J. Schjoth, and Ray Lewis Skaggs.³ All of the individuals discharged had signed authorization cards on July 21.⁴ The balance of the cards were signed during the lunch period where Superintendent John Glennon was eating with a group of men and later where construction work was being done. Paley's testimony was substantially the same as Westfall's with respect to obtaining the signatures on the authorization cards.⁵

would be admitted only upon the approval of the General Counsel. The General Counsel has objected to the admission to the documents marked "Respondent's Exhibits Nos. 2e and 2g," and because of this objection of the General Counsel and the arrangement for the submission of this material, these two documents will not be considered in the resolution of this case. However, in view of the General Counsel's lack of objection, Respondent's Exhibits Nos. 2a through 2i, with the exception of 2e and 2g, are now admitted into evidence as part of this record.

²The complaint alleges and the answer admits the status of labor organizations involved and the fact that Respondent was engaged in commerce within the meaning of the Act, as well as the jurisdictional facts.

³This complaint is amended to correct "Shaggs" to "Skaggs."

⁴In addition to obtaining the signatures of the 12 individuals named in the complaint, there were also obtained authorization cards from John Glennon, the superintendent of the mine, Earl Treolor, an electrician, Alfred Barry and Paul Jones whose authorization cards indicate they were welders, and a Willard Edison who was also shown to be a welder on his authorization card, and who, according to Glennon, acted in a supervisory capacity when Glennon was absent.

⁵Mill Superintendent Williams testified that Gates stated at the meeting of July 22, 1959, that Hancock had told him of the union organization in a telephone conversation.

On the morning of July 22, 1959, General Manager Gates, Carl Earl, an officer and director of the Company, James Goldsworthy, John Glennon, and Roy Williams, the superintendent of mill operation, engaged in conferences where the subject of union organization was one of the topics discussed. This conference was ended by Gates and his assistant, Hancock, driving into Hawthorne to draw paychecks for John J. Manfredi, LeRoy Taylor, John Phillips, Ted Deal, LeRoy Goodhue, Harold Huff, Fred Mappin, David Millard, Louis Penrod, William J. Schjoth, Ray Lewis Skaggs, and Maurice Adams.

B. The issues

The General Counsel contends that Gates threatened to discharge John J. Manfredi, Maurice Adams, and LeRoy Taylor because of union activities and did discharge John Phillips, Ted Deal, LeRoy Goodhue, Harold Huff, Fred Mappin, David Millard, Louis Penrod, William J. Schjoth, and Ray Lewis Skaggs for their union activities. Respondent denies this contention.

C. The evidence

Eugene Gates was the general manager of Respondent. Under him was General Superintendent James Goldsworthy. Carl Earl was a stockholder and secretary-treasurer of the corporation. John Glennon and Roy Williams were superintendents under Goldsworthy, Glennon having charge of the mine and construction operations and Williams having charge of the milling aspect of Respondent's operations.

On July 21, 1959, Clarke, one of the mine crew, was not at work. Mappin, Goodhue, Deal, Skaggs, and an employee named Hunter worked in the mine shaft. Kunde and Clarke worked on the surface in connection with the mining operation. Schjoth was the mine hoist engineer. Skaggs, Mappin, Deal, Goodhue, and Schjoth at least signed union organization cards in the presence of Glennon on July 21, 1959. Kunde and Hunter did not. Glennon testified that he told Gates on July 22, 1959, that practically everyone had signed cards. Other members of Glennon's crew who were construction workers who signed cards on July 21 were John Phillips, Maurice Adams, and Louis Penrod.

The three men in Williams' mill crew who signed union cards on July 21, 1959, were LeRoy Taylor, John Manfredi, and David Millard.

Millard credibly testified that when he went into the office on July 22, 1959, to receive his terminal pay, Gates informed him that he was a good worker and that he was cutting down on expenses. Then Gates said that he did not want a union and was not going to have one.⁶

According to Gates, after a meeting at the site of the mill on July 22, 1959, it was concluded to terminate Manfredi, Adams, Taylor, Phillips, Deal, Goodhue, Huff, Mappin, Millard, Penrod, Schjoth, and Skaggs. Gates went into Hawthorne and drew checks to pay off these men. Taylor and Adams testified for Respondent, while Manfredi did not testify at all. According to Taylor, Gates asked him why he was dissatisfied and Taylor said he should be getting additional pay to which Gates agreed. Adams testified that when Gates came to his home on the evening of July 22 he was given his terminal check and then followed Gates to his car and was given a job at the mill.

Goldsworthy testified that shortly after June 25, 1959, when he went to work for Respondent, he had recommended open-pit mining and that on July 14 Gates had definitely indicated his willingness to accept this recommendation.

Respondent's general position was that the reduction in force was because of economic reasons to curtail the expense of developing the mine shaft and get cheaper ore, in addition to the existing stockpile, from open-pit mining. Goldsworthy admitted that it was not until November that tests proved open-pit mining to be economically feasible, that he had not personally been in the mine shaft, and that Respondent still planned on getting ore from a vertical shaft.

D. Analysis of evidence

The decision to terminate 12 men on July 22, implemented to the extent of drawing their terminal checks, is consistent with the credited testimony of Millard that

the previous evening. Gates denied this statement. However, the record shows that Hancock acted as the general assistant to Gates, that he was supposed to meet him at the plane on the morning of July 22, and that he drove him in to the bank at Hawthorne on that afternoon. Williams is credited, as his testimony is more compatible with the ensuing events of July 22, 1959, in connection with the actions of Respondent.

⁶This was denied by Gates, Glennon, and Earl. These denials lack plausibility in the light of the additional evidence which will be discussed herein.

Gates was determined not to have a union, as their termination would leave only four nonsupervisory personnel in the employ of Respondent who had signed union authorization cards.

Respondent offered testimony that the reduction in force as to eight men was due to an economic decision not to spend additional money on the shaft at that time but to get ore instead from an open-pit mining method. In the case of the ninth man, Millard, his discharge was attributed to faulty maintenance of equipment.

The force of the statistics in selecting for discharge only those who had signed union authorization cards as an indication of antiunion motivation is fortified by several other aspects of the record.

Millard's alleged failure to put an oil pan on equipment was stressed by Gates as a reason for his discharge as it resulted in costly repairs. Yet Goldsworthy testified the claimed damage did not occur until after Millard's discharge.

Of the people working at the mine only the two who had not signed union cards were not discharged.

The retention of Manfredi, Taylor, and Adams after drawing their terminal checks, by Gates, is not consistent with the claimed economic reason for reducing personnel on July 22, 1959.

The record is silent with respect to any necessity of terminating the construction personnel under Glennon.⁷ The record shows several replacements in Glennon's crew after July 22, 1959.

Williams, the mill superintendent, informed Manfredi and Millard they were fired as he had *replacements* for them.

Goldsworthy, the general superintendent, testified that he had recommended to Gates as early as July 1, 1959, that open-pit mining be attempted. Yet the record shows that miners were employed in the shaft through July 22, 1959, with a miner being hired on July 13, 1959.

Goodhue's testimony that Glennon told him the layoff was a "surprise"—"out of a clear sky" is credited.

Secretary-Treasurer Earl testified that economics dictated the layoff. His denial that he had considered union organization as a potential economic problem lacks persuasion. The decision to temporarily abandon work on the shaft mine came after approximately \$75,000 had been expended on it and the open-pit tests for economic mining operations were not completed until about November 1, 1959.

On the basis of the above it is found that John Phillips, Ted Deal, LeRoy Goodhue, Harold Huff, Fred Mappin, David Millard, Louis Penrod, William J. Schjoth, and Ray Lewis Skaggs were discharged because of their attempts to engage in concerted union activity for the purpose of collective bargaining by signing union authorization cards.⁸

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, 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 thereof.

CONCLUSIONS OF LAW

1. Hod Carriers, Laborers, Miners, Maintenance and Production Workers, Local Union No. 169, International Union of Hod Carriers and Common Laborers, AFL—

⁷ The mill expansion was underway on July 22, 1959, and the record facts point to the probability that the construction personnel were still needed even though the mine work was stopped.

⁸ In view of the scope of proposed remedy it is regarded as unnecessary to distill from this record a finding on the question as to whether Gates threatened to discharge Manfredi, Taylor, and Adams, as alleged in the complaint. It is clear that Mill Superintendent Williams told Manfredi and Taylor they were discharged. The only testimonial evidence of the reason for their continuing to work comes from Gates and Taylor which controverts the allegation of threatened discharge.

Also in the case of Adams, Gates told him he was terminated and then in a matter of moments rehired him.

Although the record would support a finding these three men were discriminatorily discharged, I am not persuaded that evidence of actual discharges as occurred here supports a charging allegation of threatened discharges.

CIO, and International Union of Operating Engineers, Local Union No. 12, AFL-CIO, are labor organizations within the meaning of the Act.

2. By discriminating in regard to the hire and tenure of employment of its employees, thereby discouraging membership in the above labor organization, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

3. The aforesaid unfair labor practices affect commerce within the meaning of the Act.

[Recommendations omitted from publication.]

Gray, Rogers, Graham & Osborne and Madison Earl Carrithers and Albert Ellis Hartley, Jr. and Local No. 189, American Federation of Technical Engineers, AFL-CIO. Cases Nos. 19-CA-1799, 19-CA-1800, and 19-CA-1799-2. October 25, 1960

DECISION AND ORDER

On March 31, 1960, Trial Examiner Howard Myers issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices 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.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in these cases and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, except as modified herein.

1. We agree with the Trial Examiner that the Respondents are engaged in a business affecting commerce within the meaning of the Act and that the assertion of jurisdiction thereof is warranted. The Respondents are engaged in the business of architecture, engineering, and land surveying at Fairbanks, Alaska. During 1959, they performed services valued at \$35,482 for the U.S. Corps of Engineers, Ladd Air Force Base, and Eielson Air Force Base. In addition, services connected with airstrips were performed for Alaska's International Airport and the Alaska Department of Aviation, which were valued in excess of \$18,000 and \$26,000, respectively. Upon the entire record, we find that the Respondents' operations exert a sufficient impact on national defense to justify our exercising jurisdiction in these cases.²

¹ Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Rodgers and Jenkins]

² *Ready Mixed Concrete & Materials, Inc.*, 122 NLRB 318.