

4. By refusing, on and after March 10, 1960, to bargain collectively with the Union as the exclusive representative of its employees in the aforesaid unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By the aforesaid refusal to bargain collectively, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. 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.]

## APPENDIX A

### 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 our employees that:

WE WILL bargain collectively upon request with Oil, Chemical and Atomic Workers International Union, as the exclusive representative of all our employees in the bargaining unit described herein, in respect to rates of pay, wages, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All operating and maintenance employees of our Wichita Falls, Houston, and Lafayette divisions, excluding office clerical, technical, and professional employees, guards, mechanical maintenance foremen, electrical maintenance foremen, chief main line engineers, and all other supervisors as defined in the Act.

THE TEXAS PIPE LINE 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.

**Gibbs Corporation and Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO**

**Southern Shipbuilding, Inc., Division of Gibbs Corporation and Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO.** *Cases Nos. 12-CA-1153 and 12-CA-1206. November 18, 1960*

## DECISION AND ORDER

On June 29, 1960, Trial Examiner A. Bruce Hunt 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.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with these cases 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 cases, and hereby adopts the findings,<sup>1</sup> conclusions, and recommendations<sup>2</sup> of the Trial Examiner, with the additions and modifications set forth below.

As indicated in the Intermediate Report, the complaint allegations involving the assaults upon the union organizers on August 10 turns crucially upon proof that Respondents' officials or supervisors directed these assaults or otherwise participated in them. In sustaining this aspect of the complaint, the Trial Examiner relied both on: (1) circumstantial evidence tending to prove that Gibbs and/or Dorman knew of the plan of attack in advance and either instigated it or encouraged its effectuation, and (2) direct and other evidence provided by credible testimony establishing that they actively participated in acts of assault.

Gibbs and Dorman admitted being present at the assault and that they both returned to the plant that evening after telephone contact with each other because they had heard that there might be some trouble. Examination of the testimony of credited witnesses indicates that: (1) earlier that afternoon, and in Gibbs' presence, Dorman told three of the five union organizers subsequently assaulted, "If you continue to come over here there's going to be trouble";<sup>3</sup> (2) Dorman carried a blackjack that night; (3) one of the assaulted union organizers (McKinnon) was hit by a blackjack; (4) Gibbs and Dorman were in the group of about 15 men which included Wilson, the prime actor in the attack; and (5) during the melee, Gibbs directed Wilson to "get" Polston, and, after Wilson hit him with a metal object attached to his fist, Gibbs also did so with his open hand or arm.

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<sup>1</sup> The Respondents have excepted to unfair labor practice findings of the Trial Examiner, which we have adopted, on the ground that he erred in his credibility resolutions. It is well established, however, that the Board will not overrule a Trial Examiner's resolution as to credibility unless a clear preponderance of all the relevant evidence convinces the Board that such resolution was incorrect. *Cadre Industries Corporation*, 124 NLRB 278. No such conclusion is warranted in this case. ". . . [T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." *N L R.B. v. Pittsburgh S.S. Company*, 337 U.S. 656, 659.

<sup>2</sup> We do not adopt section 2(b) and (c) of the Trial Examiner's recommendations, as they are not warranted by the violations found, and therefore we do not include these sections in our Order.

<sup>3</sup> The organizers were distributing literature at the Southern shipyard when they were told this by Dorman.

In more specific terms, union organizers McCarthy and George, both of whom were found to be credible witnesses, testified as follows concerning the events of that evening:

Q. (Mr. Adair.) Would you describe the circumstances or occurrences that happened that night while you were distributing the literature?

A. (McCarthy.) Yes, sir. We were waiting till the whistle blew. Shortly before midnight Mr. Gibbs drove into the yard alone in a black Lincoln automobile.

Q. Could you see and identify the gentleman driving the car as Mr. Gibbs?

A. Yes, sir. This gentleman here was driving.

TRIAL EXAMINER: The witness points to Mr. Gibbs.

Q. Go ahead.

A. And about a car length behind Mr. Gibbs' automobile a black Chevrolet sedan went into the yard loaded. It had the front seat full and the back seat full. On the side opposite to the driver in the front seat I recognized Mr. Wilson. The rest of the men in the car I did not recognize. They were men.

Q. All right. Continue.

A. The whistle for knocking off blew and shortly after the whistle blew one man came out of the yard. He crossed the side that I was stationed on. I handed him a leaflet. He took the leaflet and walked away. A few seconds after that a group of approximately 15 men came out of the yard. In that group was Mr. Gibbs, Mr. Dorman, Mr. Deneen and Mr. Wilson that I recognized and knew by name. . . . This group came out at a fast pace. Some of them congregated around Mr. George and Mr. Wilson shouldered me to the ground. . . . He hit my right shoulder with his right shoulder and I hit the ground. . . . Seconds after that Mr. Polston, who was in his car, had got out. He stood up and raised his hands and said, "Fellows, we're not here for any trouble. We're here to make a distribution of literature." *Mr. Gibbs shortly after he made that statement pointed and said, "Wilson, get that s—— with the mustache."* Wilson hit him between the eyes with a right closed hand with a metal object on it, and Polston hit the pavement on the seat of his pants. Polston got up and *Mr. Gibbs hit Mr. Polston behind his neck with an open hand.*

\* \* \* \* \*

Q. (Mr. Adair.) And what was said by whom, and go ahead.

A. (George.) *Mr. Gibbs, III, said, "Wilson, get that s—— with the mustache,"* and Wilson came dashing at Polston and hit him right between the eyes, here partially on the nose, and up in this

vicinity, and Mr. Polston went down on the seat of his pants and he partially rocked backwards and then got up, and as he got up *Mr. Gibbs stepped by Mr. Wilson and swung on Mr. Polston, and I don't believe he caught him with the hand. I think it was some part of his arm alongside the neck.* [Emphasis supplied.]

We are satisfied, on the basis of all the foregoing evidence, of the Respondents' participation in the assaults of August 10, 1959. We are further convinced, as was the Trial Examiner, that this conduct was directed to discouraging organizational activity on behalf of the Union.<sup>4</sup> We conclude, accordingly, as did the Trial Examiner, that the Respondents thereby engaged in conduct in violation of Section 8(a)(1) of the Act.

### ORDER

Upon the entire record in these cases, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Gibbs Corporation and Southern Shipbuilding, Inc., Division of Gibbs Corporation, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Assaulting, beating, or otherwise engaging in physical violence, or inciting, encouraging, or assisting others to assault, beat, or otherwise engage in physical violence, for the purpose of discouraging membership in, or activities on behalf of, any labor organization of their employees.

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

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

(a) Take all reasonable and prudent steps to afford all persons lawfully on or about their shipyards adequate protection at all times from intimidation, physical assaults, beatings, and threats of physical violence directed at discouraging membership in Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, or in any other labor organization.

(b) Post in conspicuous places at their shipyards, copies of the notice attached hereto marked "Appendix."<sup>5</sup> Copies of said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being duly signed by the Respondents' representatives, be posted

<sup>4</sup> Respondents contend that the incident was motivated by animosity between members of opposing unions. We find no merit to this contention. Even though it is possible that the animus between the Unions provided stimulus, this in no way explains or justifies participation by Respondents.

<sup>5</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."

by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(c) File with the Regional Director for the Twelfth Region, in writing, within 10 days from the date of this Decision and Order, what steps the Respondents have taken to comply herewith.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT assault, beat, or otherwise engage in physical violence, nor will we incite, encourage, or assist others to assault, beat, or otherwise engage in physical violence, for the purpose of discouraging membership in, or activities on behalf of, Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, or any other labor organization of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities.

WE WILL take all reasonable and prudent steps to afford all persons lawfully on or about our shipyards adequate protection at all times from intimidation, physical assaults, beatings, and threats of physical violence, directed at discouraging membership in Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, or in any other labor organization.

GIBBS CORPORATION,  
*Employer.*

SOUTHERN SHIPBUILDING, INC., DI-  
VISION OF GIBBS CORPORATION,  
*Employer.*

By \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title) (Representative) (Title)  
Dated \_\_\_\_\_

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

This proceeding involves allegations that the Respondents, Gibbs Corporation and Southern Shipbuilding, Inc., violated Section 8(a)(1) of the National Labor Relations Act, 61 Stat. 136. On January 11, 12, and 13, 1960, the duly designated Trial Examiner conducted a hearing at Jacksonville, Florida, at which all parties were represented. The Respondents' motions to dismiss the complaint are denied. Upon the entire record in the case, and from my observation of the witnesses, I make the following:

## FINDINGS OF FACT

## I. THE RESPONDENTS

Gibbs Corporation and Southern Shipbuilding, Inc., the latter a division of the former and herein called Southern, are engaged in the operation of shipyards at Jacksonville, Florida. During the 12-month period of October 1958 through September 1959, the Respondents purchased raw materials valued in excess of \$50,000 which were shipped to them from points outside the State of Florida. During the same period the Respondents provided goods and services directly related to national defense in an amount exceeding \$100,000. There is no dispute, and I find, that the Respondents are engaged in commerce within the meaning of the Act.

## II. THE UNION

Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, is a labor organization admitting to membership employees of the Respondents.

## III. THE UNFAIR LABOR PRACTICES

A. *The issue*

The principal issue is whether, at 12:01 a.m., on August 11, 1959, at the intersection of public streets outside Southern's shipyard, when organizers for the Union were preparing to distribute handbills to workers leaving the shipyard, representatives of the Respondents led a group of individuals in assaults and batteries upon the organizers. There is no doubt that brutal assaults and batteries occurred. The question is whether the Respondents' representatives participated. The defense is that the organizers were attacked by a rival union group and that the representatives of the Respondent were present only during the latter stages of the attack and only for the purpose of stopping it.

There were five witnesses for the General Counsel, including four of the five organizers who were attacked, and there were two witnesses for the Respondents. The determination of the issue turns upon credibility.

B. *Events during the afternoon preceding the attack*

The Respondents' shipyards are bounded on the north by the St. John's River which runs through Jacksonville. The property of each Respondent is separate from that of the other but the properties adjoin for an undisclosed distance. To some extent, the property of Southern consists of land which was subdivided into streets and building lots by an earlier owner but, insofar as appears, was never developed further.

In order to understand a dispute which occurred between representatives of the Respondents and the Union during the afternoon of August 10, 1959, additional reference must be made to the subdivided property. Southern's property is bounded on the south by June Street which runs east and west. An intersecting thoroughfare is Flagler Avenue, running north and south. During 1957 or earlier, Southern acquired title to all lots on both sides of Flagler Avenue north of June Street to the St. John's River. Thereafter, the city of Jacksonville abandoned Flagler Avenue north of the intersection with June Street and, by operation of law, that portion of Flagler Avenue became the property of the adjacent landowner, Southern. About 75 feet north of June Street, Southern constructed a gate across Flagler Avenue which became the main gate to Southern's shipyard. Southern did not, however, post signs or otherwise take effective means to notify the public that the 75 feet of Flagler Avenue between June Street and the gate was closed to the public. That portion of Flagler Avenue retained its appearance as a public street, dead-ending at the gate.

During the afternoon of August 10, as the day shift ceased work, three organizers for the Union stationed themselves on Flagler Avenue outside the gate in order to distribute handbills. This was one of a number of efforts by the Union to organize the Respondents' employees. The organizers are Charles J. George, the Union's State director, Roy F. McCarthy, a national representative of the Union, and James

J. Polston, executive secretary of Local 32 of the Union. While these organizers were distributing handbills to employees who were on foot or in automobiles, a group of persons came out of the shipyard. Within the group were George W. Gibbs III, vice president of Gibbs Corporation and manager of Southern; Rex Dorman, vice president of Gibbs Corporation and director of industrial relations for both Respondents; and supervisors named Deneen, Hartley, and Ingle. One or more of those persons told the organizers that the latter were on private property and directed them to get off. Polston went to a telephone and called a policeman who soon arrived. The events of the afternoon ended without violence although vulgar remarks were exchanged. The complaint alleges that Gibbs threatened the organizers if they should return to continue their organizational efforts, and the testimony of the General Counsel supports that allegation. On the other hand, the Respondents' testimony is to the contrary. In view of my credibility determinations below, I credit the testimony for the General Counsel

### C. The attack

Late that night the organizers returned to the intersection of June and Flagler to distribute handbills to employees on the second shift who ceased work at midnight. George and McCarthy drove their respective autos, unaccompanied. Polston was accompanied by men named McKinnon and Crawford who are chief shop steward and shop steward of Local 32 at the Merrill-Stevens shipyard, respectively. At midnight, George stationed himself at the northwest corner of the intersection. McCarthy was at the northeast corner. Polston's automobile, with Polston, Crawford, and McKinnon as occupants, was parked on June Street near the intersection, facing westward toward McCarthy and George. A lone employee came out of the shipyard and was offered a handbill. Suddenly, from shrubbery along the west side of Flagler Avenue north of the intersection, a group of a dozen or more men emerged. A question to be determined hereinafter is whether representatives of management were among the group. No witness at the hearing admitted having been among it.<sup>1</sup> The men in the group spread out. George, a man of 65 years, was grabbed by someone who pinned his elbows to his sides. Someone else hit George on the hand with a blackjack and slapped his face. Meanwhile, McCarthy, a man of 45 years, 5 feet 11 inches in height and weighing 170 pounds, was battered to the ground when Bill Wilson, an employee of Gibbs Corporation who works on the day shift, rushed into McCarthy in the manner of a football player blocking another. Polston, Crawford, and McKinnon, observing events from Polston's automobile, got out and went into the street intersection. As Polston was saying that the organizers did not want trouble, Wilson, with metal knuckles on his fist, hit Polston a damaging blow to the face, knocking Polston to the ground. Polston arose and someone else hit him. He tried to escape by running south on Flagler Avenue toward its intersection with Mary Street, which lies parallel with June Street about 150 feet distant. Some of the attackers followed him. When near Mary Street, Polston, a man of 44 years, 5 feet 8 inches in height, and weighing 225 pounds, decided that he could not escape. He stopped. As he testified, he is "too fat and short . . . to run far." Again Polston was battered severely.

About the time when Polston began to run, a group of men backed Crawford and McKinnon against Polston's automobile and threatened in unprintable language to batter them unless they got in Polston's automobile and drove away. Crawford and McKinnon complied. They drove in the direction in which Polston had run. Near Mary Street, seeing a group of men around Polston they stopped and got out of the auto. As Crawford sought to reach Polston to get him into the auto, Wilson said to Crawford that Wilson had told "you all not to come back over here or else there was going to be trouble." Crawford replied that "we're in our rights and we'll be back," whereupon Wilson hit him in the mouth and knocked him to the ground. As McKinnon started to pick up Crawford, McKinnon was hit with a blackjack. Crawford arose, was hit on the back of the neck with a blackjack, and lost consciousness. Polston and Crawford were put into Polston's automobile while Crawford still was unconscious. McKinnon got in too but it does not appear whether he made it under his own power. Polston drove to a police station to report the matter.

Turning our attention back to George and McCarthy, who had been manhandled at the intersection of June and Flagler, they were told to get in an automobile and leave or be killed. They entered George's auto, with McCarthy in the driver's seat, and someone slammed the door on McCarthy's ankle. They drove south on Flagler

<sup>1</sup> That being so, the findings concerning the attack are based upon the testimony of four organizers, Polston, George, McCarthy, and Crawford, all witnesses for the General Counsel.

Avenue and, without stopping, passed the group who were battering Polston, Crawford, and McKinnon at Mary Street. George and McCarthy continued on to report the matter to police. Later that night, the five organizers met again and obtained medical treatment for those who needed it. Three stitches were taken in Crawford's upper lip and four were taken inside his mouth. Polston sustained a broken nose and three broken ribs.

#### *D. The General Counsel's position*

According to the General Counsel's evidence, Gibbs and Dorman led and actively participated in the attack upon the organizers, Gibbs directed Wilson to batter Polston, Gibbs also hit Polston, Dorman wielded a blackjack, and Supervisor Deneen was among the attackers.

#### *E. The defense*

As recited, the Respondents assert that the organizers were attacked by a rival union group, not by any representative of management. The employees of both Respondents have been represented for some years by Independent Workers Union of Florida, herein called the Independent. Since 1956, at least, however, representatives of the Union have sought intermittently and unsuccessfully to obtain majority status. Just 4 days before August 10, when George and McCarthy were distributing literature outside the main gate of Gibbs Corporation's property, about one-half mile from the main gate to Southern's property, Wilson was watching and he voiced objection to George's comments to employees that they should not "pay any attention to the propaganda being spread around by Roy Gatz," president of the Independent. Wilson said to George that George was not "too old to slap the —— out of" if George did not cease his remarks about Gatz. George responded that "two can play at that game. We probably might have some people that could do some slapping around themselves." Soon Gatz appeared upon the scene and George repeated in his presence the comments which George had been making to employees. Gatz said to George, in reference to George and his associates, "We think you are a bunch of —— [vulgarity]," and George answered that, "the feeling is mutual. We think you're a bunch of —— [vulgarity]." As George and McCarthy left the scene Wilson challenged McCarthy to get out of an automobile and "take a walk up the street." McCarthy ignored the challenge.

Turning to events on the night of the attack, Gibbs and Dorman, the only witnesses for the Respondents, testified as summarized in this paragraph. After 10 o'clock, Dorman happened to talk, at the gate to Gibbs Corporation's property, with employees whom he could not identify but who told him that the "CIO organizers were coming back to Southern in force and they [the organizers] were going to take care of the situation in the view of what had happened that afternoon" and that "there may be some trouble." Whereupon, Dorman telephoned Gibbs at the latter's home and they arranged to meet on the property of Gibbs Corporation from which they drove in Gibbs' auto to the property of Southern, passing the intersection of June Street and Flagler Avenue at about midnight where they noticed a few persons, at least one of whom was distributing literature, but there was nothing "out of the ordinary." At a guardhouse and timeclock for employees about 75 feet beyond the gate into Southern's property, and thus about 150 feet from the intersection of June and Flagler, someone whom Gibbs and Dorman could not identify but who may have been a guard, said that there was trouble or fighting outside where, a few moments earlier, there had been nothing "out of the ordinary." Gibbs and Dorman walked in the direction from which they had just come but, since Dorman is lame, Gibbs went ahead of Dorman. They were unaccompanied and their purpose was solely to break up any fight which might be underway. When Gibbs arrived at the intersection of June and Flagler, he saw some persons "scuffling" or "milling around" but he did not stop because he saw a "scrap" about 150 feet farther down Flagler Avenue at the intersection of Mary Street. Although Flagler Avenue is unlighted between intersections, the "scrap" at Mary Street appeared to Gibbs to be more severe than the one at June Street. As Gibbs continued on toward Mary Street, Dorman passed the group of men at June Street. He observed only some people "milling around" and continued on to investigate what appeared to be a "scuffle" at Mary Street. Gibbs and Dorman arrived at Mary Street only moments apart. Before they could do anything to stop the "scuffle" between Polston and Wilson, an unidentified man drove up in a truck, stopped, got out with an object in his hand, and advanced toward the group, whereupon Gibbs called out a warning to Dorman who turned around and told the man to get back in the truck and leave, that "We're trying to break this up." The man complied. Dorman, noticing that

Polston had grabbed Wilson around the back or neck, separated the two men.<sup>2</sup> At that point an automobile came up and stopped. Someone (Crawford and McKinnon) got out. Dorman did not know but assumed correctly that the automobile belonged to Polston or that the driver was one of the organizers, so Dorman told Polston to get in the automobile and tried to push him in. Polston and the persons in the auto drove away. When the police arrived later, Dorman told them that there had been a fight between employees and organizers.

According to Dorman, although he had seen blood on Polston, he did not know that Polston or anyone had been "beaten up." Neither Dorman nor Gibbs, so they testified, saw the attack upon Crawford and McKinnon when the former was knocked unconscious. According to Gibbs, he assumed that employees were among the fighters and he made "a few remarks to try to break it up," speaking to all persons in the group, but he did not identify himself in the faint light nor did he try to separate any combatants.

In their brief, the Respondents assert:

This entire Complaint appears to be just a typical organizers trick. George et al. obviously challenged certain members of the Independent Workers Union to a pre-arranged fight on the night of August 10, 1959. They stashed three men in reserve in a car out of sight of the gate and when certain members of the Independent Workers Union stepped into the light outside the gate, Polston flashed the signal and the reserves [Polston, Crawford, and McKinnon] entered the fray. The fight went badly for the organizers and then Rex Dorman and George Gibbs, III arrived and broke it up. It appears likely that George figured he could turn a losing battle into a winning war and decided to capitalize on Dorman's and Gibbs' unexpected appearance by exaggerating the number of Independent Workers Union men present and screaming that they were led by Gibbs, III and Dorman. . . .

In support of the quoted contention, the Respondents contend also that: (1) Polston intended to fight Wilson and that Polston "was to take the walk down the street with Wilson that McCarthy had previously declined"; (2) five organizers to distribute literature to workers on the shift ending at midnight is a very high proportion of organizers to employees, much higher than had been used by the Union at the main gates of Gibbs Corporation and Southern on earlier occasions, and establishes that the extra organizers were there to fight, not to solicit members; (3) as Polston acknowledged, when Polston, seated in his automobile with Crawford and McKinnon, saw the group of men attack McCarthy, Polston reached to the dashboard and switched the lights on and off, and that, contrary to Polston's testimony, the switching of lights was a signal, and Polston, Crawford, and McKinnon immediately left the automobile to give battle; and (4) the testimony of the witnesses for the General Counsel is inconsistent and, in some instances, the testimony of a witness varies from that which he gave months earlier in a misdemeanor case which was based upon warrant sworn out by Polston against Gibbs and Wilson.

#### F. Conclusions

I am convinced that the General Counsel has established his case. There are various reasons. *First*, the Respondents assert that there is an "overwhelming inference" of a prearranged fight between members of rival unions. That is not so. Polston, George, Crawford, and McCarthy denied it, and the Respondents did not produce a single witness to testify that, as a member of the Independent, he participated in the attack or in any arrangements for it. Too, the Respondents did not produce a single admitted attacker to testify, in contradiction of witnesses for the General Counsel, that the attackers were not led by Gibbs and Dorman from the very beginning. *Second*, although the leadership of one labor organization has only disrespect for the leadership of the other, there is no evidence to contradict that of George that the rank-and-file of one labor organization have no ill feelings toward the rank-and-file of the other. *Third*, there is no evidence that any of the five organizers hit any attacker. Dorman testified that he knew of no injury to anyone employed by either Respondent. Moreover, there is no evidence that the organizers were prepared for battle and, indeed, Polston clearly was not prepared for it. His

<sup>2</sup> Polston testified credibly that he did not strike Wilson at any time and that, when Wilson and Dorman approached the truckdriver, he placed his hands on Wilson's arms. Polston testified also that he could not explain why he had done so but that he may have been asking Wilson not to "mess with the boy" who had been driving the truck. Wilson was not a witness.

uncontradicted testimony is that the night was hot and that he wore a sports shirt, shorts, and a pair of "flip-flops," which are loose fitting slippers or sandals that are held to the foot by the toes. According to the Respondents, "Polston's attire in shorts that night is more indicative of some kind of athletic event than" solicitation of union members. While shorts are worn by some athletes, including boxers, such is hardly sensible garb for a street fight and surely one who intends to have a fist fight in a street would not handicap himself by wearing flip-flops. *Fourth*, the fact that Polston, upon seeing the attack upon McCarthy, switched the lights of his automobile on and off does not convince me that he did so as a signal. I believe that he told the truth when he testified that he did so unconsciously. There was no occasion to flash the lights as a signal to Crawford and McKinnon who were on the front seat beside him. Nor was there any point in trying to signal his presence to George and McCarthy because they already knew his whereabouts. The only effect of the switching of the lights, insofar as I can discern, was to alert the attackers to the whereabouts of persons other than George and McCarthy. Such effect could have had no advantage for the organizers. *Fifth*, it is true, as the Respondents assert, that the five organizers numbered more than the Union previously had used to distribute handbills on any of the few occasions described in the record. But, even without considering that George's age is 65, the number of organizers cannot be called a force for a prearranged battle.<sup>3</sup> *Sixth*, Gibbs and Dorman, by their demeanor, impressed me as untruthful witnesses. In addition, their transcribed testimony is unconvincing. Their purpose, so they testified, was to stop a fight and, upon hurrying to the intersection of June and Flagler, they did not pause but continued on to Mary Street because it appeared that a bigger "scrap" was in progress there. The fact, however, is that only Polston of the five organizers had run to Mary Street. The remaining four organizers were still being manhandled at June and Flagler.<sup>4</sup> If Gibbs and Dorman had been interested in stopping a fight, they had an opportunity without going beyond the intersection of June and Flagler. Moreover, by Gibbs' own admissions, he did substantially nothing to stop the batteries anywhere, and the testimony of Gibbs and Dorman that they were unaware of any injury to any organizer is incredible. I am convinced, in accord with the General Counsel's testimony, that Gibbs and Dorman were among the assaulters from the beginning and that, in running from the intersection of June and Flagler toward Mary Street, they really were in pursuit of Polston. *Seventh*, there is testimony by an employee that Dorman possessed a blackjack upon returning to the shipyard after the attacks. Frank F. Brooks, whose work ended at midnight, testified for the General Counsel in rebuttal that he was waiting at a guardhouse for a fellow passenger on his motorcycle when Gibbs, Dorman, Deneen, and several other persons came into the shipyard and that he saw a guard take a blackjack from Dorman's hand. Brooks testified further that sometime later, in talking with Dorman, he was critical of the violence which had occurred on August 10 and that he said too that he had seen Dorman hand the blackjack to a guard, whereupon Dorman did not deny having done so but asked if Brooks had seen Dorman use the blackjack, to which Brooks responded in the negative. Dorman, who had testified in defense that he did not have a blackjack that night, did not take the witness stand in sur-rebuttal to contradict Brooks, nor did the guard, Deneen, or anyone in the group at the guardhouse (other than Gibbs and Dorman) testify. I credit Brooks' testimony.<sup>5</sup>

<sup>3</sup> The Union's explanation for having had two more men at hand that night than had been present during the afternoon is that it suspected that a second gate to Southern's property, about 200 or 300 feet on June Street east of the intersection with Flagler Avenue might be used by the Respondents for the employees' exit in order to prevent their receiving the handbills. Polston's automobile was parked on June Street facing west, however, and Gibbs' testimony is that the gate had not been used by employees for 1½ to 2 months. The Respondents point to that testimony and to the positions of the automobile and the second gate, but these factors do not overcome the strong evidence that the organizers had not come prepared for a fight and, in fact, did not battle even in self-defense.

<sup>4</sup> According to both Gibbs and Dorman, they arrived at Mary Street before Crawford and McKinnon drove up in Polston's automobile.

<sup>5</sup> On August 11, Brooks was laid off. He filed a grievance. Before the grievance was processed, Brooks, his wife, and six children picketed the Respondents during changes of shifts over a period of about 3 days. Later Brooks lost the grievance. He has not been reemployed. Although Brooks is hostile toward the Respondents, I credit his testimony concerning Dorman's possession of a blackjack. He impressed me as a truthful witness, not as one who was swearing to falsehoods because of hostility arising from a layoff and the loss of a grievance. It does not appear that he was a member of the Union and his

*Eighth*, the Respondents advance several points in contending that the four organizers who testified for the General Counsel are unworthy of belief. To some extent, the points are exaggerated. To some extent, they are accurate but partially explainable by lapses of memory which are common to men or by the fact that honest witnesses to an event may not receive identical mental impressions. I have considered each point carefully and I am convinced that the truth lies on the General Counsel's side. I conclude that the Respondents have violated Section 8(a)(1) of the Act by premeditated and cruel assaults and batteries upon organizers for the Union.

#### 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 certain unfair labor practices, I shall recommend that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the above findings of fact, and upon the entire record in the case, I make the following:

#### CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.
2. By interfering with, restraining, and coercing its employees in the exercise of the 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.
3. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

testimony is uncontradicted that he was unacquainted with the five organizers until he left the shipyard soon after seeing the guard take the blackjack and then made inquiries concerning the attacks.

**Western Light & Telephone Company, Inc.<sup>1</sup> and Communications Workers of America, AFL-CIO,<sup>2</sup> Petitioner.** *Case No. 18-RC-4356. November 18, 1960*

### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Ray C. Jenkins, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this proceeding, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.

<sup>1</sup> The Employer's name is hereby corrected to conform with the evidence in the record.

<sup>2</sup> The Petitioner's name appears as amended at the hearing