

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

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

1. Respondent Allied Distributing Corporation and Standard Optical Company is engaged in commerce within the meaning of the Act.

2. International Union of Electrical, Radio and Machine Workers, AFL-CIO, is a labor organization within the meaning of the Act.

3. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act by:

(a) On or about October 28, 1959, threatening its employees with loss of work and/or termination of employment if the Union was selected as their bargaining representative.

(b) Terminating Ray Story, Virgil Benton, and Henry Amador on September 14 and November 6 and 13, 1959, respectively, because of their activities in behalf of the Union.

[Recommendations omitted from publication.]

**Becker-Durham, Inc. and International Union of Electrical,
Radio and Machine Workers, AFL-CIO.** *Case No. 3-CA-1428.*
March 15, 1961

DECISION AND ORDER

On September 8, 1960, Trial Examiner C. W. Whittemore 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.

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 entire record in this case, including the Intermediate Report, the exceptions and brief, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner with the modifications indicated herein.

1. We agree with the Trial Examiner that the Respondent's production manager, McQuillen, knew about the meeting which the three alleged discriminatees had attended with a union organizer the night before their layoff, and that the layoffs were prompted by McQuillen's opposition to the Union's organizational efforts. The Trial Examiner found that McQuillen had admitted to Mrs. Lobdell that he knew

¹ In affirming the Trial Examiner, we find it unnecessary to, and accordingly do not pass upon, the Trial Examiner's finding that McQuillen displayed an antiunion attitude by his statement that "if the union came in they would not be able to come to him on a semi-personal basis as before."

about the meeting the previous night, in his conversation with her on March 29, 1960, when he laid her off. The Trial Examiner credited Mrs. Lobdell's testimony, despite McQuillen's denials that he knew about her organizational activities or that he had accused her of having gone against company policy by attending the union meeting. That same evening, Mrs. Lobdell and her husband went to the plant to see McQuillen, and according to the credited testimony of the Lobdells, McQuillen again admitted that he knew that they and two other employees, both of whom had also been laid off that day, had met with a union organizer the preceding evening. The Lobdells gave varying versions of what McQuillen stated his sources of information to be as to his knowledge of the meeting, but both agreed substantially that McQuillen had made such an admission. We find that the General Counsel has established through the testimony of the Lobdells that McQuillen was aware that the union meeting had been held. We do not believe it to be a material failure of proof that the General Counsel was unable to specify exactly where and how McQuillen had obtained his knowledge of the union activities of the discriminatees.

We also have considered other resolutions of credibility made by the Trial Examiner in the light of the various discrepancies noted by the Respondent in the testimony of witnesses for the General Counsel. We have carefully considered these discrepancies as they bear on the credibility of all the witnesses, and we are of the opinion that the preponderance of all the relevant record evidence shows that the Trial Examiner's ultimate evaluation of the evidence is correct.

2. We agree with the Trial Examiner's Section 8(a)(1) findings except with respect to McQuillen's conversations with Mrs. Lobdell and Anna Hellicoss shortly after their recall in June 1960. McQuillen told each of them that they would be discharged if they were caught soliciting for the Union on company time. The record shows that McQuillen agreed with Mrs. Lobdell that she had a right to talk about the Union during her lunch hour and work breaks and that the prohibition against solicitation could only be applied during working hours. We do not find, therefore, that McQuillen's remarks to these two employees constitute a violation of Section 8(a)(1).

3. The Trial Examiner found that the Respondent had not actually discriminated against Elmer Lobdell when it refused him employment on March 29 and again in July, since there were no vacancies for which he could have been hired at those times. Nevertheless, in view of Respondent's threats to discriminate against him, the Trial Examiner recommended that Lobdell be placed on a preferential hiring list and that the Respondent be required to offer him the first available position which he was qualified to occupy. Our order against the Respondent requires it not to discourage membership in

any labor organization by refusing to hire applicants for employment because of their union activities. This prohibition will suffice to protect Lobdell, as well as other applicants, against any discrimination in the future.

ORDER

Upon the entire record in this proceeding, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Becker-Durham, Inc., East Durham, New York, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in, and activities on behalf of, International Union of Electrical, Radio and Machine Workers, AFL-CIO, or in any other labor organization, by discharging, laying off, refusing to reinstate, refusing to hire, or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment.

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

(c) Interrogating or polling employees regarding their membership in or their allegiance to any labor organization, in a manner constituting interference, restraint, and coercion in violation of Section 8(a)(1) of the Act.

(d) Sponsoring or promoting any employee representation plan.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as amended 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) Make whole employees Leah Lobdell, Anna Hellicoss, and Alberta Hood for any loss of earnings they may have suffered by reason of the discrimination against them 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 records necessary for the de-

termination of the amounts of backpay due and the right of reinstatement under this Order.

(c) Post at its plant in East Durham, New York, copies of the notice attached hereto marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by the Respondent, be posted by it 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 to insure that said notice are not altered, defaced, or covered by any other material.

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

CHAIRMAN McCULLOCH and MEMBER JENKINS took no part in the consideration of the above Decision and Order.

² In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage membership in and activities on behalf of International Union of Electrical, Radio and Machine Workers, AFL-CIO, or in any other labor organization by discharging, laying off, refusing to reinstate, refusing to hire, or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment.

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

WE WILL NOT interrogate or poll employees regarding their membership in or their allegiance to any labor organization in a manner constituting interference, restraint, and coercion in violation of Section 8 (a) (1) of the Act.

WE WILL NOT sponsor or promote any employee representation plan.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist any labor organization to bargain through representatives of their own choosing,

and to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized by Section 8(a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL make whole employees Leah Lobdell, Anna Hellicoss, and Alberta Hood for any loss of pay they may have suffered by reason of the discrimination against them.

BECKER-DURHAM, INC.,
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

A charge having been filed and duly served, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and an answer having been filed by the above-named Respondent, a hearing involving allegations of unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, was held on July 26 and 27, 1960, in Catskill, New York, before the duly designated Trial Examiner.

At the hearing all parties were represented, and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. Counsel for the Respondent argued. No briefs have been received.

Upon the record thus made, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Becker-Durham, Inc., is a New York corporation. Its principal office and place of business is in Valley Stream, New York. It operates a plant in the town of East Durham, New York, the only plant involved in this proceeding, where it is engaged in the manufacture, sale, and distribution of loudspeakers. From this plant, during 1959, it sold and distributed directly and indirectly to points outside the State of New York products valued at more than \$100,000.

The Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Union of Electrical, Radio and Machine Workers, AFL-CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and issues*

The complaint's chief issues involve the sudden layoff of three female employees and the refusal to hire the husband of one of the three on March 29, 1960. It is General Counsel's claim that such action was in reprisal for their union activities.

These four individuals, and *only* these four, met with a union representative during the evening of March 28, and within 24 hours Production Manager McQuillen

took the described action against them, and *only* them, in a plant of about 45 employees.

Plainly pertinent to the layoff and hiring issues is the undisputed fact that on the following day, March 30, McQuillen assembled all employees and referred to their union activities, as will be more fully described in the following section.

Other antiunion conduct by McQuillen, urged by General Counsel as violative of the Act, includes his later polling of employees and interrogating them in violation of Section 8(a)(1), and prompting and encouraging them with promises of benefit to establish an employee representation plan.

All events at issue occurred within a few weeks after the Charging Union began efforts to organize on March 23, 1960.

B. Facts relating to McQuillen's discriminatory action on March 29 and the meeting of March 30

At the close of the workday on March 29, 1960, McQuillen summarily and without previous notice laid off employees Anna Hellicoss, Leah Lobdell, and Alberta Hood. No others were laid off that day, nor was similar action taken against any employee within a material period either before or after that date. Also, on March 29, McQuillen declined to hire Elmer Lobdell, husband of Leah.

The following facts, based upon the credible testimony of the above-named individuals, as well as of other employees, tend unmistakably to support General Counsel's allegations. McQuillen's denials and counterclaims are considered in the section next following.

(1) On March 23 Hellicoss, Lobdell, and her husband met with a representative of the Union at a hotel in a nearby town to discuss organizing the employees of the East Durham plant.

(2) On March 28 these three and Roberta Hood met at the same place with the same representative.

(3) During the morning of March 29 Leah Lobdell asked McQuillen if it was true that employee Varili was leaving. When the manager replied that he was, she inquired what the chances were for the recall of her husband, Elmer, who had worked for the Respondent in 1959 but had been laid off during the seasonal reduction in force, late that year. McQuillen told her the possibilities were good, and suggested that she stop by at the office on her way out that night.

(4) Shortly before the end of the day Lobdell was sent to the office by the foreman. There McQuillen told her that she was being laid off at once because of lack of orders. She questioned the reason given, pointing out that she had been doing two girls' work, and asked for the real reason. McQuillen then said she had "gone against" company policy, and wagered her 100 to 1 that she had evidence of the fact in her purse. He invited her to hand it over for inspection. She declined. He then asked her where she had been the night before, said he knew she had been in Palenville (where the union meeting had been held), and declared that he knew she had attended at least two meetings and maybe more. Finally he said: "Your union activities—that's why you are being let go."

(5) Lobdell reported her layoff to her husband, Elmer. Early that evening the two tried to talk to McQuillen at his home, but were told that he would see them at the plant later that night. At the factory, the manager berated her for "starting" something, and this time wagered her 200 to 1 that she, 2 other girls, and her husband had been with a "distinguished gentleman" in Palenville the night before. An argument developed, and McQuillen asked Elmer directly if he had not been there. Lobdell finally admitted the fact. McQuillen then declared that he could have them both blackballed in that and neighboring counties. He told Elmer that he had been warned about hiring him the year before, and told to "keep an eye" on him. As they left, Elmer queried, "So there's no need of making application" for work, and McQuillen replied, "No dice."

(6) A few days before the hearing, in July, Elmer applied directly to McQuillen for work. The manager replied that he had caused a lot of trouble and his attorney would have to be consulted. He added, however, that there would be "nothing doing" until after the hearing in these proceedings, "if then."

(7) Anna Hellicoss, who, like Leah Lobdell, had attended both union meetings, was also suddenly laid off at the end of the shift on March 29. When McQuillen told her it was because of lack of work she protested that this could not be the reason, since this was the season when rehiring customarily began, and asked if the real reason was because she had requested a raise a few days earlier. McQuillen answered that it was the "way"; she had gone about getting it, having gone against "company policy."

(8) Alberta Hood, who attended the March 28 meeting, also was laid off in the afternoon of March 29. She was told that work was slow, and that she lacked seniority. She made no protest, having been hired only a month or so before.

(9) Having laid off the only three girls who had attended the union meetings, McQuillen assembled all remaining employees the next afternoon, March 30. He opened his remarks by saying that they had probably heard that he had laid off the three because of union activities. He suggested that perhaps some of them had been approached by these three, who had been present at a meeting the night before they were laid off. He then said he was "tired" of fighting organization, and if they wanted a union they could have it. He warned them, however, that if they did their benefits would be cut, including bonus, Blue Cross, and employment. He further said that their customary Christmas layoff would be 2 or 3 months, instead of as many weeks, and that perhaps the plant would be closed entirely.

C. Conclusions as to the layoffs and the coercive meeting of March 30

The Trial Examiner can place no reliance upon any of McQuillen's uncorroborated testimony either as to the reasons advanced by him for the layoffs or as to his assembly of employees on March 30, a fact admitted by him. His denial of the statements attributed to him by employees, relating to the reasons for the layoffs and the threats of reprisals, finds no corroboration. It is reasonable to believe that had he not made the remarks, some one of his approximately 40 employees would have been brought forward to support his denials. Furthermore, his shifting and confused account of factors which he claims brought about the selection of the three employees for layoff makes his entire testimony of doubtful value.

In addition to his denials, McQuillen as a witness, admitted telling the employees that if the Union came in "they wouldn't be able to come to me on a semi-personal basis as we had before." This admission plainly reveals an antiunion attitude, and is contrary to the provisions of the Act.

In view of the general unreliability of McQuillen's testimony, as appraised by the Trial Examiner, it appears unnecessary to analyze in detail the confused and inconsistent claims made by him in regard to the three layoffs. An example of inconsistency, however, is found in the fact that while on the witness stand he gave three different dates for the decision to lay off employees—in mid-March, on March 22 or 23, and on March 29, the actual date of layoff. An example of his confusion is found in his testimony concerning the selection of Leah Lobdell. He said she was chosen to be laid off out of seniority because she was not "versatile" and unqualified. Yet when it was pointed out that according to her testimony she had been called upon to perform varied jobs, he finally admitted, in effect, that he could not be certain as to what work she had done. After quoting at length from records to lay an apparent economic basis for the layoffs, he finally admitted that as a fact there had been no actual reduction in force, with the possible exception of Hellicoss. Two former employees were called in to take the place of Lobdell and Hood.

In short, the Trial Examiner finds no merit in the reasons claimed by McQuillen for the layoffs. His candid remarks to Lobdell on March 29 and to the employees in assemblage on March 30 reveal the true motive, and it is concluded and found that they were laid off that day because of their union activities, and to discourage membership in that organization. This action, as well as his uttered threats of economic reprisals on March 30, interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

D. Conclusions as to the refusal to hire Elmer Lobdell

Although the facts found above impell a strong suspicion that Elmer Lobdell was unlawfully refused employment on March 29, the Trial Examiner is unable to find sufficient evidence in the record to establish beyond question that he was actually deprived of employment, either on March 29 or in July, which he would reasonably have had absent McQuillen's hostility toward the Union.

While the Trial Examiner can place no more reliance upon McQuillen's own testimony regarding Elmer Lobdell than on other matters, in this instance the manager's claim that he had already arranged for a replacement of Varili, the employee who was leaving, is supported by the credible testimony of employee Daniel Low. The latter said that in January 1960, McQuillen promised to hire his brother as soon as an opening occurred. He also said that on Monday, March 28, McQuillen told him to have his brother report for work the following Wednesday, and his brother did so, to learn Varili's work before he was to leave early in April.

It must be borne in mind that the union meeting which precipitated the layoffs did not occur until the night of March 28—after McQuillen had made the commitment to hire Low to fill Varili's job.

While McQuillen's suggestion to Mrs. Lobdell that she see him later in the day, which he admits having made on the morning of March 29, concerning her husband's applying for the Varili vacancy, may tend to indicate that the vacancy might be filled by Lobdell, the inference would be strained, in the opinion of the Trial Examiner. It appears reasonable to infer that because he was busy at the time he merely put off discussion until later in the day. The nature of his later interview with Lobdell, the same day, indicates that in the interim he had received information concerning the union meeting of the night before and promptly decided to rid the plant of Mrs. Lobdell and others. Indeed, according to Mrs. Lobdell's credible testimony, during the night interview McQuillen asked, in respect to his knowledge of their attendance at the union meeting, why she thought he had five or six old women around there.

Except for the hiring of Low to fill Varili's vacancy, according to McQuillen's unchallenged testimony there have been no hirings of male employees up to the time of the hearing.

Credible evidence does establish, however, and it is concluded and found, that on March 29 McQuillen informed Elmer Lobdell in effect that he would not be considered for employment because of his union activities, and that in July he told him there was little possibility of being hired because of the "trouble" he had caused. "Trouble," the Trial Examiner infers, referred to the charge and the complaint. McQuillen's conduct on each of these occasions falls within the proscriptions of the Act, and was violative of Section 8(a)(1) in that it interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

Since no actual discrimination was established, in the opinion of the Trial Examiner, it is not found that the same conduct violated Section 8(a)(3) of the Act. An appropriate remedy of preferential hiring will, however, be recommended.

E. Polling of employees

McQuillen as a witness admitted, and it is found, that on April 19 he conducted a poll of the plant employees for the purpose of determining whether or not they "wanted" the Union. The manager also admitted, and the Trial Examiner agrees, that his act was not "prudent."

Credible evidence establishes that McQuillen distributed blank slips of paper to employees and instructed them to vote "yes" or "no." Foreman Stonitsch collected the marked ballots. The votes were counted under the supervision of both McQuillen and Stonitsch.

The Trial Examiner finds no permissive merit in McQuillen's claim that he conducted this poll because he had been told by his attorney that the Union might withdraw its charges if he would recognize it. The real purpose and reasonable effect of such polling, the Trial Examiner is convinced, considering the context in which it occurred, was to undermine union organization.¹ By polling its employees on April 19, as found above, the Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

F. Formation of employee representation committee

On or about May 23 McQuillen called five women employees into his office. In substance he told them that they had been summoned because he did not know "how long this business is going to take with the Labor Board," that he "had a plan in mind," and wanted them to circulate his idea among the other employees to see how they felt about it. The plan included a vacation with pay, an extra paid holiday, hourly wage increases, and less time between increases. He further instructed them to go out and have the "girls" elect a representative for each department, to speak for them, and meetings would be held with them "at certain times."²

While it appears that although employees thus instructed started to carry out McQuillen's directions, the project was dropped within a few days upon advice from the Respondent's attorney that such a representation plan was unlawful.

The purpose and reasonable effect of McQuillen's promotion and sponsorship of such an employee representation plan, however, was nonetheless unlawful, in that

¹ See *California Compress Company, Inc.*, 121 NLRB 1388.

² The quotations are from the credible testimony of employee Forma. McQuillen's denials are not credited.

it tended to undermine self-organization by the employees and to interfere with, restrain, and coerce employees in the exercise of rights guaranteed by the Act.

G. Other interference, restraint, and coercion

A few days after mid-April, when she returned to work from an illness, employee Cummings was called into McQuillen's office and asked what she thought about the Union. She replied that she had no thoughts one way or the other on the subject. He then repeated to her, in substance, his remarks to all employees on March 30, as described above.

As noted below in the section entitled "The Remedy," employees Lobdell and Hellicoss were recalled to work on June 9. A few days after their return, McQuillen went to each of them and threatened them with discharge if they were caught talking "on company time." While there is no evidence that he gave a similar slip to Hellicoss, to Lobdell McQuillen handed a paper containing the following warning:

You have engaged in Union solicitations during working time. You are here-by (sic) warned not to do so again. In the event that you again carry on any union organizing activities during working time, you will be discharged.

When handed the slip Lobdell flatly denied that accusation contained therein, but insisted that she had a right to talk at noon hour or during her breaks. McQuillen admitted that on this point she was right.

In the context of discriminatory layoffs, and other coercive and unlawful conduct engaged in by McQuillen, described heretofore, the Trial Examiner is convinced and finds that his interrogation of Cummings and his unfounded warnings to Lobdell and Hellicoss constituted interference, restraint, and coercion of employees in their exercise of rights guaranteed by the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES 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 of commerce.

V. THE REMEDY

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

It will be recommended that the Respondent make employees Leah Lobdell, Anna Hellicoss, and Alberta Hood whole for any loss of pay suffered by reason of the discrimination against them, by payment to each of them of a sum of money equal to that which she would normally have earned as wages, absent the discrimination, from March 29 to June 9, 1960, the date of their recall, less their net earnings during said period, and in a manner consistent with Board policy set out in *F. W. Woolworth Company*, 90 NLRB 289, and *Crossett Lumber Company*, 8 NLRB 440. It will also be recommended that the Respondent, upon request, make available to the Board and its agents all payroll and other records pertinent to the analysis of the amounts of backpay due and the right of reinstatement.

As to Elmer Lobdell, although it has been found above that actual discrimination against him had not been visited, there being lack of proof that a vacancy existed at the material times, it has been found that he was given to understand by the employer that such unlawful discrimination had been and would be invoked against him. In view of this unlawful threat of discrimination, and to remedy its effect, it will be recommended that Lobdell be placed upon a preferential hiring list and offered the first position available which he is qualified to occupy, and that Lobdell be so informed by registered mail immediately upon receipt of this Intermediate Report.

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, the preventive purposes of the Act may be thwarted unless the recommendations are coextensive with the threat. To effectuate the policies of the Act, therefore, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed employees by the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. International Union of Electrical, Radio and Machine Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of employees Leah Lobdell, Anna Hellicoss, and Alberta Hood, thereby discouraging membership in the above-named labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

3. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. 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.]

Shelly Gordon and Palmer Gordon, Partners d/b/a Lakeland Cement Company and Citrus, Cannery, Food Processing and Allied Workers, Drivers, Warehousemen and Helpers Local Union No. 444, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Cases Nos. 12-CA-1230, 12-CA-1268, 12-CA-1269, 12-CA-1270, 12-CA-1271, 12-CA-1272, 12-CA-1273, 12-CA-1275, 12-CA-1279, 12-CA-1280, 12-CA-1282, 12-CA-1283, 12-CA-1284, 12-CA-1285, 12-CA-1286, 12-CA-1288, and 12-CA-1294. March 15, 1961*

DECISION AND ORDER

On May 23, 1960, Trial Examiner Reeves R. Hilton issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had not engaged in any of the unfair labor practices alleged in the complaint as amended and recommending that the complaint as amended be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the General Counsel filed exceptions to the Intermediate Report and a brief in support thereof.

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 [Members Rodgers, Leedom, 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 exceptions and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, except as herein modified.¹

¹ For the reasons set forth in detail in the Intermediate Report, Member Rodgers would affirm the Trial Examiner's recommendation that the complaint herein be dismissed. With respect to the finding by Members Leedom and Fanning that the Respondent violated the Act by interrogating employee Johnson, Member Rodgers agrees with the Trial Examiner