CONCLUSIONS OF LAW

1. The Respondent, Stant Lithograph, Inc., is, and has been, at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local 13, Amalgamated Lithographers of America, is a labor organization within the meaning of Section 2(5) of the Act.
3. All lithographic production employees at the Respondent's Washington, D.C., plant, excluding all other employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. The Union, Local 13, Amalgamated Lithographers of America, was, on March 11, 1960, and, at all times since, has been, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. By refusing on and after March 11, 1960, to bargain collectively with the aforesaid Union as the exclusive representative of the employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(5) of the Act.
6. By the aforesaid unfair labor practice the Respondent is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Fontainebleau Hotel Corporation d/b/a Hotel Fontainebleau *and* Hotel Employees Union, Local 255, Hotel & Restaurant Employees & Bartenders International Union, AFL–CIO.

Case No. 12–CA–1544. April 6, 1961

DECISION AND ORDER

On December 22, 1960, Trial Examiner Lloyd Buchanan 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, together with a supporting brief.[1]

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

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

[1] The Respondent's request for oral argument is hereby denied as the record, including the exceptions and the brief, adequately presents the issues and positions of the parties.

case, and hereby adopts the findings, conclusions,[2] and recommendations of the Trial Examiner.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Fontainebleau Hotel Corporation d/b/a Hotel Fontainebleau, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Hotel Employees Union Local 255, Hotel & Restaurant Employees & Bartenders International Union, AFL–CIO, or in any other labor organization, by discharging any of its employees or discriminating in any other manner in respect to their hire or tenure of employment or any term or condition of employment.

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

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities.

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

(a) Offer to Cyril J. McCormick immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him, in the manner set forth in section IV of the Intermediate Report entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social

[2] In adopting the findings and conclusions of the Trial Examiner, we have considered, in connection with the Respondent's motivation for discharging McCormick, the fact that prior to that discharge the Union had agreed to withdraw its representation petition and the Respondent and the Union had agreed to submit to arbitration the dispute which had led to the Union's organizational campaign. Viewed in isolation, these factors might tend to favor a claim that the Respondent had no antiunion purpose which could be served by the discharge of McCormick. However, a consideration of all of the circumstances surrounding McCormick's discharge, i.e., Kaufman's attitude when he interrogated McCormick and learned of McCormick's union adherence, the sketchy nature of the information concerning McCormick's alleged dishonesty, the unreliability of the informant, the failure of the Respondent to make any investigation of McCormick's honesty, the failure of the Respondent to give McCormick any reason for his discharge, and Kaufman's delay in discharging McCormick after having received authorization to take this action, convinces us that McCormick was discriminatorily discharged as found by the Trial Examiner.

security payment records, timecards, personnel records and reports, and all other records necessary or appropriate to an analysis of the amount of backpay due and the right of reemployment under this Order.

(c) Post at its hotel in Miami Beach, Florida, copies of the notice attached hereto marked "Appendix."[3] Copies of said notice, to be furnished by the Regional Director for the Twelfth 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.

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

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

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage membership in Hotel Employees Union, Local 255, Hotel & Restaurant Employees & Bartenders International Union, AFL–CIO, or any other labor organization, by discharging any of our employees or discriminating in any other manner in respect to their hire or tenure of employment, or any other term or condition of employment.

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

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Hotel Employees Union, Local 255, Hotel & Restaurant Employees & Bartenders International Union, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities.

WE WILL offer to Cyril J. McCormick immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss suffered as a result of the discrimination against him.

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

FONTAINEBLEAU HOTEL CORPORATION d/b/a
HOTEL FONTAINEBLEAU,

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

The complaint herein alleges that the Respondent has violated Section 8(a)(3) of the National Labor Relations Act, as amended, 73 Stat. 519, by discharging, on June 15, 1960, and thereafter refusing to reinstate, Cyril J. McCormick because of his union membership and concerted activities; and Section 8(a)(1) of the Act by said alleged acts and by interrogation of employees on or about June 9, 1960, concerning their union membership, activities, and desires. The answer denies the allegations of violation, and alleges that McCormick was discharged for failure to conduct himself in the best interests of the hotel.

A hearing was held before me at Miami, Florida, on October 20, 1960, and at the close the General Counsel and the Respondent were heard in oral argument. Pursuant to leave granted to all parties, briefs have been filed by the General Counsel and the Respondent.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE RESPONDENT'S BUSINESS AND THE LABOR ORGANIZATION INVOLVED

It was admitted and I find that the Respondent, a Florida corporation, with principal office and place of business in Miami Beach, Florida, is engaged in the hotel business; that 75 percent or more of its rooms are rented to guests who reside in the hotel for less than 30 days; that during the 12 months preceding issuance of the complaint, its gross revenue in the conduct of its business was more than $500,000; that during that period it purchased material, directly or indirectly, from outside the State of Florida valued at more than $50,000; and that it is engaged in commerce within the meaning of the Act.

It was admitted and I find that the Union is a labor organization within the meaning of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The alleged independent violation of Section 8(a)(1)*

For several years the Union and the Respondent had maintained collective-bargaining agreements covering various classifications of the Respondent's employees. A question then arose concerning inclusion of food checkers and cashiers, and efforts were initiated at the end of May or the beginning of June 1960 to organize these and to obtain dues checkoff authorization cards from them. One need not guess whether the Respondent, bargaining concerning other employees, opposed organization and recognition of checkers and cashiers because of the very nature of their work. Whatever the reason, certain steps were now taken by the Respondent.

Kaufman, in charge of all of the Respondent's checkers and cashiers and admittedly a supervisor, asked Bergeron, a cashier, whether she had signed a union card; she had and told Kaufman so in reply. After Nisman, another cashier, signed a card, Kaufman asked her whether she had joined the Union. Bergeron did not recall the date of Kaufman's inquiry, and Nisman testified only that the inquiry of her had occurred "a few months" before the hearing. With both witnesses unable to recall the date of such interrogation, it is not unreasonable to fix it, in the terms of the complaint, as having occurred on or about June 9, 1960. The latter date was definitely fixed by McCarthy, who testified that on June 9 Kaufman approached the cashier's booth in the coffee shop and asked whether McCormick had joined the Union. Receiving an affirmative reply, he continued, "What are you mad at?" When McCormick referred to the Union's medical coverage plan as cheaper than the Blue Cross, Kaufman replied, "They will still grab Five bucks a month out of your pay," and, in McCormick's words, "stormed" out. Kaufman testified that he similarly questioned another employee, Langer.

Kaufman did not deny any of this interrogation. On direct examination he testified only to two points: in the affirmative when asked whether he had found out that any checker was a member of the Union, and then that he did not argue with any checkers or with McCormick specifically concerning their union membership. Questioned on cross-examination, he added that he did not recall any conversation with McCormick concerning the Union or medical coverage. I find that Kaufman questioned four checkers or cashiers concerning their union membership. This was no casual interrogation; the series of questions was certainly violative in the light of the discharge of McCormick, *infra.*

B. *The alleged violation of Section 8(a)(3)*

The interrogation noted indicates the Respondent's opposition to organization of its checkers and cashiers. McCormick signed a union card on May 31. At his own booth and at a checker's booth elsewhere on the Respondent's premises, he discussed with other cashiers and checkers the desirability of obtaining a majority for union representation. He asked two employees to sign, and one of these as well as a third employee gave him their signed cards. (McCormick testified that he turned in three cards.) I make no finding concerning the Respondent's knowledge of these activities by McCormick. But we have seen that Kaufman learned that he had joined the Union and construed such act as a sign that McCormick was "mad" at something; and that Kaufman stormed out after speaking with McCormick on June 9.

About June 11, 12, or 13, Kaufman reported to Novack, the Respondent's president, that "he had been told that there was a doubt as to (McCormick's) honesty." Kaufman continued that a former employee, Miss Knight, now employed elsewhere, had called him and stated that a friend of hers who worked in the hotel (employed by a concessionaire) had told her that she was getting food free and at lower cost in the coffee shop through a male cashier. Knight's unreliability is so evident, as noted *infra,* that I find it difficult to believe that Kaufman, who knew her, relied on her report. (He himself evidently did not, for he made no investigation and took no action beyond this report to Novack.) But aside from the personality involved, the report was double hearsay. Yet Novack thereupon instructed Kaufman to discharge McCormick, a competent and satisfactory employee who had been commended on his work. For some unexplained reason, or none, Kaufman did not discharge McCormick until June 15, 2 to 4 days after Novack's order. Kaufman may have been delayed for 2 or 3 days in speaking to Novack since the latter is so busy and hard to reach.

Kaufman's failure, despite his power to discharge, to take steps against McCormick for perhaps as much as a week after he received the message over the telephone belies the need for such a precipitate decision as was now made to discharge McCormick without investigation and without inquiry even of him. I do not minimize the importance of honesty, especially among checkers and cashiers; my own emphasis on this may be greater than that of the Respondent, which had condoned McCormick's alleged rudeness and freshness, and now delayed action against him for passing someone through the line several times without payment and with lesser payments. The Respondent's delay indicates that it did not regard the report concerning McCormick to be so serious as to require immediate discharge so as to preclude an attempt to check in the hotel itself with the original source of the report or even with McCormick. Yet neither check was attempted; nor is there evidence that Novack or Kaufman had checked with McCormick's immediate supervisor.

Novack testified that he asked Kaufman whether Knight had a personal grievance against McCormick. But this real possibility was not pursued after Kaufman replied

that he thought she did not know McCormick. Kaufman could say to Novack only, "It sounds very authentic." Understandably, Novack declared that he was not looking for libel suits. Further he did not think it fair (to McCormick presumably) to give the Union the reason for discharging McCormick; he did not want to make such a serious charge. He told Kaufman to "keep it secret." This alleged consideration or concern for McCormick and the fear of a suit for slander are cited to explain Novack's statement to Herman, the president of the Union, well into July that McCormick had been laid off because business had dropped off; he had not been discharged. (The Respondent does not rely on this latter or on an earlier incident mentioned at the hearing as the reason for the discharge, and we need not further consider the falsity of Novack's statement to Herman.)

We shall note *infra* that Kaufman apparently had a second telephone conversation with Knight, after which on August 26 he obtained her signature to a statement in which she detailed what she had been told, the story which allegedly prompted McCormick's discharge. The aspect to be noted at this point is that even this statement was not sought by the Respondent until more than 2 months after McCormick was discharged. The Respondent acted, not to verify or even check on the report which allegedly led to the discharge, but to support its action after the charge herein had been served upon it.

While shifting of reasons warrants rejection of them as mere pretexts, we have here for evaluation, not shifting reasons, but Novack's explanation for withholding the actual reason. That explanation is inadequate. The seriousness of the charge against McCormick was not reflected in any attempt to check on it, as we have seen. Beyond this, neither the fear of a suit for slander nor a decent regard for McCormick's reputation precluded an inquiry of McCormick himself. The alleged concern for him was so great that he was discharged without even being told why, much less given an opportunity to deny or explain! Further, it stands undenied that discharges are always investigated by the Union and the reasons are given by the Respondent. Presumably by the reasons for such serious action against employees are generally themselves serious; yet only in this case was the alleged reason withheld, in the face of the dispute concerning inclusion of cashiers and because the Respondent "did not want to unduly hurt McCormick." The absence of a credible explanation warrants a finding that the discharge, which was certainly not painless and might have been avoided had there been an investigation or opportunity to explain, was prompted by the union activities generally and McCormick's specifically; Novack's alleged belief that McCormick was dishonest was a pretext, and I so find.

Nisman testified that Oppenheim, the Union's business agent, told her that McCormick had not been fired for union activities. Such a statement by Oppenheim, who testified only that he did not recall it, might be considered an admission against interest, but it does not determine the issue before us. Nor, whether Oppenheim's purpose was to reassure Nisman, or whatever his purpose, is it of value as an admission. He testified without contradiction that he had attempted several times and in various ways to learn why McCormick had been dismissed; but no one ever told him. Oppenheim was at most expressing an opinion without basis in fact.

Noting Novack's testimony that Kaufman had told him of a reported doubt concerning McCormick's honesty and the statement which he submitted for Knight's signature, *infra,* it can be said that Kaufman appears to have displayed at this point a nice reluctance to utter an outright falsehood. As for the argument that other cashiers or checkers were not discharged, it is not necessary to a finding of discrimination that there be multiple discharges. Discharge of one union proponent (it does not appear that Kaufman questioned any other male cashier; there was no other in the coffee shop) when the Union seeks only a few more authorizations, tends effectively to discourage organizational activities even if employees are not actually discouraged in a given situation. (The circumstances surrounding the simultaneous discharge of another employee, apparently more active in the Union's behalf than McCormick, were not in issue here and are not to be guessed at or considered.) As for another point raised by counsel for the Respondent, availability of arbitration procedure does not preclude recourse to Board processes.

Because of the alleged reliance on Knight's telephone report to Kaufman early in June, and her signing of a statement submitted to her on August 26, detailed consideration needs to be given to her testimony. After testifying that she did not remember the number of conversations which she had with Kaufman, Knight referred to one such conversation and, in connection with that one, to "the prior conversation." At this point she gave the impression (one might borrow from her statement and say, "intimated") that she had two conversations with Kaufman concerning McCormick. In an attempt to explain away her signed statement of

August 26 (she was called by the General Counsel in rebuttal) that "The intimation was that a certain male cashier in the Coffee Shop" had reputedly failed to collect in full, Knight testified that she was very busy when she signed it, and did not read the statement, which was brought to her by messenger from the Hotel Fontainebleau. I do not rely on this too easy explanation. Knight testified that she worked at the President Madison Hotel until September 29 or 30, and that she then went to work at the Delmonico Hotel. August 26, when she signed the statement, was therefore not her first day at the Delmonico, and her explanation that, because this was her first day on the new job, she did not read the statement which she signed is incredible. Knight was at least confused even when she testified that she signed the statement while so busy at the Delmonico, since she did not start to work there for more than 1 month after she signed it. Her testimony is completely jumbled, and one can most kindly characterize it as unreliable.[1]

But this jumble does not make reliable the Respondent's testimony concerning McCormick's discharge, evaluated *supra*. In fact, Knight's so evident unreliability and her readiness to offer any explanation, however poor, which were so apparent as she testified, indicate that Kaufman and Novack were leaning on a weak reed indeed when they cited her unchecked report as the reason for McCormick's discharge. I do not believe that as experienced businessmen and employers of many people, they relied on any report from Knight, whatever that report was, beyond using it as a pretext here.

If further evaluation be unnecessary, it may be at least interesting to note that after Knight testified that she had not mentioned McCormick's name or referred to a male cashier during her first conversation with Kaufman, and that she did not know whether there was a male cashier in the coffee shop; and that during their second conversation, on or just before August 26, when Kaufman told her that she was sending a statement for her to sign, he asked whether she had in their first conversation intimated that it was a male cashier who had been involved, and she replied in the negative—after all of this testimony by Knight, Kaufman, recalled, testified that in her original recital to him Knight had said that she had been told that her information was, "He was passing her through." Kaufman now explained that reference to a "he" in the coffee shop had led him to believe that it was the only male cashier in the coffee shop, hence McCormick; and therefore the discharge.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section II, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that the Respondent engaged in and is engaging in certain unfair labor practices affecting commerce, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It has been found that the Respondent, by discharging McCormick, discriminated against him in respect to his hire and tenure of employment in violation of Section 8(a)(3) of the Act. I shall therefore recommend that it cease and desist therefrom and from infringing in any other manner upon the rights guaranteed in Section 7 of the Act.[2] I shall further recommend that the Respondent offer to McCormick

[1] This means that I do not credit her testimony. Cf. *Jackson Maintenance Corporation*, 126 NLRB 115.

[2] A so-called "broad order" is herein recommended in deference to the long-standing practice of issuing such orders in cases involving discriminatory discharges. The question intrudes, however, whether in exercising its power to determine the scope of cease-and-desist orders (*May Department Stores d/b/a Famous-Barr Company* v. *N L R.B*, 326 U.S. 376, 392), the Board should follow the sauce-for-the-goose principle. Whatever was said in this connection in such cases as *Central Kentucky Broadcasting Company, Incorporated*, 93 NLRB 1298, and *W. B. Jones Lumber Company, Inc.*, 114 NLRB 415, applies here. But "the Respondent's unlawful conduct and its underlying purpose" here and the anticipation of repetition of its conduct are no more serious or greater than in the very recent case involving the *International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 154, AFL–CIO (Cuyahoga Wrecking Company)*, 129 NLRB 922 where the Board limited its order against the various unions, which caused the discrimination, to the two employers there involved

Comparison could be made between the conduct and the purpose of the unions in the latter case and the Respondent herein; between the two employers there and the single

immediate reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay sustained by reason of the discrimination against him, computation to be made in the customary manner.[3] I shall further recommend that the Board order the Respondent to preserve and make available to the Board, upon request, payroll and other records to facilitate the checking of the amount of backpay due.

It has been further found that the Respondent, by interrogation, interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act. I shall therefore recommend that the Respondent cease and desist therefrom.

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. Hotel Employees Union, Local 255, Hotel & Restaurant Employees & Bartenders International Union, 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 Cyril J. McCormick, thereby discouraging membership in a 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 such discrimination and by interrogation concerning employees' union membership and activities, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in 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 labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

employee here; between the threat in that case of repetition against other employers and the threat against other employees here. An employer's business extends beyond a given employee even if at a single location; a union, by its nature, extends beyond a given employer and generally to various locations.

[3] *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827; *Crossett Lumber Company*, 8 NLRB 440; *Republic Steel Corporation* v. *N.L.R.B.*, 311 U.S. 7; *F. W. Woolworth Company*, 90 NLRB 289, 291–294.

General Mills, Inc. (Mechanical Division) *and* Local No. 101, American Federation of Technical Engineers, AFL–CIO, Petitioner. *Case No. 18–RC–4480. April 6, 1961*

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hjalmar Storlie, 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 case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent employees of the Employer.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons: