nonstriking employees of the Association and those who fail or refuse to participate in picketing or other forms of concerted activity. Affirmatively I shall recommend that appropriate notices be posted by Respondent at its place of business. I shall not, however, require that such notices be furnished the member restaurants of the Greater Peoria Restaurant Association for posting by them if they so choose. The record in the instant case indicates that the membership of this Association is so fluid as to cast doubt on who should be furnished notices for posting; furthermore, the administrative details, including preparation and distribution of notices and verification of compliance, should not, in my judgment, be used in remedying matters of such slight significance in the effectuation of the Act.[39]

CONCLUSIONS OF LAW

1. Cooks, Waiters and Waitresses Union, Local 327, and Peoria Local Joint Executive Board, Hotel and Restaurant Employees International Union, are labor organizations within the meaning of Section 2(5) of the Act.
2. Greater Peoria Restaurant Association is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
3. By making threats of reprisal against nonstriking employees and those who failed or refused to participate in picketing or other concerted activity or who sought to withdraw from such activity during the course of a strike it was conducting against Greater Peoria Restaurant Association, the Respondent restrained and coerced employees in the exercise of their rights guaranteed by Section 7 of the Act and it thereby violated Section 8(b)(1)(A) of the Act.
4. The aforesaid practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

[39] Cf *N L R B.* v. *Crompton-Highland Mills, Inc*, 337 U S. 217, 226, rehearing upon Court's refusal to require posting of notice denied 337 U S 950.

Mister Softee of Michigan, Inc. *and* Charles Neal. *Case No. 7-CA-2840(2). April 24, 1961*

DECISION AND ORDER

On January 26, 1961, Trial Examiner James T. Rasbury 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. The Respondent and the General Counsel filed exceptions to the Intermediate Report.

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 parties' exceptions, and the entire record, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications:

1. We agree with the Trial Examiner's finding that Respondent discharged Charles Neal on June 27, 1960, in violation of Section 8(a)(3)

and (1) of the Act.[1] In this connection, it is clear from the record, though not fully documented in the Intermediate Report, that the Respondent believed Neal was an active union adherent.[2] For example, on one occasion early in June 1960, Respondent's general manager, Sol Moretsky, came over to Neal's truck and told him he did not want Neal "scouting" for the Union and signing up members. Neal denied that he had "scouted," but admitted that he had talked to the Union about joining. Neal told Moretsky he would not quit, but that Respondent could fire him if his work was not satisfactory.[3] Moretsky replied, "Well, I'm not going to fire you, but I'm going to ride your back until I find something to fire you for."

On June 11, 1960, when Neal had occasion to complain to Respondent's president, Nick Annis, about discipline that he considered unjust, Annis asked Neal whether he thought the discipline was "because of the Union." Neal replied, in effect, that such a connection appeared possible, whereupon Annis stated that he did not care whether the employees had a union or not, because if they did, he would merely return the trucks to the owners.[4] Annis pointed out that the drivers would be the only ones hurt, because they would lose their jobs. Shortly thereafter, during the same conversation, Annis asked Neal, "Well, if you don't like the company's policy, why don't you quit?"

On June 17, 1960, Moretsky reproached Neal for having left his truck, purportedly to get change from a taxicab driver. Moretsky wanted to know whether there was a union man in the taxicab, and repeated his earlier statement that the best thing for Neal to do was quit. Moretsky added that if Neal did not quit, he would "ride his back" until he did.

In view of the above, and the other evidence contained in the Intermediate Report, we adopt the Trial Examiner's finding that Respondent's discharge of Neal on June 27, 1960, was for reasons relating to his union activity, and therefore violated Section 8(a)(3) and (1) of the Act.

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[1] The Trial Examiner credits Neal's testimony with respect to his June 27 discharge. However, he quotes Neal as having testified that Moretsky, Respondent's general manager, told him "he (Neal) had not reported to work the day before and had therefore been regarded as a quit" Neal actually testified that Moretsky said, "I didn't receive any message, and as far as I'm concerned you're fired." This corrected version further supports our finding, and that of the Trial Examiner, that Neal was discharged and did not quit on this occasion.

Respondent in its exceptions correctly notes that, according to the record, Managers Goudreau and Moretsky switched locations approximately every month, and not every 3 or 4 months, as stated in the Intermediate Report. However, this and several other minor factual errors which we have found in the Intermediate Report have no bearing on the unfair labor practice findings made herein.

[2] "Union" is used herein to refer to International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., which had just begun an organizational drive among Respondent's driver-salesmen

[3] Respondent concedes that Neal was one of its top driver-salesmen, and had received two awards for his efforts.

[4] It appears that the trucks driven by Neal and Respondent's other driver-salesmen were owned by individual investors.

2. The Trial Examiner found, and we agree, that Respondent committed an independent violation of Section 8(a)(1) by directly threatening employees with discharge if they joined or supported the Union. The Trial Examiner did not, however, find certain other independent violations of Section 8(a)(1) alleged in the complaint, and to this the General Counsel excepts. We find merit in the General Counsel's exception.

As indicated above, on June 11, 1960, Annis, Respondent's president, told Neal that if the Union came in the trucks would revert to the owners. Such a move, he said, would result in loss of employment to the drivers. A similar remark was made by Goudreau, another of Respondent's officers, in the course of a conversation with several of the drivers. In our view, these remarks constituted threats of economic reprisal if the employees should bring in the Union, and as such independently violated Section 8(a)(1).[5]

On several occasions in June 1960, Respondent's general manager, Moretsky, told Neal he would "ride his back" until he quit, or until Respondent would have occasion to fire him. Both these statements were made during conversations relating to Neal's union activities. Under the circumstances, we believe that Moretsky's remarks constituted thinly veiled threats to make Neal's working conditions more onerous because of his suspected union activities. We find that these remarks by Respondent constituted additional violations of Section 8(a)(1).[6]

ORDER[7]

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Mister Softee of Michigan, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in, and activities on behalf of, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., or any other labor organization of its employees, by discriminatorily discharging any employee, or by other-

[5] See *Hugh Major, d/b/a Hugh Major Truck Service,* 129 NLRB 322; *Sunrise Lumber & Trim Corp.,* 115 NLRB 866, 877, enfd 241 F. 2d 620 (C A 2), cert denied 355 U S 818.

[6] See *Empire Manufacturing Corporation,* 120 NLRB 1300, 1317, enfd. 260 F. 2d 528, 529 (C A 4).

[7] The General Counsel excepts to the Trial Examiner's recommendation that Respondent be required to post the remedial notice for only 30 days We find merit in this exception, and shall provide for the usual 60-day posting period. However, as Respondent's business is seasonal, we shall order that the 60-day posting period begin when Respondent's business is in full operation. See *Charbonneau Packing Corporation,* 95 NLRB 1166; *Southern Fruit Distributors, Inc.,* 81 NLRB 259, 260.

Because the character and scope of the unfair labor practices found to have been engaged in by the Respondent go to the very heart of the Act, we shall order the Respondent to cease and desist from in any manner interfering with, restraining, and coercing the employees in their rights guaranteed by Section 7 of the Act. *N L.R B.* v. *Entwistle Mfg Co.,* 120 F. 2d 532 (C.A. 4).

wise discriminating against employees, in regard to hire, tenure, or other terms or conditions of employment, except as authorized by Section 8(a)(3) of the Act, as amended.

(b) Threatening employees with discharge or loss of employment in the event the aforementioned Union should become the bargaining representative, or threatening employees with more difficult working conditions, or other economic reprisals, because of their union activities or affiliations.

(c) In any other manner interfering with, restraining, or coercing employees in the right to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., 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 mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any or all such activities, except as authorized in Section 8(a)(3) of the Act, as amended.

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

(a) Offer to Charles Neal immediate and full reinstatement to his former job as a driver-salesman,[8] without prejudice to his seniority or other previous rights and privileges, and make him whole in accordance with the Board's remedial policies (*The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827; *Crossett Lumber Company*, 8 NLRB 440; *F. W. Woolworth Company*, 90 NLRB 289) for any loss of pay he may have suffered by reason of the discrimination against him.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records necessary to analyze the amount of backpay due.

(c) Post at its headquarters, as well as at all depots or garages from which the driver-salesmen normally depart and return with their trucks, copies of the notice attached hereto marked "Appendix."[9] Copies of said notice, to be furnished by the Regional Director for the Seventh Region, shall, after being signed by Respondent's authorized representative, be posted by Respondent immediately upon receipt thereof, and be maintained by it until said notice shall have been posted for 60 consecutive days while Respondent's business is in full operation. Said notices shall be posted in conspicuous places,

[8] Such offer of employment shall be made at the start of the next seasonal operation following issuance of this Decision and Order, or, if operations have already commenced for the present season, shall be made immediately.

[9] 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."

including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

CHAIRMAN MCCULLOCH and MEMBER BROWN took no part in the consideration of the above Decision and 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 Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., or any other labor organization of our employees, by discriminatorily discharging any employee, or by otherwise discriminating against employees in regard to hire, tenure, or other terms or conditions of employment, except as authorized by Section 8(a)(3) of the Act, as amended.

WE WILL NOT threaten employees with discharge or loss of employment in the event the Union should become the bargaining representative, or threaten employees with harassment or economic reprisals because of their union activities or affiliations.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the right to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., 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 mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any and all such activities, except as authorized in Section 8(a)(3) of the Act, as amended.

WE WILL offer to Charles Neal immediate and full reinstatement to his former job as driver-salesman, without prejudice to his seniority or other previous rights and privileges.

WE WILL make Charles Neal whole for any loss of pay he may have suffered by reason of the discrimination against him.

All our employees are free to become or to remain members of the above-named Union or any other labor organization.

MISTER SOFTEE OF MICHIGAN, INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 days during the height of the season, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This proceeding [1] with all parties represented was heard before the duly designated Trial Examiner in Detroit, Michigan, on November 14, 1960, on the complaint of the General Counsel and answer of Mister Softee of Michigan, Inc., herein called the Respondent. The issues litigated involve the alleged violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, herein referred to as the Act.

Upon consideration of the entire record, the oral argument, the briefs filed, and my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a corporation maintaining its principal office and place of business at 11534 Dexter Avenue, in the city of Detroit, Michigan. At all material times hereto the Respondent has engaged in the manufacture, sale, both retail and wholesale, and distribution of dairy and related products such as ice cream mix, topping, containers, and other goods and materials valued in excess of $50,000 which goods and materials were transported to Respondent's Detroit location directly from States of the United States other than the State of Michigan. Upon these admitted facts I find the Respondent to be an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., herein called the Union, is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The issues*

The Charging Party, Charles Neal, last worked for the Respondent on June 25, 1960 [2] The General Counsel alleges that on or about June 27, the Respondent discharged and has failed to reemploy Charles Neal because of his union activities. The General Counsel also alleges other independent acts by the Respondent's supervisors alleged to be violative of 8(a)(1) of the Act. The Respondent denies the discharge of Charles Neal and contends that he quit.[3] The issue is factual and can only be determined by resolving credibility of the various witnesses.

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[1] At the hearing Melvin Crane failed to appear and counsel for the General Counsel moved to have Case No. 7–CA–2840(1) and all allegations in the complaint exclusively relating to Melvin Crane withdrawn from the instant case. The General Counsel also moved to delete or strike paragraph 8–c of the complaint in the absence of proof. The Respondent's counsel voiced no objections to the General Counsel's request and the motions were granted The caption of the case has been corrected to reflect the effect of the motions granted.

[2] All dates hereinafter are 1960 unless otherwise indicated.

[3] The Respondent's answer (General Counsel's Exhibit No 1 1) and the evidence presented at the hearing are not consistent on this point. The answer (paragraph numbered 9) admits the discharge of Neal on June 27, but says that it was for just and suffi-

B. *Background*

Neal was employed by the Respondent as a driver-salesman of a neighborhood ice cream dispensing truck. Each morning the driver-salesmen report to the depot or garage where the trucks are kept overnight and there they clean, sanitize, and stock their truck for the respective days' sales and depart to a designated area in the city. At the designated area the driver-salesmen follow a prescribed route making sales of ice cream, sundaes, malted milk, etc., to the children and other customers in the designated neighborhood. The driver-salesmen are paid a prescribed percentage of their gross sales. The Respondent exercises substantial control over the activities of the Charging Party and other driver-salesmen in a similar capacity and there is no issue involved herein as to these "employees" being independent contractors

C. *Company knowledge*

Knowledge on the part of responsible Respondent's supervisors of the activity and interest of the Union in organizing the employees appears in the record undenied. For example, witnesses Neal, Allen, Caruso, and Reach each testified that Richard Goudreau made a derogatory comment about the Union and said "if anybody joined with the union they would be fired." This occurred shortly after the first organizing effort by the Union. While Goudreau denies the particular comment he admitted having made a remark to the employees concerning their interest in the Union and also expressed the opinion that Respondent had benefits that exceeded those of some organized companies. Furthermore, Elmer Kragh, the union business agent, testified that he had several discussions with Sol Moretsky, an officer of Respondent, concerning the Union representing the employees. This was not denied. From these undisputed and undenied facts, I find that Respondent had knowledge on or about June 1 that the Union was interested in representing Respondent's employees and the employees were interested in the Union.

D. *Events prior to discharge*

The employees reported to the garage or depot at varying times, apparently depending to a large degree on the distance to be traveled from the garage to the designated area to which the driver-salesmen might be assigned, but there was agreement between the parties that 10:30 a.m. was about the latest that a driver could report for work without receiving some chastisement from the Respondent. According to Neal, he reported for work on June 11 at 10:45 a.m. On this occasion he was unable to locate his truck and when he told Richard Goudreau, the general manager of the garage, Goudreau told him that his truck had been turned over to someone else because of Neal's tardiness and that Neal was to take 3 days off. Neal objected to the 3 days' layoff because June 11 was on a Saturday and the weekend was of course the most lucrative period of time in which to work. Because of this he complained to Nick Annis, president of Respondent, who interceded for Neal to some extent, but before the matter was entirely straightened out the 3 days had passed and Neal "apologized" to Goudreau and returned to work.[4]

Goudreau's testimony surrounding the June 11 incident is not substantially different from that of Neal, except that he indicates that Neal was late on June 8 and received a warning and further that instead of reporting for work on June 11 at approximately 10:45, Neal came to work about 11 or 11:15 a.m.

Sol Moretsky, vice president and route manager, was in charge of the garage out of which Neal worked on June 17. (The Respondent has two garages or locations within the city of Detroit and apparently Moretsky was in charge of one location and Goudreau was in charge of the other, but they made it a practice to switch every 3 or 4 months.) Sometime during the afternoon on this date, Moretsky, while out checking on the trucks, saw Neal away from his truck and an argument ensued.

According to Neal's testimony, he had stepped away from his truck in an effort to obtain some needed change from a taxicab driver. In the course of obtaining the change, the taxicab driver had inquired concerning the location of a particular street

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cient cause, unrelated to union activity. At the hearing Neal's supervisor testified that he did not discharge Neal, but merely asked him to bring a doctor's certificate verifying his absence due to illness before returning to work and that Neal had never returned to work

[4] Neal testified that he apologized to Goudreau because he was asked to do so by Annis, the president Goudreau testified that on the occasion of the June 11 incident, Neal swore at him and that Neal had apologized because of the language directed toward Goudreau In view of Respondent's defense, i.e , that Neal quit and was not discharged, the matter is irrelevant and immaterial to a determination of the basic issue

and Neal had given him directions. As Neal returned to the truck Moretsky approached him and complained because the truck was dirty and Neal had left the truck unattended. Moretsky accused Neal of having talked to the taxi driver because he was a union friend and asked Neal why he did not quit. Furthermore, Moretsky told Neal that he was going to ride his back until he quit. Moretsky of course denies the union conversation but does admit having chastised Neal severely for being away from his truck and stated that it was against company policy to be away from the truck except in an extreme emergency.[5] The June 17 incident ended without definitive action by the Respondent.

E. *The discharge*

Neal apparently continued to work until June 25. On Sunday, June 26, Neal did no report to work because of a bad cold. He testified that he called the office to report his illness and in the absence of the manager, Moretsky, he spoke to the man who takes care of the supplies and asked that he advise Moretsky of his illness. On June 27, he was still ill and called to report his illness and talked to Moretsky. On this occasion according to Neal, Moretsky told him that he (Neal) had not reported to work the day before and had therefore been regarded as a quit. Neal tried to reach Annis that same day but was unable to do so. On the following day, June 28, he talked to Annis seeking to have the matter straightened out. Annis advised Neal that Moretsky was in charge of the east side personnel and that he was not going to interfere with Moretsky's decision.

Moretsky testified that Neal had been absent on April 25 and 26 and May 2, 3, 9, and 10. Thus when Neal failed to report to work on Sunday, June 26, Monday, the 27th, and Tuesday, the 28th, he became somewhat disturbed. According to Moretsky, Neal called in on June 29, which was the first report that he had received of Neal's illness, and at that time Moretsky requested that Neal obtain a doctor's certificate verifying his illness before returning to work.

Respondent's witnesses were in agreement with the position taken by the General Counsel concerning the skill and ability of Neal. Neal was among the top producers and had received two salesman's awards for his productive efforts.

F. *Conclusions*

The record clearly establishes that Respondent's supervisors had knowledge of the Union's efforts to organize the employees. Elmer Kragh, business agent of the Union, testified that he had had several conversations with Sol Moretsky concerning a contract for the employees. According to Neal, about June 3 or 4, some 3 or 4 days after the Union first began distributing application cards and seeking to organize the employees, he heard Goudreau say that the Union was not any good and anyone that joined it would be fired. This testimony is corroborated by Clifford Allen who testified that he heard Goudreau state that he "didn't think anybody that joined the Union would have their jobs." Allen was a driver-salesman who was first employed by the Respondent about May 1, 1960.

Caruso, who first started to work for the Respondent as a driver-salesman on May 9, 1960, testified that about 3 or 4 days after the Union began to organize the employees that he heard Goudreau say "we have no use for union organizers and we can do without the Union." James Reach, another driver-salesman, testified that he heard Goudreau talking about the Union within a week of the Union's initial campaign on June 1, at which time Goudreau said: "If the Union came in, the trucks would revert back to the owners." Goudreau denied having made these statements but did state that one night in the garage he had told some of the employees that he "didn't know why anyone would join the Union. The Company has better benefits than the organized companies." Based on the testimony of Neal, Allen, Caruso, and Reach, whom I credit, I find that the Respondent did, through remarks made by supervisors, Richard Goudreau and Sol Moretsky, threaten employees with discharge if they joined or supported the Union.

However, I find that the proof is wanting to sustain the General Counsel's allegation that Respondent threatened employees with paycuts and alteration of other conditions of employment if they joined or supported the Union and the allegation that Respondent granted pay increases (or promised pay increases) to its employees for the purpose of dissuading employees from engaging in union activities. The only evidence tending to support the latter two allegations came from witness

[5] According to Moretsky, the strict policy of not leaving the truck had become important to the Respondent following an accident in which certain liabilities attached to the Respondent because its driver was thought to have been assisting in the directing of traffic. The rule of staying inside the truck was made at the insistence of the insurance carrier.

Caruso who testified that at a general meeting of the driver-salesmen on August 1, Moretsky had talked to the group and stated that he had no use for the Union and that in the course of the talk he had indicated to the employees that drivers who stayed an additional year with the Company would receive an additional 1-percent increase in pay. He also testified that in September at a general meeting the employees were told that all those employees who produced in excess of a specified dollar amount of gross sales would receive an additional 1-percent increase.

General Counsel's witness, James Reach, who also testified concerning the August 1 meeting of the driver-salesmen, had no recollection of Moretsky having talked at the meeting.

Annis, the Respondent's president, testified that the bonus system of 1 percent additional for each year the employees worked for the Company had been inaugurated in 1959 and was not new. I credit this testimony. There is no proof in the record that the promised increase in percentage payments announced at the meeting in September 1960 was in any way related to union activity. To the contrary, because of the season of the year and the obvious slackening of such a seasonal business, such an announcement would have been consistent with Annis' announced program of periodic contests in an effort to stimulate sales. I find, therefore, that the General Counsel has failed to sustain his allegation that the Respondent violated Section 8(a)(1) of the Act by threatening employees with paycuts and alteration of employment conditions or granting or promising employees increases for the purpose of dissuading the employees from engaging in union activities. (Paragraphs numbered 8b and d of the complaint.)

We turn now to a consideration of the severance of Neal from the Respondent's payroll. Although there is little in the record to indicate that Neal was in fact an active, ardent union adherent, there is testimony indicating that the Respondent's supervisors were apparently of the opinion that Neal was a leader in the Union.[6] Based on my observations of Neal and his general demeanor, I credit his testimony concerning the events of his discharge and reject the testimony of Moretsky.[7] In view of Neal's fine record as a salesman, and accepting Neal's version of Moretsky's conversation with him when Neal called in to report illness, it would seem to be a reasonable inference that Moretsky sought to remove Neal from the payroll because he believed him to be an active adherent and leader in the Union's efforts to organize the driver-salesmen.[8] I therefore find that Neal was discharged by the Respondent on or about June 27, 1960, because of the belief by Respondent that Neal was actively engaged in promoting the Union and in so doing the Respondent violated Section 8(a)(3) and (1) of the Act as alleged by the General Counsel.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of 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 Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action of the type conventionally ordered in such cases which I find necessary to remedy and remove the effect of the unfair labor practices and to effectuate the policies of the Act.

Because Respondent's business is a seasonal business, the posting forthwith of the usual notice recommended in this type of case would fail to reach Respondent's employees who may have been or who might become affected by Respondent's misconduct. Therefore, I shall recommend that the notice to all employees be posted during a period of the year that will be most effective in achieving the purpose of such a notice. I shall also recommend that the notice remain posted for only 30 days because, under the circumstances of this case, it is believed that such a period is adequate to remove the effects of Respondent's misconduct.

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[6] According to Neal's testimony which I credit, Annis mentioned the Union to Neal as a possible reason for his June 11 layoff; Moretsky mentioned the Union and told Neal that he should stop scouting for the Union and asked why he did not quit; and of course as indicated heretofore Goudreau had expressed himself in opposition to the Union in the presence of Neal.

[7] *Bryan Brothers Packing Company*, 129 NLRB 285, footnote 1.

[8] Cf *B V.D. Company, Inc.*, 110 NLRB 1412

It will 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 the discriminatively discharged employee, namely, Charles Neal.

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

CONCLUSIONS OF LAW

1. The Respondent is and has been at all times material to this proceeding an employer within the meaning of Section 2(2) and is and has been engaging in commerce within the meaning of Section 2(6) and (7) of the Act.
2. By discriminatorily discharging employee Charles Neal on or about June 27, 1960, as found above, the Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(3) and (1) of the Act.
3. By interfering with, threatening, restraining, and coercing employees in the exercise of rights guaranteed them by Section 7 of the Act, as found above, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

[Recommendations omitted from publication.]

Editorial "El Imparcial", Inc. *and* Teamsters, Chauffeurs, Warehousemen and Helpers, Local 901, IBTCW & H of America.

Case No. 24-CA-1293. April 24, 1961

DECISION AND ORDER

On October 12, 1960, Trial Examiner John H. Dorsey issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint 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.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds 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.[1]

[The Board dismissed the complaint.]

CHAIRMAN MCCULLOCH and MEMBER BROWN took no part in the consideration of the above Decision and Order.

[1] The General Counsel's exceptions were limited to the Trial Examiner's failure to find that a speech made by the Respondent's owner to a gathering of employees was violative of Section 8(a)(1) of the Act. The Trial Examiner's Intermediate Report states that the General Counsel's and Respondent's witnesses gave conflicting testimony regarding the content of the speech, and that the witnesses for each of the parties failed to impress him that they were telling the whole truth. The Trial Examiner failed to credit any of the witnesses, and consequently found that the General Counsel had not proved the allegation by a preponderance of the testimony and recommended its dismissal. In these circumstances we affirm the dismissal of the allegation. *Blue Flash Express, Inc.*, 109 NLRB 591, 592, 601-602; and *Casa Grande Cotton Oil Mill*, 110 NLRB 1834, 1852.