R. E. Smith and Florence B. Smith, a partnership, d/b/a Southern Dolomite *and* Ernest Powell, Montieth Pulver, and Emil Adkins. *Cases Nos. 12–CA–1347–1, 12–CA–1347–2, and 12–CA–1347–3. May 12, 1961*

SUPPLEMENTAL DECISION AND ORDER

On February 23, 1961, Trial Examiner George A. Downing issued his Supplemental 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 Supplemental Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Rodgers 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 Supplemental Intermediate Report, the exceptions, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, with certain modifications in the remedy as hereafter set forth.

THE REMEDY

Consistent with the Board's usual policy,[1] we shall toll backpay from June 27, 1960, the date the Trial Examiner issued the original Intermediate Report in this case recommending dismissal of the complaint for lack of jurisdiction, until January 13, 1961, when the Board reversed that recommendation.

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, R. E. Smith and Florence Smith, a partnership d/b/a Southern Dolomite, Palmetto, Florida, their agents, successors, and assigns, shall:

[1] *Interior Enterprises, Inc.*, 125 NLRB 1289, where the Board held that as the Trial Examiner's recommendation that the complaint be dismissed because the Board lacked statutory jurisdiction was tantamount to a finding that the respondent had not violated the Act, the Board's policy of tolling backpay should apply to a case where the Trial Examiner's recommendation for dismissal was based on his erroneous conclusion that the Board had no jurisdiction over the case.

1. Cease and desist from:

(a) Interrogating coercively their employees concerning union activities and the circulation and signing of union petitions, and threatening to close the plant and to cut the work hours, if the Union is brought in.

(b) Discouraging membership in Local Union #925 International Union of Operating Engineers, or in any other labor organization of their employees, by discharging them or failing to reinstate them, or by discriminating in any other manner in regard to hire or tenure of employment or any term or condition of employment to discourage membership in a labor organization.

(c) In any other manner interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form, join, or assist Local Union #925, or any other labor organization, to bargain collectively through representatives of their own choosing, or 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 such activities.

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

(a) Offer to Emil Adkins, Ernest Powell, and Montieth Pulver immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make each of them whole for any loss of pay which he may have suffered in the manner set forth in the section of the Supplemental Intermediate Report entitled "The Remedy," as modified herein.

(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 and the rights of Adkins, Powell, and Pulver, under the terms of this Order.

(c) Post in their offices at Palmetto, Florida, copies of the notice marked "Appendix A," [2] attached to the Supplemental Intermediate Report. Copies of said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being signed by Respondents' representative, be posted by Respondents immediately upon receipt thereof and maintained by them for 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 notices are not altered, defaced, or covered by any other material.

[2] This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" the words "Decision and Order" 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."

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

SUPPLEMENTAL INTERMEDIATE REPORT

On January 13, 1961, the Board, having found that Respondents are engaged in commerce within the meaning of the Act and that it would effectuate the policies of the Act to assert jurisdiction and to resolve the substantive issues raised by the complaint, issued its Decision and Order (129 NLRB 1342) remanding the above proceeding to the Trial Examiner for the preparation and issuance of a Supplemental Intermediate Report with respect to the unfair labor practices alleged in the complaint.

The complaint, issued on March 31, 1960, by the General Counsel of the National Labor Relations Board and based on charges duly filed and served, alleged that Respondents had engaged in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act by discharging the Charging Parties above named on January 29, 1960, because of their union activities or other concerted activities for the purpose of collective bargaining or mutual aid or protection and by certain interrogations and threats made by Superintendent William Zipperer on or about January 28, 1960. Respondents answered on April 6, 1960, denying the unfair labor practices as alleged and averring that the three employees were terminated for "valid cause." By amendment filed on April 19, 1960, Respondents specified a number of causes which led to the discharges.

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

I. RESPONDENTS' BUSINESS

Respondents are engaged in commerce within the meaning of the Act. (129 NLRB 1342, *supra.*)

II. THE LABOR ORGANIZATION INVOLVED

International Union of Operating Engineers, Local Union #925 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The issues*

1. Whether Respondents, through Superintendent William Zipperer, engaged in interrogation and threats concerning union activities as alleged.
2. Whether Respondents discharged the Charging Parties because of their union or other concerted activities or for the various causes assigned.

B. *The evidence*

Respondents operated a dolomite mine and plant at which they employed some 16 to 19 employees and at which "union talk" had periodically occurred at times in the past. After some talk among themselves about the desirability of bringing in a union, the Charging Parties on January 27, took action toward that end by circulating a petition among the employees and obtaining signatures thereon. The alleged interrogations and threats by Superintendent Zipperer and the discharges followed promptly on January 28 and 29, during a 10-day absence of the Smiths, who did not return to the plant until after the discharges on January 29. Thus all the union activity and all the acts complained of occurred during the absence of the Respondents. Save for Zipperer's acts and statements, there was no evidence of antiunion animus on Respondents' part.

The Charging Parties worked together on the night shift (9 p.m. to 7 a.m.); and before and during their shift on January 27, they solicited signatures from practically all employees on both shifts to a slip of paper which bore on the reverse side the following legend, which Pulver had written:

> We, the men whose names appear on the reverse side of this paper, wish the Operating Engineers Union, Local #925, to bargain for us with our employer, Southern Dolomite Co., of Palmetto, Fla., for better wages & working conditions.

Ten signatures were obtained, including those of Stephen Litschaur [1] and Earnest Gortman. Powell, Pulver, and Adkins worked their full shift beginning on January 27, and on the morning of January 28, Powell and Adkins took the petition to the Union's office in Tampa and procured a supply of authorization cards. Adkins and Pulver worked their shift beginning at 9 p.m., on January 28, but Powell sent a message through Pulver that he was sick and would not be in.

Jerry Lewers testified that on the afternoon of January 28, Zipperer spoke to him as he passed by the office, asking if he had signed the "union paper," and that he answered affirmatively. Zipperer told him that if the Union was brought in the employees might get a nickel, dime, or quarter raise, but that the hours would probably be cut to 40 or 45 a week. Zipperer also stated that if a union was brought in, Mr. Smith would not stand for it and that the plant would be closed down. On cross-examination Lewers added that Zipperer said that if the union cards were signed on a Monday night (for example), there was no need to come to work Tuesday, because the plant would be closed.

Charles Council testified that on the morning of January 28, Zipperer questioned him about a report Zipperer had heard concerning a union starting there. Council, who had not been asked to sign the petition, replied that he did not know what Zipperer was talking about. Albert Wright testified that on the morning of January 28, Zipperer approached him and asked if he had signed any paper (without specifying what kind). Wright replied he had not signed and had not seen any.

Lewers testified that on the 29th (after the discharges) he and Zipperer passed Adkins and Pulver on the road as Zipperer was driving him home, and that Zipperer asked him if he knew "if they were the ones that brought the paper around." Lewers answered that he did not know.

After punching out on the morning of January 29, Pulver and Adkins were called into the office. Zipperer told Pulver that it was necessary to lay him off. When Pulver asked the reason, Zipperer stated that it was necessary to cut the working force either to seven men or by seven men. Pulver asked why he was chosen, and Zipperer told him it was because he was hard to get along with and that some of the employees could not work with him. Adkins testified that Zipperer also referred to a report that Pulver had been reading a book while on the job.

Zipperer told Adkins that he was selected because he was tearing up the shed (referring to the fact that Adkins, a bulldozer operator, had struck and broken roof pillars and an I-beam). Adkins asked if the real reason had to do with the Union. Without replying directly, Zipperer stated that a union would not do any good, because although the employees might get a 10-cent an hour raise, the hours would be cut to 8 and the employees would end up with less money in their paychecks.

Powell called in to Zipperer about 10 a.m., on the 29th, and Zipperer stated he was letting Powell go on account of his drinking. When Powell claimed he had been sick, Zipperer charged him with having been drunk, and Powell did not deny the charge (nor did he at the hearing). Zipperer said that he was going to let Powell go because Smith had told him to. The Union was not mentioned.

Respondent rested its defense on the testimony of R. E. Smith and Zipperer. Smith's testimony was directed mainly to refuting the claim of supervisory status for Litschaur (see footnote 1, *supra*) with establishing that Zipperer was without authority to set company policy,[2] and with supporting Zipperer's explanation to

[1] A collateral and largely immaterial issue was litigated as to Litschaur's alleged supervisory status. Litschaur was Respondents' hourly paid full-time mechanic, but was put in charge of plant operations during Zipperer's 2-week vacation which ended shortly after January 1. Though Zipperer was on call 24 hours of the day, Litschaur also sometimes acted for him when he was not around. Except for the vacation period, however, the evidence does not establish by a preponderance that Litschaur was a supervisor within the meaning of the Act. Indeed, his authority did not appear to be substantially greater than Powell's, who was in charge of the operation of the rehaul and dryer (burner) on the night shift and who the General Counsel claimed had employee status. Both performed manual labor, working with other employees who assisted them; and to the extent that they had authority to direct such employees, their direction was of a merely routine nature, not requiring the exercise of independent judgment. Their status might most accurately be described by the term "strawboss" or "working foreman."

Furthermore, Litschaur's status as a supervisor is relevant chiefly to the question of Respondents' knowledge of the union activities, which was otherwise fully established through Zipperer, as herein found.

[2] The "policy" point appeared to be without validity since Zipperer's supervisory status was conceded and since all the union activities and all of Zipperer's acts occurred during Respondents' absence, during which Zipperer alone represented the company vis-a-vis the

Adkins and Pulver as to the necessity for reducing the working force. On the latter point Smith testified that Respondents' business was subject to seasonal fluctuations, usually slack from September to April and heavy from mid-April to September. In 1959, however, the busy period extended into January, due to the necessity of repairing the plant machinery, which was in a rundown condition. However, neither Smith nor Zipperer testified to any discussions between them concerning the making of a layoff or as to discharging Powell, and both admitted that new hirings were made within a day or so.

Though Zipperer denied knowledge of the employee petition and of the activities of Powell, Pulver, and Adkins, his testimony lent considerable support to that of the General Counsel's witnesses. Thus Zipperer admitted that he first heard of union talk on either the 27th or 28th from Earnest Gortman, admitted that he questioned Council about the Union, admitted that he questioned Harrison Hall (also on the 28th) about his knowledge of the union movement and about whether Hall had "signed the paper," and admitted that Hall replied that he had signed and that most of the other employees had also signed. Zipperer made no denial of Wright's testimony; and as to Lewers', he testified that he could recall no conversation with him on the 28th, but that he did talk with Lewers after the discharges on the 29th. Zipperer did not, however, specify the content of the latter conversation or otherwise deny Lewers' testimony.

In view of Zipperer's admissions and his failure to deny much that the General Counsel's witnesses testified to (much of which was of a cumulative nature), I fully credit the testimony of the latter.

Zipperer's testimony concerning the discharge incident varied mainly from that of Pulver and Adkins in that under his version he did not refer to the necessity of cutting the force,[3] and he did definitely deny Adkins' charge that the discharges were due to the union activities. His specification of derelictions was also somewhat broader than Pulver and Adkins testified to in that in both cases he assigned the fact that while working with Powell on the night of January 26, they had failed to comply with his orders to clean out the boot at the foot of the elevator.

Zipperer's testimony was in substantial accord with Powell's concerning the latter's discharge, including his reference to the fact that Smith had directed the discharge. However, Smith's testimony contained no reference either to Powell's drinking or to his direction of Powell's discharge, which occurred, indeed, before Smith's return to the plant.

Zipperer also testified at some length concerning the occurrence of the various incidents which he assigned in making the discharges and to complaints concerning Pulver. Powell, Council, and one Suggs had complained about not being able to get along with Pulver, and Suggs had quit in August 1959, rather than work with Pulver. Powell and Council corroborated Zipperer concerning their complaints, through Powell continued to work with Pulver.

Concerning Adkins, Zipperer testifed that around January 16, Adkins knocked a post off the pillar under the shed, and that on January 20, he broke the main truss (I-beam). Adkins was warned about the danger of the shed falling and killing someone and that if it happened again he would be discharged. On or about January 28, Adkins knocked another post from its pillar. Although Adkins denied the last incident, Council's testimony supported Zipperer's concerning it.

Concerning Powell, Zipperer conceded that he was an excellent workman when sober but testified to a number of experiences with Powell while drunk. In July or August 1959, Powell was off from work for about a week while intoxicated, was discharged, but was later rehired. Around October 2, Powell reported for work while intoxicated and Zipperer took him home. Zipperer warned Powell of discharge on repetition of the offense. When Zipperer returned from his vacation early in January, Litschaur reported that around January 1, Powell had again reported for work intoxicated and that he (Litschaur) had taken Powell home. Zipperer spoke to Powell about that and warned him again of discharge. Powell's testimony did not substantially conflict with Zipperer's description of his conduct.

Also relevant to the discharges was Zipperer's testimony that he did not know of the activities of the Charging Parties or of the trip to Tampa until after the discharges, and that he had reason to believe that Gortman was a leader in the activity because Gortman had been active in talking union some 2½ years earlier. Zipperer

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employees. Furthermore, Smith admitted that he at no time gave Zipperer any instruction concerning unions.

[3] However, Respondents' counsel, in arguing the admissibility of Smith's testimony concerning the seasonal fluctuation of the business, admitted that Zipperer in fact referred to the necessity of reducing the force, as Pulver and Adkins testified.

admitted, however, that Powell also had several times spoken of the need for a union, but testified he had not heard either Adkins or Pulver engage in union talk.

Explaining the hiring of new men immediately after the discharges, Zipperer testified that when Gortman quit on Friday or Saturday, after the discharges, he needed more men and that he hired two. Indeed, on cross-examination Zipperer testified that he did not make the discharges simply to cut the work force, though that was the result, but that he made the discharges because of "inefficient work." The matter was brought to a head, he testified, by the failure to clean out the elevator boot. Reminded that that had occurred on the 26th, Zipperer testified that he would have fired them then except that he wanted to finish out the payroll period.[4] Things were again brought to a head on the morning of the 29th, he testified, by Adkins knocking down a second post and by Powell not reporting for work.

C. *Concluding findings*

1. Interference, restraint, and coercion

Having credited the testimony of Lewers, Council, and Wright, I find that by Zipperer's interrogation of them concerning the union activities and the circulation and signing of the petition, and by his threats to Lewers that if the Union was brought in the plant would be closed and that the work hours would be cut, Respondents interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act. The interrogations here did not stand alone; they were enmeshed with Zipperer's threats and with the discriminatory discharges as found in section 2, *infra*. Though Zipperer's statement concerning the cutting of the work hours seemed phrased possibly in terms of prediction, it, too, must be found coercive since it was joined with the direct and unequivocal threat of the plant closing.

2. The discharges

I conclude and find from the entire evidence that Zipperer had learned the identity of the employees who were back of the petition and of the union movement. In addition to the interrogations and threats which the General Counsel's witnesses testified to, Zipperer admitted questioning Harrison Hall about the Union and about signing "the paper," and admitted hearing other union talk from Gortman (the first signer after the discharges). Such extensive interrogations in a small plant with few employees [5] coupled with the timing of the discharges and the selection of the three leaders, plainly warrant the conclusion that Zipperer's interrogations had borne fruit and that he knew who was leading the movement. The fact that Zipperer continued his interrogations after the discharges does not weaken that conclusion; it is not inconsistent with prior knowledge on Zipperer's part. Thus Zipperer may have been seeking to learn how much Lewers knew and how closely he was involved in the union movement. In any event, even were it assumed *arguendo* that Zipperer was without certain knowledge, the evidence nevertheless showed that he strongly (and correctly) suspected the identity of the leaders.

We turn then to the question whether the employees were discharged because of their union activities or for the causes which Respondent assigned, and considering the case first as postured by the General Counsel's evidence, a finding of discriminatory motivation is plainly required. The most cogent factors persuasive of that conclusion were the timing of the discharges in the midst both of the organizational activities and of Zipperer's counter campaign of interrogation and threats, plus Zipperer's unerring selection of the three leaders.

Was Respondents' evidence sufficient to overcome the *prima facie* case? Though I conclude and find that the various incidents which Zipperer testified to occurred substantially as he described them and though it is found that causes existed which would support each of the discharges, the question under the circumstances of this case is whether Zipperer in truth acted because of the matters he assigned or whether he used them only as pretexts behind which to accomplish the removal of the leaders in the union movement. For ". . . a discharge ostensibly for cause must, in order to be protected as such, be in reality a discharge for cause, and . . . a trumped up or synthetic discharge for cause may not be used by the employer as a shield and

[4] Zipperer admitted, however, that he had not at any time spoken to the men before the 29th about their failure to clean up the boot, though he had known of it since 7 a m, on the morning of the 26th.

[5] See, e.g, *Bituminous Material & Supply Co*, 124 NLRB 945, 947; *Shamrock Foods, Inc.*, 127 NLRB 522; *Pyne Moulding Corporation*, 110 NLRB 1700, 1704

buckler to protect him against a discharge, the real, the dominant motive of, the moving cause for, which is antiunion discrimination." *N.L.R.B.* v. *C & J. Camp, Inc., et al. d/b/a Kibler-Camp Phosphate Enterprise,* 216 F. 2d 113, 115 (C.A. 5).

On the other hand, if an employer is inefficient and engaged in union activity, such coincidence does not destroy the just cause for discharge. *N.L.R.B.* v. *Birmingham Publishing Company,* 262 F. 2d2, (C.A. 5); but though the Board cannot save a man who has given his employer just cause for discharge by showing that he was prounion and his employer antiunion (*id.*), yet the existence of some justifiable ground for discharge is no defense if it was not the "moving cause." *Wells Incorporated* v. *N.L.R.B.,* 162 F. 2d 457, 460 (C.A. 9); *C. & J. Camp, Inc., supra.*

Respondents' evidence failed to establish that the causes which Zipperer assigned were the "moving causes." The various inefficiencies and derelictions which Zipperer recited were matters which he had known of and put up with for varying periods. It was not until the three men became the leaders of the union movement that their conduct suddenly became intolerable. *N.L.R.B.* v. *Electric City Dyeing Co.,* 178 F. 2d 980, 983 (C.A. 3). Furthermore, Respondents' defenses were shifting and inconsistent as concerned the necessity of cutting the work force. Though Respondents conceded that Zipperer assigned that ground, Zipperer's explanations and actions plainly did not square with its genuineness. Being without authority to set policy, it seems inconceivable that Zipperer would have undertaken to act precipitately in making a reduction in force on the very day of Smith's return. Not only was there no evidence that Zipperer and Smith had discussed the necessity for a layoff, but there was no opportunity for them to have done so until after the discharges. The immediate hiring of two new employees further exposed the sham in Respondents' defenses.

Powell's case presented, of course, a somewhat closer question. Though Powell's discharge followed immediately after his final intoxication, it also followed immediately his circulation of the petition and his trip to the Union's office in Tampa. Though a series of earlier warnings were given, earlier offenses were condoned until Powell became a leader in the union movement. I am persuaded and find from the entire evidence that Powell's last offense represented a fortuitous circumstance which Zipperer seized upon as a pretext to eliminate the last of the three backers of the union petition.

I therefore conclude and find on the basis of the entire evidence that Respondents discharged Adkins, Pulver, and Powell because of their union membership and because they engaged in union or other concerted activities for their mutual aid or protection.

IV. THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and that they take certain affirmative action of the type conventionally ordered in such cases, as provided under recommendations below, which I find necessary to remedy and to remove the effects of the unfair labor practices and to effectuate the policies of the Act. For reasons which are stated in *Consolidated Industries, Inc.,* 108 NLRB 60, 61, and cases there cited, I shall recommend a broad cease and desist order.

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. International Union of Operating Engineers, Local Union #925, is a labor organization within the meaning of Section 2(5) of the Act.
2. By interrogating their employees concerning the union activities and the circulation and signing of the union petition and by threatening to close the plant and to cut the work hours if the Union were brought in, Respondents interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices proscribed by Section 8(a)(1).
3. By discharging Adkins, Powell, and Pulver, and by thereafter failing to reinstate them, Respondents engaged in discrimination to discourage membership in Local Union #925, thereby engaging in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.
4. The aforesaid unfair labor practices having occurred in connection with the operation of Respondents' business as set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and substantially affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT interrogate coercively our employees concerning their union activities or the circulation and signing of union petitions, nor will we threaten to close the plant or to cut the work hours if the union is brought in.

WE WILL NOT discourage membership in International Union of Operating Engineers, Local Union #925, or in any other labor organization of our employees, by discharging employees or failing to reinstate them, nor will we discriminate in any other manner in regard to hire or tenure of employment or any term or condition of employment to discourage membership in a labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to form, join, or assist said International Union of Operating Engineers, Local Union #925, or any other labor organization, to bargain collectively through representatives of their own choosing, or 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 such activities.

WE WILL offer to Emil Adkins, Ernest Powell, and Montieth Pulver immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights or privileges, and make them whole for any loss of pay they may have suffered as a result of our discrimination against them.

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

R. E. SMITH AND FLORENCE B. SMITH A PARTNERSHIP,
D/B/A SOUTHERN DOLOMITE,

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.

International Union of Operating Engineers, Local Union No. 12, AFL–CIO *and* Tri-Counties Association of Civil Engineering Employers *and* Vandenberg Development Corp., and Utah Construction & Mining Co., Parties to the Agreement. *Case No. 21–CE–5. May 15, 1961*

DECISION AND ORDER

On October 4, 1960, Trial Examiner Eugene K. Kennedy issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in any unfair labor practices 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 supporting brief.