seniority or other rights and privileges. It is further recommended that Respondent Local make Hall whole for any loss of pay he may have suffered by reason of its discrimination against him, by paying to him an amount equal to that which he would have earned, but for the discrimination against him, from May 25, 1959, the date of the discrimination against him, until a date 5 days after Respondent Local has notified both the Bradley Company [3] and Hall as recommended above, less Hall's net earnings during said period (*Crossett Lumber Company*, 8 NLRB 440, 497–498), said backpay to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

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

CONCLUSIONS OF LAW

1. D. L. Bradley Plumbing and Heating Co., Witte-Barker, Inc., and other employers who bound themselves in collective bargaining by group action, are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Plumbers & Pipe Fitters Local Union 214 is a labor organization within the meaning of Section 2(5) of the Act.
3. By attempting to cause and by causing D. L. Bradley Plumbing and Heating Co. to discriminate against H. Maynard Hall in the hire and tenure of his employment, Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) and Section 8(b)(1)(A) of the Act.
4. By restraining and coercing employees in the exercise of rights guaranteed them by Section 7 of the Act, Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.
5. 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.]

[3] Respondent's written advice to the Bradley Company on April 18, 1960, that it had no objection to the reemployment of Hall did not toll the backpay due Hall because, insofar as the record shows, Respondent has never informed *Hall* that it no longer objects to his reinstatement.

Gibbs Corporation *and* Joseph Abrunedo, William Dean Beason, Neven E. Bennett, Willard M. Buie, Dennis C. Burch, Hubert C. Dubberly, Sherman L. Hudson, Laverne R. Jenkins, Johnnie G. Jewell, Wilford J. Lloyd, Edison McDonald, Rudolph Nudo, Carol G. Nugent, Murphy D. Price, Jr., Cecil D. Rogers, Oscar Harold Ryals, Henry R. Tillman, Edward D. Turner, George E. Tuten, and Joseph O. Witcher. *Case No. 12–CA–1502. June 2, 1961*

DECISION AND ORDER

On December 1, 1960, Trial Examiner John F. Funke 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 and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

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 [Chairman McCulloch and Members Rodgers and Fanning].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings,[1] conclusions,[2] and recommendations [3] 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, Gibbs Corporation, Jacksonville, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dicharging or otherwise discriminating against its employees for engaging in concerted activities for their mutual aid or protection.

(b) Discharging or otherwise discriminating against its employees because they have filed charges under the Act.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist any 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 and protection, as guaranteed in Section 7 of the Act, or to refrain from any or all such activities.

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[1] The Trial Examiner found that Respondent violated Section 8(a)(4) of the Act by discharging Neven E Bennett for having signed the Nudo letter supporting the charges which had been filed against Respondent on May 23, 1960 Respondent has excepted to this finding The record discloses, and the Trial Examiner found, that, although Respondent believed that Neven E Bennett had joined in filing the charges and discharged him because of this belief, Bennett had not in fact done so prior to his discharge. Accordingly, we find merit in the Respondent's exception in this regard and shall dismiss this aspect of the complaint. However, the Trial Examiner found, and we agree, that Respondent violated Section 8(a)(1) of the Act by discharging Bennett and we adopt his recommended order that Bennett's discharge be remedied in the manner set forth in the section of the Intermediate Report entitled "The Remedy"

[2] The Respondent excepted to the Trial Examiner's characterization of the agreement between the Respondent and the Union as a "sweetheart contract." As the Trial Examiner, both on his own motion and on motion of Respondent's counsel, struck testimonial evidence at the hearing which so characterized the agreement, we find merit in this exception and do not adopt the Trial Examiner's characterization of the contract. This does not affect our agreement with the Trial Examiner's finding that in the circumstances, the activities of the employees were protected by the Act.

[3] Because the character and scope of the unfair labor practices found to have been engaged in by the Respondent herein go to the very heart of the Act, we shall for this reason alone fashion a broad order directing the Respondent to cease and desist from in any other manner infringing upon employee rights guaranteed in Section 7 of the Act. See *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F. 2d 532 (C.A. 4).

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

(a) Offer to all of the employees named in the section of the Intermediate Report entitled "The Remedy" immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them, in the manner set forth in that section of the Intermediate Report.

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 other records necessary in analyzing the amount of backpay due and reinstatement rights under the terms of the Order.

(c) Post at its Jacksonville, Florida, shipyard, copies of the notice attached hereto marked "Appendix."[4] Copies of said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said 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 the Respondent has taken to comply therewith.

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that Respondent violated Section 8(a)(4) of the Act by discharging Neven E. Bennett, be, and it hereby is, dismissed.

[4] 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 discharge or otherwise discriminate against our employees for engaging in concerted activities for their mutual aid or protection.

WE WILL NOT discharge or otherwise discriminate against our employees because they have filed charges under the Act.

WE WILL offer the following employees immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay suffered as a result of the discrimination against them:

Joseph Abrunedo	Edison McDonald
William Dean Beason	Rudolph Nudo
Neven E. Bennett	Carol G. Nugent
Willard M. Buie	Murphy D. Price, Jr.
Dennis C. Burch	Cecil D. Rogers
Hubert C. Dubberly	Oscar Harold Ryals
Sherman L. Hudson	Henry R. Tillman
Laverne R. Jenkins	Edward D. Turner
Johnnie G. Jewell	George E. Tuten
Wilford J. Lloyd	Joseph O. Witcher

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, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

GIBBS CORPORATION,
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

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before the duly designated Trial Examiner at Jacksonville, Florida, on October 4, 5, and 6, 1960.

The complaint, as amended, alleged that Gibbs Corporation, herein called the Respondent or the Company, discharged 20 employees on specified dates in May and June 1960 because they filed charges alleging violation of the National Labor Relations Act, as amended, against the Respondent and the Independent Workers' Union of Florida, herein called the Union.

The complaint alleged that by the aforesaid discharges Respondent interfered with, restrained, and coerced its employees in violation of Section 8(a)(1); assisted the Union in violation of Section 8(a)(2); discriminated against its employees to discourage membership in a labor organization in violation of Section 8(a)(3); and discriminated against its employees because they filed charges under the Act in violation of Section 8(a)(4).

The answer denied that the employees were discharged and denied any violation of the Act.

At the opening of the hearing the General Counsel moved to amend the complaint to allege that the Respondent, by the aforesaid discharges, discriminated

against its employees to *encourage* membership in the Union. The motion was withdrawn when the Trial Examiner stated he would grant Respondent the 10 days requested for leave to amend its answer.[1]

At the conclusion of the case the General Counsel submitted brief oral argument and briefs were received from the General Counsel and the Respondent on November 4.[2]

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

Gibbs Corporation is a Florida corporation engaged in the operation of a shipyard at Jacksonville, Florida. During a representative 12-month period Respondent purchased materials outside the State of Florida valued in excess of $50,000 and during the same period it has provided goods or services directly related to the national defense valued in excess of $100,000. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION INVOLVED

Independent Workers' Union of Florida is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The facts*

1. The discharges on June 1

According to testimony which is not disputed the Respondent, during the year 1960, suffered a decline in revenue from its shipyard operations. It accordingly sought means of increasing its business and decreasing its expenses. According to the employee witnesses, not substantially contradicted, among the latter means devised was a disregard of seniority with respect to layoff and recall which enabled Respondent to recall second-class craftsmen ahead of first-class craftsmen for work which could be performed by either classification. This resulted in a saving to the Company of the difference between the first- and second-class rate of pay and also in increasing dissatisfaction among the first-class craftsmen affected. The Company had in effect during all times material herein a collective-bargaining contract[3] with the Union, in which the disaffected employees held membership. Redress was first sought by the employees under the grievance procedure of their collective-bargaining contract. When appeals to their shop stewards and to President Roy Gatz proved futile they hired a lawyer to advise them of their rights under the contract. This attorney, James Dixon, held a meeting with them on April 22 and advised them that the Company reserved control over seniority policy under the contract; described it as a "sweetheart" contract; and told them that their only recourse was to reopen the contract under the wage reopening clause. On May 18 a special meeting was held for the purpose of hiring a lawyer to reopen the contract and negotiate with the Company. President Gatz opposed this plan and told the men they would have to pay for the lawyer themselves. The meeting broke up in disorder when Rudolph Nudo, an employee and one of the leaders of the protesting group, was shouted down by Gatz. On May 21 the dissident group met with an agent of the National Labor Relations Board at the home of Joseph Abrunedo and on May 23 Nudo filed charges against both the Company and the Union.[4] On May 25 Nudo sent the following[5] letter to George Gibbs, Jr., Respondent's president:

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[1] See Section 102 20 and 102 23 of the Board's Rules and Regulations, Series 8 The motion was not based on newly discovered evidence or upon facts which were not available during the period of investigation

[2] By motion dated November 18, 1960, the General Counsel moved to correct the record. By order dated November 29 the Trial Examiner granted said motion and the record was corrected as requested in the motion.

[3] Respondent's Exhibit No. 1.

[4] General Counsel's Exhibits Nos 4 and 5.

[5] General Counsel's Exhibit No. 6.

RUDOLPH NUDO,
9751 LILY RD.,
JACKSONVILLE 11, FLORIDA,
May 25, 1960.

Mr. GEO. W. GIBBS II,
c/o Gibbs Corp. Inc.,
Foot of Hendricks Avenue,
Jacksonville 7, Florida

DEAR MR. GIBBS: This is to inform you that a Committee has been formed from your employees supporting charges to the effect that unfair labor practice has been committed in violation of the Labor Management Relations Act, by your Company.

Also these men are disgusted with the fact that so many Senior 1st Class mechanics in all departments are kept out of work while you work Junior 2d Class mechanics in their place.

The following is a list of men active in supporting these charges against you and your Company.

G. E. Tuten
J. Abrunedo
H. C. Dubbrey
E. Turner
S. L. Hudson
W. J. Lloyd
J. O. Mitchel
M. D. Price Jr.
C. G. Nugent
L. R. Jenkins
N. Weeps
Edison McDonald
H. R. Sillman
D. C. Burch
J. G. Jewell
O. H. Ryals
C. B. Rogers
W. B. Beason
L. Bennett

Yours very truly

RUDOLPH NUDO,
Committee Chairman.

cc: Committee File

On May 27 the events which led to the issuance of complaint herein moved into focus. On that date the Company sent a letter to a large number of its employees notifying them not to report to work until further notice. The employees whose names appeared in the Nudo letter of May 25 were included in this group. Many of the employees receiving the letter went to the Company's yard the next day, May 28, for an explanation. No explanation was forthcoming, however, until May 31 (May 29 was a Sunday and May 30 was a holiday) when Rex Dorman, director of industrial relations, told them that a layoff of 75 to 100 men had been necessitated by the cancellation of a contract. Dorman admitted that the Company had not followed its seniority policy in making the layoffs and stated that the mistakes would be corrected. On the same day the Company sent telegrams to a number of employees telling them to return to work including, with a few exceptions, the men whose names were on the Nudo letter.[6] On the next day June 1, all employees in the Nudo letter, except Nudo,[7] returned to work and were discharged on that day. While there is a variation in the circumstances of discharge and the reasons given these need not, in view of the ultimate finding, be recited here. After the men were discharged and on the afternoon of the same day a group of them met Dorman in the yard and asked him why they were fired. According to the credited testimony of Tuten, Rogers, Jewell, and Witcher, Dorman told them they had been fired because they had signed the Nudo letter.

On the next day, June 2, the discharged employees went to the union hall and saw Gatz, Vice President Moon, and Shop Steward Pereyra. At the request of the

[6] Those employees named in the complaint whose names did not appear on the letter are treated individually, *infra.*

[7] Nudo, whom I credit, testified that he had filed a grievance (General Counsel's Exhibit No. 2) against the Company on May 25 and that a hearing was held on May 31 At this hearing Dorman told Gatz that he could not represent Nudo because Nudo had filed charges against the Union and then told Nudo that he was not working because he (Dorman) did not want him around and that he would never be around while Dorman was there. I find that Nudo was fired on May 31 because he had written the letter to Gibbs and had filed charges against the Company. This finding is based not only on the testimony of Nudo but on subsequent testimony that all men whose names appeared on the Nudo letter were to be discharged.

men the officers of the Union went to the yard to find out why the men had been discharged. Upon returning Gatz told the men that they had been fired because their names appeared in the Nudo letter. The men asked Gatz what he was going to do about it and Gatz finally brought out a copy of the charges by Coffee filed against the Union with the National Labor Relations Board and told them nothing would be done until the charges were disposed of by the Board.

Dorman and President George Gibbs, Jr., were the only witnesses called by the Respondent. Dorman testified that he fired the men whose names appeared on the Nudo letter on instructions from Gibbs. He stated that Gibbs gave him a memorandum with the names of the employees to be fired and that later Gibbs called him by telephone and told him to get the men out of the yard. This was on June 1 and Gibb's orders were carried out on that day. Dorman further testified that Gibbs did not give him any reason for discharging the employees and that he did not ask for any. He denied that he told Tuten, Rogers, Jewell, and Witcher that they had been fired because their names appeared on the letter, and he testified that he still did not know the reason why the men had been discharged when he met with Gatz, Moon, and Pereyra on June 2. I do not believe Dorman.[8] Apart from my observation of him it appears incredible that the industrial relations director of so large a company would be advised in writing and by telephone to effect a summary discharge of a group of employees and neither be given a reason nor ask for one.

Gibbs testified that he received the Nudo letter either 7 or 10 days after the date of the letter, that he was leaving for New York when he received it, and that he tried, without success, to reach either of his attorneys, Mr. Bowden and Mr. Hamilton. He then left the memorandum of instructions for Dorman and called Dorman from New York to make sure the instructions had been carried out. Gibbs testified that he fired the employees whose names appeared on the Nudo letter because he believed they were acting in derogation of the certified bargaining agent and he thought he would be committing an unfair labor practice if he met with them. (The Nudo letter does not request a meeting.)

2. The discharge of Willard M. Buie

Buie was a rigger first employed in 1951 and his foreman was Oscar Jay. The last day he worked was May 27. On Saturday, May 28, he received the letter from the Company telling him not to report to work until further notice. He saw Jay who told him that the order had come from "higher up" and that night he received calls from other men who had received similar letters. On Tuesday, May 31, he reported to the yard and found his timecard missing from the rack. He and a group of the employees who received the layoff notice saw Moon and later that day they met with Dorman who said he had received orders to lay off some 75 or 100 men but that due to a mixup in the personnel department (Dorman had been out of town) the Company's seniority policy had not been followed. Dorman agreed that this error would be corrected and the senior men put back to work. Buie, unlike the others, did not receive a telegram to report back to work on June 1. He went to the yard, found his card still missing from the rack, talked to his shop steward, and later talked to Gatz and Moon. That night he met Neven Bennett who told him that he (Bennett) had gone to work and had then been fired. On June 2 Buie went back to the yard and again he saw Gatz, Moon, and Pereyra. In the afternoon he saw Carroll, Dorman's assistant, and Carroll told him to go to work. He worked until 1:15 p.m. on Monday, June 6, when Jay came to him and told him to "get his damn tools and get out of the yard" because he had been fired. He asked why and Jay told him it was because he had filed a grievance against the Company. Buie had not filed a grievance but he had joined in the filing of the first charge by Coffee on June 3 (General Counsel's Exhibit No. 1–a) and his name was the first on the list.

Dorman first testified that he fired Buie because he refused to testify in an investigation of the Company by the Wage and Hour Division of the Department of Labor. Buie was asked to give a statement to the Company's attorneys and Dorman felt that Buie was uncooperative.[9] On cross-examination Dorman testified that the

[8] I discredit him upon his demeanor on the stand, upon contradictions in his testimony, and upon the implausibility of some of his testimony Dorman impressed me as a witness void of any regard for the truth.

[9] Dorman's original testimony in which he stated that Buie had taken the fifth amendment gave the impression that Buie had rfused to testify before the Wage and Hour investigators.

investigation took place in either March or May and later changed the dates to either the first of April or May. But Dorman admitted that Buie worked for some time after his refusal to testify (he was working on May 27). He then testified that Buie was fired because he had filed a grievance for 3 or 4 days relating to the time lost due to the Company's error on May 28 [10] but he also admitted that he rehired Buie on June 3 and fired him on June 6. There is no rational explanation on the basis of Dorman's own testimony either for the rehire on June 3 or the discharge of June 6.

I cannot credit any of Dorman's testimony regarding the discharge of Buie and I do credit Buie wherever there is dispute. I find that Buie was discharged on June 6 because his name appeared on the charge filed by Coffee under the National Labor Relations Act.

3. The discharge of Neven E. Bennett

Bennett was a first-class machinist employed at Gibbs since 1950. He was not working, due to a disability, on May 28 when he received the Company's letter telling him not to report to work. He called his foreman, Bernette, asked about the letter, and was told to forget it and report as soon as he was able. He heard the rumor that there would be a meeting of employees at the yard on May 31 and he attended. He did not receive a telegram telling him to report on June 1, possibly because he was on the disabled list. On the night of June 1 he saw Abrunedo who told him that he (Abrunedo) had been fired that day. On Thursday, June 2, he was told by the Company's nurse that he could work the next day and he went to see Carroll in Dorman's office. Dorman told Bennett that the Company had fired the wrong Bennett and that they should have fired him for signing the Nudo letter.[11] Bennett denied that he had signed it but he told Dorman that he thought the men had done the right thing. Dorman then told him he would think it over. That night Bennett called Bernette and told him he would report in the morning and was told that he "was involved" and that he could come in and clear out his belongings. I therefore find that he was discharged on June 2.

Without finding that Bennett authorized the use of his name on the Nudo letter I do find that he was discharged by Dorman because Respondent believed he had signed the letter.

4. The discharge of Joseph O. Witcher

The name of Joseph O. Witcher does not appear on the Nudo letter. Nudo testified, however, that Witcher's name was mistakenly designated on the letter as J. O. Mitchel. Nevertheless, he was told by Dorman on June 1 that he was fired because Dorman had been instructed to fire all the men who signed the letter. Whether or not Dorman had been able to ascertain that Mitchel was an error and that the proper name was Witcher is a matter of speculation. In view of the uncontradicted testimony of Witcher that he inquired why he was fired and was told that all the men who had signed the letter were fired, I can only find that he was fired because the Respondent knew or suspected that he was among the group filing charges.

B. *Conclusions*

1. Violation of Section 8(a)(2)

I find no evidence in the record to support the allegation that the Respondent assisted the incumbent Union in violation of Section 8(a)(2) of the Act. I cannot see that the discharges herein assisted the Union except in the derivative fashion that they removed from the bargaining unit a dissident group of employees. But the primary purpose of the discharges was reprisal for the Nudo letter referring to the charges of unfair labor practices. I do not find such indirect and unintended support as the Union may have received from this action sufficient to support this allegation of the complaint.

I shall therefore recommend that the complaint, insofar as it alleges violation of Section 8(a)(2), be dismissed.

2. Violation of Section 8(a)(3)

The complaint also alleges that the discharges of the employees discouraged membership in a labor organization in violation of Section 8(a)(3) of the Act. Quite obviously the discharges did not discourage membership in the incumbent Union.

[10] Buie never did file a grievance—Dorman admitted that Buie did not tell him he was filing a grievance but stated that he heard this from Howell.

[11] The name which appeared on the Nudo letter was L. Bennett, but Nudo testified that this was a mistake and that it should have been N. Bennett.

If this paragraph is intended to mean that the discharges discouraged membership in the employees' committee, then there must be evidence that the employees' committee was a labor organization within the meaning of the Act. There is no evidence that this committee ever sought to meet with the Respondent concerning "grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work." I can only find that the purpose of this committee was to file charges with the National Labor Relations Board and have the Board investigate the contract between the Company and the incumbent Union and investigate the practices under the contract. I do not find that this meets the very liberal standards applied to the statutory definition.[12] As in the *Perfect Circle* case, the action taken by the employees was for the limited purpose of utilizing the processes of the Board. I shall therefore recommend that the complaint, insofar as it alleges that the Respondent violated Section 8(a)(3) of the Act, be dismissed.

3. Violations of Section 8(a)(1) and (4)

These are the chief issues. The contention of the Respondent that it discharged the employees because they attempted to negotiate directly with Respondent and bypass the certified bargaining agent must be rejected. There are no facts to support such a contention in this record. The employees who were discharged had sought to have their bargaining agent, the incumbent Union, process their grievances respecting seniority in recall and had been rejected. They had asked, at a union meeting, for a legal interpretation of their bargaining contract and they had been told by an attorney that the contract was a "sweetheart" contract under which they had no seniority privileges. They had asked their president, Gatz, to reopen the contract and had been told they would have to hire their own attorney. They had, unlike the employees in the *Dazey* case,[13] exhausted their procedures within their Union. They then took what appeared to be the only recourse remaining—a request for an investigation by the National Labor Relations Board. Before they filed their charges, however, they consulted with an agent of the Board, an act which I find manifests the good faith of the employees. Unless I am to hold that a group of employees who have reason to believe either that their contractual rights have not been protected by their designated bargaining agent or that the contract has been collusively designed to deprive them of certain rights may not ask for a Board investigation of the facts, then I must find that their concerted activity is protected. The mere statement of the alternatives begets the answer. The report of the Senate Select Committee To Investigate Improper Activities in Labor-Management Relations revealed that among the most vicious practices designed to deprive employees of their rights was that of the collusive or "sweetheart" contract. If we are to hold that employees may not appeal to the Board without immunity against discharge when they have reason to suspect that such collusion exists and after their designated agent has declined to give them assistance under the contract then the Board itself gives sanction to collusion. The record of the Board is squarely to the contrary. I therefore find that in writing the letter to Gibbs and in filing charges with the Board, the employees engaged in protected concerted activity and that their discharge was in violation of Section 8(a)(1). I also find that their discharge for filing the charges or because they were suspected of filing the charges was in violation of Section 8(a)(4).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

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

Having found that the Respondent discharged its employees because they engaged in protected concerted activity and because they filed charges against the Respondent

[12] See *Perfect Circle Corporation Plant #5, Machining Plant, Richmond, Indiana,* 114 NLRB 725. Cf. *N L R B.* v. *Fant Milling Company,* 360 U.S. 301.

[13] *Dazey Corporation,* 106 NLRB 553.

under the Act or were suspected of so doing, I shall recommend that Respondent offer the following named employees full and immediate reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges:

Joseph Abrunedo	Edison McDonald
William Dean Beason	Rudolph Nudo
Neven E. Bennett	Carol G. Nugent
Willard M. Buie	Murphy D. Price, Jr.
Dennis C. Burch	Cecil D. Rogers
Hubert C. Dubberly	Oscar Harold Ryals
Sherman L. Hudson	Henry R. Tillman
Laverne R. Jenkins	Edward D. Turner
Johnnie G. Jewell	George E. Tuten
Wilford J. Lloyd	Joseph O. Witcher

I shall also recommend that Respondent make each of the above-named employees whole for any loss of pay he may have suffered because of Respondent's discrimination, by payment to each of them a sum of money he would normally have earned as wages from the date of such discrimination to the date of the offer of reinstatement less his net earnings during said period. The backpay will be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

Because the Respondent herein has not only engaged in a willful and flagrant unfair labor practice by its summary discharge of its employees for engaging in protected concerted activity but because it has also been found to have engaged in unfair labor practices of varying magnitude in the past,[14] I shall recommend that a broad cease-and-desist order issue. In so doing I am mindful of the multitude of recent decisions of the courts, including the Supreme Court, restraining the Board in the issuance of orders which exceed in scope the Board's authority to effectuate the policies of the Act.[15] If the issuance of a broad order can be justified by the circumstances of the case and the history of the employer then this is such a case and such a history.

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

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2) and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Employees Committee is not a labor organization within the meaning of the Act.
3. By terminating the employment of the employees named in paragraph 6 of the complaint because they filed charges against the Respondent alleging violations of the National Labor Relations Act, or because they were suspected of filing said charges, and because they engaged in concerted activity for their mutual aid and protection, the Respondent violated Section 8(a)(1) and (4) of the Act.
4. Respondent did not furnish financial or other support to the Union in violation of Section 8(a)(2) of the Act.

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[14] See *Gibbs Corporation*, 120 NLRB 1079; *id* 124 NLRB 1320; *id.* 129 NLRB 709

[15] See, e g, *Communications Workers of America, AFL–CIO and Local No 4372, et al. (Ohio Consolidated Tele. Co)* v. *N.L.R.B*, 362 U.S. 479; *Highway Truck Drivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Virginia-Carolina Freight Lines)* v. *N.L.R.B*, 273 F. 2d 815 (C.A.D.C); *N.L.R.B* v. *United Brotherhood of Carpenters and Joiners of America, AFL–CIO, et al (Midwest Homes, Inc)*, 276 F 2d 694 (C.A. 7); *Local 636 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada, AFL–CIO (Detroit Edison Co)* v. *N.L.R.B*, 278 F 2d 858 (C.A.D.C); *N.L.R.B* v. *Bangor Building Trades Council (Davison Const Co)*, 278 F 2d 287 (C.A. 1); *International Typographical Union, AFL–CIO (Haverhill Gazette)* v *N.L.R.B*, 278 F. 2d 6 (C.A. 1); *Morrison-Knudsen Company, Inc* v. *N.L.R.B*, 276 F 2d 63 (C.A. 9); *N.L.R.B* v. *Local 111, United Brotherhood of Carpenters & Joiners of America (Clemenzi Construction Co.)*, 278 F. 2d 823 (C.A. 1); *Puerto Rico Drydock & Marine Terminals, Inc* v *N.L.R.B*, 284 F 2d 212 (C.A.D.C); *N.L.R.B* v *International Association of Machinists, Aeronautical Industrial District Lodge 727 and Local Lodge 758, AFL–CIO (Menasco Mfg Co.)*, 279 F 2d 761 (C.A. 9); *N.L.R.B.* v. *Local 476, United Assoc of Journeymen & Appren. of Plumbing & Pipefitting Ind, etc (E Turgeon Const Co, Inc)*, 280 F. 2d 441 (C.A. 1); *N.L.R.B.* v. *Lamar Creamery Company*, 246 F. 2d 8 (C.A. 5).

5. Respondent did not, by the aforesaid termination of its employees, discourage membership in a labor organization in violation of Section 8(a)(3) of the Act.
6. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Benton and Company, Inc. ***and*** **Lloyd G. Blake, George C. Stuart, Leo Everett Jones, Russell Johnson, Dan W. Derwort, John Crawford, Robert E. Claycomb, and Frank D. Kersey.** *Cases Nos. 12–CA–1393–1 through 12–CA–1393–7 and 12–CA–1458–1. June 5, 1961*

DECISION AND ORDER

On February 13, 1961, Trial Examiner Eugene F. Frey 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 a copy of the Intermediate Report attached hereto. He also found that the Respondent did not engage in certain other unfair labor practices alleged in the complaint and recommended that it be dismissed insofar as it contains such allegations. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

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 [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 Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings and recommendations of the Trial Examiner with certain modifications in the remedy as hereafter set forth.

THE REMEDY

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

It appears that following the layoffs on March 18 and 21, 1960, found herein to have been discriminatory, the Respondent's business operations and workload have declined in volume and that at the time of the hearing it was conducting its operations with a reduced work force. It is therefore possible that some of the employees discrimi-