

those of the other employees. Accordingly, we shall include only the quality control inspectors in the unit.

The foremen in the printing, cutting, dyeing, glueing, and maintenance departments in the folding carton division, and the foremen in the printing, finishing, shipping, and maintenance departments in the shipping container division all have the same degree of authority. They assign men to work, change them from one job to another and reprimand employees for unsafe work or violation of company rules. They attend the regular meetings of supervisors. They possess no authority to hire or discharge employees, but their various recommendations concerning the status of subordinates are given much weight by the Employer. Their production work is usually confined to setting up the machines which the other employees will use. We find that the foremen are supervisors within the meaning of the Act.¹³ We shall exclude them. As the record is inadequate to determine the supervisory status of the shipping clerk, we shall permit him to vote subject to challenge.

The watchman keeps unauthorized persons out of the plant. He wears a uniform, carries a gun, and protects the Employer's property from theft. We find that he is a guard. We shall exclude him.¹⁴

We find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees at the Employer's Turner Avenue and Hovis Road plants in Charlotte, North Carolina, including expeditors, timekeepers, production clerks, mailmen, samplemakers, truck schedule and receiving clerks, quality control inspectors, factory order clerks and factory order clerk trainees, but excluding estimators, sales service clerks, draftsmen, payroll clerks, cost clerks, statistical clerks, production planning clerks, the assistant to the director of quality control, office clerical employees, salesmen, professional employees, watchmen, guards, foremen, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

¹³ *Beneke Corporation*, 109 NLRB 1191.

¹⁴ *Ertel Manufacturing Corp.*, 118 NLRB 1338.

Ampruf Paint Company, Inc. and Steel, Paperhouse & Chemical Drivers & Helpers, Local No. 578, and Paint Makers Local 1232, AFL-CIO. *Case No. 21-CA-4099. July 12, 1961*

DECISION AND ORDER

On February 28, 1961, Trial Examiner David F. Doyle issued his Intermediate Report in the above-entitled proceeding, finding that the 132 NLRB No. 6.

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 Intermediate Report attached hereto. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report, and the Respondent filed a supporting brief.

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 Leedom].

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, conclusions, and recommendations of the Trial Examiner.¹

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, Ampruf Paint Company, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Steel, Paperhouse & Chemical Drivers & Helpers, Local No. 578, and Paint Makers Local 1232, AFL-CIO, or any other labor organization of its employees, by discharging or refusing to employ its employees or in any other manner discriminating against them in regard to hire or tenure of employment or any term or condition of employment.

(b) Threatening employees with discharge or plant closing, evicting employees because of union activities, and granting wage increases to employees to influence their union activities.

¹ We agree with the Trial Examiner's finding that employee Landry was discharged because of his union activities, and that 14 employees who went on strike to protest Landry's discharge were unfair labor practice strikers. In any event, even assuming that they had the status of economic strikers on the assumption that Landry's discharge was for cause, they are entitled to reinstatement and backpay as they unconditionally offered to return within a few hours after the strike commenced and before any of them had been replaced.

Member Rodgers agrees that Landry's discharge was unlawful and that the 14 employees were unfair labor practice strikers and entitled to reinstatement. He therefore finds it unnecessary to determine what reinstatement rights they might have on an assumption that Landry's discharge was for cause.

We find no sufficient evidence that potentially dangerous conditions were created in the plant when the employees walked out. The failure of employee Rowland to turn off the heating unit under the glue pot could not have led to any danger of fire. The fact that a truck was left standing in the yard with the motor still running did not endanger the safety of persons or property as the air brake was on and the ignition was turned off by another employee shortly thereafter. Compare *Valley Die Cast Corp.*, 130 NLRB 508. Furthermore, no evidence was presented connecting any identified striker with the breaking of an office window in the Respondent's plant and the breaking of the car window of one of the nonstriking employees. *International Ladies' Garment Workers Union, AFL v. N.L.R.B. (B.V.D. Company, Inc.)*, 237 F. 2d 545 (C.A.D.C.).

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Steel, Paperhouse & Chemical Drivers & Helpers, Local No. 578, and Paint Makers Local 1232, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Offer to Mike Landry, Bobby Cape, Edward Cochran, Clifford Hankins, Allen Jacobson, Harold Little, John Mettler, Alvin Ras, Roy Riley, Roger Rowland, Gilbert Smith, Richard Stroup, Jack Sumner, Charlie Varnum, and James West immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, 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 the section of the Intermediate Report entitled "The Remedy."

(c) Offer to Mike Landry immediate occupancy of his former or substantially equivalent living quarters or leased premises on the same terms as previously enjoyed, and make him whole for any loss he may have suffered by reason of his eviction by payment to him of a sum of money equal to that which he has had to pay as rental for other living quarters or leased premises from the date of the eviction to the date he is offered occupancy, plus such additional expenses as he may have incurred during said period as a direct result of his eviction by the Company, less the amount he would normally have paid to Respondent as rent for his living quarters or leased premises during said period.²

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

²The record shows that employee Landry was evicted from the premises rented to him by the Respondent because said premises were used by him as "headquarters for campaigns and concerted activities by a labor organization." As it is clear that Landry's eviction was due to his union activities, we order the Respondent to offer to him occupancy of the same or equivalent premises and make him whole for any loss suffered by the eviction. *Kohler Co.*, 128 NLRB 1062.

(e) Post at its plant in El Monte, California, copies of the notice attached hereto marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by Respondent, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by other material.

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

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

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage membership in Steel, Paperhouse & Chemical Drivers & Helpers, Local No. 578, and Paint Makers Local 1232, AFL-CIO, or any other labor organization of our employees, by discharging or refusing to employ our employees or in any other manner discriminating against them in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT threaten employees with discharge or plant closing, evict employees because of union activities, or grant wage increases to employees to influence their union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Steel, Paperhouse & Chemical Drivers & Helpers, Local No. 578, and Paint Makers Local 1232, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer to Mike Landry, Bobby Cape, Edward Cochran, Clifford Hankins, Allen Jacobson, Harold Little, John Mettler, Alvin Ras, Roy Riley, Roger Rowland, Gilbert Smith, Richard Stroup, Jack Sumner, Charlie Varnum, and James West immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them.

WE WILL offer to Mike Landry immediate occupancy of his former company-owned or substantially equivalent living quarters or leased premises on the same terms as previously enjoyed, and make him whole for any loss he may have suffered by reason of his eviction by payment to him of a sum of money equal to that which he has had to pay as rental for other living quarters or leased premises from the date of the eviction to the date he is offered occupancy, plus such additional expenses as he may have incurred during said period as a direct result of his eviction, less the amount he would normally have paid to us as rent for his living quarters or leased premises during said period.

AMPRUF PAINT COMPANY, INC.,
Employer.

Dated----- By-----
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding, with all parties represented, was tried before the duly designated Trial Examiner in Los Angeles, California, on November 9, 10, and 17, 1960, on complaint of the General Counsel and answer of Ampruf Paint Company, Inc., herein called the Company or Ampruf. The issues litigated were whether the Company had violated Section 8(a)(1) and (3) of the Act by certain conduct more particularly described hereinafter.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is a California corporation with its principal office and place of business at El Monte, California, where it engages in the manufacture, sale, and distribution of paint. During the 12-month period prior to the complaint the Company had a gross volume of business valued in excess of \$500,000, and shipped products valued in excess of \$50,000 directly outside the State of California. In the same period it also received goods and materials valued in excess of \$50,000, which were shipped to it from points outside the State of California.

It is undisputed, and I find, that the Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the assertion of jurisdiction is warranted.

In the events hereafter related, the principal supervisors who acted for the Company were Robert Sencer, its president, and Mike Gildon, its plant superintendent. Robert Morris, who I find was a supervisor, also played a part.¹

II. THE LABOR ORGANIZATIONS INVOLVED

Steel, Paperhouse & Chemical Drivers & Helpers, Local No. 578, and Paint Makers Local 1232, AFL-CIO, are both labor organizations within the meaning of Section 2(5) of the Act.

In the events hereafter related, the two unions acted jointly, so in this report both unions are referred to jointly as the Union.

III. THE UNFAIR LABOR PRACTICES

A. *The issues*

It is the contention of the General Counsel that for approximately a week prior to July 20, 1960, an employee of the Company named Mike Landry was active in organizing the Union at the Company's plant, and because of such activity, the Company discharged Landry on July 20, 1960. The complaint further alleges that when Landry was discharged, a group of employees struck in protest of his discharge, that on the same date they were discharged by the Company, and that since that date the Company has failed and refused to reinstate either Landry or any of the employees who struck although their reinstatement was duly requested. The complaint also alleges that Sencer, the president of the Company, and Morris, a supervisor, made certain statements to the employees which violated Section 8(a) (1) of the Act.

In its answer the Company denies the commission of unfair labor practices and at the hearing contended that Landry was discharged for good cause on July 20, 1960, and that the other employees named in the complaint voluntarily quit their employment.²

B. *The sequence of events*³

1. The organizational efforts of Landry and the Union

It is undisputed that Mike Landry, the employee who is a principal in this controversy, knew Robert Sencer, the president of the Company, before Landry went to work for the Company. At that time Landry was employed by a painting contractor named Booth, and, in the course of that employment, became acquainted with Sencer. Sometime in January 1960,⁴ Landry asked Sencer if the latter would rent to Landry a small house which stood across the street from the Ampruf plant; one of the conditions of rental being that Landry would repair the house in his spare time. Sencer and Landry agreed to a rental of this house on those terms. In February 1960, Landry became unemployed and he requested employment from Sencer. Sencer agreed to hire Landry as a spray painter, and both the rental of the house and the employment of Landry appear to have been prompted by Sencer's compassion for Landry's economic plight rather than by any business considerations. Sencer in his testimony pictured himself as Landry's benefactor and Landry did not deny that feature of Sencer's testimony.

Landry testified, and in this he was supported by the testimony of other employees, that around the first week of July a group of the men at the plant began to talk

¹ While the supervisory authority of Morris is not free from all doubt, I am of the opinion that he was a supervisor because of the following facts established by the evidence. (1) About a month prior to the discharge of Landry, Sencer offered Morris a job as "foreman." (2) In June 1960, Morris hired employee Stroup. (3) Morris, as part of his duties, was responsible for the gathering of all delivery orders, the routing of all trucks, the order of deliveries, and the correct loading of the trucks. Under the circumstances I find that Morris "responsibly directed" the truckdrivers.

² These employees are 14 in number as follows: Bobby Cape, Edward Cochran, Clifford Hankins, Allen Jacobson, Harold Little, John Mettler, Alvin Ras, Roy Riley, Roger Rowland, Gilbert Smith, Richard Stroup, Jack Sumner, Charlie Varnum, and James West.

³ At the hearing Mike Landry and employees Stroup, Jacobson, Cochran, Rowland, Varnum, and Sliger testified as to this sequence of events, as did Union Representatives Nicely, Craver, Zagajeski, and Buckley. The testimony of these witnesses was credible and mutually corroborative. I credit their testimony fully and it is the basis for the findings of fact in this section of this report. Any discrepancies or differences in the testimony of these witnesses is of an inconsequential nature.

⁴ All dates are in 1960.

about organizing a union. After discussing the matter for a few days, on approximately July 15, Landry telephoned to Paul Nicely, a business representative of the Union, and made a date for Nicely to meet and discuss organizational plans with a group of the employees at Landry's house. Pursuant to this telephone conversation on Saturday, July 16, Nicely met Landry and seven other employees of the Company at Landry's house across the street from the plant. At this meeting a quantity of union authorization cards were supplied to Landry and on the following Monday, July 18, Landry distributed these union authorization cards to the employees. On the same evening a meeting was held at the home of employee John Sliger which was attended by Landry and approximately 15 other employees of the Company. In the course of his remarks, Nicely said that sometimes when a union organized a plant the management discharged some employees in reprisal, and he told the men that in the event that happened they were to notify him immediately. Also at this meeting Nicely told the men that he would discuss the matter of recognition with Sencer, president of the Company, on the next day.

It is undisputed that on July 19, Nicely, together with Union Representatives Zagajeski and Buckley, met with Sencer at the Company's plant. When they informed Sencer that they represented a majority of the employees in his plant and asked him for recognition as bargaining representative they met with a very angry response. Sencer said that he didn't want his plant organized and that he would rather close the doors than sign any agreement with the Union. After some further discussion, Sencer cooled down and Nicely prevailed upon him to give the situation further consideration, with the result that Sencer agreed to look over the standard form of union agreement which Nicely agreed to provide.

Apparently also there was some talk among the employees about the organization of the Union at this time, for, on the evening of July 18 or 19, employees Stroup, Lane, and Von Harten met with Supervisor Robert Morris in the washroom of the plant. The men fell to discussing the efforts of the Union to organize the men. Employee Lane stated that he anticipated that there would be an election among the employees in which they could vote as to union representation. The men fell to discussing the chances of the Union to prevail in the election. Employee Lane stated that he thought the Union would win, and in discussing the situation went to the timecard rack, in the presence of Supervisor Morris and the others, and ticked off the timecards of the employees whom he felt were in favor of the Union. The total of those in favor and those against the Union as shown by the timecards showed a very close election. At that point, Morris said, "Well, if it's going to be that close, I know of about four of them that probably instigated it. We'll just give them the boot."⁵

On the next day, July 20, Superintendent Gildon informed employee Cochran that his wage rate had been raised from a \$1.80 to \$2 per hour. Cochran had received a 20-cent increase in pay the week previous, so this increase was entirely unsolicited. Superintendent Gildon also informed employee Rowland that he was raised to \$2 an hour and that "this doesn't have any bearing on this other thing." This constituted a 30-cent hourly increase to Rowland.

2. The discharge of Landry; the walkout of the men

Around 9 a.m. on July 20, after Gildon had notified the other employees of their raises, he notified Landry that he was discharged. And in discharging Landry he asked if Landry thought "the other employees are going to follow you out of this plant?" Landry, following Nicely's instructions, thereupon notified the other union adherents, and the 14 employees named in the complaint thereupon concertedly left their jobs in protest to Landry's discharge. They walked across the street and gathered at Landry's house to await the coming of Business Representative Nicely who was immediately notified of what had occurred. In a matter of moments, Representatives Nicely and Craver came to Landry's house and discussed the situation with the men. Then Nicely, Craver, and Landry went across the street to the Company's plant and offices to see Sencer. When the men were admitted to Sencer's office, Sencer immediately assailed Landry stating that he didn't want him in the office, and that he was trying to organize a union and cause the ruin of Sencer's business. Sencer also stated that he wouldn't have the "blankety blank blank" working for him again and told Nicely that he should get Landry to "blank" out of there. On the advice of Nicely, Landry withdrew from the office.

⁵ Morris' version of this statement is that he said, "If the plant ever went union we'd have to get rid of three or four guys and get some men in who are qualified to do the job that they would be getting paid for." In the light of all the evidence, I think that Stroup's version of this conversation is more credible.

Nicely then requested Sencer to allow all the employees to return to work. Nicely stated that their action had been somewhat hasty and he requested Sencer to allow them to go back to work. Sencer refused.

In the discussion it appeared that Sencer felt outraged by the fact that he had, in his estimation, befriended Landry and that Landry, by engaging in the organizational activity, had betrayed him. In order to try to effect some sort of compromise of the situation, Nicely then asked that all the men be reinstated except Landry, but Sencer would not agree to this either. Sencer took the position that the men had quit and told Nicely that he "absolutely would not take them back."

On the next day, the striking employees began picketing at the Ampruf plant, using Landry's house across the street as an organizational point for the pickets. On July 22, the Company served a notice of termination of tenancy for the house which Landry and his family occupied.

On July 25, Nicely and Union Representative Kopke again met with Sencer at his office and again asked him to allow the employees except Landry to go back to work. Sencer again refused to allow any of the men to return to work.

3. Interference, restraint, and coercion

On an occasion approximately 1 week after the start of the strike, Sencer was standing in front of the plant and noticed that Landry and some of the other striking employees were in front of Landry's house. He called to them and said that he "would bolt the doors and nail the doors closed before he would let the Union enter his plant." On another occasion, a few days later, employees Landry, Varnum, Slinger, and several others were across the street from the plant when Sencer emerged with Supervisor Weissmann. On this occasion Sencer told the employees that "he would close the doors before he would let us come back to work." On July 28, the Company served upon Landry a "three-day notice to quit for violation of terms of tenancy and committing of nuisance." This notice stated as to Landry, "In violation of the terms of the tenancy which is for residential purposes, you have permitted said premises to be used for non-residential purposes, to wit, as headquarters for campaigns and concerted activity by a labor organization."⁶ The house was surrendered by Landry on July 29.

On the next day, Sencer left the premises of the plant in his automobile and stopped at a point where Landry and some of the employees and their wives were standing. Landry asked Sencer if he could sleep well at night after putting a family out on the street. Sencer replied, "Mike, if you work for me for 5 years you could never pay me back the money you made me lose trying to bring this union into my plant." Thereafter Nicely conferred with Sencer on about seven occasions between July 20 and October 10, and each time Nicely requested Sencer to reinstate the strikers. Although Nicely did not ask for the reinstatement of Landry after his original request, Landry personally requested reinstatement on several occasions.

C. The defense

At the hearing it was the contention of the Company that Landry was discharged because his work was substandard. Sencer testified that on 15 or 16 occasions Superintendent Gildon told him that Landry's work was "not up to par, he wasn't doing the job well, and he would like permission to let him go." Sencer testified that he did not give permission to Gildon to discharge Landry because he was sympathetic to Landry's financial plight. However, on this point Gildon testified that prior to June 20 he had not asked Sencer for permission to discharge Landry, and that from the time Landry was given a wage increase, in about mid-March, until the morning of July 20, Gildon never spoke with Sencer about Landry. Sencer testified that the thing which triggered the discharge of Landry was a complaint by Booth, the painting contractor, who was Landry's former employer and who was a paint customer of Ampruf. According to Sencer, on the morning of July 20, Booth came to the Ampruf plant on business and again complained to Sencer that Landry was trying to take some small jobs away from Booth. According to Sencer, on all previous occasions when Booth had complained of this conduct of Landry, Sencer had refused to discharge Landry, although that was the usual demand inherent in Booth's remarks. However, on July 20, he came to the conclusion that he should discharge Landry because Landry was creating trouble with Booth, a good customer of Ampruf.

This version of the discharge of Landry I find unacceptable. It shows a complete reversal of attitude of Sencer toward Landry. Prior to July 20, according to Sencer, he peremptorily brushed aside Booth's complaints about Landry, and on one occasion

⁶ General Counsel's Exhibit No. 3 in evidence.

stated to Booth that he was running Ampruf, and Booth should not tell him what employees he should hire or fire. It is undisputed that on July 20 Sencer's attitude toward Landry underwent a complete change, but under the circumstances it is apparent that Sencer's new view of Landry was due to Landry's activity in organizing the Union and the visit of Business Agent Nicely on the previous afternoon at which visit Nicely informed Sencer that his employees had designated the Union as their collective-bargaining agent. As stated previously, Sencer felt that in promoting the Union Landry had betrayed Sencer and this was apparent in Sencer's testimony in many places in the transcript. At one place Sencer virtually admitted that he held Landry responsible for the union organization of the plant. He said, "It's like anyone you do a favor for, you wouldn't expect him to kick you in the teeth, and this is exactly what he [Landry] did to me."⁷ At another place Sencer testified, "I did everything I possibly could for a complete stranger [Landry] and he did everything he could to knife me in the back." A moment later, Sencer testified as follows, "I don't think it was his place to question my men that were working for me five and ten years as to whether they were happy on their job or weren't happy."⁸ At another point, Sencer did not deny that he made the statement attributed to him by Landry in which Sencer said that if Landry worked for him for 5 years he would not be able to pay Sencer for the money he had caused Sencer to lose by trying to bring the Union into the plant.

Although the auditor is tempted to be sympathetic to Sencer in regard to Landry's conduct toward him, Sencer's testimony establishes beyond doubt that Sencer regarded Landry as the instigator of the union movement in the plant, and that the discharge of Landry was in reprisal for that activity.

Concluding Findings

From all the evidence it is clear that Landry was discharged because of his activities on behalf of the Union and in order to discourage the organizational efforts of the Union. It is likewise clear from the evidence that Sencer was extremely hostile toward unions because of some experience he had with them in the past. At the first interview with Nicely, Sencer told Nicely that he would rather close the plant than deal with the Union and later on he told the union representative to get Landry to ". . . hell" out of his office. At a later date Sencer told a group of the striking employees that he would bolt the doors and nail the doors closed before he would let the Union enter the plant.

The evidence establishes that Landry was the chief organizer among the men. It was he who first made contact with the Union on July 15 and who engaged in the distribution of union authorization cards to the employees. He also attended the organizational meetings of the employees at his own house and at Slinger's. The evidence establishes that it was common knowledge among the employees of the plant that Mike Landry was one of the prime movers in organizing the Union. It is likewise clear that when Nicely informed Sencer on July 19 that the Union had been designated by a majority of the men that Sencer decided to take counter-measures. This action consisted of granting unsolicited pay raises to two men and of the discharge of Landry. These measures went awry when the 14 employees decided to strike in protest of Landry's discharge. From all the evidence it is clear that Landry was discharged because he had engaged in union activities and that the 14 men named in the complaint walked out of the plant and became unfair labor practice strikers in protest of Landry's unlawful discharge. Later events, depicted in the testimony, confirm this finding. When Nicely remonstrated with Sencer, and asked that Landry be reinstated, Sencer peremptorily ordered Landry from his office and took the position that the other men had voluntarily quit their employment. Even when Nicely pleaded with him to permit the return to work of the unfair labor practice strikers, Sencer refused and he persists in that refusal to this day.

Only one conclusion can be drawn from Sencer's adamant and oft-repeated refusal to reinstate the employees, that Sencer discharged both Landry and the striking employees as of July 20, 1960, because of their concerted activity protected by Section 7 of the Act. The strike, being in protest of Landry's unlawful discharge, was an unfair labor practice strike, and the discharge of the strikers was a violation of Section 8(a) (3) and (1) of the Act.⁹

⁷ Transcript, page 425.

⁸ Transcript, pp. 481-483.

⁹ *N.L.R.B. v. Globe Wireless, Ltd.*, 193 F. 2d 748 (C.A. 9); *N.L.R.B. v. Remington-Rand, Inc.*, 130 F. 2d 919 (C.A. 2)

The evidence also establishes that the Company violated Section 8(a)(1) of the Act by the following conduct of the following supervisory personnel:

(a) Supervisor Morris' statement to employees on or about July 18, that he knew a number of employees were instigators of the Union and that they would be discharged.

(b) President Sencer's and Superintendent Gildon's granting of wage increases to certain employees on or about July 20, in connection with their refraining from union or concerted activity.

(c) President Sencer's threat to striking employees on or about July 27, that he would close the plant doors before he would reinstate any strikers.

(d) President Sencer's eviction of employee Mike Landry from Landry's home on or about July 28, because of Landry's membership in and activities in behalf of the Union.¹⁰

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Company set forth in section III, above, occurring in connection with the operations of the Company 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 Company discriminated in regard to the hire and tenure of employment of Mike Landry, Bobby Cape, Edward Cochran, Clifford Hankins, Allen Jacobson, Harold Little, John Mettler, Alvin Ras, Roy Riley, Roger Rowland, Gilbert Smith, Richard Stroup, Jack Sumner, Charlie Varnum, and James West by discharging them on July 20, 1960, the Trial Examiner will recommend that the Company offer to each of them immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges, and make each of them whole for any loss of pay each may have suffered by reason of said discrimination against him by paying to each of them a sum of money equal to that which each would have earned as wages from the date of the discrimination against him, July 20, 1960, to the date of his full reinstatement as herein provided. This sum of money shall be computed in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289.

Since it has been found that the Company has engaged in certain other unfair labor practices in violation of Section 8(a)(1) of the Act, it will be recommended that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Steel, Paperhouse & Chemical Drivers & Helpers, Local No. 578, and Paint Makers Local 1232, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

2. Ampruf Paint Company, Inc., is an employer engaged in interstate commerce within the meaning of Section 2(6) and (7) of the Act.

3. By discharging Mike Landry, Bobby Cape, Edward Cochran, Clifford Hankins, Allen Jacobson, Harold Little, John Mettler, Alvin Ras, Roy Riley, Roger Rowland, Gilbert Smith, Richard Stroup, Jack Sumner, Charlie Varnum, and James West, thus discriminating in regard to their hire and tenure of employment because they had become members of the Union and engaged in union activities for the purpose of collective bargaining or other mutual aid or protection, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

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

¹⁰ *Indianapolis Wire-Bound Box Company, d/b/a Cleveland Veneer Company*, 89 NLRB 617.