V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices, I recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent discriminatorily discharged W. W. Pate, I recommend that Respondent offer him immediate and full reinstatement without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings that he may have suffered by payment to him of a sum of money equal to that which he normally would have earned from the aforesaid date to the date of Respondent's offer of reinstatement, less net earnings during said period. The backpay provided for herein shall be computed in accordance with the formula stated in *F. W. Woolworth Company*, 90 NLRB 289. I also recommend that Respondent, upon reasonable request, make available to the Board and its agents, all payroll and other records pertinent to an analysis of the amount due as backpay.

Since the discriminatory discharge found herein goes "to the very heart of the Act" (*N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F. 2d 532, 536 (C.A. 4)), and indicates a purpose to defeat the self-organization of its employees, I am convinced that the unfair labor practice committed is related to other unfair labor practices proscribed and that the danger of their commission in the future is to be anticipated from Respondent's conduct in the past. Accordingly, in order to make effective the interdependent guarantees of Section 7 and thus effectuate the policies of the Act, I will recommend that the Respondent cease and desist from in any manner infringing upon the right of employees guaranteed by the Act. *May Department Stores d/b/a Famous-Barr Company* v. *N.L.R.B.*, 326 U.S. 376, 386–392.

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. Respondent is engaged in commerce and the Union is a labor organization, all within the meaning of the Act.
2. By discriminating in regard to the hire and tenure of W. W. Pate, thereby discouraging membership in the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid 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.]

Remington Rand Division of Sperry Rand Corporation, Petitioner *and* Office Employees International Union, Local 212, AFL–CIO. *Case No. 3–RM–227. August 17, 1961*

DECISION, ORDER, AND CLARIFICATION OF CERTIFICATION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hymen Dishner, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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].

Upon the entire record in this case, the Board finds:

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

2. The Union is a labor organization within the meaning of the Act.

3. The Union currently represents, under contract, a unit of office clerical employees, excluding, *inter alia*, technical employees. This unit was certified on September 27, 1957, subsequent to a Board-conducted consent election.[1] The Employer now seeks a self-determination election among certain employees of the data processing department.[2] The Union filed a motion to dismiss the petition and a motion requesting the Board to clarify the certified bargaining unit so as to include (1) data processing department employees,[3] and (2) coders. The Employer contends that the data processing department is a new operation and that therefore these employees are entitled to a self-determination election.[4] The Union argues that the employees of the department are merely an accretion to the office clerical unit which it currently represents.

The record indicates that the data processing department was established in September 1958 subsequent to the current contract, which was executed on January 17, 1958. Employees in the data processing department have been unilaterally excluded by the Employer from the coverage of the contract; however, no demand to represent these employees was made by the Union until September 1960.

The function of the data processing department is the processing of information, particularly with respect to payrolls, accounts receivable, domestic sales, and cost analyses. Before September 1958, all of these operations were performed by other departments using conventional equipment and by employees represented in the office clerical unit. The record shows that at least five office clerical employees were transferred into the data processing department where they do work similar to that performed in their prior departments. In general, the employees in the data processing department exercise much the same skills and enjoy substantially the same employment benefits as the office clerical employees in the existing unit. The record, as a whole, indicates that the data processing department performs essentially the same functions that were performed previously by employees in the bargaining unit, except that new machinery, e.g., a Univac I computer, has been introduced to increase the efficiency of the operation. Accordingly, we find that the employees of the data processing department

[1] Case No. 3–RC–1897 (not published in NLRB volumes).

[2] I e, computer operators, peripheral equipment operators, junior librarians, and Univac control clerks.

[3] In addition to the four classifications specified by the Employer (*ibid*), the Union would include the classification of "labor maintenance."

[4] The parties stipulate that no technicals are employed in the data processing department

are within the scope of the existing certified unit. *Loews, Inc.*, 127 NLRB 976; *General Electric Company*, 120 NLRB 199.

The Union also seeks clarification of the certified unit to include the coders. It contends that they were excluded from the unit in the prior consent-election case only because the Union relied upon the Employer's erroneous representation that the coders were technical employees. The classification of coders was in existence prior to the consent election in 1957. They did not vote in the election and have never been represented by any union. No effort was made by the Union to represent these employees until approximately 3 years after the Board certified the office clerical unit. The contract executed pursuant to the certification did not include coders. We find, in view of the above and the entire record, that a motion for clarification is not the proper method for adding the excluded classification to the existing unit, and that a representation petition is necessary seeking an election among the coders. We therefore deny the Union's motion for clarification as to the coders. *General Electric Company*, 119 NLRB 1233; *Kiekhaefer Corporation*, 119 NLRB 1097.

In view of the above findings, we shall dismiss the Employer's petition since it seeks only a segment of the employees in the existing unit, and therefore does not raise a question concerning representation within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. In addition, we hereby grant the Union's motion to clarify the certification of Office Employees International Union, Local 212, in Case No. 3–RC–1897 to include in the unit the employees in the data processing department.

[The Board dismissed the petition.]

Dalmo Victor Company *and* Tool and Die Craftsmen, National Independent Union Council,[1] Petitioner. *Case No. 20–RC–4489. August 18, 1961*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before M. C. Dempster, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

[1] The name of the Petitioner appears as amended at the hearing.