

of the Act in general, and, hence, the Trial Examiner deems it necessary to order that the Respondent cease and desist from in any manner infringing upon rights guaranteed to the employees in Section 7 of the Act.

CONCLUSIONS OF LAW

1. By discharging Emmet M. Kirk and David Timmerman on May 23, 1959, thereby discriminating in regard to their hire and tenure of employment and discouraging union activity among its employees, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

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

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

4. The Respondent did not violate Section 8(a)(3) or (1) of the Act by discharging Joe Foss on June 8, 1959.

[Recommendations omitted from publication.]

Peavy Concrete Products, Inc. and Blanton Allen

Peavy Concrete Products, Inc., and Peavy Concrete Company and Atlanta Building and Construction Trades Council and Truck Drivers and Helpers Local Union No. 728, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Cases Nos. 10-CA-4589 and 10-RC-4778. August 29, 1961

DECISION AND ORDER

On March 21, 1961, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and is 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 Respondent filed exceptions to the Intermediate Report and a brief in support thereof.

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 Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

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, Peavy Concrete Products, Inc., Atlanta, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Atlanta Building and Construction Trades Council and Truck Drivers and Helpers Local Union No. 728, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization of its employees, by discharging, refusing to reinstate, or otherwise discriminating against employees in regard to hire or tenure of employment or any term or condition of employment.

(b) Coercively interrogating employees concerning their own and other employees' union membership, activities, and sentiments, promising benefits and threatening to discharge or to take other economic action against employees for reasons of union membership and activities and election results, and telling employees not to attend union meetings and advising them that it has obtained and will further obtain information concerning such meetings and their attendance at such meetings, and in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, 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 or protection, or to refrain from any or all such activities.

(c) Otherwise interfering in a manner constituting interference, restraint, and coercion with employees' rights to a free election of representatives.

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

(a) Offer Blanton Allen immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(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 other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its offices in Atlanta, Georgia, copies of the notice attached hereto marked "Appendix."¹ Copies of said notice, to be furnished by the Regional Director for the Tenth 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. Respondent shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Tenth Region, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the election in Case No. 10-RC-4778 held on October 28, 1960, be, and it hereby is set aside, and that Case No. 10-RC-4778 be remanded to the Regional Director for the Tenth Region for the purpose of conducting a new election at such time as he deems that circumstances permit the free choice of a bargaining representative.²

¹ 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."

² The new election shall be conducted among the production, maintenance, and warehouse employees including drivers, batchers, in-loaders, tireboys, laborers, plant maintenance mechanics, and dispatchers employed by the Employer at its seven Atlanta, Georgia, facilities, but excluding office clerical employees, watchmen, guards, and supervisors as defined in the Act, who are employed during the payroll period immediately preceding the date of the issuance of notice of election.

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discharge or otherwise discriminate against our employees because of membership or other activities in behalf of Atlanta Building and Construction Trades Council and Truck Drivers and Helpers Local Union No. 728, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

WE WILL NOT coercively interrogate employees concerning union membership, activities, and sentiments.

WE WILL NOT promise benefits and threaten discharge or other reprisal for union reasons, and we will not take such reprisal.

WE WILL NOT tell employees not to attend union meetings and tell them that we have obtained and will obtain information concerning their attendance.

WE WILL NOT interfere in a manner constituting restraint and coercion with employees' rights to a free election of representatives.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any 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 reinstate and make whole Blanton Allen for any loss of pay suffered as a result of our discrimination against him.

All our employees are free to become or remain members of any labor organization or to refrain from such membership, except to the extent that this right may be affected by an agreement conforming to the provisions of Section 8(a) (3) of the National Labor Relations Act, as amended.

PEAVY CONCRETE PRODUCTS, 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 consolidated proceeding involves an unfair labor practices case and objections to conduct of an election in a representation case. A hearing on the unfair labor practices was held before the duly designated Trial Examiner on January 16 and 17, 1961, at Atlanta, Georgia. By orders dated January 16 and 31, 1961, the Board meanwhile directed the Trial Examiner to conduct a representation hearing on objections, with authority to consolidate the complaint and representation cases for purposes of Intermediate Report; an order of consolidation was issued on February 3, 1961. The parties to the representation case submitted a stipulation dated February 8 and 9, 1961, whereby they agreed, *inter alia*, that the objections issues be determined upon the aforementioned unfair labor practices record and that further hearing be waived. The stipulation was received and the record was thereupon closed by order dated February 15, 1961.¹

Upon the entire record and my observation of witnesses,² and upon consideration of briefs submitted, I hereby make the following:

¹ In accordance with the stipulation, the following documents are received in evidence and will be marked and inserted in the official exhibit file in Case No. 10-RC-4778 as Trial Examiner Exhibits: No. 1, stipulation; No. 2, objections to election; No. 3, Regional Director's report on objections, dated December 20, 1960; and No. 4, employer's exceptions to Regional Director's report. The following are also received and marked as Trial Examiner Exhibits: No. 5, Board order directing hearing, dated January 16, 1961; No. 6, Board order amending order, dated January 31, 1961; No. 7, Trial Examiner order of consolidation, dated February 3, 1961; No. 8, Trial Examiner order, February 15, 1961, receiving stipulation and closing record; No. 9, Regional Director's notice of hearing, dated January 26, 1961; and No. 10, Regional Director's order, dated February 14, 1961, indefinitely postponing hearing.

² I have considered but do not necessarily set forth all versions of conflicting testimony.

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

Peavy Concrete Products, Inc., Respondent herein, is a Georgia corporation maintaining its principal office and place of business at Atlanta, Georgia, where it is engaged in the production and sale of ready-mix concrete, mortar, and concrete blocks and in the sale of general building materials.³ During a representative yearly period, Respondent's interstate purchases exceed a value of \$50,000. I find, as all parties agree, that Respondent is engaged in commerce within Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Atlanta Building and Construction Trades Council (herein called Council) and Truck Drivers and Helpers Local Union No. 728 (herein called Local and affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America) are labor organizations within Section 2(5) of the Act and are herein jointly called the Union.

III. THE UNFAIR LABOR PRACTICES AND OBJECTIONS

Preliminary Statement

All events recounted here occurred in 1960, unless otherwise stated. The Union began holding organizational meetings for, and openly distributing campaign literature to, Respondent's employees in or about June, and it filed a representation petition on August 1. Following a hearing on August 22, the Board issued a Decision and Direction of Election on October 3, and a majority of the approximately 120 eligible voters cast ballots against the Union in the election held on October 28. The Union filed objections to the conduct of the election on November 4, the Regional Director recommended sustaining certain objections and that a new election be held, and the Board then directed a hearing upon Respondent's exceptions to the Regional Director's recommendation for a new election. The complaint alleges and Respondent denies that Respondent violated Section 8(a)(1) of the Act by various specified acts of interference, restraint, and coercion⁴ during the organizational and preelection period and that Respondent also violated Section 8(a)(3) and (1) of the Act by discharging Blanton Allen on November 7. The officers and/or agents of Respondent who purportedly engaged in the alleged conduct are President Robert H. Peavy, Sr., Vice Presidents Neal Peavy and Robert H. Peavy, Jr., Plant Superintendents A. R. Kidd and J. W. Quinn, and Garage Foreman John Willis; the parties agree, and I find, that these individuals are supervisors of Respondent within Section 2(11) of the Act.

Section 8(a)(1) Conduct; Objections

Kidd, who is in charge of the so-called industry yard with yardmen and approximately 14 drivers, testified that during the month of the October election he initiated and had several union discussions with each employee, that he asked them on these occasions what the Union had promised them at union meetings, and that he told them that Respondent did not want the Union and "would do more for them than the Union would." About a week before the election, according to employee Charlie Labron's credible testimony, Kidd called Labron into the office and inquired whether Labron had attended a union meeting; Labron replied that he had, and Kidd asked who else had been present; when Labron said he did not know, Kidd mentioned the names of some employees who Kidd said had attended. Employee John Henry Lane also credibly testified that Kidd had inquired concerning Lane's and other employees' attendance at a union meeting, that Kidd made similar inquiry of Lane several weeks before the election, and that Kidd told Lane on this latter occasion that Lane had attended after Lane replied he had not.

Quinn, who is in charge of 33 men at the block plant, testified that he asked employees during the preelection period whether they had signed union cards and attended a union meeting and what the Union had promised them and that he told employees that the Union "can't promise anything that we haven't got" On an

³ Respondent and Peavy Concrete Company were found by the Board in the representation case to constitute a single employer, upon the basis of common ownership and management, common facilities and labor policy, and employee interchange (Decision and Direction of Election, dated October 3, 1960, not published in NLRB volumes).

⁴ The objections upon which the Board directed a hearing are among such alleged 8(a)(1) conduct.

occasion after a union meeting, Quinn remarked to the employees that if they had signed union cards they would have "to go over the hill." (There was a hill at the yard entrance.) One day in October after the Union had distributed handbills with notice of a union meeting, Quinn asked employees Andrew Schofield and George Clark, according to Schofield's credible testimony, whether they were attending the meeting and they said they were; the next day Quinn asked Clark and Schofield whether they had attended and what was discussed there. Later that same day Schofield voluntarily informed Quinn that the Union had requested Schofield to be a union observer in the scheduled election. Quinn then told Schofield that "if I were you I wouldn't do it because it will make a sore spot," and Quinn asked Schofield what he intended to do; Schofield did not answer. Quinn repeatedly asked Schofield's intention⁵ on other occasions each time with the same comment about a "sore spot." Quinn also told Schofield, according to Schofield's credible testimony, that there would be "a change . . . [and] some new faces around here" if the Union comes in and President Peavy had said he would close the plant should the men become organized. Quinn had some buttons with the legend, "Vote No"; handing one to Schofield, Quinn said that "if you are not for the Union you will wear this button." Schofield did not serve as a union observer at the election; Blanton Allen did, and his case is discussed hereinafter.

Morris Crowder was another employee whom Quinn had interrogated about union sentiments and attending a union meeting. Vice President Robert Peavy also made similar inquiry of Crowder and other employees and a few days before the election Foreman Willis asked Crowder whether Crowder was "going with the Union."

Respondent officials addressed employee meetings convened by Respondent at its various installations the morning before the election. President Peavy told the employees whom he addressed on such occasion that he wanted everyone to "vote right and make no mistakes" and that he did not know what would happen if he "didn't win." That same night Respondent held a party off the premises for its employees, attendance on a voluntary basis, with food, beverages, and professional entertainment. This was the first such event since Respondent had taken over the business in 1957 and Vice President Robert Peavy testified it was "just a get together for the employees." President Peavy announced at this party that Respondent would hold a "victory party if the Company won the election."

Allen's Discharge; Additional 8(a)(1) and Objections Conduct

Allen, who operated a ready-mix concrete truck, was with Respondent and its predecessors since 1923. Vice President Neal Peavy directed Dispatcher Marvin Harris to discharge Allen on November 7.

Shortly after a union meeting in June or July, according to Allen's credible testimony, Neal Peavy asked Allen whether he had attended the meeting and Allen replied that he had; Peavy remarked to Allen that "we do not work anybody that attend a union meeting." Peavy told Allen a few days later that Peavy would fire Allen "if you get the Union in" and that Allen also would be "automatically fired . . . if you don't get the Union in"; Dispatcher Harris and another dispatcher were present on this occasion and Peavy commented to them at the time that Allen "thinks he is smart. He is one of the leaders that has been around here. He is the head of it." In the presence of Dispatcher Harris a week or so later, Peavy asked Allen whether Allen had attended a certain union meeting and, when Allen said he had not, Peavy told Allen that Union Representative Taylor had mentioned at the meeting that Peavy had threatened Allen's discharge whether or not the organizational campaign succeeded. Peavy was present on an occasion in August or September when Allen asked Dispatcher Harris why Allen seemed to be receiving so-called "scatter" loads; Peavy commented at the time that as a union member Allen was "lucky to have a job." One day shortly before the election Peavy asked Allen whether Allen would be attending a union meeting that night and Peavy said he did not want the employees to attend the meeting and that he (Peavy) would have someone to inform him which employees were present.⁶

The day before the election Peavy asked Allen how Allen would vote. Allen declined to answer and he told Peavy that it was immaterial because of Peavy's aforementioned statement that Allen would be discharged no matter how the election turned out. Peavy then told Allen that Peavy "might forget what I [Peavy] said

⁵ I reject Quinn's explanation that he was interested in arranging driving assignments.

⁶ Peavy also asked employee John Woodard, in the presence of employees R. C. Henderson and James Green, whether Woodard "want[ed] a union"; on the same or another

to you [Allen], if you vote right," and Peavy also remarked that Allen's truck could remain in the garage and Allen would have no work and consequently earn no money if Allen "didn't vote right."

Allen, with Respondent's knowledge, served as a union observer at the October 28 election. The Union filed objections to the election on November 4, and Respondent discharged Allen on November 7. Respondent claimed, in effect, that a contributing cause for the discharge was the alleged fact that Allen had run out of gas while on an assignment on October 28 after the election that day and Respondent asserted as the precipitating cause that Allen had deliberately mishandled and damaged a truck's transmission on November 7, this latter incident being referred to as the "gear grinding" one.

On the day during which Allen purportedly ran out of gas, Allen was temporarily assigned to concrete truck No. 17. Allen filled up the gas tank that day following which he delivered a load of mixed concrete. The motor began popping and smoking and losing oil during this trip, and a mechanic from another yard added some oil and made some temporary adjustments which enabled Allen to complete the assignment and return to the yard where he worked. On his return, Allen reported the difficulty with the truck to Respondent Mechanic Ralph Payne; Payne added more oil and made some adjustments and he told Allen that Payne would make the necessary repairs the next day. Later that same day the yard dispatcher instructed Allen to deliver another load of concrete in the same truck, which Allen did, and the motor acted up again on this trip and finally stopped operating before Allen could make delivery. Allen did not know what the trouble was and he caused a radio call to be made to Respondent's office to send out a mechanic with some gas.⁷ Mechanic Payne was thereupon dispatched to Allen's truck

Concrete trucks use butane gas and Payne testified that such fuel system requires a certain air pressure in order to function and that, even with a full tank of gas, the system will not operate without the requisite air pressure. Payne testified that his inspection of Allen's disabled truck showed the malfunction to be a lack of pressure caused by an air leak which resulted in the lines freezing up. Payne testified that when he is directed to service a truck for being "out of fuel," which is the information he was given on this occasion, such phrase means either that the vehicle is actually out of gas or that there is ample gas but no air pressure in the tank. In filling up the gas tank after the breakdown, Allen found the tank to be approximately half full; there is no testimony that the vehicle was out of or even low in gas on this occasion.

Payne worked on the truck at the scene of the breakdown and Allen was finally able to bring in the vehicle. Allen made some passing comment about the breakdown to Dispatcher Harris later that day. Harris said nothing and neither Harris nor anyone else ever reprimanded Allen or even indicated to Allen that Allen had purportedly run out of gas on the occasion in question. Mechanic Payne testified that the only report he made to the office concerning this incident was an oral one the following day to the effect that he had to install new connections to remedy the air leaks. Neal Peavy testified that he heard Allen's call come in for gas, as set forth above, and that he accordingly assumed that Allen had in fact run out of gas. Peavy testified that, while it is company policy to discharge drivers who run out of gas on a job, he did not direct Allen's discharge on that occasion because of Allen's long and loyal service; Peavy also testified that he never investigated the matter and that his only information concerning the incident was hearing the aforementioned call.

Coming now to the so-called gear grinding incident, Allen was in truck No. 17 rolling slowly past Dispatcher Harris when Harris instructed Allen to back up into the mixer line for a load of concrete. Allen testified that he then pushed in his clutch and touched the gear stick and that the gears momentarily "scratched," which "scratch" he described as a "little bitty noise." Harris thereupon remarked that Allen should stop all forward motion before reversing gears, to which Allen replied that he had not yet attempted to back up. This was the entire conversation, whereupon Allen proceeded into the mixer line and left to deliver the concrete.

Neal Peavy testified that Dispatcher Harris meanwhile called and notified him that Allen had deliberately tried to back up the truck without completely stopping its forward motion, that Allen had thereby damaged the transmission, and that the truck would accordingly have to be repaired. Peavy testified that, without any

evidence Peavy asked whether Woodard had attended a union meeting and Peavy told Woodard that Peavy knew who had attended and that Respondent would close down if they "get a union in"

⁷This gas gage on this particular truck was not in operating order.

further investigation, he then directed Harris to discharge Allen at once. When Allen returned from his mentioned trip, Harris notified him of his discharge; Allen requested an explanation and Harris, in reply, gave him a termination slip stating "can not follow directions" as the reason for the discharge. That part of the termination slip requiring the "supervisor's signature" contained the signatures or purported signatures of Peavy and Harris.

Harris was not called to testify in this proceeding, and there is no credible testimony or other competent evidence for finding that the transmission suffered any damage or that it was even inspected in connection with the so-called gear grinding incident.

Concluding Findings

The record establishes, and I find, that Respondent has violated Section 8(a)(1) of the Act in that its officials and other supervisors coercively and systematically interrogated employees concerning their own and other employees' union membership, activities, and sentiments; threatened discharge, plant shutdown, and other economic loss for reasons of union activities (including serving as a union observer at a Board election) and should the union campaign succeed; sought to induce employees to wear "Vote No" buttons if they opposed the Union and to reject the Union by stating that Respondent would do more for employees than the Union would; and told employees not to attend union meetings and that it has obtained and will further obtain information concerning union meetings and who attends such meetings. Much of this conduct, such as interrogation and threats and the like, occurred during the period between the Board's Direction of Election and the holding of the election; and I accordingly also find, without need for repetitious specification, that the Employer has thereby interfered with the employees' free choice in the selection of a collective-bargaining representative in the October election. *The Hurley Company, Inc.*, 130 NLRB 282; *Murray Ohio Manufacturing Co., Lawrenceburg, Tennessee, Division*, 122 NLRB 1306, 1314-1317, enfd. by consent 279 F. 2d 686 (C.A. 6). Cf. *N.L.R.B. v. Walton Manufacturing Company & Loganville Pants Co.*, 286 F. 2d 16 (C.A. 5).

The case of Allen's discharge is a situation of Respondent discharging a longtime faithful employee for two alleged reasons neither of which is supported by the record and under circumstances where the official (Neal Peavy), who directed the discharge, had specifically interrogated Allen and threatened him with reprisal and where the dispatcher (Harris), who carried out Peavy's order, was present on at least three occasions where Peavy had thus indicated displeasure with Allen's union sentiments and activities. Mindful that an employee's union membership and his Employer's antiunion attitude do not alone prove unlawful motivation for such employee's discharge, I am satisfied from a consideration of all additional circumstances set forth above that Respondent discharged Allen not for running out of gas (which Allen did not do) or for grinding gears and damaging equipment (which Allen did not do) or for believing that Allen had done so, but because of Allen's union sentiments and activities.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

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

I shall recommend that Respondent offer immediate and full reinstatement to Blanton Allen to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of his discharge by payment of a sum of money equal to that which he would have earned as wages from the date of his discharge to the date of the offer of reinstatement, less his net earnings during such period, in accordance with *F. W. Woolworth Company*, 90 NLRB 289.

In view of the nature of the unfair labor practices committed, I shall also recommend that Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

I shall also recommend setting aside the October 1960 election and that another election be conducted.

CONCLUSIONS OF LAW

1. The Union is a labor organization within Section 2(5) of the Act.
2. Respondent is engaged in commerce within Section 2(6) and (7) of the Act.
3. Respondent has violated Section 8(a)(3) and (1) of the Act by discharging Blanton Allen.
4. Respondent has further violated Section 8(a)(1) of the Act by coercively interrogating employees concerning their own and other employees' union membership, activities, and sentiments, by promising benefits and threatening to discharge and to take other economic action against employees for reasons of union membership and activities and election results, and by telling employees not to attend union meetings and that it has obtained and will further obtain information concerning such meetings and their attendance at such meetings.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within Section 2(6) and (7) of the Act.
6. Respondent has engaged in conduct interfering with the employees' right to a free election, thus affecting the results of the October 1960 election.

[Recommendations omitted from publication.]

Pepsi Cola Bottling Company of Chattanooga, Inc. and International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America, AFL-CIO, Local Union 79, Petitioner. *Cases Nos. 10-RC-4963 and 10-RC-4964. August 29, 1961*

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a consolidated hearing was held before Richard G. Vail, 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 Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

Upon the entire record in these cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. The Employer is engaged in the manufacture, bottling, and distribution of soft drinks in Chattanooga, Tennessee. The Petitioner filed separate petitions on April 10, 1961, for a production and maintenance unit and for a unit of driver-salesmen, at the above soft drink establishment. At a consolidated hearing held in both cases the Employer contended that the petitions should be dismissed on the ground that they were inconsistent¹ and a current agreement between it and

¹ For reasons discussed hereinafter, we accepted the stipulation of the parties to amend the petitions to constitute one petition for an overall unit. Accordingly, we deny the Employer's motion.