with the express stipulation that the Union's position on this subject might require a supplement to or modification of agreements previously reached. Thus, when the Union accepted the proposed term it no longer had before it an offer of a complete agreement looking to a binding contract upon acceptance. Its act of acceptance did not create a binding contract which the Respondent was statutorily compelled to sign. The Respondent's refusal to do so in this case was not violative of Section 8(a)(5) of the Act.

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

CONCLUSIONS OF LAW

1. Shreveport Garment Manufacturers, Shreveport, Louisiana, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Amalgamated Clothing Workers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. The allegations of the complaint that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act have not been sustained.

[Recommendations omitted from publication.]

Denson Electric Co., Inc. ***and*** **Floyd R. Price, Roy Edward Fillyaw, Robert L. Barkheimer, Eldridge Lee McCormick, Clint W. Parvin, Calvin E. Bryant, Jessie F. Withrow, and Billy Ray Johnson.** *Cases Nos. 12–CA–1211, 12–CA–1213, 12–CA–1214, 12–CA–1215, 12–CA–1216, 12–CA–1218, 12–CA–1219, and 12–CA–1220. September 14, 1961*

DECISION AND ORDER

On August 30, 1960, Trial Examiner Lee J. Best 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 Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed.[1] 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 except as indicated below.

[1] We find no merit in the Respondent's motion to dismiss the complaint on the basis of the alleged bias of the Trial Examiner and hereby deny the motion.

1. As admitted by the Respondent, and found by the Trial Examiner, the Respondent's president, J. Stanley Denson, discriminatorily discharged employee Floyd Price at the Northgate jobsite on Saturday morning, August 15, 1959,[2] in violation of Section 8(a)(3) of the Act.

Also, as found by the Trial Examiner, Denson contacted Price on the afternoon of the discharge and "apologetically" acknowledged his mistake in discharging Price and his fellow workers, requested Price to see each of them in person and tell them to return to the jobsite on Monday, August 17, and said that he wanted "to talk to them and get the mess straightened out." The Trial Examiner concluded that this was not an unconditional offer of reinstatement to Price. However, the Trial Examiner has not taken into account Price's admission of the validity of his pretrial affidavit. In this affidavit, Price not only acknowledged that Denson apologized to him but also expressly admitted that Denson told him he wanted to have all the men come back to work.

On the basis of all the evidence, we find, contrary to the Trial Examiner, that Denson did make an unconditional offer to reinstate employee Price on Saturday afternoon, August 15, 1959.[3]

2. The Trial Examiner found that the Respondent also discriminatorily discharged employees Clint W. Parvin, Jessie F. Withrow and Robert L. Barkheimer at the Northgate jobsite on Saturday, August 15, 1959, in violation of Section 8(a)(3) of the Act. We are in substantial agreement with this finding.[4]

As found by the Trial Examiner, Denson told the three employees in question at the plant parking lot on Monday morning, August 17, "Boys, I'm sorry for what happened Saturday—I made a mistake—I was completely unnerved, and just to show you I was wrong, I want to pay you for all day Saturday, and would like for you all to go back and finish the job." The Trial Examiner concluded that this statement did not constitute an unconditional offer of reinstatement to the three employees.[5] We disagree with this holding. We find in Denson's statement of August 17 a clear unconditional offer of reinstatement to Parvin, Withrow, and Barkheimer.[6]

3. The Trial Examiner found, and we agree, that the Respondent discriminatorily discharged Eldridge Lee McCormick at the North-

[2] Unless otherwise indicated all subsequent dates in this Decision will refer to 1959

[3] *Spitzer Motor Sales, Inc.*, 102 NLRB 437; and *Minimax Stores*, 95 NLRB 129

[4] We agree with the Trial Examiner's findings with respect to Parvin and Barkheimer. However, we find it unnecessary to pass upon the Respondent's contention that Withrow was not discriminatorily discharged but, instead, voluntarily quit his job For, as appears below, no remedial provision would be required as to Withrow even if Withrow was discriminatorily terminated.

[5] The Trial Examiner apparently took the position that Denson's offer of reinstatement was conditioned upon a subsequent "interview" The record, however, does not substantiate the Trial Examiner's position

[6] See cases cited in footnote 3, *supra*.

gate jobsite on Saturday, August 15, 1959, in violation of Section 8(a)(3) of the Act.

McCormick did not report to the plant parking lot on Monday morning, August 17, and therefore was not present when Denson made his offer to reinstate three of McCormick's fellow employees. Also, McCormick did not receive the Respondent's unconditional offer of reinstatement which was contained in a registered letter posted on August 20, 1959. However, the record demonstrates that the Respondent forwarded this registered letter just 5 days after McCormick's discharge to 126 East Fifth Street, the very mailing address given to it by McCormick. McCormick had, in fact, resided at that address when he first entered the Respondent's employ and his parents were still residing there when the registered letter reached that address on August 21, 1959. But, at some earlier date, McCormick moved to 249 East Fifth Street and had neglected to inform the Respondent of his new mailing address. Thus, the Respondent's registered letter was then returned to it by the postal authorities with the notation "moved" appearing on the face of the envelope. However, two other letters containing a check and some hospitalization papers were forwarded by the Respondent to the 126 East Fifth Street address shortly thereafter and were admittedly received by McCormick.

The Trial Examiner concluded that no proper offer of reinstatement to McCormick was to be found in the above circumstances. However, in accordance with Board precedent, we find that the Respondent, by mailing a registered letter to the dischargee's last known address, made a "bona fide" effort to offer reinstatement to McCormick [7] and that the Respondent's backpay liability should be tolled as of the date of the attempted delivery of the letter.

THE REMEDY

Having found that the Respondent unconditionally offered to reinstate Price on Saturday, August 15, and Parvin, Withrow, and Barkheimer on Monday, August 17, to their former positions, and since the record shows that all four lost no pay on August 15 despite their termination early that morning, we find that these complainants are not entitled to either reinstatement or any backpay.

Inasmuch as the Respondent made a bona fide effort to offer McCormick reinstatement on August 21, and in view of the Respondent's actual offer of reinstatement to McCormick at the hearing on April 21, 1960, which offer was not accepted, we find that McCormick is herein entitled only to backpay from August 17 until 21.

[7] See *Jay Company, Inc*, 103 NLRB 1645; and cf. *Monroe Feed Store*, 122 NLRB 1479

Because the nature of the unfair labor practices engaged in by the Respondent evinces an attitude of general opposition to the purposes of the Act, we shall order that the Respondent cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.

Since Florida is a right-to-work law State, we have omitted from the Order and notice to all employees recommended by the Trial Examiner the words "except to the extent that such right 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 amended."

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, Denson Electric Co., Inc., Jacksonville, Florida, its offices, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating its employees, threatening to discharge its employees for organizational activities, and imposing upon its employees as a condition of employment that they refrain from forming, joining, or assisting labor organizations, bargaining through representatives of their own choosing, and engaging in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) Discouraging membership in Local 177, International Brotherhood of Electrical Workers, AFL–CIO, or any other labor organization, by discriminating in regard to hire or tenure of employment or any term or condition of employment.

(c) In any other manner interfering with, restraining, or coercing its employees or otherwise infringing upon their exercise of their right to self-organization, to form, join, or assist a labor organization, including the above-named labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining, or other mutual aid or protection, or to refrain from any or all such activities.

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

(a) Make whole Eldridge Lee McCormick for any loss of pay suffered by him as a result of the discrimination found as set forth in the foregoing section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social se-

curity 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 office in Jacksonville, Florida, copies of the notice attached hereto marked "Appendix."[8] Copies of said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being duly signed by the Company's representative, be posted by the Company immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Company 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 have been taken to comply herewith.

[8] 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 National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT coercively interrogate our employees or threaten to discharge them for their organizational activities, or require as a condition of employment that they refrain from concerted activities on behalf of labor organizations for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT discourage membership in Local 177, International Brotherhood of Electrical Workers, AFL–CIO, or any other labor organization, by discriminating in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees or otherwise infringe upon their exercise of the right to self-organization, to form, join, or assist the above-named 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 other mutual aid or protection, or to refrain from any or all of such activities.

WE WILL make whole Eldridge Lee McCormick for any loss of pay suffered by him by reason of our discrimination against him.

All of our employees are free to become and remain or to refrain from becoming or remaining members of the above-named or any other labor organization.

DENSON ELECTRIC CO., 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

Having been consolidated pursuant to Section 102.33(b) of the National Labor Relations Board's Rules and Regulations, Series 8, and with all parties represented, these proceedings were heard before the duly designated Trial Examiner at Jacksonville, Florida, on April 18, 19, 20, 21, and 22, 1960, upon a consolidated complaint and notice of hearing issued by the General Counsel of the National Labor Relations Board and answer thereto filed by Denson Electric Co., Inc., herein called the Respondent or Respondent Employer. The principal issues litigated were:

(1) Whether the Respondent Employer in violation of Section 8(a)(1) of the Act interfered with, restrained, and coerced its employees in their exercise of the rights guaranteed in Section 7 of the Act by interrogation concerning attendance at a union meeting and threatening to discharge those who signed authorization cards on behalf of Local 177, International Brotherhood of Electrical Workers, AFL–CIO, herein called the Union or the IBEW.

(2) Whether the Respondent Employer in violation of Section 8(a)(3) of the Act discriminated in regard to hire or tenure of employment to discourage membership in a labor organization by discharging employees Floyd R. Price, Robert L. Barkheimer, Eldridge Lee McCormick, Clint W. Parvin, and Jessie F. Withrow because they joined or assisted a labor organization and engaged in concerted activities for the purpose of collective bargaining and other mutual aid or protection.

At the request of the Charging Parties in Cases Nos. 12–CA–1213, 12–CA–1218, and 12–CA–1220, and with the concurrence and consent of the General Counsel, it is recommended that the complaint be dismissed insofar as it pertains to Roy Edward Fillyaw, Calvin E. Bryant, and Billy Ray Johnson, pursuant to Section 102.9 of the Rules and Regulations of the National Labor Relations Board.

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

FINDINGS AND CONCLUSIONS

I. BUSINESS OF RESPONDENT EMPLOYER

Denson Electric Co., Inc., is a corporation organized and existing under the laws of Florida with its principal office and place of business at 703 Forest Street, Jacksonville, Florida, where it is engaged in the electrical contracting business. During the calendar year 1959, a representative period of current operations, this Employer purchased goods and materials valued in excess of $50,000, which were shipped to it from points outside the State of Florida I find, therefore, that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 177, International Brotherhood of Electrical Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act, existing in whole or part for the purpose of representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.

III. THE UNFAIR LABOR PRACTICES

A. *Undisputed facts*

Throughout the spring and summer of 1959 the Respondent Employer was engaged in the performance of electrical wiring subcontracts for Fernandina Builders (prime

contractor) in store buildings being constructed at Northgate Plaza Shopping Center in or near Jacksonville, Florida, wherein it employed approximately 25 to 30 journeymen electricians and electrician helpers on an hourly basis, including the alleged discriminatees herein. Foreman Alvin L. Clayton was supervisor in charge of all work for the Respondent. During the period from June through August 1959, Respondent was apprised of the fact that its employees were engaged in organizational activities, attending union meetings, and signing authorization cards in favor of Local 177, International Brotherhood of Electrical Workers, AFL–CIO, for the purpose of collective bargaining. Believing that such activities were interfering with and delaying production work, President James Stanley Denson called Floyd R. Price (employee) to his office in the early part of August and requested him to use his influence with other employees to put a stop thereto. According to Price, Denson accused him of being a ringleader in the organizational effort, but he denied it. Thereafter, at approximately 9 a.m. on Saturday, August 15, 1959, President Denson in a spirit of exasperation and "with blood in his eyes" admittedly visited the various jobsites at Northgate and talked to each individual employee at work, told each of them that he must either stop engaging in union activities or get off the job, inquired of each whether he had attended a union meeting or signed a union card, and each was required to make known his decision on the spot. Some accepted this ultimatum and agreed to stay on the job; some said they would quit. Among those leaving the job at that time were Floyd R. Price, Robert L. Barkheimer, Eldridge Lee McCormick, Clint W Parvin, and Jessie F. Withrow. From the foregoing I am, therefore, constrained to find that Respondent discriminated in regard to the hire and tenure of employment of aforesaid employees to discourage membership in a labor organization, thereby interfering with, restraining, and coercing its employees in their exercise of the rights guaranteed in Section 7 of the Act.

En route from the Northgate worksite back to his office President Denson concluded that he had made a mistake, and upon arrival adopted measures to revoke the action taken by him in discharging employees for engaging in organizational activities. Thereupon, he instructed his office personnel to notify the discharged employees to go back to their jobs, if and when they demanded final paychecks for current wages. He also called Foreman Clayton by telephone at the jobsite, and instructed him to put the dischargees back to work, but learned that they had already departed. Denson then called the residence of Floyd R. Price, and left a message for him to return his telephone call Contact by telephone with Price was consummated that afternoon, whereupon Denson apologetically acknowledged his mistake in discharging the aforesaid employees, and requested Price to see each of them in person and tell them to return to the jobsite on Monday, August 17, 1959; that he wanted to talk to them and get the mess straightened out. In compliance with Denson's request, Floyd R. Price called Jessie F. Withrow by telephone that Saturday afternoon, and told him in substance to meet Denson at the jobsite on Monday morning—that President Denson wanted to talk to him. At approximately 4 p.m. that same afternoon Price went to the home of Eldridge Lee McCormick and personally told him in substance that President Denson wanted all of the discharged men to return to the job and would talk to all of them the first thing on Monday morning, August 17, 1959. On Sunday afternoon, August 16, 1959, Price called Clint W. Parvin by telephone, and told him in substance to go back to the job on Monday morning, August 17, 1959, and hear what President Denson had to say. Price also requested Parvin to call Robert L. Barkheimer about the matter, but there is no evidence that Parvin did so.

The Trial Examiner is not convinced, and cannot find from the evidence herein that the foregoing overtures of President Denson to Floyd R. Price and through him to the other dischargees constituted a proper and unconditional offer of reinstatement to their former positions within the meaning of the Act.

B. *Alleged offers of reinstatement*

On Monday, August 17, 1959, Floyd R. Price and Eldridge Lee McCormick went directly to the Northgate jobsite about 7:30 a.m. to await further instructions from President Denson. Robert L. Barkheimer, Clint W. Parvin, and Jessie F. Withrow reported first to the plant at 703 Forest Street in Jacksonville, Florida, where it was customary for employees to assemble before going out to their respective jobs At approximately 7 a.m. President Denson drove into the plant parking lot outside the fence, and observed Clint W. Parvin and Jessie F. Withrow sitting nearby in an automobile. Thereat, he told them in substance: "Boys, I'm sorry for what happened Saturday—I made a mistake—I was completely unnerved, and just to show you I was wrong, I want to pay you for all day Saturday, and would like for you all to go back and finish the job." Shortly thereafter, he saw Robert L. Barkheimer, and made

similar statements to him. Barkheimer credibly testified that Denson also said that he would go out to Northgate as soon as he disposed of other business in his office. Thereupon, Barkheimer, Parvin, and Withrow proceeded to the jobsite at Northgate, where they joined Price and McCormick, to await the arrival of President Denson. Foreman Alvin L. Clayton observed these men in a group at Northgate, and ascertained from them that they were expecting the arrival of President Denson to interview them with respect to going back to work. Foreman Clayton himself did not authorize or instruct them what to do, but called Denson by telephone at approximately 8 a.m., and told him that the men were at Northgate waiting to see him. Denson's reply to Foreman Clayton was that he had another appointment, but would come out to Northgate as soon as he could do so, but did not give Foreman Clayton any instructions with respect to putting the men back to work on their jobs. After waiting for Denson until approximately 9:30 a.m. the dischargees departed.

The Trial Examiner is of the opinion that overtures made by President Denson to Robert L. Barkheimer, Clint W. Parvin, and Jessie F. Withrow on Monday, August 17, 1959, did not constitute a proper and unconditional offer of reinstatement to their former positions within the meaning of the Act.

During the afternoon of Monday, August 17, 1959, President James Stanley Denson in telephone conversation with Garrett Caruso Baker, business mangaer of Local 177, inquired if he was trying to put Respondent out of business, and arranged for a conference at 6 p.m. At the ensuing conference Denson and Baker discussed the previous discharge of employees for engaging in union activities. At the invitation of Denson the conference continued until approximately 11 p.m. at dinner with their respective wives in a local restaurant. William T. Basford, Jr., attorney for the Respondent, was also present. Throughout this conference Business Manager Baker proposed that the dischargees would return to work if Respondent would recognize the Union as their bargaining representative and enter into a collective-bargaining agreement with Local 177. President Denson reiterated that he had already authorized these employees to return to work, but refused to recognize or sign any contract with the Union. Consequently, no agreement was reached.

On Tuesday, August 18, 1959, President Denson assembled all employees in the plant at 703 Forest Street, and explained to them that his business was being operated in competition with open-shop contractors, and asserted that if they continued to work for Respondent it must be under open-shop conditions. Denson admittedly spoke to them on that occasion, as follows:

> I explained to them in this manner, which they all knew and I know, that we run an open shop and we have to compete with open shop contractors where there are no union contract organization, and that is mostly in small commercial work, medium commercial work, open shop, large commercial work, and then about 65% housing, and there are no union contractors doing that. I said, "Now, boys, if you all want to unionize this shop, the first thing you're going to do is put me out of business, lose your own jobs, I might as well give Garrett Baker the keys, I'll give one of you boys the keys, because we're strictly out of business. We just can't compete for houses under open shop conditions. In fact, I don't even see how—well, it's common knowledge that the union doesn't go after that type of work. Possibly they go after it, but without much success, without any success." I explained to them very thoroughly about the situation and told them that they had one or two choices, if they wanted to go union, go on and go union, because—go on down to the union and go union, but if they stayed with me it would have to be—if we stayed in the same field we were, it would have to be under open shop conditions. If I wanted to go after the bigger work, naturally I'd go in the union so I could go after it.

Thereafter, on August 20, 1959, the Respondent posted separate letters to Robert L. Barkheimer, Eldridge Lee McCormick,[1] Floyd R. Price, Clint W. Parvin, and Jessie F. Withrow, which the General Counsel contends are self-serving declarations, as follows:

> Mr. ROBERT L. BARKHEIMER,
> *5534 Phillips Highway,*
> *Jacksonville, Florida.*
>
> DEAR ROBERT: I am informed that you voluntarily walked off the job Saturday Afternoon, August 15, 1959, and that subsequent to your reporting to work Monday morning you left again.

[1] The letter to McCormick was returned to Respondent from the Post Office Department unclaimed.

You reported to work Monday, August 17, 1959, discussed the matter with me, and I repeated the unconditional reinstatement. Your supervisor informed me that you refused to work after reporting to the job and I have found it necessary to hire a replacement.

Yours truly,

J. STANLEY DENSON, *President,*
Denson Electric Co., Inc.

* * * * * * *

Mr. ELDRIDGE LEE MCCORMICK,
126 E. 5th Street,
Jacksonville, Florida.

DEAR ELDRIDGE: You were unequivocally reinstated in your job, without loss of pay or benefit the same day you were suspended, Saturday, August 15, 1959. The offer is still available to you and you can report to work at any time you wish.

Yours truly,

J. STANLEY DENSON, *President,*
Denson Electric Co., Inc.

* * * * * * *

Mr. FLOYD PRICE,
10542 Biscayne Blvd.
Jacksonville, Florida.

DEAR FLOYD: You were unequivocally reinstated in your job, without loss of pay or benefit the same day that you were suspended, Saturday, August 15, 1959. As you recall, We discussed the matter at length on the telephone Saturday afternoon and I told you that you and the other men should come back to work and you agreed to do so. I talked to you again Monday morning, repeating the fact that you and the other men were reinstated without reservation.

The supervisor informs me that you refused to work when you reported to the job Monday, August 17, 1959, and I have found it necessary to hire a replacement.

Yours truly,

J. STANLEY DENSON, *President,*
Denson Electric Co., Inc.

* * * * * * *

Mr. CLINT W. PARVIN,
Rt. 6 Box 330,
Jacksonville, Florida.

DEAR CLINT: You were unequivocally reinstated in your job, without loss of pay or benefits, the same day that you were suspended, Saturday, August 15, 1959. This fact was communicated to you the same day.

You reported to work Monday, August 17, 1959, discussed the matter with me, and I repeated the unconditional reinstatement. Your supervisor informed me that you refused to work after reporting to the job and I have found it necessary to hire a replacement.

Yours truly,

J. STANLEY DENSON, *President,*
Denson Electric Co., Inc.

* * * * * * *

Mr. JESSIE F. WITHROW,
1106 North 1st Street, Box 164,
Jacksonville Beach, Florida.

DEAR JESSIE: I am informed that you voluntarily walked off the job Saturday Afternoon, August 15, 1959 and that subsequent to your reporting to work Monday morning you left again.

You reported to work Monday, August 17, 1959, discussed the matter with me, and I repeated the unconditional reinstatement. Your supervisor informed me that you refused to work after reporting to the job and I have found it necessary to hire a replacement.

Yours truly,

J. STANLEY DENSON, *President,*
Denson Electric Co., Inc.

By reason of the foregoing overtures and other efforts of President Denson to induce dischargees to return to work, the Respondent contended throughout the

hearing before the Trial Examiner that a proper and unconditional offer of reinstatement to their former or equivalent positions had been made to each of the alleged discriminatees herein. At the hearing on April 21, 1959, President Denson renewed such offers of reinstatement and publicly agreed upon the record at that time that Respondent was presently offering to Floyd R. Price, Robert L. Barkheimer, Eldridge Lee McCormick, Clint W. Parvin, and Jessie F. Withrow immediate and full reinstatement to their former or equivalent positions, without prejudice to the rights guaranteed to employees in Section 7 of the Act. The Trial Examiner holds, therefore, that on April 21, 1960, the Respondent made a proper and unconditional offer of reinstatement to aforesaid dischargees, which will toll the amount of backpay, if any, that may be awarded in this case by reason of unfair labor practices found to have been engaged in by Respondent prior thereto.

Concluding Findings

From all the evidence and the entire record in this case it is clear and admitted that the Respondent on August 15, 1959, interrogated with respect to their organizational activities, threatened to discharge, and imposed upon all of its employees the unlawful requirement to cease and desist from concerted activities on behalf of a labor organization as a condition of employment; that by reason of their refusal to accept such unlawful condition of employment the Respondent on August 15, 1959, discriminatorily discharged its employees, Floyd R. Price, Robert L. Barkheimer, Eldridge Lee McCormick, Clint W. Parvin, and Jessie F. Withrow to discourage membership in a labor organization; and that on August 18, 1959, Respondent by the utterances of President Denson reimposed upon its employees the unlawful condition that if they retained their employment they must work under open-shop conditions without a labor organization to represent them as bargaining agent. I further find from the record as a whole that by reason of its failure to withdraw and retract the aforesaid unlawful condition of employment or to restore to its employees the rights guaranteed by Section 7 of the Act, the aforesaid overtures made prior to April 21, 1960, by Respondent to dischargees with respect to returning to work did not constitute a proper offer of reinstatement to their former or equivalent positions within the meaning of the Act; and I agree with the contention of counsel for the General Counsel that aforesaid letters posted by Respondents on August 20, 1959, were merely self-serving declarations to support its contention that reinstatement had been offered to the dischargees herein.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The conduct of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends 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 and is engaging in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take affirmative action herein designed and designated to effectuate the policies of the Act. It will also be recommended that Respondent make whole Floyd R. Price, Robert L Barkheimer, Eldridge Lee McCormick, Clint W. Parvin, and Jessie F. Withrow, respectively, for any loss of pay suffered by them as a result of the discrimination herein found by the payment to each of them of a sum of money equal to the amount he would normally have earned as wages from the date discharged by the Respondent on August 15, 1959, to the date occurring 5 days after proper reinstatement was offered to each of them at the hearing before the Trial Examiner herein on April 21, 1960, less net earnings [2] to be computed on a quarterly basis in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289, and *N.L.R.B.* v. *Seven-Up Bottling Company of Miami, Inc.*, 344 U.S. 344. Earnings in one particular quarter shall have no effect upon the backpay liability for any other such period. By reason of the recurrent nature of conduct heretofore engaged in by the Respondent, demonstrating its hostility towards collective bargaining, which the Act is designed to protect, and the likelihood that such conduct may continue unless effectively restrained, it will be recommended that Respondent cease and desist from in any manner infringing upon the rights of its employees to self-organization, to form, join, or assist labor organizations, to bargain collectively through representa-

[2] See *Crossett Lumber Company*, 8 NLRB 440, 497–498.

tives 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, except to the extent that such right 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.

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. Local 177, International Brotherhood of Electrical Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act, existing in whole or part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

2. By interrogating, threatening with discharge, and imposing upon its employees as a condition of employment that they refrain from forming, joining, or assisting a labor organization, bargaining collectively through representatives of their own choosing, and engaging in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, the Respondent has and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Floyd R. Price, Robert L. Barkheimer, Eldridge Lee McCormick, Clint W. Parvin, and Jessie F. Withrow, employees, to discourage membership in a labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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.]

Servette, Inc. *and* Wholesale Delivery Drivers & Salesmen Union, Local No. 848, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Ind. *Case No. 21–CA–3869. September 14, 1961*

DECISION AND ORDER

On October 4, 1960, Trial Examiner David F. Doyle issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report together with a supporting brief, and the Respondent also filed a brief.

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, as it finds merit in some of the General Counsel's excep-