

such period. Backpay shall be computed in accordance with the Board policy set forth in *F. W. Woolworth Company*, 90 NLRB 289.

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

CONCLUSIONS OF LAW

1. Millwrights and Machinery Erectors Local Union No. 2471, United Brotherhood of Carpenters and Joiners of America, is a labor organization within the meaning of Section 2(5) of the Act.

2. By causing and attempting to cause Otis, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, to discriminate against applicants for employment in violation of Section 8(a)(3) of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

3. By restraining and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) 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.]

Baltimore Paint and Chemical Corporation and Warehouse Employees Union Local 570, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Case No. 5-CA-1914. January 9, 1962

DECISION AND ORDER

On October 25, 1961, Trial Examiner Louis Plost issued his Intermediate Report herein, finding that the Respondent had engaged in unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report.

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 the entire record in this case, and adopts the findings, conclusions, and recommendations of the Trial Examiner, except as indicated below.²

¹ The Respondent excepted to the refusal of the Trial Examiner to admit additional evidence of Knott's alleged derelictions in duty during the past few years. Evidence to this effect is already in the record and the proffer of testimony by Traffic Manager Marsh as to such matters, which the Trial Examiner rejected, would have been cumulative. In coming to his conclusion, with which we agree, that Respondent discharged Knott because of the assistance he gave to the Union in its organizational campaign, the Trial Examiner did take into consideration Respondent's alleged dissatisfaction with his work before the advent of the Union.

² We do not adopt the Trial Examiner's finding that Supervisor Rogers' taunting references to Knott as a "union steward" were in violation of Section 8(a)(1). Furthermore, for the reasons stated by the Trial Examiner in his Conclusions of Law, we shall order the Respondent to cease and desist from violations of Section 8(a)(1), not only in the specific instances found but also in any other manner.

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, Baltimore Paint and Chemical Corporation, Baltimore, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging concerted activities of its employees by discriminatorily transferring or discharging them, or by discriminating in any other manner in regard to their hire or tenure of employment.

(b) Threatening its employees with discharge or other reprisal if they engage in union activity or if they report discussions with management concerning such activities to their union; and warning them that such activities will lead to discharge if the union should fail to organize the plant.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and 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 by 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 Arnold Knott immediate and full reinstatement to his former or substantially equivalent position of forklift operator without prejudice to his seniority or other rights and privileges.

(b) Make whole said employee in the manner set forth in the section of the Intermediate Report entitled "The Remedy" for any loss of pay he may have suffered by reason of the Respondent's discrimination against him.

(c) 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 and determine the amount of back-pay due.

(d) Post at its plant in Baltimore, Maryland, copies of the notice attached hereto marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by an authorized representative of Baltimore Paint and Chemical Corporation, be posted by Respondent immediately

³ 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."

upon receipt thereof, and 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 by Respondent to insure that such notices are not altered, defaced, or covered by any other material.

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

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 Warehouse Employees Union Local 570, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization, by discriminatorily transferring or discharging any of our employees, or in any other manner discriminating against them in regard to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT threaten our employees with discharge, or other reprisal, if they engage in union activity or report discussions concerning such activities with management to their union, or warn them that such activities will lead to discharge if the union should fail to organize the plant.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join the aforesaid labor organization, 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 and 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.

WE WILL offer Arnold Knott immediate and full reinstatement to his former or substantially equivalent employment as forklift operator, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization, except as

that 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. We will not discriminate in regard to the hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any labor organization.

BALTIMORE PAINT AND CHEMICAL CORPORATION,
Employer.

Dated _____ By _____
(Representative) (Title)

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

INTERMEDIATE REPORT

STATEMENT OF THE CASE

It having been charged by Warehouse Employees Union Local 570 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Union) that Baltimore Paint and Chemical Corporation (Respondent) has been engaging in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, 73 Stat. 519 (Act), the General Counsel of the National Labor Relations Board (Board) on behalf of the Board, by the Regional Director for the Fifth Region, issued a complaint and notice of hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended.¹

The complaint alleged in substance that the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act by transferring Arnold Knott to a less desirable job on or about April 7, 1961, and by discharging him on May 10, 1961, and has since failed and refused to reinstate said Arnold Knott to his former or substantially equivalent position "because of his membership in, assistance to, or activity on behalf of the Union, or because he engaged in concerted activities with other employees of Respondent for the purpose of collective bargaining or other mutual aid or protection."

The complaint further alleged that the Respondent engaged in conduct violative of Section 8(a)(1) of the Act by illegal interrogation and threats of discharge.

On July 13, 1961, the Respondent filed an answer in which it denied that it had engaged in any of the unfair labor practices alleged, admitted the discharge of Arnold Knott but averred that the discharge was for cause.

Pursuant to notice a hearing was held before the Trial Examiner on September 6 and 7, 1961, at Baltimore, Maryland. All parties were present and represented at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to present oral argument, and to file briefs. Counsel for the Respondent submitted a brief on October 2, 1961.

Upon the entire record in the case and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The complaint alleged and the answer admitted that:

Respondent is, and has been at all times material herein a corporation duly organized and existing by virtue of the laws of the State of Maryland, operating its place of business in Baltimore, Maryland, where it is engaged in the business of manufacturing paint.

¹ A copy of the charge filed in this matter on May 18, 1961, was served on Respondent on or about May 19, 1961.

During a representative twelve months' period, Respondent, in the course and conduct of its business operations shipped goods and material valued in excess of \$50,000 from its place of business in Baltimore, Maryland, directly to points located outside of the State of Maryland.

II. THE LABOR ORGANIZATION INVOLVED

Warehouse Employees Union Local 570, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The Discriminatory Discharge of Arnold Knott

Arnold Knott was employed by the Respondent, September 27, 1956, and discharged May 10, 1961.

Knott testified that he worked as an order filler for the first 1½ years of his employment by the Respondent and was then transferred to the job of forklift operator; there were no complaints regarding his work as order filler.

Vincent McKeey Marsh testified that he is the Respondent's general traffic manager, in charge of all warehouse receiving and shipping, that while Knott was an order filler he received "minor complaints such as the work was too hard for Knott" from Supervisor Cyrus Haller, but that any complaints regarding Knott's work as order filler (which job he held for 1½ years) "had nothing to do with his final discharge." Haller was not called.

Knott further testified that he was transferred from order filler to forklift operator, a promotion, and that upon the completion of a new building (Building L) he was transferred to this building as forklift operator; there were no complaints regarding his work in his first and second stations as forklift operator except that at the beginning of his job in "L Building" Cyrus Haller, the foreman, spoke to him regarding "holding up" the order fillers by talking to them. Arnold testified:

Q. Now, during the time that you worked in L Building, did you receive any complaints about your work?

A. Yes, sir. Cy Haller, he called me to his side, and he said that I was holding up the order fillers by talking to them.

You see, there was new work over there, and I didn't know where everything was, so I would stop and ask them where it was.

Q. Was this at the beginning of your stint in L Building?

A. Yes, sir.

Q. Did he give you any type of formal complaint, anything written?

A. No, sir. He just called me to his side.

Q. How many times did this happen?

A. Once.

Marsh testified that "a year and a half ago . . . or a little longer" he had received complaints regarding Knott's work in L Building from both Haller and Rogers. He testified:

We had a new building completed. It required a real skilled operation such as putting the stock in the proper places and watching for areas that need to be refilled. By that I mean lowering the stock from higher racks to the lower racks for use by the order fillers. And the complaints became continuous.

Q. What was the nature of those complaints?

A. That he was going off in the corner—

TRIAL EXAMINER: He was doing what?

The WITNESS: Going off in a corner somewhere and sitting down, stopping and talking to the other employees, the other order fillers; and that the stock was not in the proper places; and they weren't being lowered in time for the order fillers.

And that was holding them up.

As found, Haller did not testify. Rogers was not questioned on the matter. The Respondent stated on the record:

Mr. Trial Examiner, this history of his employment at this time has no bearing on the reason for his discharge.

However, the Respondent stated it wanted the record to contain these incidents:

Because in every situation there is a straw that breaks the camel's back. And we reached that straw. We can't show you what the straw was unless we give you the past history.

TRIAL EXAMINER: I don't think I will take any more evidence on it.

Knott further testified that he worked in L Building for "less than a year" and was transferred back as a forklift operator to the location where he originally worked also as forklift operator; while in L Building he worked alone and after his transfer he continued to work alone.

With reference to Knott's transfer from L Building back to his former location Traffic Manager Marsh testified:

Well, the fork lift job was transferred from the L Building, which I discussed previously, to the end of our production line, the plant. Until such time we were receiving complaints again on his work performance.

TRIAL EXAMINER: He was transferred from this one building to the other building?

The WITNESS: That is right. Still on the lift truck.

TRIAL EXAMINER: *The fork lift job was transferred, and he was transferred with it; is that right?*

The WITNESS: Not the same truck. Another truck. [Emphasis supplied.]

Knott labors under a physical handicap in that his left arm is crippled being some 4 inches shorter than the right, but according to Knott does not hamper him in his work.

During his employment Knott received regular periodic raises, his wages rising from \$1.25 per hour to \$1.90 per hour.

Knott testified that he joined the Union March 8, 1961, at an organizational meeting attended by only 7 or 8 of the Respondent's 185 employees. Interest apparently did not increase for according to Knott there were some four or five later called meetings which were attended by himself and only one other employee. At the first meeting he attended, Knott was given "about 25" authorization cards to distribute to fellow employees, which he did, but not on working time.

Knott further testified that "about the end of March" he was called to General Manager Edward Levenson's office, in which he had never been before, and upon entering was greeted by Levenson with the remark, "I hear you have been attending union meetings." According to Knott:

At first I told him I hadn't been, because I didn't want to get fired at the time. Later on, he said, "I know you done it so you might as well own up to it."

Knott admitted his union activity upon which General Manager Levenson said to him that the Union "can't do nothing for you"; that if he had problems regarding his job he should bring them to Levenson; that no one else would hire him because of his disability; that he now had the best job he ever had in his life and that:

He said "You are trying to be a big wheel and trying to organize the place."

Knott further testified:

He kept telling me, said he couldn't stop me from attending the meetings, but he didn't want me talking union around the shop. Then he told me I was a bastard. He said, "I mean that literally."

And then he said—no, he said, "I could fire you for this. And you go back to tell this to your union man and I will fire you."

Edward Levenson, the Respondent's general manager, testified:

I had received reports that Arnold Knott was leaving, was not doing his job properly, and was interfering with the work of others. And normally disciplinary action of this type is taken by the foreman or the supervisor. It was not normally brought to my attention. But it was common knowledge throughout the plant that Arnold Knott was very active in trying to bring a union into Baltimore Paint. And Mr. Marsh, Arnold Knott's supervisor, came to me asking me what he should do about it. [Emphasis supplied.]

On further questioning by the Respondent's attorney, Levenson explained that Traffic Manager Marsh wanted advice as to what disciplinary action he should take "in the case of Arnold Knott's loafing and distracting others in their job," and that he decided to "talk to Arnold Knott" so there would be "no misunderstanding" and had him called to the office. He testified:

Q. (By Mr. GUTMAN.) This was the first and only time you ever called Knott into your office during his five years of employment, is it not?

A. It was, yes.

General Manager Levenson further testified:

The only complaint that I had was that he was loafing on the job and disrupting the jobs of others.

Levenson testified:

I asked him to come up to my office, which he did.

When he came into the office, I told him that he was allowing his union activity to interfere with his job and the jobs of others.

He immediately denied this. And for the next short period of time, I spoke in a way that I don't normally speak. If I cursed, it was then.

According to Levenson he told Knott he had reason to discharge him but "wasn't doing it because he had been with the Company close to five years." He testified:

He was handicapped and would have difficulty in getting another job. And most important I didn't want him or anyone else to think that he was being discharged because of union activity.

Levenson admitted that the Respondent had no rule prohibiting solicitation, including solicitation for a union by its employees.

He further testified:

TRIAL EXAMINER: Did you say to Mr. Knott at any time during this conversation "If you tell this to the union man, you are going to be fired" or words to that effect?

The WITNESS: No. I absolutely did not.

What I probably said was "You can tell this to the union man."

If I said anything in that regard, that is what I said.

Knott further testified that beginning "about a week" after his conversation with Levenson, Assistant Traffic Manager William Rogers and Foreman Charley Trew on various occasions said to him "when are you going to pass out my card" and "give me a card" and also:

One other time Rogers come up to me and said, "You know if the union don't get in, you are as good as out of a job."

Rogers admitted saying, "Hello shop steward, when are you going to give me my union card" to Knott. He testified:

I would be walking past him. Or if I was back near the end of the conveyer where he was working. Or if I was with the foreman back in the traffic department. I would be back there giving some information or other to him. And I might make a statement to him at that time. He would come right by where I would be standing.

He denied telling Knott "If the union don't get in you are as good as out of a job."

The Trial Examiner credits Knott.

Knott testified that shortly after his conversation with Levenson he had occasion to use the toilet in "F" building, and:

I was ready to come back out, and Rogers walked up and said "You are not supposed to use this bath room."

Knott testified that "one year before" this Rogers had told him complaints were made of lunches being taken from "F" building and that Knott "should try to stay out of there as much as possible."

Rogers testified that "on a couple of occasions I caught him [Knott] in the off-limits men's room in F building"; however, Rogers fixed the time of this as "close to two years ago."

Knott testified without contradiction that "about a couple of weeks" after his conversation with Levenson he was taken off his job of forklift operator and put to steaming labels off 5-gallon cans; that he asked Rogers the reason for the transfer and was told, "I don't see where I have to give you any reason."

General Traffic Manager Marsh testified as to the reason for Knott's transfer. According to Marsh:

He was transferred to one particular area where he would be confined and could not leave there without someone knowing it, without a supervisor knowing it.

Knott testified that he worked at the steaming job for "about .2 weeks" and was discharged May 10, 1961.

Marsh testified:

TRIAL EXAMINER: When was that transfer made?

The WITNESS: I don't remember the exact date.

TRIAL EXAMINER: Well, with reference to his discharge?

The WITNESS: I would say—I don't recall exactly. I would say in the neighborhood of two months. A month and a half or two months.

TRIAL EXAMINER: A month and a half or two months before his discharge he was transferred from his fork lift job to steaming?

The WITNESS: That is right.

According to Knott about 11:25 p.m. of May 10, he was sent "10 or 12" pails from which the labels were to be steamed; that Philip Rimer, who had held the steaming job before Knott was assigned to it, was sent to him, as this was a rush order; that he was steaming and Rimer was scraping off the labels; that at "1:20 or 1:30" all had been steamed and only three remained to be scraped; that he then left for a drink of water, stopping on his return at "F" building to look at the clock, he testified:

And I stopped inside the door in F Building to see what time it was. I come right back out and I see Mr. Marsh running up the aisle. So, about half way down the aisle, he said, "What are you doing?" I told him I went to get a drink of water.

He said, "What are you doing in F Building?"

I said, "I stopped to see what time it was."

Q. Pardon me just a moment. Did you actually go into F Building?

A. No, sir.

Q. What did you do?

A. I just took about a step in and then looked underneath the conveyor.

Knott testified that it took him "about a second" to stop and look at the clock. He continued:

Q. Go on about what Mr. Marsh said to you?

A. He asked me what I was doing. I told him I was getting a drink. He said, "How come you stopped in here?"

I said, "I stopped to see what time it was."

Then he said, "How come you left your job?"

I said, "I have to get a drink of water, because I was thirsty."

He said, "I have been getting a lot of complaints about your work lately."

He said, "I am going to have to let you go." He told me to go back to the office. And he made out my cards.

Q. How long had you been gone from your work place which is marked "X" on General Counsel's Exhibit No. 2?

A. About a minute, minute and a half.

While he was with Marsh, according to Knott:

A. He said, "You have been caught smoking in the bath room." He said, "You are not allowed to smoke on the job."

Q. What did you say to him?

A. I said, "Maybe it was twice in the four years I have been here."

He just made out the cards and sent me upstairs with them.

General Traffic Manager Marsh testified that on May 10, upon his return from lunch, he made a tour of the plant and saw Rimer steaming pails and noted that Knott was absent; that he then "questioned Phil [Rimer] about where was Knott" because he knew that Rimer was assigned to other duties which "were important"; that Rimer told him Knott had gone "to get a drink of water"; that Rimer also told him his supervisor, Boyce Brady, had sent him to help Knott.

Marsh further testified:

So, I walked up one aisle, made a right-hand turn, and as I approached the entrance to F Building, Arnold Knott was coming out of F Building.

Under an 8-year old rule, "F" building was "off limits" to all employees except fork-lift operators; that "in the neighborhood of a couple of years" previously he had told Knott, in the presence of his supervisors of this rule. According to Marsh he asked Knott where he had been, was told Knott had gone for a drink of water and had looked into F building to see what time it was. Marsh continued:

He said, "I wanted to see what time it was."

So, I said, "I don't believe that. Because if you wanted to know what time it was, right at the fountain in the cafeteria there is a clock which is very easily seen from the fountain."

and then told him "I thought it was about time we terminated his employment," took Knott to his office and discharged him. He further testified:

Q. (By Mr. BLUM.) Did you have any conversation with him in your office when he was terminated?

A. He asked why he was being discharged. And I told him. I went over some of his past faults and summarized them and told him that was the reason he was being discharged.

On cross-examination Marsh testified:

Q. (By Mr. GUTMAN.) I might have misunderstood your testimony, so try to straighten me out. Did you say F Building was off limits to everybody but shipping department employees?

A. No.

Q. Straighten me out.

A. I said "F" Building is off limits to any person other than fork lift operators.

Q. Okay. It is off limits to everybody but fork lift operators?

A. Well, there is a printing department G, and the labeling girls are permitted to go back there.

Q. I understand. And you had explained—you had called Arnold into your office quite a while back, a year or so ago, and you told him it ("F" building) was off limits; is that correct?

A. I believe so.

Q. *Why was it necessary for you to call Arnold in and tell him it was off limits to anybody but a fork lift operator when he was a fork lift operator?* [Emphasis supplied.]

Marsh then stated that he would change his testimony to be that he warned Knott only regarding the restroom in F Building, but that "I am pretty sure" Rogers had told him the building was "off limits" to all but forklift operators.

Rogers testified that while Knott operated a lift truck he told Knott only that the "men's room in F building" was "off limits."

Boyce B. Brady testified that he is the Respondent's supervisor of the hand labeling department; on May 10, at "around 10:30 . . . I can't say the exact time" but that "it could have been 11," he sent 20 pails to Knott "to have the labels steamed off" for a 2 p.m. shipment; that at noon he passed Knott's place of work and:

I don't remember how many he had steamed before lunch, between the time he got them there and lunch time. But I knew he couldn't get them out by himself.

So I sent Phil Rimer back to help him after lunch. And when we got up from eating our lunch, I told him, I said, "Arnold, I am going to sent Phil back to help you."

Brady further testified:

Q. It is not unusual if you have a rush job to send Phil or one of the other boys to help on that steaming operation, is it?

A. No. If I see that we have got to get them out in an hour, I don't expect one man to do it. I would send another man.

Conclusion

The Trial Examiner is convinced on all the evidence considered as a whole, including his observation of the witnesses, that Knott's testimony with respect to any fault found with his work during his almost 5 years of continuous employment by the Respondent represents the accurate version thereof and therefore credits his testimony and does not credit the testimony of the Respondent's witnesses Marsh, Rogers, and Levenson where their testimony is in conflict with Knott on matters relating to his work record. The Trial Examiner finds strong support for his finding in the fact that although the Respondent insisted on relating alleged complaints regarding Knott it specifically stated that such evidence had not entered into Knott's final discharge as a cause thereof. The Trial Examiner believes that General Traffic

Manager Marsh unwittingly stated the reason for Knott's final transfer in testifying that:

He was transferred to one particular area where he would be confined and could not leave there without someone knowing it, without a supervisor knowing it.

The Trial Examiner believes that the reason for the transfer was disclosed in General Manager Levenson's testimony that "it was common knowledge throughout the plant that Arnold Knott was very active in trying to bring a union into Baltimore Plant."

As stated by the Respondent on the record, "in every situation there is a straw that breaks the camel's back." The "straw," in the Trial Examiner's opinion, based on all the evidence, was not forgotten derelictions by the employee, festering for 5 years, but the fact that he was the 1 of 2 employees of a total of 185, who attended the Union's organization meetings.

The Trial Examiner credits Knott's account of his interview by Manager Levenson and in view of Levenson's failure to deny his insulting language and his elaborate attempt to minimize it, in all fairness to the general manager's better nature feels that after his uncalled for unsavory designation of a crippled employee whose offense was adherence to a union, Levenson who "didn't want him or anyone else to think he was being discharged for union activity," also sought to hide his conduct by threatening Knott with discharge if Knott revealed it.

The Trial Examiner finds the threat, as well as Knott's later transfer to "steaming," to have been caused by Knott's union activity and was therefore violative of the Act. The Trial Examiner further finds Rogers' admitted statement to the effect that he taunted Knott as "union steward," and the statement which the Trial Examiner finds Rogers made to Knott to the effect that if the Union did not win Knott would be out of a job, also to be conduct violative of the Act.

Concluding Findings

On all the evidence and from his observation of the witnesses the Trial Examiner finds that by threats made by General Manager Levenson, and by statements made by Assistant Traffic Manager Rogers to employee Arnold Knott as hereinabove found the Respondent did interfere with, restrain, and coerce its employees, and is interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

The Trial Examiner further finds that by transferring Arnold Knott to the job of steaming and by discharging him on May 10, 1961, the Respondent did discourage and is discouraging membership in a labor organization by discrimination in regard to hire and tenure of employment or terms or conditions of employment and by said acts and conduct did engage in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

It having been found that the Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. As it has been found that the Respondent discriminated with regard to the hire and tenure of employment of Arnold Knott in violation of Section 8(a)(3) and (1) of the Act, the Trial Examiner will recommend that the Respondent offer him immediate and full reinstatement to his former job of "lift truck operator," or a substantially equivalent position without prejudice to his seniority or other rights and privileges. (*The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.) It will be further recommended that the Respondent make the aforesaid employee whole for any loss

of pay suffered by reason of the discrimination against him. Loss of pay shall be based upon earnings which Knott normally would have earned from the date of the discrimination against him, to the date of his reinstatement, less net earnings, computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company* (90 NLRB 289). It will also be recommended that the Respondent preserve and, upon request, make available to the Board payroll and other records to facilitate the computation of the backpay due.

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. The Respondent is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in unfair labor practices proscribed by Section 8(a)(1).

4. By discriminating with respect to the hire and tenure of employment of Arnold Knott, thereby discouraging membership in the above-named 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.

5. By the immediately foregoing the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by 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.

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

Since the violations of the Act which the Respondent committed are closely related to other unfair labor practices proscribed by the Act, and the danger of their commission in the future is reasonably to be anticipated from their past conduct, the preventative purposes of the Act may be thwarted unless the recommendations are coextensive with the threat. To effectuate the policies of the Act, therefore, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed employees by the Act.

[Recommendations omitted from publication.]

County Bindery & Die Cutting Service, Inc. and Local 116,
International Brotherhood of Bookbinders, AFL-CIO. *Case*
No. 2-CA-7962. January 10, 1962

DECISION AND ORDER

On October 17, 1961, Trial Examiner Louis Libbin 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. The Trial Examiner also found that Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended that these particular allegations be dismissed. Thereafter, Respondent and the General Counsel filed exceptions to the Intermediate Report together with supporting briefs, and