

## PROPOSED SUPPLEMENTAL ORDER

As the Remedy and Order of the original Decision and Order of the panel, as corrected, are not inconsistent with our findings herein, we hereby adopt them as part of this Proposed Supplemental Decision and Order, except that in paragraphs A, 2 (f), and B, 2 (f), the figure "20" shall be substituted for the figure "10."<sup>6</sup>

MEMBER RODGERS, concurring:

I concur in the result solely on the basis of the Board's original decision herein.

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<sup>6</sup> The parties are hereby given 20 days from the date of this Order to file exceptions to this Proposed Supplemental Decision and Order, together with supporting briefs

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**Local 825, International Union of Operating Engineers, AFL-CIO [R. G. Maupai Co., Inc.] and Mechanical Contractors Association of New Jersey, Inc.** *Case No. 22-CC-90. January 26, 1962*

## DECISION AND ORDER

On January 23, 1961, Trial Examiner John F. Funke issued his Intermediate Report herein, finding that Respondent had not engaged in certain 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 and the Charging Party filed exceptions to the Intermediate Report together with supporting briefs.

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 [Members Rodgers, Fanning, and Brown].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds 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 finds merit in the exceptions of the General Counsel and the Charging Party.

The complaint alleged that the Respondent Union violated Section 8(b)(4)(i) and (ii)(B) of the Act by inducing and encouraging employees of Henry Ernst, Jr., and John Ochs, subcontractors of R. G. Maupai, Inc., to strike, and by refusing to refer men to work for Ernst and Ochs, all for the purpose of forcing Ernst and Ochs to cease doing business with Maupai, and to force Maupai to recognize the Respondent Union.

The Trial Examiner recommended that the complaint be dismissed in its entirety, because he found that Respondent was not responsible

for the initiation of the work stoppage by the employees of Ernst and Ochs, which began on July 8, 1960. Although we adopt the finding that the Respondent did not initiate the strike because it is based on credibility findings in which the Trial Examiner accepted as true the testimony of some of the employees that they quit work of their own volition, we do not agree that the complaint should be dismissed.

The evidence establishes that the Respondent had demanded, shortly before the work stoppage occurred, that Maupai hire and assign one of its members to the operation of a welding machine on the jobsite in question. Maupai refused, on the ground that its contract with the Plumbers and Pipefitters Union precluded its doing so. It also appears that during the continuance of the work stoppage, Respondent's agent, Pierson, persisted in demanding that Maupai sign a contract with the Respondent. On July 8, after the work stoppage occurred, and after it became certain that the employees who had quit work could not be persuaded to return to work, Ernst called the Respondent's offices and requested that men be referred by Respondent to work for Ernst and Ochs. The Respondent refused to refer any men to the job until Maupai signed a contract.

Both Ernst and Ochs had contracts with the Respondent, under which they were required to call upon the Respondent for needed workmen, and Respondent was obliged to supply workmen. Ernst and Ochs customarily secured all their employees through the Respondent. The employee who quit on July 8 had been referred to work for Ernst and Ochs, at the request of Ernst. On a number of occasions after July 8, Ernst made additional requests of Respondent for men to work on the jobsite in question, all of which were refused by Respondent.

We therefore find that Respondent, although obligated by contract to do so, refused to refer members of the Respondent for employment by Ernst and Ochs; that objects of such refusal were to force Ernst and Ochs to cease doing business with Maupai, in order to force Maupai to recognize and bargain with the Respondent, and that by such conduct, Respondent violated Section 8(b)(4)(ii)(B) of the Act.<sup>1</sup>

#### THE REMEDY

Having found, contrary to the Trial Examiner, that Respondent violated Section 8(b)(4)(ii)(B) of the Act, we shall order it to cease and desist from the practices herein described, and take certain affirmative action which the Board finds will effectuate the policies of the Act.

<sup>1</sup> See *Local 756, International Brotherhood of Electrical Workers, AFL-CIO, et al. (The Martin Company)*, 131 NLRB 1010. See also, *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959*, pp 1194(1) and 1581(1-2).

Upon the basis of the foregoing and the entire record, the Board rejects the Trial Examiner's Conclusion of Law numbered 3 and makes the following:

#### CONCLUSIONS OF LAW

1. Respondent, by refusing to refer workmen on request, with an object of forcing Ernst and Ochs to cease doing business with Maupai because Maupai did not have a contract with Respondent, has engaged in unfair labor practices within the meaning of Section 8(b) (4) (ii) (B) of the Act.

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

#### ORDER

Upon the entire record in the case and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Local 825, International Union of Operating Engineers, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from refusing to refer individuals for employment to Henry Ernst, Jr., and John Ochs in order to force Henry Ernst, Jr., or John Ochs to cease doing business with R. G. Maupai Co., Inc., in order to force R. G. Maupai to recognize and bargain with the Respondent Union, unless the Respondent has been certified as the representative of the employees of R. G. Maupai Co., Inc.

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

(a) Post in conspicuous places in the Respondent's business offices, meeting halls, and in all other places where notices to members are customarily posted, copies of the notice attached hereto marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after they have been signed by the Respondent's authorized representative, be posted by it for 60 consecutive days. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(b) Notify the aforesaid Regional Director, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the complaint herein be, and it hereby is, dismissed insofar as it alleges violations of the Act other than those found herein.

<sup>2</sup> 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 MEMBERS OF LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

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 you that:

WE WILL NOT refuse to refer individuals for employment to Henry Ernst, Jr., and John Ochs in order to force Henry Ernst, Jr., or John Ochs to cease doing business with R. G. Maupai Co., Inc., in order to force R. G. Maupai to recognize and bargain with Local 825, unless Local 825 has been certified as the representative of the employees of R. G. Maupai Co., Inc.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,  
*Labor Organization.*

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. Employees may communicate directly with the Board's Regional Office, 614 National Newark Bldg., 744 Broad St., Newark, New Jersey; Telephone Number Market 4-6151, if they have any question concerning this notice or compliance with its provisions.

INTERMEDIATE REPORT  
STATEMENT OF THE CASE

This proceeding, with all parties represented, came on to be heard before me on October 18, November 12, and December 21, 1960, at Newark, New Jersey, on the complaint of the General Counsel and the answer of Local 825, International Union of Operating Engineers, herein called Local 825 or the Respondent.

The complaint alleges that the Respondent Union, through its agents, induced and encouraged employees of Henry Ernst, Jr., and John Ochs to engage in a strike or refusal to perform services, etc., for their employers and threatened, coerced, and restrained Ernst, Ochs, and the Elizabeth Housing Authority<sup>1</sup> and that the objects of said inducement, encouragement, threats, coercion, and restraint were to force Elizabeth Housing Authority, Ernst, Ochs, and other persons to cease doing business with R. G. Maupai Co., and to force Maupai Co. to bargain with Respondent as the representative of its employees notwithstanding Respondent has not been certified as such representative. The complaint alleges that by these acts the Respondent violated the provisions of Section 8(b)(4)(i) and (ii)(B) of the Act.

The answer denies the allegations.

At the opening of the hearing on October 18 the parties stipulated that the testimony in *John J. Cuneo v. Local 825, International Union of Operating Engineers* in the District Court of the United States for the District of New Jersey would be the same as contained in the transcript of that proceeding if the witnesses were called

<sup>1</sup> At the end of the hearing the Trial Examiner granted Respondent's motion to dismiss the allegation that Elizabeth Housing Authority was threatened, restrained, or coerced within the meaning of Section 8(b)(4)(ii)(B) on the ground that no evidence of such threats, restraint, or coercion against the Authority was introduced by the General Counsel.

in the instant case. By its terms the stipulation excluded all remarks and arguments of counsel and all remarks and findings of the District Judge. It was further stipulated that the hearing would be adjourned until November 18 with the right to any party to reopen the hearing and call witnesses. The General Counsel reopened the hearing on November 18 and called witnesses and Respondent called witnesses on December 21. The parties were given until January 13 to file briefs. No briefs were received.

Upon the aforesaid stipulation and my observation of the witnesses and upon the entire record, I make the following:

#### FINDINGS AND CONCLUSIONS

##### I. THE BUSINESS OF THE EMPLOYERS

R. G. Maupai Co., Inc., is a New Jersey corporation engaged in the manufacture, sale, distribution, and installation of heating systems, air conditioning systems, piping, plumbing, and related products. During the year ending June 30, 1960, Maupai Co. caused to be purchased and delivered to its place of business in New Jersey goods and materials valued in excess of \$400,000 of which more than \$200,000 were transported from outside the State of New Jersey.

John Ochs, herein called Ochs, is an individual engaged as a building contractor at Livingston, New Jersey. During the past year Ochs caused to be purchased and delivered to his Livingston place of business goods and materials valued in excess of \$50,000 from places outside the State of New Jersey.

Henry Ernst, Jr., herein called Ernst, is an individual engaged in business as an excavating contractor at Caldwell, New Jersey.

Maupai Co. and Ochs are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The complaint does not allege and I do not find that Ernst is engaged in commerce within the meaning of Section 2(6) and (7).

##### II. LABOR ORGANIZATION INVOLVED

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

##### III. THE ALLEGED UNFAIR LABOR PRACTICES

###### A. *The facts*

In June 1959, Maupai Co. contracted with the Housing Authority of the city of Elizabeth, New Jersey, to install the heating system at an apartment house development grandiloquently known as the Captain Nicholas Migliore Manor Project, herein called the Manor. It commenced work on the project in September 1959, and in the course of its operations it used a gas-driven electric welding machine. Since Maupai Co., as a member of the Mechanical Contractors Association, was a party to a collective-bargaining contract with the United Association of Pipefitters and Apprentices, Local 475, herein called the Pipefitters, this machine was operated by a welder who was a member of the Pipefitters when it was put to work at the Manor in April 1960.

In connection with its Manor contract Maupai subcontracted the excavation work to Henry Ernst and Ernst in turn rented a crane or rig for use in excavating for the installation of a 15,000-gallon fuel oil tank from John Ochs. Ochs, as a member of a truckers association, had a contract with Local 825 and Ernst signed a contract with Local 825 shortly before he rented the rig.

The excavation work was scheduled to start on July 6. On that day the rig was delivered to the jobsite together with an operator, Zahn, and an oiler. Ochs testified that the rig did not operate that day because the oiler's book with Local 825 was not current and a substitute oiler could not be obtained. The rig operated July 7 with Zahn and an oiler named Williams. On July 8 Zahn did not appear for work giving as his reason, according to Ochs, the fact that there was a "dispute" and that he (Zahn) had received a telephone call from Corrigan to report sick. Corrigan, like Zahn, was not called as a witness but was identified as master mechanic for Arthur Venieri, a general contractor, and as a member of Local 825. Since Zahn did not appear the crane could not operate but on the morning of the 8th both Esposito, who operated a backhoe machine for Ernst, and Williams, who could not work, refused to work and it is this stoppage which is the source of complaint.

According to the testimony of Eugene Maupai, he received a telephone call from Lakin, his foreman at Manor, on the morning of July 8 telling him the Ochs' rig

was not working. Maupai then called Jack Pierson, business agent of Local 825, but was unable to reach him. Maupai then went to the jobsite with Kenneth Smith, his estimator, where he met a group consisting of Arthur Venieri, Ernst, Corrigan, Williams, and Esposito who, like Williams, was a member of Local 825. Maupai asked why the Ernst and Ochs rigs were not working. Corrigan told him that Esposito and Williams were not working because they had no agreement with Maupai. He also told Maupai that "we want a man on the welding machine" and Maupai replied that the job belonged to the steamfitters and that he was not going to put an engineer on the machine. Maupai told Ernst to start digging but both Esposito and Williams refused to work when ordered to by Ernst and they were paid off by Ernst. Maupai's testimony is corroborated by Smith.

Ernst, who was at the jobsite before Maupai and Smith arrived, testified that both Esposito and Williams told him that morning that they "did not care to work." Ernst, whose testimony is not too clear, then went to see Corrigan who told him that the men did not care to work because there was no agreement with Maupai. When Ernst asked the men if this was true they said it was. Corrigan told Ernst he had no authority to tell the men to go to work. Ernst told Esposito that he was working for him and not for Maupai Co. and testified that Esposito told him he would be blackballed by the Union if he worked. Ernst *thought* that Esposito said that he was told this by Corrigan. Ernst also corroborated Maupai's version of the conversations at the jobsite when Maupai arrived. Ernst later called the union hall for men but was unable to get any and was told by one dispatcher that he did not know the men were not working at the Manor.

The two witnesses who knew best why they did not work, Esposito and Williams, were called by the Respondent in both the district court proceedings and at the hearing herein. Williams, whose testimony likewise was not free from ambiguity, stated that he was sent to the Manor by the dispatcher at Local 825 on July 7 and told to report to Maupai. (It was Ernst, however, who asked for an oiler.) Once on the job he asked Zahn for whom he was working. His testimony as to the answer varies since at the district court he testified that Zahn told him he (Zahn) was working for Ochs but that Williams was working for Ernst. At the hearing he testified that Zahn told him he did not know for whom he (Williams) was working. Williams did testify that he was concerned as to whether or not payments would be made to the pension and welfare fund on his behalf because his wife was expectant at the time. He learned on that day that Maupai did not have a contract with Local 825 so he knew Maupai would not make the payments. After quitting time that night Williams called Local 825 and was told that neither Ernst nor Ochs had made any payments to the fund.<sup>2</sup> The next day, July 8, Williams, who could not work without an operator in any event, told Esposito he was not going to work. He refused to work when Ernst told him to work and also refused to work when Maupai ordered him. (How either Ernst or Maupai expected him to work without an operator is not explained.) Williams asked Maupai if he recognized Local 825 and when Maupai told him he did not he said he would not recognize Maupai. Williams denied that any union delegate or representative told him to stop work and also testified that at the hearing in the Federal Courthouse Pierson asked him to go back to work and he refused.

Esposito was employed by Ernst as operator of a backhoe machine. He worked at the Manor site 1 week in June, was laid off, returned to work in July and had been working about 10 days prior to July 8. Ernst testified that he did not work on July 8 because "the rumor was they didn't sign no agreement with the union which wasn't covered by the Welfare fund." Esposito stated Ernst told him that he had signed a contract with Local 825 but that Corrigan told him that he (Corrigan) did not know anything about it.<sup>3</sup> Corrigan also told him that Maupai Co. did not have a contract with Local 825 and asked him to check the books of the operator and the oiler of the Ochs rig when it arrived. (According to the testimony Corrigan checked the books himself.) Esposito denied that he had talked to any representative of Local 825 or anyone else (except Williams) about stopping work—he stopped, he testified, of his own free will and because of his concern about pension payments. He specifically denied that Corrigan told him to stop work or that he told Ernst that he would be blackballed by the Union if he worked or that he had been told this by Corrigan.

<sup>2</sup> Ernst subsequently forwarded at least one check to the fund. This was on August 1 and was in the amount of \$10.40. Pierson testified that Ochs was delinquent in his payments

<sup>3</sup> Other testimony indicates Ernst did sign a contract with Local 825 but that the Union, for reasons not disclosed, did not sign it

This summarizes the testimony relating to the jobsite conversations on July 8. On the afternoon of July 8 Maupai talked to Pierson on the telephone. He asked Pierson why the men had been taken off and, according to Maupai, Pierson told him the men quit because Maupai had no agreement with Local 825 and that the men would not work until there was an agreement. As a result of a meeting that same day between Pierson and Ernst, Pierson agreed to meet with Maupai. A meeting was held at the Newark Airport on July 25 when Maupai and Smith met with Pierson and a person identified only as Mr. Nabraga. The purpose of the meeting was to get the men back to work. Pierson iterated that the men would go back if a contract was signed between Maupai Co. and Local 825 but that otherwise they were afraid their pension and welfare plan was jeopardized. Maupai refused to sign an agreement but offered to guarantee the pension and welfare payments. Pierson then asked that the charges be withdrawn and Maupai requested assurance that the same dispute would not occur on the next job. Pierson testified that Maupai said he could not withdraw the charges because they had been filed by the Mechanical Contractors Association. The meeting ended with no agreement reached.

Following the meeting at the airport no further meetings were held except for efforts to settle the case prior to the district court proceedings. The Trial Examiner struck testimony which pertained to these negotiations on the ground that the interests of the Board would best be served if all statements made and action taken pursuant to a settlement agreement or efforts to reach such agreement were privileged.<sup>4</sup>

#### B. Conclusions

Much of the testimony in this case is obscure, confused, contradictory, and, on some vital issues, meager to a point approaching absence. From such an olio decision must nevertheless be reached.

Certain preliminary findings must be made before reaching the chief issues—the inducements of employees and the threats to employers. On the basis of testimony which could be more complete I find that both Esposito and Williams were employees of Ernst. While the General Counsel contended that Williams was employed by Ochs that contention finds no support in the record. Both Ernst and Ochs testified that the rig was rented by Ernst and although Ochs testified that Zahn, the operator, was his employee he made no such statement with respect to the oiler. Williams, the oiler, was sent directly to the jobsite by Local 825 and told to report to Maupai Co., although Ernst testified that he called the hall and asked that an oiler be sent. Williams himself appears to have been unsure for whom he was working since he asked that question of Zahn. While Zahn's reply was not binding upon any employer it is evident that Zahn knew Williams was not employed by Ochs and Zahn must have been familiar with the practices with respect to oilers when the rig was rented out. It is the testimony of Ernst, however, which I find controlling and he testified that he hired Esposito and that later on he hired Williams. There is the further evidence that Ernst ordered both Esposito and Williams to go to work on July 8 and, when they refused, Ernst paid both of them off.

This finding leaves Zahn as the sole employee of Ochs at the jobsite but there is no competent evidence to support the charge that he was induced or encouraged to quit work by the Respondent. The only evidence in this respect is the hearsay testimony of Ochs as to what Zahn told him he was told by Corrigan, which I reject.<sup>5</sup> Insofar as the complaint alleges that employees of Ochs were induced or encouraged to engage in a strike or refusal to work in violation of Section 8(b)(4)(i)(B) I shall recommend dismissal.

Again as to Ochs, there is not an iota of evidence that he was threatened by any representative of Local 825 at any time. Ochs testified to only one conversation, his conversation with Zahn who was and is his employee and who made no threat at all. I shall recommend dismissal of the complaint insofar as it alleges that Ochs was threatened, coerced, or restrained by Respondent within the meaning of Section 8(b)(4)(ii)(B).

Ernst, then, is the surviving employer with respect to whom a violation might be found. At the hearing I pointed out that the complaint did not allege either that Ernst was engaged in commerce within the meaning of the Act or that he was engaged in an industry affecting commerce. It may be that this defect in pleading is

<sup>4</sup> The transcript is in error in referring to the lines which were stricken. The Trial Examiner struck all of the testimony of Maupai beginning on line 9, page 35 and ending on line 24, page 37. The transcript stated line 9, page 35 through line 24, page 27.

<sup>5</sup> See *Los Angeles Building and Construction Trades Council, A.F.L., et al. (Westinghouse Electric Corporation)*, 94 NLRB 415.

fatal and that the complaint, as to inducement of employees of Ernst and as to threats to Ernst, may be dismissed on that ground.<sup>6</sup> The case, however, may be more simply disposed of on the merits, thus saving time, which is of the essence.

Again with respect to the 8(b)(4)(i)(B) allegation I find a total deficiency of evidence to support the charge. Ernst had only one conversation with Pierson after the work stoppage and his testimony is that Pierson asked him not to run the rig until the "matter" was straightened out with Maupai. I am unwilling to equate that simple request with threat, coercion, or restraint within the meaning of the Act. Assuming, *arguendo*, that the General Counsel is correct in his contention that Corrigan had authority to act as agent for Local 825, there is no evidence that Corrigan made any threat to Ernst or to anyone in this proceeding. When Esposito and Williams refused to work on July 8 Ernst asked Corrigan why they were not working. Corrigan volunteered the information, corroborated by the men themselves, that they did not care to work because there was no contract with Maupai. Corrigan also told Ernst that he had no authority to tell the men to go to work. Again there is neither a threat nor restraint and coercion. I shall recommend that the complaint be dismissed insofar as it alleges violation of Section 8(b)(4)(ii)(B) by Respondent.

The lone allegation remaining is that Respondent induced or encouraged the employees of Ernst to strike or refuse to perform services on July 8 for an object proscribed by the Act. The testimony of the employees, which I credit in substance, is exactly to the contrary. Both testified that they were unwilling to work because they were concerned about their pension and welfare funds since Maupai Co. had no contract with Local 825. This concern is borne out by the conduct of Williams on July 7, his first day on the job. He had, according to his testimony, been told at the hall to report to Maupai Co. He learned from Zahn when he reported that he was not working for Ochs. He also learned that Maupai Co. had no contract so that he was not protected if Maupai was his employer. He called the hall after work and learned that Ernst had made no payments to the fund. Whether or not he communicated this knowledge to Esposito the next day is speculative but since they were the only two members employed by Ernst and since they both refused to work and gave the same reason it is not unreasonable to assume that he did. In any event both testified that they were not told to stop work by any representative of Local 825. I credit this testimony. While there is the testimony of Ernst that Esposito told him that he would be blackballed by the Union if he worked I find it unnecessary to resolve this issue of credibility. (Esposito denied making the statement.) This testimony is, like Ochs' testimony as to what Zahn told him Corrigan had said, hearsay and inadmissible. (In view of the ambiguity of the testimony I do not credit the statement of Ernst that Esposito said he was told this by Corrigan.) I likewise credit the testimony of Williams that he was asked by Pierson to return to work after the stoppage and that he refused.

In further support of the evidence that the refusal to work was voluntary I accept and credit the testimony of Pierson and Weber, the only representatives of Local 825 who were called in this proceeding, that they not only did not call the work stoppage but that they did not know of it until after it occurred. I agree that there is evidence that Local 825 had claimed the right to have an operating engineer on the gas welding machine prior to July 8 but the assertions of this claim, which were unaccompanied by any threats, were unrelated in either time or circumstance to the work stoppage.<sup>7</sup> There is nothing in the testimony of either Esposito or Williams to indicate that they were aware of this tentative dispute. While this dispute was mentioned by Corrigan on July 8 after the stoppage it was not suggested as a reason why the men refused to work. Again at the meeting at Newark Airport Pierson told Maupai that the men were unwilling to work because they felt their pension and

<sup>6</sup> See the analysis of this question in the Intermediate Report of Trial Examiner Royster in *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 575, AFL-CIO (Boulder Master Plumbers Association)*, 132 NLRB 1355. Cf. Trial Examiner Somers' Intermediate Report in *Local Union 825, International Union of Operating Engineers, AFL-CIO (Carlton Brothers Company)*, 131 NLRB 452.

<sup>7</sup> Arthur Lakin, Maupai Co's foreman at Manor, testified that in April 1960 he had a conversation with Arthur Hayes, shop steward for Local 825, in which Hayes demanded that an operating engineer run the welding machine. When Lakin told him they did not need an engineer Hayes replied that they "wouldn't fight over it, they would leave it to the delegates." Smith, Maupai Co.'s estimator, testified that on or about May 5, 1960, he received a call from Pierson in which Pierson said he wanted an engineer on the welding machine and would call later. (There is no record of such a call.)

welfare funds were in jeopardy and when Maupai offered to guarantee the payments agreement failed because Pierson's request for a withdrawal of the charge was countered by Maupai's request for assurance against a work stoppage on the next job. I therefore find that Local 825 neither caused the work stoppage at the Manor on July 8 by inducing or encouraging Esposito and Williams to refuse to perform services nor that it induced or encouraged them to continue to refuse to perform any services. To make either finding I would have to reject *in toto* the testimony of Esposito, Williams, and Pierson, not on the ground that it is contradicted by other testimony or by inconsistent independent evidence but on the ground that, as members and officers of a labor organization, their testimony is unworthy of belief. My rejection of that proposition is utter.

I find no evidence to support the allegation that Respondent induced or encouraged any employee of Ernst to engage in a strike or a refusal to perform any services in violation of Section 8(b)(4)(i)(B) of the Act.

#### CONCLUSIONS OF LAW

1. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

2. R. G. Maupai Co., Inc., and John Ochs are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Respondent has not induced or encouraged any individual employed by any person engaged in commerce or in any industry affecting commerce to engage in a strike or a refusal to perform any services nor has Respondent threatened, coerced, or restrained any person engaged in commerce or in an industry affecting commerce, in either case, for an object proscribed by or in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

[Recommendations omitted from publication.]

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**Edward H. McLaughlin, McLaughlin Industrial Distributors, Inc., Contract Builders Hardware, Inc., and Union Hardware & Metal Company, all formerly Union Hardware & Metal Company and Warehouse, Processing & Distribution Workers' Union, Local 26.** *Case No. 21-CA-4254. January 26, 1962*

#### DECISION AND ORDER

On October 16, 1961, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter the Respondents, the General Counsel, and the Union filed exceptions to the Intermediate Report and briefs in support thereof.

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 [Members Leedom, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner made 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, the briefs, and the entire record<sup>1</sup>

<sup>1</sup> The Respondents' request for oral argument is hereby denied as the record, including the exceptions and briefs, adequately presents the issues and positions of the parties.