

registered letter, addressed to his last known address, that the aforementioned offer of reinstatement is continued until 90 days after his discharge from the Armed Forces. The backpay period as to him will run from the date of his discriminatory discharge until induction into the Armed Forces⁷⁰ and from a date 5 days after timely application for reinstatement until the date of Respondents' offer of reinstatement.

Loss of pay shall be computed and paid in accordance with the formula adopted by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

The unfair labor practices found to have been engaged in by Respondents are of such a character and scope that in order to insure Respondents' employees of their full rights guaranteed them by the Act, it will be recommended that Respondents cease and desist from in any manner interfering with, restraining, and coercing their employees in their rights to self-organization.

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. International Association of Machinists, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. Sachs & Sons and Helen Sachs, Inc., are a single employer within the meaning of Section 2(5) of the Act.

3. Respondents, during all material times, have been engaged in, and now are engaged in, commerce within the meaning of Section 2(6) and (7) of the Act.

4. By discriminating in regard to the hire and tenure of employment and the terms and conditions of employment of Creed Tinker, Samuel Ballinger, Harvey D. Campbell, Mart M. Roberts, Jr., Lewis Müller, David Miller, and Andrew Guillory, thereby discouraging membership in the Union, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

5. By interrogating their employees regarding their union activities and sympathies, by threatening their employees with discharge if they join or remain members of the Union, by threatening their employees with a loss of pay if they remain members of the Union, and by otherwise interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondents have engaged in and are 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 within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

⁷⁰The payment of this amount shall be made immediately without awaiting final determination of full amount of award *Modern Motor Express, Inc.*, 129 NLRB 1433.

The Hughes Corporation and Alonzo C. Lanier. *Case No. 6-CA-2281. February 21, 1962*

DECISION AND ORDER

On December 15, 1961, Trial Examiner Sidney S. Asher, Jr., 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 General Counsel filed exceptions with a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with
135 NLRB No. 113.

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 and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications noted below.¹

Since Lanier was discriminatorily denied employment on May 1, before any other employee was hired on May 1, in order to remedy the unfair labor practice found, Lanier must, if Respondent still has need of the services of journeymen sheet metal workers on the Pennelect project, be offered immediate employment as a journeyman sheet metal worker on that project, without prejudice to such seniority or other rights and privileges as he would have enjoyed had he been hired on May 1, 1961, discharging, if necessary, any journeyman sheet metal worker hired on that project on or after May 1, 1961.

Consistent herewith, the following paragraph is substituted for paragraph 3 of the notice:

IF we still need journeymen sheet metal workers on the Pennsylvania Electric Company project in Johnstown, Pennsylvania, we will offer Alonzo C. Lanier immediate employment as journeyman sheet metal worker on that project without prejudice to such seniority or other rights and privileges as he would have enjoyed had he been hired on May 1, 1961, discharging, if necessary, any journeyman sheet metal worker hired on that project on or after May 1, 1961.

The notice is further amended by inserting the following additional paragraph:

Employees may communicate directly with the Board's Regional Office, 2107 Clark Building, 701-17 Liberty Ave., Pittsburgh 22, Pennsylvania, Grant 1-2977, if they have any questions concerning this notice or compliance with its provisions.

ORDER

The Board adopts the Recommended Order of the Trial Examiner with the modifications of provisions 2(d) and (f) in accord with footnotes 29 and 30 of said Recommended Order, and with the further modifications in the Order and notice noted above.

¹ No exceptions were filed relating to the findings and conclusions of the Trial Examiner. The General Counsel's exceptions request the Board to modify the recommendations and notice to conform with the findings and conclusions. We find merit in these exceptions.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This case involves allegations that The Hughes Corporation, Luzerne, Pennsylvania, herein called the Respondent, on or about May 1, 1961, refused to employ Alonzo C. Lanier, and thereafter continued to refuse to employ him, because he had not been referred or cleared by Sheet Metal Workers International Association, Local 12, AFL-CIO, herein called the Union, although the Respondent did not have an exclusive referral agreement with the Union, and in order to encourage membership in the Union. It is alleged that this conduct violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (61 Stat 136), herein called the Act. After the issuance of a complaint by the General Counsel,¹ the Respondent filed an answer admitting certain jurisdictional facts; denying that its refusal to employ Lanier was for a discriminatory reason; alleging that on May 1, 1961, it needed the services of only one new employee and chose one of two applicants for the job for reasons completely unrelated to union affiliation; alleging that on May 1, 1961, Lanier was a member of the Union; and denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before me on October 9, 1961, at Johnstown, Pennsylvania. The General Counsel and the Respondent were represented and participated fully in the hearing. On November 6, 1961, the General Counsel and the Respondent filed briefs, which have been duly considered.

Upon the entire record in this case,² and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is, and at all material times has been, a Pennsylvania corporation with its principal office at Luzerne, Pennsylvania, where it is engaged in the sheet metal and plumbing business. During the year ending May 31, 1961, the Respondent purchased and had delivered to its operations within the Commonwealth of Pennsylvania goods and materials valued at more than \$50,000, which were transported directly to its operations from points outside the Commonwealth.

The Respondent's answer admits, and it is found, that the Respondent is, and at all material times has been, engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act for the Board to assert jurisdiction over its operations.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent's answer admits, and it is found, that Sheet Metal Workers International Association, Local 12, AFL-CIO, is and at all material times has been, a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

◦ The Pennsylvania Electric Company, herein called Pennelect, engaged Sordoni Construction Company of Wilkes-Barre, Pennsylvania, herein called Sordoni, to erect an office building on property which it owns in Johnstown, Pennsylvania. The contract between the parties, dated June 20, 1960, provides in pertinent part:

The contractor and his sub-contractors performing his work shall be in *good standing with the trade unions*, provided that nothing herein shall require the violation of Federal, State or other properly instituted authority.

¹The term "General Counsel" refers to the General Counsel of the National Labor Relations Board and his representatives at the hearing

²The transcript was corrected in certain respects on November 20, 1961. It is now further corrected as follows:

Page 19, line 21: Strike the word "dler" and substitute therefor the word "dire."

Page 20, line 1: Strike the word "CROSS-EXAMINATION" and substitute therefor the words "VOIR DIRE"

Page 20, line 16: Strike the words "REDIRECT EXAMINATION" and substitute therefor the words "DIRECT EXAMINATION, CONTINUED."

Page 25, line 10: Strike the word "REXCROSS" and substitute therefor the partial word "CROSS."

Thomas stated that there was work for only one man, and suggested that a telephone call be made to the Union. Braid accordingly called the Union's office in Pittsburgh and asked for Cleary or Robert Furlough, another business agent of the Union. He then made a second call to a different place, again asking for Cleary or Furlough, left a message for them to call him, and gave his name and the telephone number of the jobsite. Both Braid and Lanier "waited around for a couple of hours" at the jobsite without going to work. About 10:15 a.m. Lanier told Thomas that he had "to pay a gas bill" and that he would either return or call by telephone. Lanier then left. Paul Gable, the superintendent of the job, "started to get after [Thomas] about not having the stuff." About 11:30 or 11:45 a.m., Thomas hired Braid; he started to work that afternoon.¹⁰ About 2:30 or 3 p.m. Cleary called the jobsite and talked to Thomas.¹¹ About 3 or 3:30 p.m. Lanier telephoned to the jobsite. Thomas informed him "that the call came through" and that he (Thomas) had been told by Cleary and Furlough "to hire Braid." He added that "in his [Thomas'] position he had no choice."¹² Lanier did not thereafter return to the jobsite. He did not seek either call-in pay or unemployment benefits.

On May 3 Lanier filed with the Board charges in Case No. 6-CB-831, alleging that the Union had violated Section 8(b)(1)(A) and (2) of the Act. On September 26 the Regional Director dismissed those charges. Meanwhile, on June 6, Lanier had filed the instant charges.

On May 10, Lanier and Thomas met by chance on the street. Lanier testified, and I find, that Thomas "brought up the subject of the sore shoulder" but added that "according to him [Thomas] and Cleary . . . I [Lanier] was in line for a job there."

Between the hiring of Braid on May 1 and the hearing on October 9, the Respondent increased its complement of rank-and-file journeymen sheet metal workers from 3 to 13. In hiring new employees, Thomas testified: "I had our shop steward call the business agent. Our job steward, he calls the business agent and they send the men out." Thomas did not contact Lanier to offer him employment. He explained that he "didn't have his [Lanier's] address. . . . Like I said, the normal procedure was to hire through the Local. . . . If they wanted to send him in, if he was unemployed at the time, he probably would have come in."

C. Positions of the parties

The complaint alleges that on or about May 1 the Respondent, through Thomas, refused to employ Lanier, and thereafter continued to refuse to employ him, because he was not referred or cleared by the Union. The General Counsel contends that Thomas hired Lanier on April 28, but then discharged him on May 1 and replaced him with Braid, because Lanier had not been sent by the Union, and Braid had. Alternatively, the General Counsel maintains that, if Lanier was not hired on April 28, then on May 1 he was a job applicant who was refused employment because he lacked union referral. Instead of hiring Lanier, argues the General Counsel, the one available job was given to Braid, because Braid had been sent by the Union.

The Respondent, on the contrary, maintains that it never hired Lanier. Its answer appears to admit that Lanier was a job applicant on May 1. But it is alleged that on that date the Respondent had need of only one additional employee, and that Thomas chose one of the two applicants for reasons not related to union referral. In support of this position, the Respondent argues that Thomas had no knowledge "that one [applicant] was preferred over the other by the Union," both being union members, and that he selected Braid for the job rather than Lanier "as a matter of personal choice." In addition to the defense set forth in the answer, the Respondent urges that it was bound by the contract between Pennelect and Sordoni, and therefore required by that contract to "remain in . . . [the] good graces of the local trade unions." Finally, the Respondent protests that the action of the Regional Director in dismissing Lanier's charges against the Union in Case No. 6-CB-831 while proceeding with the instant charges was "highly prejudicial to The Hughes Corporation."

¹⁰ The finding of fact as to the hour of Braid's hiring is based upon Thomas' undenied testimony.

¹¹ According to Thomas, Cleary asked for Braid and when Thomas informed him that Braid was working, Cleary replied: "Well, that is all" In view of Thomas' statement to Lanier later that day, that Cleary told him "to hire Braid," I am not convinced that Thomas, while testifying, related the *entire* conversation he had with Cleary.

¹² The findings of fact regarding this Lanier-Thomas telephone conversation are based on Lanier's undenied testimony.

D. Conclusions

1. Lanier's alleged hiring

It will be recalled that on April 28 Thomas directed Lanier to "report to work Monday morning." The General Counsel contends that this constituted a hiring. Such a contention, on its face, might appear to be inconsistent with the complaint, which alleges that "On or about May 1, 1961, the Respondent . . . refuse[d] to employ Alonzo Lanier, and thereafter continued to refuse to employ Alonzo Lanier." However, this need not be determined. Even aside from this question of variance, the record is convincing that Lanier was never hired by Thomas. Lanier never signed the documents required by the Respondent from newly hired employees,¹³ nor was it shown that his name ever appeared on the Respondent's records as an employee. Moreover, Lanier's actions indicate that he did not consider himself as having been hired, for after his first interview with Thomas he went to Chapel and inquired what his rehire status there would be if he went to work for the Respondent, thus showing that he had not yet made up his mind. Moreover, after what the General Counsel asserts to have been his discharge on May 1, Lanier sought neither call-in pay nor unemployment compensation.¹⁴ Under all the circumstances here present, I conclude that Thomas' direction to Lanier on April 28 to report for work on May 1 did not create an employee-employer relationship between Lanier and the Respondent, but merely constituted a promise or commitment by Thomas to hire Lanier on May 1.

2. The refusal to hire Lanier

Turning now to the General Counsel's alternative theory, that Lanier was a job applicant on May 1 and was refused employment at that time, this is consistent with the complaint and, indeed, impliedly admitted in the answer. We come, then, to the question of why Thomas, confronted with two applicants for a single available job, hired Braid rather than Lanier, despite his earlier commitment to employ Lanier.

The Respondent argues that, as both Braid and Lanier were members of the Union, "there is nothing to show that Respondent knew that the Union preferred Mr. Braid to Mr. Lanier, if in fact it did." This fails to take into account Thomas' knowledge that Lanier had not been referred by the Union but had come to the jobsite on his own initiative seeking work, whereas Braid claimed that he had been referred to the Respondent by the Union—a significant difference between them. The Respondent also points out that "The actual employment of Mr. Braid took place before there was any communication [by Thomas] with the Union." But the facts indicate that Thomas, under pressure from Gable to get the project moving, decided not to wait for word from the Union, but instead to accept at face value Braid's statement that he had union referral.¹⁵ When the call from Cleary came later, it merely confirmed what Thomas already suspected, namely, that Braid and not Lanier had been referred by the Union.

Thomas testified that he chose Braid over Lanier mainly because of Lanier's old shoulder injury,¹⁶ but also because Braid could weld, appeared to be younger, and Lanier indicated lack of interest by leaving the jobsite while the matter of who would be hired remained undecided. But Lanier's injured shoulder was a fact known to Thomas even before he promised Lanier that he would hire him. Moreover, the question of welding could not have had any real importance, for Thomas did not ask Lanier if he could weld. Finally, Thomas never adequately explained why he delayed his choice from 7:50 to 11:30 a.m. I conclude that the reasons

¹³ Thomas testified without contradiction: "Once he [a job applicant] signs a time slip or a Social Security record, or a withholding statement, then he is hired. Then our insurance takes over."

¹⁴ Lanier testified that he did not demand call-in pay because after his conversation with Thomas on May 10, he felt he still had a chance of obtaining work with the Respondent, and did not want to antagonize the Respondent. But this fails to explain why he had not sought call-in pay prior to May 10.

¹⁵ Thomas' testimony on this point is significant:

Q. Has your corporation always hired through the Local?

A. That was the normal procedure every place we went.

Q. But . . . you hired Mr. Braid rather than Mr. Lanier before you had final word from the local, is that right?

A. Well, I was just taking hearsay, that he was sent in there to go to work . . . I took his word he was sent by the Local.

¹⁶ At one point Thomas testified that this was the *only* reason

given by Thomas for preferring Braid over Lanier were mere afterthoughts put forth to disguise the real reason.

There is ample and cogent evidence that Thomas was concerned only with the attitude of the Union toward the two rival applicants. Thus, as noted above, he testified that "we got to hire through the Local on a job like this."¹⁷ And his first statement to Lanier on April 28 was that Lanier would have to "clear through the Union." After promising Lanier a job, Thomas received a note informing him that he could not "hire on the job" and that "all hiring is done thru [the union hiring] hall." When he next saw Lanier on May 1 he immediately gave him this note.¹⁸ He then suggested that a telephone call be made to the Union; obviously he was interested in what officials of the Union had to say. In addition, when Lanier called in at 3 or 3:30 p.m. on May 1, Thomas stated "that the call [from the Union] came through"; that he had been told by Cleary and Furlough "to hire Braid"; and that "in his position he had no choice." Thomas thereby demonstrated beyond question that the selection of Braid over Lanier was a decision made by the Union alone, in which he (Thomas) took no part. Any lingering doubt as to why Lanier was not hired is dispelled by Thomas' testimony on cross-examination:

Q. Wasn't the real reason [that no decision was made from 7:50 to 11:30 a.m.] you were waiting for a call from Cleary to tell you which man to hire?

A. That was in the discussion.

Q. That was in the discussion?

A. I wasn't waiting. It was more or less one of these two men, and I was—

Q. You were going to hire the one that Cleary said, is that right?

A. Right. [Emphasis supplied.]

In view of the foregoing I am convinced, and find, that on May 1 Lanier was refused employment solely because he lacked referral from the Union, and that the relative qualifications of Lanier and Braid were disregarded.

3. The Respondent's other defenses

At the hearing and in its brief the Respondent raised additional defenses not set forth in the answer. In this posture of the pleadings, it may be that these defenses could be disregarded. Nevertheless, they will be considered.

Pointing to the provision of the 1960 contract between Pennelect and Sordoni which requires subcontractors on the project to be "in good standing with the trade unions," the Respondent maintains that it was bound thereby, and that this clause required it to conduct its hiring on the job in a manner designed to avoid "trouble of any make, sort, or description . . . with the local trade unions." In the first place, as the Respondent was not a signatory to the Pennelect-Sordoni contract, it is difficult to understand on what theory the Respondent was bound by its terms. In the second place, the provision in question is couched in vague language, the precise meaning of which is difficult to determine.¹⁹ In any event, even assuming that the Respondent was bound by the contract, and that it can be construed as providing for a valid exclusive hiring hall to be operated by the Union, this would not aid the Respondent. For the only contract which might possibly provide a defense in this type of situation would be one between the Respondent and "a labor organization."²⁰ Here the Respondent admittedly had no written agreement with the Union, and there is no probative evidence of any oral understanding between the Respondent and the Union. It is accordingly found that the Respondent's defense based upon the Pennelect-Sordoni contract lacks merit.

There remains the defense that the Respondent was somehow prejudiced by the Regional Director's dismissal of Lanier's charges against the Union. This also lacks merit. It is clear that, in such circumstances, Section 8(a)(3) does not require

¹⁷ At oral argument, the Respondent's attorney admitted that its foremen were "instructed . . . to inquire into whether or not the prospective Sheet Metal Workers' journeymen were in, at least, in good standing with Local No. 12." Surely, the Respondent's interest in the union status of job applicants exhibited more than academic curiosity.

¹⁸ Regardless of the note's authorship, Thomas, by handing it to Lanier, clearly indicated that he (Thomas) had to conduct himself accordingly.

¹⁹ At oral argument, the following colloquy took place:

TRIAL EXAMINER: . . . Now, you are asking me to say that that means an exclusive hiring hall arrangement?

Mr. SAYLOR: No, I don't think the contract goes that far.

²⁰ See Section 8(f) of the Act.

the General Counsel to proceed against the Union as a prerequisite to the issuance of a complaint, or a finding, against the employer.²¹

4. Ultimate conclusions

As set forth above, Thomas at first promised to fill the existing vacancy by hiring Lanier. Later, despite this commitment, Braid was employed instead, solely because Thomas believed that Braid had been referred by the Union while Lanier had not. This constituted discrimination against a job applicant prohibited by Section 8(a)(3) of the Act.²² Moreover, this discrimination encouraged "membership" in the Union, as that word is used in Section 8(a)(3) of the Act, for it forcibly demonstrated the absolute necessity of union referral.²³ And specific proof of the Respondent's intent is unnecessary where its conduct inherently encourages union membership. "It is obvious that the discrimination . . . had the natural and probable effect not only of encouraging nonunion employees to join the Union, but also of encouraging union employees to retain their union membership."²⁴ It is accordingly found that, by refusing employment to Lanier on May 1 because he lacked union referral, the Respondent discriminated in regard to hire, thereby encouraging membership in the Union, in violation of Section 8(a)(3) of the Act, and interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.²⁵

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

CONCLUSIONS OF LAW

1. The Hughes Corporation is, and at all material times has been, an employer within the meaning of Section 2(2) of the Act.

2. Sheet Metal Workers International Association, Local 12, AFL-CIO, is, and at all material times has been, a labor organization within the meaning of Section 2(5) of the Act.

3. By denying employment to Alonzo C. Lanier, thereby discriminating in regard to the hire of job applicants, and encouraging 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.

4. By the above-described conduct the Respondent has interfered with, restrained, and coerced its employees in the exercise of 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.

5. The above-described unfair labor practices, occurring in connection with the Respondent's operations, have a close, intimate, and substantial relation to trade, traffic, and commerce among the States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof, and constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

²¹ Compare *National Union of Marine Cooks and Stewards, CIO. (Burns Steamship Company)*, 92 NLRB 877, 879. Indeed, the proceedings against the Union would appear to be irrelevant to any issue herein *NLRB v. L. Ronney & Sons Furniture Manufacturing Co.*, 206 F. 2d 730, 738 (C.A. 9), cert. denied 346 U.S. 937.

²² It is no longer open to question that Section 8(a)(3) protects applicants as well as employees. *Phelps Dodge Corp. v. NLRB.*, 313 U.S. 177.

²³ *The Radio Officers' Union of the Commercial Telegraphers Union, A.F.L. (A. H. Bull Steamship Company) v. NLRB.*, 347 U.S. 17.

²⁴ *Gaynor News Company, Inc.*, 93 NLRB 299, 313, enfd. as mod. 197 F. 2d 719 (C.A. 2), affd. 347 U.S. 17.

²⁵ *American Pipe and Steel Corporation*, 93 NLRB 54.

It may well be that the Respondent's conduct toward Lanier amounted to illegal aid and assistance to the Union in violation of Section 8(a)(2) of the Act. Thomas' statement to Lanier on April 28 that "You will have to clear through the Union" and his handing the note to Lanier on May 1 might also constitute independent acts of interference, violative of Section 8(a)(1) of the Act. But these matters were not covered in the complaint. As these issues either were not "fully litigated" (*Monroe Feed Store*, 112 NLRB 1336, 1337) or were litigated "only incidentally in connection with the 8(a)(3) issue in the case and not as a possible basis for an independent . . . finding" (*Crookston Times Printing Company*, 125 NLRB 304, 305) I deem myself precluded from considering them.

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in this case, I make the following:

RECOMMENDATIONS

I am not persuaded that the Respondent's past conduct as revealed by the record in this case is indicative of a predilection to commit other unrelated unfair labor practices in the future. It will accordingly be recommended that the Respondent cease and desist only from engaging in the unfair labor practices found and any like or related conduct.²⁶

If the Respondent still has need of the services of journeymen sheet metal workers on the Pennelect project,²⁷ it will be recommended that the Respondent offer to Lanier immediate employment as a journeyman sheet metal worker on that project, without prejudice to such seniority or other rights and privileges as he would have enjoyed had he been hired on May 1, 1961, discharging, if necessary, any journeyman sheet metal worker hired on that project after May 1, 1961. It will further be recommended that the Respondent make Lanier whole for any loss of pay he may have suffered by paying to him a sum of money equal to that which he would normally have earned from May 1, 1961, the date of the discrimination against him, to the date of the offer of employment or the date on which Lanier's employment on the Pennelect project would normally have ended, whichever is earlier, less his net earnings during such period. The backpay provided for herein shall be computed in a quarterly manner, as established by the Board.²⁸

It will further be recommended that the Respondent preserve and, upon request, make available to the Board all records needed to determine the amount of backpay due hereunder. Finally, it will be recommended that the Respondent post the usual notices, both at its Luzerne office and at the site of the Pennelect project in Johnstown.

It is therefore recommended that The Hughes Corporation, Luzerne, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership in Sheet Metal Workers International Association, Local 12, AFL-CIO, or any other labor organization, by denying employment to job applicants lacking clearance or referral therefrom, or in any other manner discriminating in regard to the hire or tenure of employment of its employees, or any other term or condition of their employment.

(b) In any like or related manner interfering with, restraining, or coercing its employees or applicants for employment in the exercise of rights guaranteed in Section 7 of the Act, except to the extent that such rights 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 is necessary to effectuate the policies of the Act:

(a) If the Respondent still has need of the services of journeymen sheet metal workers on the Pennsylvania Electric Company project in Johnstown, Pennsylvania, offer to Alonzo C. Lanier immediate employment as a journeyman sheet metal worker on that project, without prejudice to his seniority and other rights and privileges.

(b) Make Alonzo C. Lanier whole for any loss of pay he may have suffered by reason of the discrimination against him.

(c) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to determine the amount of backpay due hereunder.

(d) Post at its office in Luzerne, Pennsylvania, copies of the notice attached hereto marked "Appendix."²⁹ Copies of the said notice, to be furnished by the Regional Director for the Sixth Region, shall, immediately upon receipt, be signed by a duly authorized representative of the Respondent, and be posted by it for 60 consecutive

²⁶ Compare *Gaynor News Company, Inc.*, *supra*, at p 301; and *Superior Tool & Die Co.*, 132 NLRB 1373

²⁷ Compare *NLRB v. Corning Glass Works*, 293 F. 2d 784 (C.A. 1).

²⁸ *F. W. Woolworth Company*, 90 NLRB 289

²⁹ If these recommendations are adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice. If the Board's Order is then enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order"

days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) If the Respondent's part of the said project has not been completed, promptly mail to the said Regional Director signed copies of the above-described notice for posting, the project manager willing, in conspicuous places at the site of such project.

(f) Notify the said Regional Director, in writing, within 20 days from the receipt of this Intermediate Report, what steps the Respondent has taken to comply herewith.³⁰

It is further recommended that, unless within 20 days from the receipt of this Intermediate Report the Respondent notifies the said Regional Director, in writing, that it will comply with the foregoing recommendations, the Board issue an order requiring the Respondent to take the aforesaid action.

³⁰ If these recommendations are adopted by the Board, the words "10 days from the date of this Order" shall be substituted for the words "20 days from the receipt of this Intermediate Report."

APPENDIX

NOTICE TO ALL EMPLOYEES AND APPLICANTS FOR EMPLOYMENT

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, you are notified that:

WE WILL NOT encourage membership in Sheet Metal Workers International Association, Local 12, AFL-CIO, or any other union, by denying employment to job applicants lacking clearance or referral therefrom, or in any other manner discriminating in regard to the hire or tenure of employment, or any other working conditions, of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees or applicants for employment in the exercise of their right to self-organization, to form or join any union, 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 and all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a union as a condition of employment, as authorized by Section 8(a)(3) of the National Labor Relations Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

IF WE still need journeymen sheet metal workers on the Pennsylvania Electric Company project in Johnstown, Pennsylvania, we will offer Alonzo C. Lanier immediate employment as a journeyman sheet metal worker on that project, without prejudice to his seniority or other rights and privileges.

WE WILL make Alonzo C. Lanier whole for any loss of pay he may have suffered because of the discrimination against him.

THE HUGHES 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.

**B. H. Hadley, Inc. and International Association of Machinists,
AFL-CIO. Case No. 21-CA-4492. February 21, 1962**

DECISION AND ORDER

On November 21, 1961, Trial Examiner Martin S. Bennett issued his Intermediate Report herein, finding that the Respondent had engaged in and was engaging in certain unfair labor practices violative