

Bear Creek Construction Co. and United Brotherhood of Carpenters and Joiners of America, Local 2274, AFL-CIO

United Mine Workers of America, District 50, and its Local Union No. 14693 and United Brotherhood of Carpenters and Joiners of America, Local 2274, AFL-CIO. Cases Nos. 6-CA-2227 and 6-CB-817. February 27, 1962

DECISION AND ORDER

On October 30, 1961, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceedings, finding that the Respondents had engaged in and were engaging in certain 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 Respondent Bear Creek Construction Co., hereinafter referred to as the Company, and Respondent United Mine Workers of America, District 50, and its Local Union No. 14693, hereinafter referred to as Respondent Unions, filed exceptions to the Intermediate Report and briefs in support thereof. The General Counsel filed a brief in support of the Intermediate Report.

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

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case,¹ and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.²

We agree with the Trial Examiner, for the reasons fully set forth in the Intermediate Report, that Respondent Company violated Section 8(a)(1), (2), and (3) of the Act, and that Respondent Unions violated Section 8(b)(1)(A) and (2) of the Act. Like the Trial Examiner, we reject Respondents' contentions that the provisions of Section 8(f)³ afford them a defense in this case. Section 8(f), where

¹ As the record, exceptions, and briefs adequately present the issues and the positions of the parties, the Respondent Company's request for oral argument is denied.

² We modify the Recommended Order by limiting it to the Washington County, Pennsylvania, project of Respondent Company.

³ Section 8(f) provides, in pertinent part: "It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) because (1) the majority status of such labor organiza-

applicable, permits prehire agreements and does not require a labor organization to establish majority status prior to the entering of such an agreement. However, Section 8(f), by its express terms, does not validate prehire agreements where the union has been "established, maintained, or assisted by any action defined in Section 8(a) of this Act as an unfair labor practice." In short, the validity which Section 8(f) gives to prehire agreements is removed where it is shown that the union has been illegally "established, maintained, or assisted" by the employer.

Here, it has been clearly established that the Respondent Company, as fully described by the Trial Examiner, unlawfully assisted Respondent Unions in obtaining membership applications and checkoff authorization cards.⁴ By such acts of assistance Respondent Company violated Section 8(a) (1), (2), and (3) of the Act. And because the prehire agreement between Respondents was an agreement between an employer and illegally assisted unions that contract is not validated by Section 8(f) of the Act. Moreover, in the circumstances, by entering into and maintaining such a contract, Respondent Company violated Section 8(a) (1), (2), and (3) of the Act, and Respondent Unions violated Section 8(b) (2) and 8(b) (1) (A).

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:

A. Respondent Company, Bear Creek Construction Co., its officers, agents, successors, or assigns, shall:

1. Cease and desist from:

(a) Recognizing and dealing with United Mine Workers of America, District 50, or its Local Union No. 14693, or any successors thereto, as collective-bargaining representative of any of its employees at its Washington County, Pennsylvania, project for the purpose of dealing with the Company concerning grievances, labor disputes, wages, rates

tion has not been established under the provisions of section 9 of this Act prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later"

⁴In this regard we particularly note that Respondent Company's officials solicited employee signatures to the Respondent Unions' membership application and checkoff authorization cards during the hiring process; that more than half of the 29 employees employed before November 7, 1960, executed the above-described cards as a result of the Company's solicitation; and that an atmosphere of urgency attended the solicitations implying that immediate execution of said cards was a condition of employment. Indeed, all but 2 of the 24 employees who testified in this proceeding signed the membership application and checkoff authorization cards the same day they were requested to do so by the company officials. Moreover, we note that there is no showing in the record that the employees solicited by the Company's officials were ever notified that they were not required join the Union for at least 7 days following their employment, or that the contract with the Respondent Union required only that they join the Union 16 days after their employment.

of pay, hours of employment, or other conditions of employment, unless and until Respondent Unions shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among said employees of the Respondent Company.

(b) Performing or giving effect to its agreement of November 7, 1960, with Respondent Unions relating to its Washington County, Pennsylvania, project, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding with respect to its Washington County, Pennsylvania, project, entered into with Respondent Unions relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until United Mine Workers of America, District 50, and its Local Union No. 14693, shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among the said employees of Respondent Company, provided, however, that nothing herein shall be construed to require the Company to vary any substantive provisions of such agreement or to prejudice the assertion by the employees of any rights which they may have thereunder.

(c) Soliciting checkoff authorizations for, or membership in, the Respondent Unions by threats or otherwise, interrogating employees concerning their union membership or activities, or in any like or related manner interfering with, restraining, or coercing employees at its Washington County, Pennsylvania, project, in the exercise of their rights to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection, or to refrain from any or all such activities, 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 in Section 8(f) of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from United Mine Workers of America, District 50, and its Local Union No. 14693, as a representative of its employees at its Washington County, Pennsylvania, project for the purpose of dealing with the Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or any other condition of employment, unless and until said Respondent Unions shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among Respondent Company's employees.

(b) Jointly and severally with the said Respondent Unions reimburse the above-described employees for any initiation fees, dues, or

other moneys paid or checked off as a condition of employment pursuant to the agreement of November 7, 1960, or any extension, renewal, modification, or supplements thereof, or any agreement superseding it.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records and reports necessary to analyze the amount of moneys due under the terms of this Order.

(d) Post in and around its Washington County, Pennsylvania, project copies of the notice attached hereto marked "Appendix A."⁵ Copies of said notice, to be furnished by the Regional Director for the Sixth Region, shall, after being duly signed by the Company, be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter in conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(e) Post at the same places, and under the same conditions as set forth in (d) above, and as soon as they are forwarded by the Regional Director, copies of the Respondent Unions' notice herein marked "Appendix B."⁶

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

B. The Respondent Unions, United Mine Workers of America, District 50, and its Local Union No. 14693, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Performing or giving effect to its agreement of November 7, 1960, with the Respondent Company relating to its Washington County, Pennsylvania, project, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding entered into with Respondent Company relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until United Mine Workers of America, District 50, and its Local Union No. 14693 shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among the employees of said Respondent Company at its Washington County, Pennsylvania, project, provided, however, that nothing herein shall be construed to require the Company to vary any substantive provisions of such agreement or to prejudice the assertion by employees of any rights which they may have thereunder.

⁵ 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."

⁶ See footnote 5.

(b) Acting as exclusive bargaining representative for any of the above-described employees of Respondent Bear Creek Construction Co., for the purpose of dealing with said Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until said Respondent Unions shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among the above-described employees.

(c) In any like or related manner causing or attempting to cause the Company to discriminate against any such employee in violation of Section 8(a)(3) of the Act.

(d) In any like or related manner restraining or coercing said employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Jointly and severally with Respondent Company reimburse the Company's employees on its Washington County, Pennsylvania, project for any initiation fees, dues, or other moneys paid or checked off as a condition of employment pursuant to the agreement of November 7, 1960, or any extension, renewal, modification, or supplements thereof, or any agreement superseding it.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records necessary to analyze the amounts of moneys due under the terms of this Order.

(c) Post at its offices and meeting halls in the vicinity of Washington, Pennsylvania, the notice attached hereto marked "Appendix B."⁷ Copies of said notice, to be furnished by the Regional Director for the Sixth Region, shall, after being duly signed by the Unions' representatives, be posted by them immediately upon receipt thereof and be maintained by them for 60 consecutive days thereafter in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Mail to said Regional Director signed copies of Appendix B for posting by the Company in and about its Washington County, Pennsylvania, project as provided above herein. Copies of the said notice, to be furnished by the Regional Director, shall, after being signed by the Respondent Unions' representative, be forthwith returned to the Regional Director for disposition by him.

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

⁷ See footnote 5.

APPENDIX A

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 Labor-Management Relations Act, we hereby notify our employees that:

WE WILL withdraw and withhold recognition from United Mine Workers of America, District 50, and its Local Union No. 14693 as the representative of any of our employees on our Washington County, Pennsylvania, project for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until the above-named organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among our employees.

WE WILL NOT perform or give effect to our November 7, 1960, agreement relating to our Washington County, Pennsylvania, project with said Respondent Unions, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding with respect to our Washington County, Pennsylvania, project, entered into with Respondent Unions relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until United Mine Workers of America, District 50, and its Local Union No. 14693 shall have demonstrated their exclusive majority representative status pursuant to a Board-conducted election among our employees, provided, however, that nothing herein shall be construed to require us to vary any substantive provisions of such agreement or to prejudice the assertion by our employees of any rights which they may have thereunder.

WE WILL NOT solicit checkoff authorizations for, or membership in, said Respondent Unions by threats or otherwise, or in any like or related manner, interfere with, restrain, or coerce our employees on our Washington County, Pennsylvania, project in the exercise of their rights to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, 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(f) of the Act.

WE WILL jointly and severally with the above-named labor organizations reimburse our employees at our Washington County, Pennsylvania, project for initiation fees, dues, or other moneys paid or checked off as a condition of employment pursuant to the agreement of November 7, 1960, or any extension, renewal, modification, or supplements thereof, or any agreement superseding it.

BEAR CREEK CONSTRUCTION Co.,
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.

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

APPENDIX B

NOTICE TO ALL MEMBERS OF UNITED MINE WORKERS OF AMERICA, DISTRICT 50, AND ITS LOCAL UNION No. 14693, AND TO THE EMPLOYEES OF BEAR CREEK CONSTRUCTION Co. (WASHINGTON COUNTY, PENNSYLVANIA, PROJECT)

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 you that:

WE WILL NOT perform or give effect to our agreement of November 7, 1960, with Bear Creek Construction Co., relating to its Washington County, Pennsylvania, project, or to any modification, extension, supplement, or renewal thereof, or to any other contract, agreement, or understanding entered into with said Company relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until we shall have demonstrated our majority status pursuant to a Board-conducted election among employees of the above Company at the Washington County, Pennsylvania, project, provided, however, that nothing herein shall be construed to require the Company to vary any substantive provisions of such agreement or to prejudice the assertion by employees of any rights which they may have thereunder.

WE WILL NOT act, or attempt to act, as the exclusive bargaining representatives of any of the employees of Bear Creek Construction Co. on its Washington County, Pennsylvania, project for the

purpose of dealing with Bear Creek Construction Co. concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment unless and until we have demonstrated our exclusive majority representative status pursuant to a Board-conducted election among employees of Bear Creek Construction Co. on its Washington County, Pennsylvania, project.

WE WILL NOT in any like or related manner restrain or coerce employees of Bear Creek Construction Co. on its Washington County, Pennsylvania, project in the exercise of their rights guaranteed in Section 7 of the Act.

WE WILL jointly and severally with the above-named Company reimburse those company employees on the Washington County, Pennsylvania, project for initiation fees, dues, or other moneys paid or checked off as a condition of employment pursuant to the agreement of November 7, 1960, or any extension, renewal, modification, or supplement thereof, or any agreement superseding it.

UNITED MINE WORKERS OF AMERICA, DISTRICT
50, AND ITS LOCAL UNION No. 14693,
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, 2107 Clark Building, 701-17 Liberty Avenue, Pittsburgh 22, Pennsylvania (Telephone, Grant 1-2977) if they have any question concerning this notice or compliance with its provisions.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by United Brotherhood of Carpenters and Joiners of America, Local 2274, AFL-CIO, complaints were duly issued herein against Bear Creek Construction Co. and United Mine Workers of America, District 50, and its Local Union No. 14693, charging violations of Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and (2), respectively, of the National Labor Relations Act, as amended, herein called the Act. These proceedings with all parties represented were heard before me, Albert P. Wheatley, the duly designated Trial Examiner, in Washington, Pennsylvania, on September 11 and 12, 1961. After the close of the hearing, the General Counsel and the Respondents filed briefs¹ which I have considered in preparation of this report.

Upon the entire record and observation of the witnesses, I hereby make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS INVOLVED

Bear Creek Construction Co., herein called Respondent Company, is a Pennsylvania corporation engaged in the building and construction industry, primarily in

¹ The briefs were received in due course on October 9, 1961.

the construction of highway projects, with its principal office in Salunga, Pennsylvania. During the period of time material herein, Respondent Company purchased goods and materials from outside the Commonwealth of Pennsylvania for use within said Commonwealth of a value in excess of \$50,000. On the basis of the foregoing findings of fact, I find and conclude that Respondent Company is engaged in commerce or in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

United Mine Workers of America, District 50, and its Local Union No. 14693 (herein collectively called Respondent Unions) and United Brotherhood of Carpenters and Joiners of America, Local 2274, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

Facts and Conclusions

In September 1960, Respondent Company was awarded a subcontract by Nello L. Teer Company, prime contractor, calling for the construction of bridges in connection with Teer's highway construction project near Washington, Pennsylvania. In the latter part of September or earlier part of October 1960, James Krumenacker, field representative for District 50, contacted management of Respondent Company and requested recognition and a contract covering persons employed in the building and construction industry. Respondent Company recognized Respondent Unions and agreed to enter into a written contract. A contract was executed on November 7, 1960. One of the questions herein is whether Respondent Unions were, on November 7, unions assisted by unfair labor practices.

The first payroll in connection with actual performance of construction work was on or about October 17, 1960, shortly after Respondents had agreed that a collective-bargaining contract would be executed.

On November 7, 1960, the date the formal contract was executed Respondent Company employed 29 nonsupervisory, nonclerical employees of the type defined in the bargaining unit set forth in the agreement between Respondents.

During one of his early visits to the project (in October 1960), District 50 Field Representative Krumenacker left a pad of District 50 membership and dues and initiation fees checkoff authorization cards with Respondent Company's officials.² Thereafter, until early April 1961, Respondent Company's officials solicited signa-

² The cards read as follows

MEMBERSHIP APPLICATION AND CHECK-OFF
 AUTHORIZATION DISTRICT 50, UNITED
 MINE WORKERS OF AMERICA

I hereby request and accept membership in District 50, United Mine Workers of America, and authorize it to represent me in my behalf to negotiate and execute any and all agreements pertaining to wages, hours and conditions of work. This power to act in my behalf expressly revokes and shall supersede all previous authorizations which I may have given to any other person or organization for the purpose of representing me as an employee. The Constitution, Laws, Rules, Policies, Regulations and Edicts of the above Union and all amendments thereto shall be binding upon me. In consideration for services rendered and to be rendered by the above Union, I agree to pay all reasonable amounts of money lawfully required as a condition to obtain and maintain membership in good standing.

My employer, therefore, is hereby authorized to deduct from my wages and turn over to the officer or representative, as designated in the applicable agreement, all such amounts of money above outlined and limited to the amounts provided in the applicable agreement between the above Union and my employer, and this authorization and assignment shall be irrevocable for the term of the applicable contract between the Union and the Company or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is the lesser, until I give written notice to the Company and the Union at least 60 days and not more than ___ days before any periodic renewal date of this authorization and assignment of my desire to revoke the same.

Signature_____ Clock No_____

Address _____

Employed by _____

Social Security No_____ Date_____

tures' to these cards during the hiring process.³ More than half of the 29 employees executed District 50 cards on or before November 7, as a result of solicitation by 1 or more of Respondent Company's representatives during the hiring process.

There is little doubt that by virtue of the aforementioned solicitation Respondent Company engaged in conduct proscribed by Section 8(a)(1) and (2) of the Act. It seems to follow, and I find, that, therefore, Respondent Unions, at the time the agreement was executed were not free from assistance through unfair labor practices. Respondents argue that Section 8(f) of the Act permits prehire agreements and does not require a labor organization to establish majority status to enter into such an agreement and that, therefore, assistance under Section 8(f) of the Act refers to assistance by an employer in the administration of the labor organization or domination of same (neither exists here) and not to assistance in obtaining majority status. While such an argument has considerable appeal it must be rejected in the light of the language of Section 8(f) referring to such assistance as is proscribed by Section 8(a) of the Act.⁴ Lack of majority does not invalidate a contract otherwise valid under Section 8(f) but assistance in obtaining majority status, except as authorized in Section 8(f), is proscribed by the requirement in Section 8(f) that the labor organization not be "established, maintained or assisted by any action defined in Section 8(a) of this Act as an unfair labor practice."

Some of those whose membership in District 50 was obtained by Respondent Company during the hiring process were also interrogated as to their then current union membership or affiliation. In other instances employees were informed that membership in District 50 was a condition of employment at this project.⁵ Furthermore, from the totality of the evidence it is apparent, and I find, that the circumstances under which signatures to District 50 cards were sought were such that an atmosphere of urgency existed implying that *immediate* execution of a District 50 card was one of the conditions of employment. It is settled that such conduct under such circumstances constitutes violations of Section 8(a)(1), (2), and (3) of the Act.

The collective-bargaining agreement executed on November 7, 1960, includes, *inter alia*, union-security provisions requiring membership in Respondent Unions as a condition of employment on the 16th day from the date of the contract execution or from the date of hire, whichever is longer, and provisions concerning checkoff of initiation fees and dues. Subsequent to the contract's execution on November 7, the provisions noted immediately above have been made effective. Here again the pivotal question is whether Respondent Unions are assisted or maintained unions by virtue of the aforementioned conduct. If they are, the execution and maintenance of this contract are unlawful. Otherwise, they are not. For reasons already noted, I answer this question in the affirmative and find that by executing and enforcing the contract Respondent Company violated Section 8(a)(1), (2), and (3) of the Act and Respondent Unions Section 8(b)(1)(A) and (2) of the Act.

IV. THE REMEDY

Having found that Respondents have engaged in unfair labor practices in violation of the Act, I recommend that Respondents, to effectuate the policies of the Act, cease and desist therefrom and take the affirmative action hereinafter specified.

³ Such solicitation involved giving District 50 cards routinely to each of the employees concerned at about the time of employment along with the W-2 Federal Tax Form, a statement that the project is a District 50 job and an explanation of dues and initiation fee deductions.

⁴ Section 8(f) reads:

It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later

⁵ The evidence concerning this matter is conflicting. I find the facts to be as noted above.

Since the evidence reveals that employees were coerced into signing District 50 cards—the cards were signed under circumstances indicating union membership and initiation and dues payments were required as a condition of employment—the remedy of reimbursement of all moneys paid by the employees to the Respondent Unions appears applicable and is recommended herein.

CONCLUSIONS OF LAW

In summary I find:

1. The evidence adduced in this proceeding satisfies the Board's requirements for the assertion of jurisdiction herein.
2. United Mine Workers of America, District 50, and its Local Union No. 14693 and United Brotherhood of Carpenters and Joiners of America, Local 2274, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.
3. The evidence adduced establishes that Respondent Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act.
4. The evidence adduced establishes that Respondent Unions have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.
5. 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.]

Oates Bros., Inc. and Truck Drivers Union No. 677, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind. *Case No. 2-CA-7808. February 27, 1962*

DECISION AND ORDER

On August 3, 1961, Trial Examiner Eugene E. Dixon 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 to the Intermediate Report and a supporting brief. The Respondent thereupon filed a reply brief.

The Board¹ has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the briefs, and the entire record in this proceeding, and hereby adopts the findings,² conclusions, and recommendations of the Trial Examiner with the following additions:

¹ Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Rodgers and Leedom]

² In the absence of exceptions, Member Rodgers adopts the Trial Examiner's jurisdictional findings, and also the findings that the strike which commenced on or about October 28, 1959, became an unfair labor practice strike on September 23, 1960. Moreover, Member Rodgers would not go beyond the Trial Examiner's findings in this case and would not therefore find that the Respondent misrepresented to the Union its financial status and the status of its business operations, or that the Respondent unlawfully insisted that the appointment of a shop steward be subject to Respondent's approval. He would therefore limit the Order herein accordingly.