

created, and have been for many years considered as being outside the unit. Under all these circumstances, to regard them as accretions, as the Petitioner contends, is not warranted. Accordingly, we shall deny the motions.

[The Board denied the motions for clarification of certifications.]

Rubin Dworkin t/a Dworkin Electroplaters and United Retail and Wholesale Employees Union, Local 115, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case No. 4-CA-2385. March 27, 1962

DECISION AND ORDER

On January 2, 1962, Trial Examiner Albert P. Wheatley issued his Intermediate Report herein, finding that the Respondent engaged in unfair labor practices and recommending that it cease and desist therefrom and take affirmative action, as set forth in the Intermediate Report attached hereto. The Trial Examiner also found that Respondent did not engage in certain other unfair labor practices and recommended that the allegations of the complaint in respect thereto be dismissed. Thereafter, both the General Counsel and the Respondent filed exceptions to the Intermediate Report, together with supporting briefs.¹

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 Trial Examiner's rulings and finds no prejudicial error. The rulings are affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and adopts the findings, conclusions, and recommendations of the Trial Examiner with the additions and modifications set forth below.²

We agree with the Trial Examiner that the Respondent violated Section 8(a)(1) of the Act by its unlawful interrogation of employees. We further find, however, on the basis of testimony credited by the Trial Examiner which is fully detailed in the Intermediate

¹ The Respondent's request for oral argument is denied, since the record and the briefs adequately present the issues and positions of the parties

² Contrary to the Trial Examiner, we believe that Chase should be included in the bargaining unit of Respondent's production and maintenance employees. He spends part of his time making deliveries and pickups. The remainder of his time, and the record indicates that it is a considerable amount of time, is spent in the plant performing miscellaneous jobs as needed. His work brings him in contact with other employees in the unit and he shares the same supervision with them. We find his interests are such as to warrant his inclusion in the unit.

Report, that Respondent also violated Section 8(a) (1) by threatening employees with loss of employment because of the Union, by promising a wage increase to a prounion employee if he abstained from voting in a Board-conducted representation election, and by telling strikers that they would not be reinstated unless they gave up the Union.

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 Respondent Rubin Dworkin, doing business as Dworkin Electroplaters, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith concerning wages, hours, or other terms and conditions of employment with United Retail and Wholesale Employees Union, Local 115, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, as the exclusive representative of the production and maintenance employees employed at his Philadelphia, Pennsylvania, place of business, excluding supervisors as defined in the Act.

(b) Discouraging membership in the Union, or in any other labor organization of his employees, by refusing to reinstate any employees engaged in concerted activities as unfair labor practice strikers or because of their union membership or activity, or by discriminating in any other manner with respect to their hire or tenure or any term or condition of employment.

(c) Unlawfully interrogating employees concerning their union membership or activities in a manner constituting interference, restraint, or coercion within the meaning of the Act.

(d) Threatening employees with loss of employment because of the Union.

(e) Promising economic benefits to employees if they abstain from voting in Board-conducted representation elections.

(f) Telling strikers that they would not be reinstated unless they give up union representation.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form labor organizations, to join the above-named labor organization or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from engaging in 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 authorized in Section 8(a)(3) of the Act.

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

(a) Upon request, bargain collectively with the above-named Union as exclusive representative of all employees in the appropriate unit described above, and embody in a signed agreement any understanding reached.

(b) Make whole the employees who were on strike as of June 7, 1961, for any loss of pay they may have suffered by reason of Respondent's discrimination against them by paying to each employee a sum of money equal to the amount which each normally would have earned as wages during the period from June 7, 1961, to the date of Respondent's offer to reinstate the employees, less his net earnings during that period.

(c) Make whole Jose Candelaira and Getulio Salas Pagan for any loss of pay which they may have suffered by reason of Respondent's discrimination against them on June 22, 1961, by payment to each of a sum of money equal to the amount which each normally would have earned as wages during the period from June 22, 1961, to the date Respondent offered reinstatement to said employees, less net earnings during that period.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due in accordance with the terms of this Order.

(e) Post in conspicuous places at Respondent's place of business in Philadelphia, Pennsylvania, copies of the notice attached hereto marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof and maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

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

³In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, you are hereby notified that Dworkin Electroplaters:

WILL NOT unlawfully interrogate employees concerning their union membership or activities, in a manner constituting interference, restraint, or coercion within the meaning of the Act.

WILL NOT threaten employees with loss of employment because of the Union.

WILL NOT promise economic benefits to employees if they abstain from voting in Board-conducted representation proceedings.

WILL NOT threaten strikers that they will not be reinstated unless they give up union representation.

WILL NOT discourage membership in United Retail and Wholesale Employees Union, Local 115, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, or any other labor organization, by discriminating against employees with respect to their hire or tenure of employment or any term or condition of employment.

WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Retail and Wholesale Employees Union, Local 115, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, or any other labor organization, to bargain collectively through representatives of their own free choice, or to engage in any other concerted activity 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 rights may be affected by an agreement requiring membership in a labor organization as authorized in Section 8(a)(3) of the Act.

WILL bargain collectively, upon request, with United Retail and Wholesale Employees Union, Local 115, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, as exclusive representative of the employees in the bargaining unit described below with respect to rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a written and signed agreement.

WILL make whole the employees who were on strikes as of June 7, 1961, for any loss of pay they may have suffered by reason of the discrimination against them by paying to each employee a

sum of money equal to the amount which each normally would have earned as wages during the period from June 7, 1961, to date of the offer to reinstate said employee less his net earnings during that period.

WILL make whole Jose Candelaira and Getulio Salas Pagan for any loss of pay which they may have suffered by reason of the discrimination against them on June 22, 1961, by payment to each of a sum of money equal to the amount which each normally would have earned as wages during the period from June 22, 1961, to the date they were reinstated, less net earnings during that period.

The bargaining unit is: All production and maintenance employees employed at the plant located at Philadelphia, Pennsylvania, but excluding all supervisors as defined in the Act.

RUBIN DWORKIN T/A DWORKIN ELECTROPLATERS,
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, 1700 Bankers Securities Building, Walnut & Juniper Streets, Philadelphia, Pennsylvania, Telephone Number Pennypacker 5-2612, if they have any question concerning this notice or compliance with its provisions.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before me, Albert P. Wheatley, the duly designated Trial Examiner, in Philadelphia, Pennsylvania, on October 2, 3, 4, 5, 9, 10, 11, 12, and 13, 1961.¹ The issues litigated were whether Rubin Dworkin trading as Dworkin Electroplaters, herein called Respondent, violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, herein called the Act. After the close of the hearing, the General Counsel and Respondent filed briefs² which I have considered in the preparation of this report.

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESSES INVOLVED

Rubin Dworkin, an individual proprietor doing business as Dworkin Electroplaters, maintains his place of business in Philadelphia, Pennsylvania, where he engages in the business of providing the service of electroplating for manufacturers of various metal products and related materials. Gross annual sales approximate \$80,000 of which in excess of \$50,000 represents sales to manufacturing enterprises located in Pennsylvania. Each of these manufacturing enterprises annually purchases and transports to its manufacturing location within Pennsylvania from points and places outside of Pennsylvania goods and materials valued in excess of \$50,000 or produces and ships goods valued in excess of \$50,000 to points and places outside of Pennsylvania.

¹ The hearing was formally closed by telegram dated October 17, 1961.

² The briefs were received in due course on December 4, 1961.

Upon the basis of the foregoing facts, I find and conclude that Respondent is engaged in commerce or a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.³

II. LABOR ORGANIZATION INVOLVED

United Retail and Wholesale Employees Union, Local 115, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. FACTS

During May 1961, the Union undertook to organize the employees of Respondent and by May 15, more than a majority of Respondent's production and maintenance employees (six of Respondent's nine employees) had signed cards designating the Union as their representative for collective-bargaining purposes. By letter dated May 15, 1961, the Union advised Respondent that a majority of his production and maintenance employees had designated the Union as their collective-bargaining representative and requested recognition and "the immediate start of bargaining." On the same date the letter was mailed by the Union to Respondent, the Union also mailed a petition for certification to the National Labor Relations Board's Fourth Region. (See Case No. 4-RC-4609.)

Upon receipt of the Union's bargaining demand letter, Dworkin interrogated his employees concerning this letter. There is conflicting evidence as to whether Dworkin went beyond mere interrogation concerning the employees' knowledge of the letter. Dworkin testified his inquiry was limited to inquiries about the letter and denied making statements attributed to him by various employees. Respondent's employees testified the inquiries were not so limited. Thus Ramon Rodriguez testified Dworkin interrogated him about the Union and whether he was in accord with the Union. According to Rodriguez, he told Dworkin he (Rodriguez) "didn't know anything about it" and then Dworkin said, "Well, what do you think of the Union? Would you like a Union?" Rodriguez testified he (Rodriguez) then indicated he was in favor of a union and he and Dworkin then discussed the possible effects of union organization of Respondent's plant. According to Rodriguez, during this discussion Dworkin told him that if the Union were successful in obtaining more money, he (Dworkin) might have to lay some people off. Dworkin denied that this conversation took place. Marcos Santiago testified Dworkin asked him if he had signed the union card and that upon his (Santiago's) affirmative reply, Dworkin told him the Union was good in that through the Union he "could earn more money" but that a bad feature about the Union was that if he (Dworkin) did not have any work employees would be sent home instead of to other sections of Respondent's operations. Also, according to Santiago, Dworkin told him (Santiago) that "it didn't mean anything if [he] had already signed the card that when the time came to vote on it [he] wouldn't have to vote and nobody would have to know [he] didn't vote," and then Dworkin offered him (Santiago) a wage increase if he (Santiago) abstained from voting. Dworkin denied making the statements attributed to him by Santiago. Angelo Rios testified that Dworkin asked him whether he knew anything about the union business and when he (Rios) answered in the negative, Dworkin asked, "Do you know who brought the Union in?" Rios testified that he (Rios) answered he did not know and Dworkin then went over to Harry Linden and remarked to him, "They went and got the Union." Rios testified that later that day Dworkin told him (Rios) that "if the Union is here" you will have to pay \$5 a month and that he (Rios) could get the same thing the Union would get without paying such sum. Dworkin denied making the statements or engaging in the conduct attributed to him by Rios. Upon the basis of the observations of witnesses and analysis of the record and probabilities in the light of those observations and the analysis, I credit the testimony of the employees noted above and find that Dworkin made the statements and engaged in the conduct attributed to him.

On May 16 (the same date that Respondent received the Union's letter) Respondent laid off Jose Candelaira and Getulio Salas Pagan. There is conflicting evidence concerning these layoffs and what was said at the time of the layoffs.

According to Candelaira, at the close of business on May 16, Dworkin told a group of employees (Candelaira, Getulio Salas Pagan, Angelo Rios, Marcos Santiago, and Ramon Rodriguez) "he didn't want no union here, he would rather

³ See *Siemens Mailing Service*, 122 NLRB 81; *Operating Engineers Local Union No. 3, AFL-CIO (California Association of Employers)*, 123 NLRB 922; and *R. E. Smith et al., d/b/a Southern Dolomite*, 129 NLRB 1342

lay us off, you know, or close the place before the Union came in the shop. So then he lay me off, me and Getulio, told me the work was closed." Getulio Salas Pagan testified that Dworkin attributed the layoff to union activities. However, the other employees did not corroborate this version of the matter and from their testimony, the testimony of Dworkin, and the entire record herein, it appears, and I find, that work was slack and that that was the reason assigned by Dworkin for the layoff of Candelaira and Getulio Salas Pagan, the two employees with the least seniority. They were told to come in late the following morning in the hope that work would be available, but it was not. Candelaira and Pagan reported their version of this matter to Union Organizer Jose Diaz and shortly thereafter began picketing at Respondent's place of business. In the meantime they went to the union place of business and reported what had happened to the Union Secretary-Treasurer and Business Agent John Paul Morris. As noted hereinafter, Morris telephoned Dworkin.

According to Union Organizer Jose Diaz and union member Walter Malloy, shortly after the picket line was established Dworkin called them into his office and asked what was happening. Their version of what was said is not consistent except that both attributed antiunion comments to Dworkin. Dworkin denied that such a conversation took place. Although I have considerable doubt about the matter in view of the record as a whole, I credit Dworkin's denial.

As noted above, on May 17, Union Business Agent Morris telephoned Dworkin. The evidence is conflicting as to what was said during this conversation and the one the next day. According to Morris, these conversations concerned in the main Dworkin's interrogations and the layoffs previously noted and Dworkin admitted engaging in this conduct and that the layoffs were because of union activity and stated he intended to take a different attitude toward his employees in view of their union activities. According to Dworkin, Morris asked if he had received the Union's letter and what he was going to do. Dworkin testified he told Morris he had referred the letter to his attorney. According to Dworkin, Morris in the course of his conversation accused him of violating the law in discharging Candelaira and Pagan because of union activity and he told Morris he had not discharged anybody but laid them off temporarily due to lack of work. Dworkin denied telling Morris that the layoffs were because of union activity and denied making other antiunion statements attributed to him by Morris. In the light of the entire record and observations of witnesses, I believe Dworkin's version of these conversations more reliable than Morris' even though Morris' version is corroborated in substantial part by his secretary who testified she listened to the conversations via an extension telephone.

As noted above, Candelaira and Pagan commenced picketing on May 17. It is not clear what legend appeared on the picket signs but apparently they read "Local 115 on strike against Dworkin Electroplaters and "Local 115 on strike for recognition and against unfair labor practices." After lunch that day Amalio Nazerio and Ramon Rodriguez joined the picket line. Because of lack of work they had punched out at noon with instructions from Dworkin to report the following morning. The four named employees continued picketing on May 18 and 19 with the exception that on Friday, May 19, Nazerio and Pagan returned to work for a few hours. When work became available Dworkin offered it on a seniority basis to the strikers. After working a few hours Nazerio and Pagan again joined the picket line when work again became slack.

On Monday, May 22, Dworkin received a telephone call from Union Business Agent Morris who asked him (Dworkin) if he had as yet heard from his attorney. Dworkin replied that he had not and Morris then asked what Dworkin was going to do and Dworkin replied, "Nothing." Morris then said, "Well, in that case we are going to close you up and pull all of your men out of the shop." That afternoon Marcos Santiago and Angelo Rios joined the pickets, making a total of six of Respondent's nine employees on strike. At this time Nazerio, Rios, and Santiago were told by Dworkin if they were not going to work, he would have to replace them. There is disputed testimony as to whether that afternoon Dworkin announced to the strikers, "O.K., all of you stay there, all of you [are] fired." Union Organizer Diaz so testified. Dworkin denied making such a statement. I credit Dworkin's denial.

Employee Candelaira testified that 5 or 6 days after May 17, Dworkin said he was not going to reinstate the strikers unless they gave up the Union. Dworkin denied making the statement attributed to him and denied that he ever conditioned employment on lack of union membership. In the light of the credited testimony and the entire record herein, I reject Dworkin's denial.

The three most senior pickets (Nazerio, Rios, and Santiago) were replaced on May 24, 25, and 26.

By letter dated June 5 (received by Respondent on June 7, 1961) Candelaira, Santiago, Nazerio, Rodriguez, Pagan, and Rios unconditionally requested reinstatement. Respondent did not honor this request.

Rodriguez testified that after picketing for about 4 weeks (after the letter requesting reinstatement) he told Dworkin he needed work and Dworkin said no because he belonged to the Union. Rodriguez further testified that on several other occasions he (Rodriguez) with other strikers asked for reinstatement and that on each occasion Dworkin refused to reinstate them because they were in the Union. Dworkin denied making the statements attributed to him by Rodriguez.

Santiago testified that after signing the request for reinstatement he called upon Dworkin and asked for work and Dworkin refused to reinstate him because of the Union and he (Dworkin) did not want any problem with the Union. Santiago testified that on another occasion he (Santiago), Angelo Rios, and Amalio Nazerio sought reinstatement and Dworkin told them they could have their jobs if they severed their connections with the Union. Rios corroborated Santiago. Dworkin's testimony on this issue is not clear. He denied making the statements attributed to him but admits making some statement to the employees that as long as they were tied up with the Union, he was, by law, not permitted to talk to them, only to the union representatives. In any event, I credit the testimony of the employees (Rodriguez, Rios, and Santiago) noted above.

Candelaira and Pagan were reinstated on June 14, 1961. The other four pickets were reinstated between June 16 and 20, 1961, after assuring Dworkin they were willing to give up the Union.

At the time Rios was offered reinstatement Dworkin told him he "did well forgetting about the Union because if you had won, I would have moved to California." Dworkin added, he could have closed the shop and worked for a relative out there. Dworkin also informed Rios that if the Union were to win, he (Rios) would probably be made steward and he (Dworkin) would not like that. The foregoing findings of fact are based upon the testimony of Rios. Dworkin denied making the statements attributed to him by Rios.

With regard to the Union's pending bargaining request, it was not until June 9, 1961, at a conference called by the Fourth Region of the Board in connection with the pending representation petition, that Respondent (Dworkin and his attorney) met with union representatives for the first time. There is conflicting testimony as to what occurred at this meeting, but no useful purpose is apparent for detailing the various versions of what occurred. It is clear from the entire record, however, that the parties did discuss whether two of Respondent's nine employees should be excluded from the unit and eligibility of strikers and replacements to vote in any election which might be held. Accord on the first issue was not reached but was on the second. There is a dispute as to whether Respondent raised an issue concerning the Union's majority status. In the light of the entire record herein, I find that such an issue was raised. There is also a dispute as to what was said about Respondent's conduct noted above but a resolution of this issue does not appear necessary or desirable herein.⁴ The conference concluded without agreement and with a hearing in prospect. At the conclusion of the conference arrangements were made for a meeting between Respondent's attorney and the union attorney to study the Union's contract proposals. Such a meeting was held on June 13, 1961.

At the meeting on June 13, the two attorneys discussed in detail the Union's contract proposals and at the conclusion of the meeting, it was agreed that Respondent's attorney would present the Union's proposal to Dworkin for his approval or rejection. There is disputed testimony as to whether at this meeting Respondent's attorney disputed the Union's majority claim but nevertheless agreed to talk about contract terms subject to the Union's establishing its majority status. In the light of the entire record herein, it appears likely such a position was taken by Respondent's attorney and I so find.

The parties next met on June 19 for a hearing then scheduled for that date in the representation case. Prior to this date the Union had not been informed of Dworkin's position concerning the Union's contract proposals. Immediately prior to the scheduled hearing, some comments were made concerning the union contract proposals but there is sharp conflict as to what was said. Nevertheless, it is clear that regardless of precise language used, Respondent did not accept the Union's contract

⁴ Nevertheless, the testimony concerning this matter has been considered in making the credibility resolutions made in this report

proposals and as a result thereof, the Union at the scheduled hearing withdrew the representation petition and announced an intention to file charges alleging unfair labor practices. The instant charge was filed on June 28.

On June 22, 1961, Candelaira and Getulio Salas Pagan were again laid off. New employees, Hayman and Ratley, were retained. At their layoff Dworkin informed Candelaira and Pagan that he believed they had brought the Union in and that the new employees were being retained instead of them because they had helped out during the strike.⁵ Candelaira was requested by Respondent to return to work on August 15 or 17 and returned to work on August 21. Pagan was recalled on August 7.

IV. UNIT

The parties herein agree that all production and maintenance employees of Respondent employed at Respondent's Philadelphia, Pennsylvania, place of business, exclusive of all supervisors as defined in Section 2(11) of the Act constitute a unit appropriate for the purposes of collective bargaining. However, there is a dispute as to whether two employees (Chase and Linden) are to be included in or excluded from the unit. Since an issue has been raised which may be an obstacle to future bargaining, their unit placement is determined herein, although the Union's majority as of the date of the request to bargain is unaffected by their inclusion or exclusion.⁶

Chase is primarily a truckdriver who makes daily deliveries and pickups. When not engaged at truckdriving he is a utility man doing whatever jobs that need to be done.

Linden commenced employment with Respondent in August 1946 and has more seniority than any other employee. He employs special technical knowledge with respect to processing work. Respondent refers to Linden as a plater and to the other employees as shop helpers. The shop helpers are not skilled or semiskilled workers. When Respondent is out of the plant, which occurs daily, Linden is in charge of Respondent's plant. Linden receives a much higher wage rate than any other employee (60 cents higher). Other employees generally refer to Linden as the foreman and he instructs and corrects other employees.

It is believed that Chase's and Linden's interests are not identifiable with those of Respondent's other employees and that they should be excluded with the unit.

Conclusions

Respondent's interrogations of employees immediately upon receipt of the Union's bargaining demand went beyond inquiries for the purpose of determining the Union's majority status and were for the purpose of interfering with the employees' union activities and were designed to dissipate the Union's majority status. That such is the case is apparent from the statements made and from Respondent's conduct thereafter.

Respondent's refusal to recognize the Union and insistence that it should first be certified violated the Act since the Union represented a majority of the employees in an appropriate unit at the time it requested bargaining and Respondent did not have a good-faith doubt of its status. In the light of Respondent's conduct undermining the Union I cannot find that Respondent had a good-faith doubt of the Union's majority status.

As noted above, I am of the opinion, and find, that the layoff of Candelaira and Pagan on May 16 was because of lack of available work and not because of their union activities. Nevertheless, the strike, which began the next day, was because of Respondent's antiunion interrogations made earlier and because of Respondent's failure to heed the Union's demand for bargaining. Furthermore, Respondent's continued refusal to bargain and continued attempts to dissipate the Union's majority status prolonged the strike. Under these circumstances the strike was an unfair labor practice strike and the strikers were unfair labor practice strikers entitled to immediate and full reinstatement upon their unconditional applications to return to work. Nevertheless, they were denied reinstatement until after they renounced the Union.

It is apparent from the credited evidence that Candelaira and Pagan were laid off on June 22, 1961, because of their union activities.

⁵Based upon the testimony of Candelaira and Pagan Dworkin denied that he told them the new employees were being retained instead of them because they had been helpful to the factory during the strike

⁶The propriety of making this determination is supported by *Allegheny Pepsi-Cola Bottling Company*, 134 NLRB 388

V. THE REMEDY

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

CONCLUSIONS OF LAW

In summary, I find and conclude:

1. The evidence adduced in this proceeding satisfies the Board's requirements for the assertion of jurisdiction herein.

2. United Retail and Wholesale Employees Union, Local 115, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, is a labor organization within the meaning of the Act.

3. The following employees of Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of the Act.

All production and maintenance employees of Respondent employed at Respondent's Philadelphia, Pennsylvania, place of business exclusive of all supervisors as defined in Section 2(11) of the Act.

4. At all times since May 16, 1961, the Union has been the exclusive representative of all the employees in the aforementioned unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

5. The evidence adduced establishes that Respondent violated Section 8(a)(1) of the Act by interrogating employees and inducing them to bypass the Union.

6. The strike which began on May 17, 1961, was an unfair labor practice strike.

7. The strikers mentioned in the preceding paragraph made unconditional application for reinstatement on June 7 and thereafter which Respondent failed and refused to honor until after the strikers renounced the Union and Respondent thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

8. The evidence adduced establishes that on June 22, 1961, Respondent laid off Jose Candelaira and Getulio Salas Pagan because of their union activities and thereby violated Section 8(a)(1) and (3) of the Act.

9. The evidence adduced establishes that Respondent refused to bargain in good faith and thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

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

[Recommendations omitted from publication.]

Magic Slacks, Inc. and International Ladies' Garment Workers' Union, AFL-CIO. *Case No. 13-CA-4233. March 27, 1962*

DECISION AND ORDER

On November 17, 1961, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other alleged unfair labor practices, and recommended that those allegations of the complaint be dismissed. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report together with supporting briefs.