

It has been found that the Respondent on May 8, 1961, discriminatorily discharged the employees whose names are set forth in Appendix B. I will recommend that the Respondent be required to offer all of them except Carr and Hackleton²² immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and make them whole for any loss of pay suffered as a result of the discrimination against them by payment to them of a sum of money equal to the amount they would have earned from the date of their application for reinstatement²³ to the date of Respondent's offer of reinstatement, less net interim earnings, to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. Actual earnings in any particular quarter shall have no effect upon the backpay liability for any other such period. It will also be recommended that the Respondent preserve and make available to the Board, upon request, payroll and other records to facilitate the computation of the backpay due.

As the unfair labor practices committed by the Respondent are of a character striking at the root of employee rights safeguarded by the Act, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of the Act.
2. By discriminating in regard to the hire and tenure of the employees listed in Appendix B, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

²² As to Carr and Hackleton, see footnote 23.

²³ As the claimants were on strike when discharged, they are entitled to backpay only from the date that they validly applied for reinstatement. I find that such date for all the claimants, except Carr and Hackleton, was May 26, 1961, when the Respondent received a letter from counsel for the Union unconditionally requesting reinstatement of all the claimants, except Carr and Hackleton. As for Hackleton, there was no evidence that he has as yet applied for reinstatement. Accordingly, he must be deemed to be still on strike, and his right to reinstatement and backpay will run from the date that he makes such application. As for Carr, as already noted, he testified that if he had not been discharged on May 8, he would have quit, in any event, on May 12. It follows that even if he should hereafter apply for reinstatement, he would not be entitled thereto or to any backpay, by reason of his discriminatory discharge.

Pottsville Community Hotel Co., Inc. and Bartenders, Hotel and Restaurant Employees Union, Local 391, AFL-CIO. Case No. 4-CA-2394. March 21, 1962

DECISION AND ORDER

On November 30, 1961, Trial Examiner James V. Constantine issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and is engaging in the unfair labor practices alleged in the complaint and recommending that he cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and

a supporting brief. The General Counsel filed exceptions to part of the Intermediate Report and a supporting argument.

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

The Board has reviewed the rulings 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 briefs, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

ORDER

Upon the entire record in this case and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Pottsville Community Hotel Co., Inc., Pottsville, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees concerning their union membership or activities in a manner constituting interference, restraint, or coercion within the meaning of Section 8(a)(1) of the Act.

(b) Using coercive statements to induce employees to refrain from joining, or to vote against Bartenders, Hotel and Restaurant Employees Union, Local 391, AFL-CIO, or any other labor organization.

(c) Threatening employees with loss of employment if they join, maintain membership in, or vote for, the aforementioned or any other labor organization.

(d) Promising employees benefits to refuse to join, or withdraw membership from, or to support or assist, the aforementioned or any other labor organization.

(e) Engaging in surveillance of its employees' union or concerted activities.

(f) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to join or assist the aforementioned or any other 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 engaging in such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organiza-

¹ The Trial Examiner found that Ronald Warfel, the son of Respondent's manager, had engaged in unlawful surveillance. The General Counsel excepted to the Trial Examiner's failure to find that the conduct of Mr. and Mrs. Warfel and Steve Prokop also constituted surveillance. As the remedy would be the same in any event, we find it unnecessary to pass upon this point.

tion as a condition of employment, as authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Post at its place of business in Pottsville, Pennsylvania, copies of the notice attached hereto marked "Appendix."² Copies of such notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by the Respondent's representative, be posted by Respondent 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

² In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL 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, we hereby notify you that:

WE WILL NOT interrogate employees concerning their union membership, activities, or desires in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

WE WILL NOT use coercive statements to induce employees to refrain from joining, or to vote against, Bartenders, Hotel and Restaurant Employees Union, Local 391, AFL-CIO, or any other labor organization.

WE WILL NOT warn or threaten our employees with loss of employment if they join, maintain membership in, or vote for, the aforementioned or any other labor organization.

WE WILL NOT promise our employees benefits to refuse to join, or withdraw membership from, or to support or assist, the aforementioned or any other labor organization.

WE WILL NOT engage in surveillance of our employees' union or concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in

Section 7 of the Act, to engage in self-organization, to form labor organizations, to join or assist the aforementioned or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for purposes 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(a) (3) of the Act, as amended.

All our employees are free to become, remain, or refrain from becoming or remaining members of the aforementioned or any other labor organization.

POTTSVILLE COMMUNITY HOTEL Co., Inc.,
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 and Juniper Streets, Philadelphia 7, 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

Upon a charge and an amended charge filed by Bartenders, Hotel and Restaurant Employees Union, Local 391, AFL-CIO, herein called Local 391, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued his complaint, dated September 1, 1961, against Pottsville Community Hotel Co., Inc., herein called the Respondent. With respect to the unfair labor practices, the complaint, as amended at the hearing, alleges, in substance, that Respondent engaged in conduct violative of Section 8(a)(1) of the National Labor Relations Act, herein called the Act. In its answer, as amended at the hearing, Respondent admits certain facts but denies all of the alleged unfair labor practices.

Pursuant to due notice, a hearing was held before me at Pottsville, Pennsylvania, on October 16 and 17, 1961. All parties were represented at and participated in the hearing, and were given full opportunity to be heard, to examine and cross-examine witnesses, to present oral argument, and to file briefs. At the close of the hearing, all parties waived oral argument. Briefs have been received from the General Counsel and the Respondent.

At the hearing, and before any evidence was received, Respondent moved to dismiss the complaint on several grounds. I denied this motion. However, on one ground, I expressed my concern upon the effect of the withdrawal of part of the charge. It involves the question of whether an operative charge existed to support independent, as distinguished from derivative, 8(a)(1) violations added by amendment after the original charge, which contained only an 8(a)(3) and a derivative 8(a)(1) violation, had been "withdrawn" as to the 8(a)(3) aspect. See *New York Shipping Association, etc.*, 112 NLRB 1047. While the issue is close, I am not convinced that *New York Shipping Association* is controlling. Accordingly, I adhere to the ruling made at the hearing. At the hearing I allowed a motion, over objection, to amend the complaint, to include an allegation of surveillance.

Upon the entire record in the case, including admissions in the answers and the stipulations of the parties, and from my observations of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a Delaware corporation, is engaged in the business of operating the Necho-Allen Hotel at Pottsville, Pennsylvania. During the year preceding September 1, 1961, Respondent received in excess of \$500,000, in gross revenue from such operation, and received goods valued at approximately \$38,000 from points located outside of Pennsylvania. A majority of the guests or customers were transients who stayed at said hotel for periods of less than 30 days.

I find that Respondent is engaged in commerce within the meaning of the Act. I further find that it would effectuate the policies of the Act to assert jurisdiction over Respondent in this proceeding. *Continental Hotel*, 133 NLRB 1694.

II. THE LABOR ORGANIZATION INVOLVED

Bartenders, Hotel and Restaurant Employees Union, Local 391, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges violations of Section 8(a)(1) of the Act in that Respondent (a) threatened employees with reprisals if they belonged to or adhered to Local 391; (b) interrogated employees concerning their union membership, activities, and desires; (c) promised employees economic and other benefits if they refrained from becoming or remaining members of Local 391; and (d) engaged in surveillance of meetings and activities of Local 391 or other concerted activities of its employees, and that by the foregoing conduct Respondent engaged in and is engaging in unfair labor practices within the meaning of Section (8)(a)(1) and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Much of the testimony adduced by the General Counsel was disputed. In general, I have credited the General Counsel's witnesses. In many instances I have expressly stated that I resolved conflicts in the testimony. In all other instances findings of fact are based on my crediting testimony supporting such findings, although I have not recited the contrary testimony which I did not credit. On some issues I have credited some of the Respondent's witnesses in part.

A. Respondent's activities in connection with the organizational campaign of Local 391

Late in 1960, or early in 1961, Local 391 began to organize Respondent's employees. On January 18, Harold Warfel, Respondent's manager, called Francis Cerullo, a banquet waiter at the Necho-Allen Hotel, into his office. Warfel observed that "union organizing was going on and somebody was passing these cards around." Thereupon Warfel held up a card and asked Cerullo if he was "passing these cards around." Cerullo denied this because he could not read the card from where he was.¹ Warfel admits asking Cerullo whether the latter circulated cards among the employees, but he testified that he also told Cerullo not to organize on company time.² Later that same day Cerullo was again called to the office by Warfel. Warfel then accused Cerullo of lying about not passing out union cards and Warfel claimed he had half a dozen women to swear that he did. Warfel also said that if Cerullo was dissatisfied he should have complained to the former and it would have been "straightened out." Warfel also discharged Cerullo as of the next day, allegedly because he lied about not distributing the cards.

About a week later Cerullo was rehired by Respondent on the advice of counsel. On that day, Warfel called Cerullo to his office. Warfel said he had a position for

¹ However, in his testimony, Cerullo admitted he solicited union membership.

² There is evidence that Respondent had a rule against union activity on company time. I find that such rule was not called to the attention of the employees until shortly before the election mentioned hereafter. I also find that, if such rule existed, it was not enforced, because the Hotel Workers Association was permitted to hold its meetings during working time on the premises of the Necho-Allen Hotel. There is evidence in the record that the Association, an independent union, at all times material had a contractual relationship with the Respondent.

Cerullo in Texas as assistant manager and asked Cerullo if he wanted it. Later in the day Cerullo rejected this offer.

On January 29, 1961, Local 391 held a meeting at the Moose Hall in Pottsville. It was scheduled to start at 2:30 p.m., but started later. Just before the meeting started, Mr. and Mrs. Harold Warfel were seen by employees driving down the street past the Moose Hall. Ten or fifteen minutes later they were again seen driving in the same direction past the Moose Hall. During this period, Steve Prokop, a supervisor employed by Respondent, was also observed by employees driving past the Moose Hall. I do not credit the Warfels' denial that they had not driven past the union meeting place. Prokop did not testify. On this same day Ronnie Warfel, a son of Mr. and Mrs. Harold Warfel, while accompanied by an unidentified companion, used binoculars while standing by his car on the next street to observe who entered the Moose Hall from about 2:30 to 3:15 p.m. He also had a notebook in his hand and recorded something in it as people entered the Moose Hall. Ronnie was not an employee of Respondent.

The next day Warfel heard rumors that Ronnie had spied on the meeting at the Moose Hall, but the father did nothing about it until the following weekend when the son came home from college. Without asking Ronnie whether he did so spy or whether he was near the Moose Hall on the previous Sunday, Warfel merely told Ronnie "You will never talk union activity or go near any union hall." No statement was made or conveyed to the employees that Ronnie's alleged conduct, was being repudiated or that Ronnie's actions were not to be construed as authorized or inspired by Respondent or its management. Although the conduct of Mr. and Mrs. Warfel and of Prokop in driving by the Moose Hall is suspicious, nevertheless I do not find it to constitute surveillance.

Although Respondent's witnesses testified that they saw a man with spyglasses at the location, they also stated that they were unable to discern who it was. In view of the fact that the General Counsel's witnesses were positive in their identification of Ronnie, and the additional fact that Ronnie did not testify, I find that the person who used the binoculars was Ronnie Warfel. It is therefore unnecessary to resolve conflicts in the testimony as to the make or color of Ronnie's car. The arguments that the General Counsel's witnesses inadequately described Ronnie's physical features do not detract from this finding. It was sufficient that Ronnie's physical make-up was given in a general way; if it was inaccurate, both his father and mother, who testified, could have questioned it, but they did not.

In January 1961, shortly after the Local 391 meeting of January 29, Warfel talked to cook Francis Morgan. Reminding Morgan that there were a few who could not afford to go on strike, and that Morgan had responsibilities, Warfel accused Morgan of having "taken part in this" as much as the others. When Morgan admitted this, Warfel admonished that he was not sleeping on it and would not forget those who were taking part "in this." Morgan understood "this" to mean employees who favored Local 391.³ On other occasions, in response to Warfel's question as to whether he attended meetings of Local 391, Morgan replied that he did. Warfel testified that he did not recall asking this question. I find that he did.

Both Warfel and Supervisor Prokop spoke to employee Anne Kehoe about her union sympathies. On January 28, 1961, Prokop asked Kehoe if she was going to attend the meeting of Local 391 on the next day. On the Saturday following January 29, 1961, Prokop, in discussing unions with her and after ascertaining that Kehoe firmly believed in them, remarked that "after this is all over you will be looking for a new job." And in March of 1961, Warfel accused her of "preaching union." After a heated discussion, during which she denied such preaching, Warfel told Kehoe that she had better start looking for another job.

On or about January 27, Prokop asked Irene Gienza, a waitress in the Necho-Allen Coffee Shop, whether she had signed a union card for Local 391. When she replied in the affirmative, Prokop said that unions were no good and that Gienza would be "very, very sorry."

About a week before January 29, Warfel asked busboy Francis Spottes if the latter was for AFL-CIO. Upon receiving a negative reply, Warfel added that it "would be good" for Spottes if he was not for that union and also that he might be laid off as the one having least seniority. After January 29, Warfel often asked him if he attended meetings of Local 391; if he knew what was going on at such meetings; if he would "spy" at those meetings by giving the names to Warfel of those attending. Mrs. Warfel and their son, Ronald, were present sometimes when these requests were made. On one occasion Warfel asked Spottes if he was "with us" and, upon

³ Although Warfel denies making this statement, I credit Morgan's version of this incident.

receiving a favorable answer, added, "I can count on you when it comes to vote . . . [Local 391] is no good." I do not credit the denials of Mr. and Mrs. Warfel against Spottes' positive and credible testimony.

An attempt was made by the General Counsel to show that, in order to influence employees against Local 391, (1) Mrs. Warfel bought drinks for some of the employees and (2) beginning in January or February 1961, the maids, who theretofore ate their lunches "off" the kitchen, were not only permitted to eat upstairs but also were served better lunches. As to (1), I find that Mrs. Warfel did not buy any drinks for employees, and, as to (2), I find that the evidence is insufficient to establish that the change in the quality of and location designated for, eating the lunches was activated by illegal motives. Accordingly, I find no violations of the Act with respect to the incidents mentioned in this paragraph.

B. Activities in connection with the election

On July 26, 1961, the Board held an election pursuant to Section 9(c) of the Act, on the petition of Local 391 in Case No. 4-RC-4516. Hotel Workers Association, an independent union, intervened therein.⁴ On the Sunday before the election Warfel, during the course of an argument with Francis Cerullo, a banquet waiter employed by Respondent, told Cerullo that the latter was getting too smart there and that after Wednesday Cerullo would not be employed and that you will not have "your boy Mr. Stern [an official of Local 391] to protect you."⁵

On July 22 Warfel talked to busboy Francis Spottes. Reminding Spottes that he was the youngest employee in point of service, Warfel told him that he would be laid off if he was "unfair" toward Respondent. Warfel also remarked that Spottes was hired to replace the busboy who was fired "for being union." On the day of the election, Warfel stated that he could "count on" Spottes to "vote for us" and that if he voted "for us" Warfel would treat him "nice."⁶ At one of these conversations, Spottes complained that he had to work at another outside job to make a living, to which Warfel replied "half a loaf is better than none."

Shortly before the election Warfel helped prepare and personally signed a letter to each employee, urging them to vote against Local 391. It is decidedly hostile to Local 391. While I find that it is protected by Section 8(c) of the Act, nevertheless I have relied on it in finding that Respondent favored the present inside union (Hotel Workers Association), opposed Local 391, and had an anti-Local 391 animus.

On the day of the election in July 1961 Warfel and Mr. Sullivan, Respondent's labor relations adviser, had breakfast at a table serviced by Evelyn Strouse, a banquet waitress at the Necho-Allen Hotel. Warfel said to her that if she would stay with him and vote for the company union they had a nice position for her later on.⁷ Later that day Mrs. Warfel asked her if she was sticking by Respondent and would vote for the "company" union because, she added, they had wonderful plans for her and were going to take care of her in September with a much better job. Notwithstanding Mrs. Warfel's denial, I credit Strouse's testimony in this respect.

About a week or so before the election Warfel told Sofia Silas, a waitress in the coffee shop of the Necho-Allen, that he hoped that she was not on the bandwagon. This was denied by Warfel, but I credit Silas in this respect. Sometime thereafter he told Silas that he heard she was "strong union minded."⁸ After some discussion he added that Silas had a husband in the hospital and that she would have no job if she did not "stick with" Warfel. He also threatened to close the kitchen and maybe the coffee shop after 9 p.m. if things got worse. Warfel testified that he mentioned the possibility of closing after 9 p.m. because it had been discussed with the directors of Respondent as a result of decreased business after that hour.

⁴ I take official notice of the facts narrated in these two sentences

⁵ On one occasion Warfel informed an employee that no bickering would be tolerated after the election which was scheduled for the following Wednesday. Warfel added that a "lot of things had been overlooked during the campaign," but that they would be stopped after the election.

⁶ On a couple of occasions, Prokop asked Spottes to vote for the Independent rather than the AFL-CIO, and said he would treat Spottes "nice" if the latter was "fair to them."

⁷ I do not credit Sullivan's and Warfel's denial that this statement was made

⁸ Warfel admits this statement but explained that it was necessary to make it because a customer complained to Warfel that Strouse was talking union too much. Warfel added that he warned Strouse, that, if the latter was union, she should keep her opinions to herself. I do not credit Warfel's explanation or his remark that Strouse should keep her opinions to herself.

While this may be true, it is patent that, considered in the setting of a coming election, it contained a threat of reprisal if the Union won the election. Accordingly, I find that Warfel threatened to close the coffee shop after 9 p.m. to influence employees against voting for, adhering to, or desiring to affiliate with Local 391.

On the afternoon of the election, Mrs. Warfel came to Raymond Hammond, a short-order night cook, and asked him if he had voted. Upon his replying in the negative, she added "remember you have a family to keep." Although Mrs. Warfel denied even seeing Hammond that afternoon, I credit Hammond's testimony, and do not credit Respondent's witnesses on this branch of Hammond's testimony. Raymond Hammond was visited in the kitchen by Warfel a few times prior to the election. In their talks Warfel asked Hammond if the latter was for the Union. When Hammond answered that he was, Warfel remarked that half a loaf of bread would be better than none.

On the Friday following the election Warfel warned Cerullo not to be bothering the employees by telling them to join Local 391 and that he should mind his own business if he intended to stay on as an employee. Warfel then confronted Cerullo with Jack Benyacka, a bellhop, who stated that Cerullo asked him to join Local 391. During the course of the conversation Warfel told another employee, William Brimsky, to hit Cerullo or Stern with a baseball bat if they came to his house again.

C. Concluding findings

On the basis of the entire record and the foregoing subsidiary findings, I find that Respondent:

- (1) Interrogated employees concerning their union membership, activities, and desires.
 - (2) Used coercive statements to induce employees to refrain from joining, or to withdraw membership from, or to vote against, Local 391.
 - (3) Warned or threatened employees with loss of employment if they joined, maintained membership in, or voted for, Local 391.
 - (4) Promised employees benefits to refuse to join, or withdraw membership from, or not to support or assist, Local 391.
 - (5) Engaged in surveillance of its employees' union or concerted activities.⁹
- I further find that such conduct violates Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

It having been found that Respondent engaged in certain unfair labor practices prohibited by Section 8(a)(1) of the Act, it will be recommended that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

As the broad scope of the Respondent's unlawful activities discloses a purpose to thwart or hinder the self-organization of its employees, reasonable apprehension of the commission of other unfair labor practices in the future may be anticipated from such past conduct. Hence the purposes of the Act will be impeded unless the remedy herein is adequate to assure free self-organization. Accordingly an Order designed to protect Respondent's employees from an infringement in any manner upon their rights guaranteed in Section 7 of the Act is warranted.

⁹ Although the activities of Ronnie Warfel were not shown to have been expressly authorized or directed by Respondent, I find that, under the circumstances, Respondent has ratified, or adopted, or approved his conduct. In my opinion, an obligation was imposed on Respondent expressly to repudiate Ronnie's spying, in order to avoid the imputation that he was acting on its behalf. This obligation arose because (1) both Ronnie's father and mother were employed in responsible supervisory capacities by Respondent; (2) he was often seen in the hotel; (3) rumors of his actions reached his father in a manner reasonably calculated to convey to the father that employees knew of Ronnie's spying; and (4) the absence of an explanation for Ronnie's spying. Cf. *C. B. Rollins, Sr., d/b/a Nashville Display Co.*, 93 NLRB 1310, 1314-1315.

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

CONCLUSIONS OF LAW

1. Local 391 is a labor organization within the meaning of Section 2(5) of the Act.

2. By engaging in the conduct set forth in the section entitled "Concluding findings," the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

[Recommendations omitted from publication.]

Eklund Brothers Transport, Inc. and General Drivers and Helpers Local Union 74, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.
Case No. 18-CA-1305. March 21, 1962

DECISION AND ORDER

On December 13, 1961, Trial Examiner George L. Powell 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 Respondent filed exceptions to the Intermediate Report together 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 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 on the Trial Examiner.¹

¹ We agree with the Trial Examiner's rejection of the Respondent's defense that it was not required to bargain with the Teamsters Union pursuant to the May 5, 1961, election because of alleged "newly discovered evidence" as to the latter's preelection conduct, which was made the basis of a charge on August 14, 1961. We find it unnecessary, however, to pass upon or adopt the Trial Examiner's suggestion that the Respondent may properly have engaged in an "investigation" of the Teamsters' alleged conduct. A representation proceeding is not adversary in nature and is designed to assure the employees of a resolution of a question concerning representation as speedily as possible consistent with due process. To this end the Board has established a cutoff date for preelection conduct to which any party may object. Similarly, the Board has established a 5-day period after the election within which objections to conduct affecting the election may be filed. Conduct occurring before the cutoff date or to which no objections have been filed within the time provided therefor will not be considered by the Board to invalidate an otherwise valid election, absent unusual circumstances not here present.