

continue production to the fullest possible extent to protect and continue its business.

A. In order to retain the employees who have remained at work or returned to work, and obtain replacements, the Company must adopt a seniority policy that will protect the job security of the employees who have remained at work or return to work, and of the replacements for jobs unfilled as of 8:00 a.m., Thursday, July 13, 1961, if such replacements desire to become permanent employees. Effective 8:00 a.m., Thursday, July 13, 1961, any man who return to work after 7:00 a.m., Thursday, July 13, 1961, will in event lay-off becomes necessary be laid off ahead of men who remained at work or returned to work before such time, and replacements desiring to become permanent employees who are hired before the man returns to work.

B. Men whose jobs are filled by successful bidders or by replacements or whose jobs have been abolished for economic reasons will be no longer considered as employees, as provided by Federal Law, unless reinstated upon return to work in any vacant job that remains unfilled at the time reinstatement is sought.

Very truly yours,

(S) FRANK MAROLD,
Vice President and Assistant-General Manager.

West Side Carpet Cleaning Co. and Frank J. Weber. Case No.
8-CA-2407. April 30, 1962

DECISION AND ORDER

On December 29, 1961, Trial Examiner Henry S. Sahn issued his Intermediate Report herein, finding that the Respondent had engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act 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 and a supporting brief.

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 [Chairman McCulloch and Members Rodgers and Leedom].

The Board has considered the Intermediate Report, the exceptions, the brief, and the entire record.¹ The Board affirms the Trial Examiner's rulings and adopts his findings, conclusions, and recommended Order.²

¹ The Respondent's request for oral argument is hereby denied as the record and the Respondent's brief adequately present the issues and positions of the parties.

² We are satisfied that the contention of the Respondent that the Trial Examiner was either biased or in error is without merit. See *Aerosonic Instrument Corp.*, 116 NLRB 1502, aff'd. 249 F. 2d 959 (C.A. 6). Moreover, we do not overrule a Trial Examiner's resolutions as to credibility except where a clear preponderance of all the relevant evidence convinces us that the Trial Examiner's resolution was incorrect. No such conclusion is warranted in this case. See *Standard Dry Wall Products, Inc.*, 91 NLRB 554.

The following paragraph is added to the notice attached to the Intermediate Report marked "Appendix A": Employees may communicate directly with the Board's Regional Office, 1501 Euclid Avenue, Cleveland 15, Ohio, Telephone Number Main 1-4465, if they have any question concerning this notice or compliance with its provisions.

ORDER

The Board adopts the Recommended Order of the Trial Examiner.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Issue

Whether the Respondent Company by engaging in alleged coercive tactics thereby violated Section 8(a)(1) and whether its discharge of one of its employees was motivated by his union activities in violation of Section 8(a)(3) of the Act or whether the discharged employee was terminated for valid economic reasons?¹

The charge in this case was filed on March 21, 1961, the complaint issued April 26, and the case heard on June 15 and 16 before Henry S. Sahn, the duly designated Trial Examiner. The Respondent filed its answer on May 5, 1961, denying the commission of any unfair labor practices. A brief was received from the Respondent on August 7, 1961, which has been fully considered.

Upon the entire record, there are hereby made the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, West Side Carpet Cleaning Co., an Ohio corporation, located in Cleveland, Ohio, admits it is engaged in the business of providing and performing carpet cleaning, carpet laying, and related services for both residential and commercial customers.

The General Counsel alleges that the volume of business done by the Respondent meets the Board's jurisdictional standards whereas the Respondent denies it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the dollar amount of its business activities during the year June 15, 1960, to June 15, 1961, is insufficient to meet the standards established by the Board for its assertion of jurisdiction.

In an unreported decision, dated January 18, 1961 (Case No. 8-RC-3970), the Board in asserting jurisdiction over the same Respondent stated:

The Employer is engaged in residential and commercial carpet cleaning. In addition, it sells carpeting to both residential and commercial customers. The Petitioner seeks to represent a production and maintenance unit at the Employer's Cleveland, Ohio, plant. During the year, September 1, 1959, through August 31, 1960, the Employer's gross annual receipts were approximately \$345,000 of which about \$27,000 represented commercial carpet cleaning and laying. For this same period, its combined direct and indirect inflow amounted to \$50,557.32. As such commercial business is nonretail in nature and is more than *de minimis* we shall apply the Board's nonretail standard. The *T. H. Rogers Lumber Company*, 117 NLRB 1732, 1733. As the record establishes that the Employer has a combined direct and indirect inflow of over \$50,000, we shall assert jurisdiction. *Siemons Mailing Service*, 122 NLRB 81.²

Moreover, since Respondent has over \$50,000 in indirect inflow for the calendar year 1960, as shown by the attachment appended to this report and marked "Appen-

¹ The pertinent provisions of the National Labor Relations Act, 61 Stat. 136, as amended, read as follows:

Sec. 7 Employees shall have the right to self-organization, to form, join, or assist labor organizations, 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,

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

² On February 1, 1961, Respondent filed a motion for reconsideration which was denied on February 7, 1961.

dix B," it is found, contrary to Respondent's contention, that the Board's jurisdictional standards are satisfied. Accordingly, it is found that the Respondent is engaged in commerce within the meaning of the Act and that it will effectuate the purposes and policies of the Act to assert jurisdiction herein.³

The Respondent contends also, that the General Counsel has failed to establish jurisdiction because his witnesses' testimony with respect to the amount of business their respective companies transacted with Respondent was "hearsay, nonprobative" evidence "against which testimony there was no opportunity for proper cross-examination for the simple reason that in almost every case the witness was not competent to answer questions concerning the records produced." This contention is answered by the following cases: *Crook Company*, 115 NLRB 23, 24; *Awning Research Institute*, 116 NLRB 505; and *Stemar Company*, 116 NLRB 578, 579, where testimony which was received under circumstances similar to the case at bar was held to be probative and competent to establish jurisdiction. In *Montana Power Company v. Federal Power Commission*, 185 F. 2d 491, 498, cert. denied 340 U.S. 947, the Court of Appeals for the District of Columbia held that the hearsay rule is not applicable to administrative proceedings so long as the evidence upon which an order is ultimately based is both "substantial and has probative value." "It is only convincing, not lawyers' evidence which is required."⁴

Furthermore, counsel for the Respondent presumably had evidence available from the Respondent's records to show that any of the General Counsel's witnesses' testimony with respect to the amount and kind of business their respective companies transacted with Respondent were incorrect. This assumption is confirmed by the fact that Respondent did prove that the figures testified to by Lester H. Fowler, manager of the Cleveland Branch of the United States Rubber Company, were incorrect in that they applied to a "West Side Carpet Company," and not the Respondent, "West Side Carpet Cleaning Company." Since evidence, obviously available to Respondent and within its knowledge, based on its own records, was not produced to contradict the testimony of the General Counsel's witnesses as to the amount of business their respective companies transacted with Respondent, an inference is justified, and it is so found, that if the evidence had been produced, it would have confirmed the jurisdictional amounts testified to by the General Counsel's witnesses.⁵

In *Dallas County v. Commercial Union Assurance Co.*, 286 F. 2d 388 (C.A. 5), the issue concerned the admissibility into evidence of an old edition of a local newspaper, which was the sole record of a disputed occurrence as of that time—a fire alleged to have occurred to a building in 1901, which an insurance company claimed to have been the true cause of charred timber in a building instead of a 1957 lightning storm, as contended by the claimant.

In justifying its admissibility, the court applied the Wigmore test for making an exception to the rule (vol 5, sec. 1367): the necessity of receiving the evidence and the circumstantial guaranty of its trustworthiness. In holding the newspaper item met both tests, the court did not suggest that the newspaper item fell within any conventional exception to the hearsay rule, either as a "business record" or an "ancient document" or "as any other readily identifiable and happily tagged species of hearsay exception," saying:

It is admissible because it is necessary and trustworthy, relevant and material and its admission is within the trial judge's exercise of discretion in holding the hearing within reasonable bounds.

In *Granite Hosiery Mills, Inc.*, 124 NLRB 1426, 1429-1430, footnote 2, where the Trial Examiner admitted the pretrial statement of an old man, who was too ill to undergo oral interrogation, the Board did not reach the question of its propriety to sign a union authorization card. he testified, "I thought that I had been very fair but it upheld the Trial Examiner's dismissal of the complaint with that evidence admitted.

³ *Bussey-Williams Tire Co., Inc.*, 122 NLRB 1146; *Plant City Welding and Tank Company*, 123 NLRB 1146-1153

⁴ *International Association of Machinists, Tool and Die Makers Lodge No 85 (Serrick Corp.) v. NLRB*, 110 F. 2d 29, 35, aff'd 311 U.S. 72 See *Ohio Associated Telephone Company v. NLRB*, 192 F. 2d 664, 666-667 (C.A. 6); and *Plant City Welding and Tank Company*, 123 NLRB 1146

⁵ *Interstate Circuit v. U.S.*, 306 U.S. 208, 225-226; *NLRB v. Sam Wallick and Sam K. Schwalm, d/b/a Wallick and Schwalm Company, et al* 198 F. 2d 477, 483 (C.A. 3); *NLRB v. Ohio Calcium Company*, 133 F. 2d 721, 727 (C.A. 6); *Concord Supplies & Equipment Corp.*, 110 NLRB 1873 1879; 2 Wigmore, *Evidence* (3d ed.), § 285; *Paudler v. Paudler*, 185 F. 2d 901, 903 (C.A. 5), cert. denied 341 U.S. 920

Wigmore on Evidence, section 1230 (3d ed.), states:

That where a fact could be ascertained only by the inspection of a large number of documents made up of various and numerous details, statements as to the net balance resulting from the year's vouchers of a Treasurer, or a year's accounts in a bank ledger, it is obvious that it often would be practically out of the question to apply the present principle by requiring the production of the entire mass of documents and entries to be perused by the jury or read aloud to them. The convenience of trials demands that other evidence be allowed to be offered in the shape of testimony of a competent witness.

It is found, accordingly, that the General Counsel's witnesses' testimony with respect to the amount of business their respective companies transacted with Respondent was competent evidence and therefore admissible.⁶

II. THE LABOR ORGANIZATION INVOLVED

Carpet and Resilient Floor Layers Local 254, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called the Union, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE TESTIMONY

On August 18, 1960, the Union filed a petition with the Board alleging that a substantial number of Respondent's employees desired to be represented for purposes of collective bargaining by the Union. When Respondent's president, Donald A. Volk, was so notified by the Board, he testified he asked individual employees to come to his office and that he attempted to ascertain which of them was interested in the Union, what they knew about the Union, and who had taken the initiative in organizing the employees. When he questioned these employees in his office, Volk testified that he told them he was considering group insurance for them but they would not get it if the Union were selected by the employees to represent them.

In the course of obtaining this information, Volk questioned various employees and he asked one of them, George Coles, who had contacted him to join the Union. Coles replied that Frank J. Weber, the alleged discriminatee in this proceeding, had come to his home and solicited him to sign a union authorization card which he did. When Volk was asked at the hearing what his reaction was to Weber soliciting Coles to sign a union authorization cards, he testified, "I thought that I had been very fair to Mr. Weber all these years. I had given him special privileges that other men hadn't been getting. I felt as though he shouldn't have been participating in something that I was against."

When Volk was asked whether he had discharged Weber for being the ringleader of the Union to scare the rest of the men, he testified: "It is possible," and then he denied it but admitted, "I may have intimidated but never said it." Volk maintained, however, that if he had intimidated this, it occurred after Weber was discharged. In an affidavit which Volk signed and gave to a representative of the General Counsel's office (General Counsel's Exhibit No. 6), he states:

At one time, when I found out about the union, I was going to fire them all but I didn't.

* * * * *

I had made up my mind to fire Weber before the union came up but I may have said I fired him for being the ring leader of the union to scare the rest of the men.

Volk, when asked at the hearing what his reaction was upon hearing of the advent of the Union, answered:

Well, I was upset by it. I have been in the business for sixty-five to seventy years and never had a union. The Company was on the verge of bankruptcy, and our accountant will show proof of that, if the court doesn't believe it. All I could see was increased wages, double time, over time, and more aggravation. I am trying to survive and keep the business alive and then something like this comes along. So it was quite a shock.

In addition to the above-cited reasons, Volk testified that the business was unable to support his brother-in-law and co-owner, Louis R. Craig, so that it was necessary

⁶ *N L R. B. v. W. B. Jones Lumber Company, Inc. and Lumber and Sawmill Workers' Union Local 2288, AFL*, 245 F. 2d 388, 391-392 (C.A. 9).

to raise money to buy out Craig's interest in the business. These pressing reasons, Volk testified, necessitated curtailments in the operating costs of the Company and one of the consequences was the discharge of Weber, who maintained, serviced, and repaired the plant's machinery, because he "couldn't afford him."

As early as 1959, Respondent contends, it was considering ways of dispensing with Weber's services because it was unable to continue to pay him the salary he was receiving. To this end, Respondent contacted various companies in 1959 to ascertain if they could maintain its equipment at less expense than it was costing to employ Weber who performed the equipment maintenance work. In explaining why it took him almost a year until November 2, 1960, to terminate Weber, Volk testified as follows:

Weber was a valuable man, and before I could make up my mind whether to let him go or not, I had to be sure that he could be replaced. The four of these witnesses . . . that testified this morning weren't sure in the Fall of 1959 that they could service my equipment. It took several months for them to assure me that they could service the equipment. However, even after they did assure me that they could service the equipment, I still didn't want to let [Weber] go because he was a valuable man. I was hoping that business conditions would pick [up]. They didn't. Things got no better. Well, we had a bad spring and things got no better at all. Winter was coming on—that was in November [1960]. . . . I was hoping that things would get better but they weren't. At the end of that time, my brother-in-law Lou Craig, half owner in the company . . . I decided to buy him out. I had to have money to buy him out, and all of these things together took all this time for me to decide to let [Weber] go.

One of the companies contacted to ascertain if the plant's equipment could be serviced for less than it was costing to employ Weber, was the American Laundry and Machinery Company which had manufactured and installed some new equipment in Respondent's plant in 1958. J. C. Griffith, a representative of American Laundry and Machinery Company was asked by Volk in the fall of 1959 if his company could service this equipment for less than it was costing Respondent to employ Weber, the alleged discriminatee. Griffith, the representative of the company that manufactured and installed Respondent's equipment in 1958, incredibly testified that even though his company maintained a service branch in Cleveland, that, "Our servicemen were not familiar with the machine. Mr. Weber knew a lot more about the machine than our service men. We could not . . . service it, nor could we give him immediate service. . . . I couldn't promise him that."

Around June 1960, Griffith was asked again by Volk if American Laundry and Machinery Company's Cleveland service office could maintain the equipment they had sold Respondent. Griffith testified that he told Volk: "At that time I thought that we could service it, although I could not again promise that immediate service, but that we would get there as soon as possible. But we thought that we could handle the service on the unit as of that date."

Lou Collins, manager of the rug equipment department of American Laundry and Machinery Company, contradicted his colleague, Griffith, when he testified that he advised Volk around December 1959 that his company would be able to service the machine. K. C. Jones, a part-time consultant to American Laundry and Machinery, testified that he told Volk in the latter part of 1959, when Volk telephoned him inquiring if the company could service the machine:

I told him that I really didn't know. That the man to call was Joe Griffith who was the local American representative, but that I thought they would be in a position to do it.

Joseph Conway, president of the Certified Chemical Equipment Company, Cleveland, Ohio, a manufacturer of supplies and equipment for the rug cleaning industry, testified that sometime around January 1960, Volk asked him if he believed he could have Respondent's plant equipment serviced by others, as he was considering discharging Weber because he could not afford to retain him. Conway advised Volk that his company "was in a position to be of help to him in emergencies, with or without Weber," and that the plant which manufactured the equipment "was only five hours from Cleveland."⁷

⁷ Conway's company serviced Respondent's equipment on two occasions since its installation by American Laundry and Machinery Company.

In spite of these assurances given to Volk during 1959 and the early part of 1960 by these various companies that the equipment could be serviced and thus enable Volk to dispense with Weber's services, it was not until November 2, 1960, that Respondent discharged Weber. This would tend to indicate that the economic considerations asserted by Respondent was not the motivating reason for Weber's discharge. Otherwise the Respondent could have dispensed with Weber's services in early 1960 when other and purportedly less expensive means of servicing its equipment were available, and not waited until November 1960 to discharge Weber, at a time when the Union was engaged in organizing Respondent's plant.

Weber, who was hired by Respondent in November 1952 at \$2.50 an hour and was receiving \$3.85 an hour at the time of his discharge, was called to Volk's office on October 31, 1960. At that time Volk told Weber when he discharged him that he hired a part-time man to take his place and that he would give Weber 2 weeks' severance pay and a letter of recommendation.

William Miles, who is presently employed by Respondent, testified that at a meeting in Volk's office around October 15, 1960, Volk told Weber, in the presence of coworkers Weber and Fargo "that if we did get the Union that he would have to let Mr. Weber go because he couldn't afford to pay him that money." Michael Fargo, in testifying with respect to this incident, stated that Volk said to Weber: "You know, Mr. Weber, if the Union gets in here I won't be able to afford to pay you. I will have to let you go."

Arthur W. Dunkhuse, another employee, testified that on August 17, 1960, Weber asked him to sign a union authorization card which he did. In the early part of September, Volk called him to his office and asked him "where [he] got [his] card and who gave it to [him]?" Dunkhuse refused to disclose this. Dunkhuse had borrowed money from Volk on various occasions and Volk during this same conversation said, according to Dunkhuse, "that if I ever wanted to borrow money to go see the Union." Volk also told him, at this same time, according to Dunkhuse, "if the union didn't go through that he would fire [him]."

Dunkhuse also testified that about 2 weeks before the Board-conducted election of February 15, 1961, Volk called him and James Griffin, a coworker, to his office and told them "I got rid of the ringleader." This is found to be an unmistakable reference to Weber, the alleged discriminatee, who had been discharged on November 2, 1960. See footnote 10, *infra*.

James Griffin, who is presently employed by Respondent, states that about the middle of August, approximately a week after he signed a union authorization card, Volk saw him in the plant and asked him "where I got my card which I signed." Griffin replied that he found it in his truck. Griffin also corroborated Dunkhuse, stating in his testimony that Volk told him "He got rid of Frank [Weber] for starting the Union."

Michael Fargo, who is an employee of Respondent, testified that Volk called him to his office about the middle of November and "he showed me some type of a benefit insurance plan that he was interested in taking out for all the employees . . . He then said, 'You understand, Mike, if I get this I don't want a union in here.' . . . Then he said to me, he said, 'Well, if the Union gets in here Mike, you know I'm going to have to let your son go . . . and also William McRarland, who was another carpet layer there.'" Fargo also testified that Volk told him, "That if the Union got in that he probably would close the place up."

Conclusions

The testimony of Miles, Dunkhuse, Griffin, and Fargo, which prove the allegations in the complaint with respect to the unfair labor practices, are credited. All of these witnesses were still in the employ of Respondent at the time they testified. As such, they depended on their jobs for their livelihood and they understood that after testifying they would continue in the employment of Respondent. Moreover, the trier of these facts is not unmindful of the predicament of an employee who testifies adversely to his employer's interests, being apprehensive and fearful, with some measure of justification, as to the future possibility of retaliatory action. These practical considerations coupled with the normal workings of human nature have led the Trial Examiner to credit Miles', Dunkhuse's, Griffin's, and Fargo's testimony as it is believed they were impelled to tell the truth regardless of what consequences might eventuate.

It is concluded and found, therefore, that the real cause of Weber's discharge was

not economic reasons but his interest in and activities upon behalf of the Union, all of which were known to Respondent.⁸ It stretches credulity too far to believe that this concatenation of Weber's union activities and his discharge shortly thereafter was merely a temporal coincidence. Weber's discharge constituted an interference with, restraint, and coercion of Weber in the exercise of his rights provided for in Section 7 of the Act, and was discrimination in regard to Weber's hire and tenure of employment, thereby discouraging membership in the Union in violation of Section 8(a)(1) and 8(a)(3) of the Act.⁹

Furthermore, it is found that Respondent in violation of Section 8(a)(1) interfered with, restrained, and coerced its employees by the following acts:

(1) Volk interrogating employees Coles, Griffin, and Dunkhuse as to whom had solicited them to sign union authorization cards.

(2) Volk informing employees that he was considering a group insurance plan for them but that he would abandon the idea if the Union were to become their collective-bargaining representative.

(3) Volk telling Griffin that he had discharged Weber "for starting the Union."

(4) Volk telling Dunkhuse that he had discharged Weber because of his role in behalf of the Union.¹⁰

(5) Volk telling employees Miles and Fargo that if they succeeded in having the Union represent them that it would result in Weber's discharge.

(6) Volk's threat to Fargo that if the Union were successful, he would be compelled to discharge Fargo's son, an employee of the Respondent, and that "he probably would close the [plant] up."

Separate findings as to other instances of alleged specific violations of Section 8(a)(1) are not made as some are embraced within those found above and others merely would be accumulative adverse findings which do not add to the obligations of the order which independently must issue. The same kind of restraining order will issue whether predicated on one or more violations of the same type so that no good purpose would be served by considering each incident separately with a view of determining whether it constitutes a violation. Inasmuch as ample evidence of conduct violative of Section 8(a)(1) has already been found, and because further findings of such additional conduct would be cumulative in nature, it is not deemed necessary to consider the legality of these additional incidents.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of the Respondent set forth in section I, above, have a close, intimate, and substantial relationship 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

Having found that the Respondent has engaged in unfair labor practices it shall be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent discriminated in regard to the hire and tenure of employment of Frank J. Weber by discharging him because of his union activities. The record shows that Weber was recalled to work by Respondent on May 8, 1961. If the position Weber now holds is substantially equivalent to his former job, no reinstatement will be recommended. If, however, it is not equivalent to his former job, reinstatement will be recommended to his former or a substantially equivalent position. It is also recommended that Respondent make Weber whole for any loss

⁸ Volk so admitted. In addition, Weber signed a union authorization card and employees Dunkhuse, Coles, Bishop, and Murphy were solicited by Weber to join the Union.

⁹ The testimony introduced by Respondent with respect to Weber's interest in leaving Respondent's employ and moving to Arizona, which he evinced on various occasions prior to his discharge, is immaterial as the Respondent did not purport to take this into consideration in discharging him.

¹⁰ The following question was asked by Respondent's counsel:

Q. Mr. Volk, you also heard it testified that you are reported to have made this statement that you got rid of the ringleader . . . can you offer us any reason why you would have made that statement after Mr. Weber was laid off?

A. Just as a general threat throughout the plant.

of pay he may have suffered because of discrimination against him by payment to him of a sum of money equal to that he would normally have earned as wages during the period from his discriminatory discharge to the date of offer of reinstatement, less his net earnings during said period, the backpay to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

CONCLUSIONS OF LAW

1. Carpet and Resilient Floor Layers Local 254, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. The Respondent, West Side Carpet Cleaning Co., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By discriminating with regard to the hire and tenure of employment of Frank J. Weber, Respondent discouraged membership in the aforementioned Union and committed unfair labor practices within the meaning of Section 8(a)(3) of the Act.

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

RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law, it is recommended that the Respondent, West Side Carpet Cleaning Co., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively or otherwise unlawfully interrogating employees¹¹ concerning their membership in, or activities on behalf of, Carpet and Resilient Floor Layers Local 254, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO, or any other labor organization of its employees, in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1).

(b) Threatening employees for engaging in union activities and/or other concerted activities.

(c) Discouraging membership in Carpet and Resilient Floor Layers Local 254, affiliated with United Brotherhood of Carpenters and Joiners of America, AFL-CIO, or any other labor organization of its employees, by discharging any of its employees or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment.

(d) Seeking to induce employees to relinquish their union membership and activities by promising them economic benefits.

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Offer Frank J. Weber immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, in the manner provided in the section of this report entitled "The Remedy."

(b) Make whole Frank J. Weber for any loss of pay he may have suffered by reason of the discrimination in the manner provided in the section of this report entitled "The Remedy."

(c) Post at its office and places of business, copies of the notice attached hereto marked "Appendix A."¹² Copies of said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by the Respondent

¹¹ *NLRB v. Nashua Manufacturing Corporation of Texas*, 218 F. 2d 886, 887 (C.A. 5), enf. 108 NLRB 837

¹² In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

Company's representative, be posted immediately upon receipt thereof, and be maintained by it for a period of at least 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent Company to insure that said notices are not altered, defaced, or covered by any other material.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other pertinent records necessary to insure expeditious compliance with this Recommended Order.

(e) Notify the Regional Director for the Eighth Region, in writing, within 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps it has taken to comply herewith.¹³

¹³In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Eighth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we notify our employees that:

WE WILL NOT discourage membership in Carpet and Resilient Floor Layers Local 254, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, or any other labor organization of our employees, by discriminating in regard to their hire and tenure of employment or any term or condition of employment.

WE WILL NOT interrogate our employees concerning their union activities on behalf of Carpet and Resilient Floor Layers Local 254, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, or any other labor organization of our employees, or threaten them with reprisals or seek to induce their relinquishment of their union membership or activities in a manner in violation of Section 8(a)(1).

WE WILL NOT in any manner interfere with, a restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or assist Carpet and Resilient Floor Layers Local 254, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, 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 any or all of such activities, except to the extent that such right may be affected by any agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the National Labor Relations Act.

WE WILL offer to Frank J. Weber immediate and full reinstatement to his former or substantially equivalent position, without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered by him as a result of the discrimination in the manner and to the extent recommended in the Intermediate Report.

All of our employees are free to become or remain members or to refrain from becoming or remaining members of the above-named Union, or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8(a)(3) of the Act. We will not discriminate against any employee because of membership in or activity on behalf of any such labor organization.

WEST SIDE CARPET CLEANING 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.

APPENDIX B

SUMMARY OF TESTIMONY AND OF STIPULATION ON COMMERCE

	A. Calendar year 1960	B June 16, 1960-June 15, 1961
I. Testimony on indirect inflow:		
Carpet Fashions, Inc.....	\$348 55	\$1,586 45
Medway Mat Co.....	48 00	16 00
Carson Pine Scott & Co.....	19,939 00	12,839 13
The East Ohio Gas Co.....	5,675 16	3,784 78
Southwest Ford Sales Co.....	13,577.62	3,970.71
City of Cleveland.....	1,498 89	1,156 29
Metal Mouldings, Inc.....	4 66	-----
Consolidated Trimming Corp.....	53 90	88.63
Crowley-Thompson Chemical Co.....	125 00	87 50
The Reese Paper Co.....	1,394 62	327.77
The Globe Paper Co.....	655.21	421.74
Robert Levin Carpet Company.....	99.76	99.76
M A Katovsky, Inc.....	5,166.08	1,883.63
The Standard Oil Company.....	1,993 92	1,514 20
Burham Stoepel & Co.....	2,747 22	5,260 84
Edward W. Daniel Co.....	94 46	149.88
Subtotal on Indirect Inflow.....	53,422 05	33,187.31
II. Stipulation on direct inflow:		
Hightstown Rug Company, Hightstown, New Jersey.....	492.80	117.30
Michael Halebian, Inc., New York, New York.....	97 60	-----
J & C Carpet Company, Inc., Ellijay, Georgia.....	582 93	63 00
Maxwell Furniture & Carpet House, Chicago, Illinois.....	918 00	-----
George H. Maus, Inc , Amsterdam, N.Y.....	120.00	-----
Meinhard & Company, Inc , New York, N.Y.....	-----	735.32
Roger H. Mullen, Inc., New York, N.Y.....	2,962.16	-----
John C. Meyer Thread Co , Lowell, Mass.....	345.10	-----
Morningstar-Paisley, Inc., New York, N.Y.....	510 00	262 50
Puritan Chemical Company, Atlanta, Georgia.....	61.80	52 80
Racine Industrial Plants, Inc , Racine, Wisconsin.....	8,821.48	2,983 10
Roth Rug Cleaners, Incorporated, Pittsburgh, Pa.....	640.00	-----
United Vacuum Appliance Corp , Connersville, Indiana.....	460 00	-----
Alles Corporation, Boston, Mass.....	45 53	-----
American Carpet Mills, Inc., Cartersville, Georgia.....	515 32	516.42
Cormas Photocopy Corporation, New York, New York.....	38 12	-----
Chamblee Mills, Inc., Cartersville, Georgia.....	246 46	-----
Coastal Chemical Corp.....	83.58	-----
Colgate-Palmolive Company, Louisville, Kentucky.....	136 07	-----
The Ruben H. Donnelley Corporation, New York, N.Y.....	12.25	-----
McElroy-Sheehan, Inc , New York, N.Y.....	18 52	-----
Arthur Lee Company, Brooklyn, N.Y.....	18 00	-----
National Reporting Company, Bala-Cynwyd, Pa.....	140 00	-----
New England Business Service, Inc., Townsend, Mass.....	10 30	-----
The National Research Bureau, Inc , Burlington, Iowa.....	4.97	-----
Pitney-Bowes, Inc , Stamford, Conn.....	79.86	-----
Revere Floor Coverings, Inc , Chicago, Illinois.....	-----	288.47
Simplex Time Recorder Co., Gardner, Mass.....	6 82	-----
Shaw-Walker, Muskegon, Mich.....	110 00	-----
The Underwriters Salvage Company, Chicago, Ill.....	150.78	-----
Subtotal on Direct Inflow.....	17,628 45	5,018 91
Grand Total, Direct and Indirect Inflow.....	71,050 50	38,206 22