

6. The Respondent Employer has not violated Section 8(a)(5) of the Act by refusing to bargain in good faith with American Bakery and Confectionery Workers International Union, Local 219, AFL-CIO, as alleged in the complaint.

7. The Respondent Employer has not violated Section 8(a)(3) of the Act as alleged in the amendment to the consolidated complaint.

[Recommended Order omitted from publication.]

**Adamson Company, Inc. and United Steelworkers of America,
AFL-CIO. Case No. 8-CA-2830. March 8, 1963**

DECISION AND ORDER

On November 15, 1962, 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 attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report together with a supporting brief.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 Rodgers, Fanning, and Brown].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the findings,² conclusions, and recommendations³ of the Trial Examiner except as noted herein.

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.⁴

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

² We agree with the Trial Examiner that the Respondent violated Section 8(a)(1) by unlawfully interrogating its employees concerning their union activity, by threatening to close its plant if the Union came in, and by threatening to discharge employees for engaging in union activity. However, we find it unnecessary to pass upon the Trial Examiner's additional finding that Breckenridge's false statement to the assembled employees that he had received orders from Respondent's president to fire Bodey for tearing up trucks also violated Section 8(a)(1) of the Act. Such an additional finding would not affect the scope of our Order herein.

³ Member Rodgers, for the reasons set forth in his dissenting opinion in *Isis Plumbing & Heating Co.*, 138 NLRB 716, would not require the payment of interest on the backpay award provided for herein.

⁴ The appendix attached to the Intermediate Report is hereby modified by adding the following immediately below the signature line at the bottom of the notice:

NOTE.—We will notify the above-named employee, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This proceeding, under Section 10(b) of the National Labor Relations Act (29 U.S.C. Sec. 151 *et seq.*; herein called the Act), began with the filing of a charge on June 13, 1962, by the Charging Party, and, with all parties represented, was held before Trial Examiner George L. Powell in Urbana, Ohio, on September 13 and 14, 1962, on complaint of the General Counsel and answer of the Respondent.¹

The issues in the case are: Whether Respondent independently violated Section 8(a)(1) of the Act by a series of incidents of interrogation of employees concerning their activities on behalf of and their interests in, the Charging Party; whether Respondent threatened certain employees with loss of employment as a result of their union activities; and whether Respondent violated Section 8(a)(3) and (1) of the Act by discharging Clarence Bodey because of his union activities. The Respondent's defense is that it did not violate Section 8(a)(1) of the Act, and that it discharged Clarence Bodey on June 9,² for failure to perform his duties properly.

All parties were represented, and participated in the hearing, and were permitted to develop testimony concerning the issues. At the close of the hearing, the General Counsel gave oral argument in lieu of filing a brief. The Respondent filed its brief on October 8.

For the reasons hereafter stated in detail in the "Findings of Fact," I find the Respondent coercively interrogated employees; threatened to close its plant if the employees became or remained members of the Charging Party; and discharged Clarence Bodey because of his activities on behalf of the Charging Party, all in violation of Section 8(a)(1) and (3), respectively, of the Act.

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, an Ohio corporation, has its principal office and place of business in the city of East Palestine, Ohio, but it has a place of business in Urbana, Ohio, where it makes metal storage tanks. The answer admits that during the past year, it shipped goods valued in excess of \$50,000 from its Urbana, Ohio, plant directly to points outside the State of Ohio and that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. I so find.

II. THE LABOR ORGANIZATION INVOLVED

It is stipulated that the Charging Party, United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act. I so find.

III. THE UNFAIR LABOR PRACTICES

Clarence Bodey, one of Respondent's truckdrivers, talked to some of Respondent's employees in East Palestine in the middle of May. He wanted to know how to get a union in the plant at Urbana. (The Charging Party represented the employees in the plant at East Palestine.) Upon his return to Urbana he spoke to two employees, as a result of which some of Respondent's employees in Urbana held a meeting on June 1. This was held at the home of Thomas Brennan.

The employees at the meeting signed a petition, and elected John Brennan and Ralph Castle to take it to the office of the Charging Party in East Palestine.

Immediately following the meeting, Clarence Bodey, Ralph Castle, and John Brennan went to Jack Wood's house and got him to sign the petition. Other incidents occur after a period of a week to 10 days.

A. *The facts relating to the 8(a)(1) allegation*

1. Interrogation of individual employees

Ralph Castle: Ralph Castle credibly testified that Milton Breckenridge, plant superintendent for Respondent, telephoned him on Sunday, June 10. Breckenridge

¹ An amended charge was filed on August 1, 1962, correcting the name of Respondent. The General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighth Region, issued his complaint and notice of hearing on August 3, 1962, based upon the above charges, alleging that Respondent violated Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

² All dates are in 1962 unless otherwise noted.

told him he had heard of Castle's trip to East Palestine and of his visit to the union headquarters located there in the Moose Lodge. Breckenridge told Castle to "either drop the Union and forget about the Union and come back to work, or forget about coming back to work." Breckenridge also told him he thought it was "kind of dirty" that they "would go behind his back and do something like this without first consulting him about it."

Breckenridge admitted on cross-examination that on Tuesday or Wednesday before Sunday, June 10, he was told by someone in a telephone conversation from East Palestine that some of the men had been in East Palestine to see about the Union. However, he denied the specific threat to Castle to drop the Union. His denial is not credited. As will be seen in later analysis of the testimony, Breckenridge was deeply disturbed by this activity and might very well have told Castle to drop the Union without remembering it. Castle impressed me as a calm, reliable witness. When Castle answered the telephone around the middle of the day on Sunday, June 10, he was immediately asked why he went behind Breckenridge's back. Breckenridge did not deny this latter point. In fact he admits similar statements as will be detailed below.³

John Brennan: Breckenridge also telephoned John Brennan on Sunday, June 10. He was not home, but his wife located him, and he returned the call. He credibly testified that Breckenridge asked how the "Moose" was and went on to tell John Brennan that he knew that he and Ralph Castle had gone to East Palestine to see about a union and "he wanted to know why he went to East Palestine to see about a union." Breckenridge also wanted to know how it was that John Brennan and Ralph Castle, the two youngest men, went and was told that they all were in it together—that he and Ralph Castle had been elected to go. Breckenridge also told John Brennan he knew that John Brennan, Ralph Castle, and Clarence Bodey had gone to the home of Jack Wood to have him sign a petition. And in the words of John Brennan, "and he told me to watch out for my job." Breckenridge admitted asking "did you make any contacts" and substantially corroborated all of John Brennan's testimony except that he specifically denied telling John Brennan to watch out for his job. I credit the testimony of John Brennan.

Julian (Jack) K. Wood: Jack Wood credibly testified to a conversation with Breckenridge at the plant around noon on Sunday, June 10. Breckenridge said, "Jack, did you know they are trying to get a union in here?" to which he replied, "I do." Breckenridge then asked him if he had signed a paper and he replied that he had done so. Breckenridge said, "Now, Jack, if you think it will help any, that is all right, sign it; if you don't, take your name off the paper."

2. Group interrogation

Castle hung up the telephone after his talk with Breckenridge on June 10, and called several of the employees who were interested in the Union. He was able to locate seven employees, who, like himself, wanted to go to Breckenridge's for a meeting. They arrived in front of Breckenridge's home in two cars and all walked into the house together. (It is understood at the outset that Breckenridge did not call this meeting although he did say he would talk to the employees separately or together.) This was in the late afternoon. As soon as they had all gathered in the living room, Breckenridge admitted asking them, "What is your bitch." He admitted they told him they were not satisfied with the way he was handling the overtime. He told them he had made a mistake and that "starting tomorrow, starting Monday, I will see that everybody gets their turn at it." But I am getting ahead of the story. The very first thing that Breckenridge said as soon as the visitors had settled themselves in the living room was, "Where is Bodey?" He was told they could not get in touch with Bodey but someone spoke up and said he had seen Bodey going toward the plant. Breckenridge admitted that he then said, "I will call him." He then telephoned Bodey at the plant, told him they were having a meeting at his home and, according to Breckenridge, asked him if he would come up and "express his viewpoints on these union activities." Bodey replied that he would be up in a few minutes.⁴

Before Bodey arrived at the meeting Breckenridge had asked the employees "what is your bitch," and had asked them, "is Bodey behind this." Breckenridge wanted to

³ The motion of Respondent to segregate the witnesses was granted by the Trial Examiner at the start of the trial. Accordingly, none of the General Counsel's witnesses heard the testimony of previous witnesses nor did they discuss the testimony they had given with future witnesses.

⁴ The seven employees who arrived at the door together were Castle, John Brennan, Dunlavy, Stinson, Maley, Tom Brennan, and Otis Smith. All but the latter testified.

know who was behind the Union and asked them if "Bodey loaded the gun and Ralph and Buck fired the bullets." Ralph and Buck were identified as Ralph Castle and John Brennan respectively. Breckenridge admitted asking them why they ever circulated the petition.

Richard Dunlavy, for the General Counsel, corroborated, in part, the testimony of Breckenridge and his credited testimony is that Breckenridge told them, "You are trying to get the Union in here." He told them it would not be a good idea "for the reason that we may shut down the plant and nobody could work." Breckenridge said, "It was foolish letting Bodey load the gun and Ralph Castle and John Brennan to fire it."

Douglas Stinson, for the General Counsel, credibly testified that Breckenridge told them he had just as much to lose if the shop closed. He told John Brennan and Ralph Castle that "it was kind of stupid of them to let Bodey load the gun and them fire the shot." He understood Breckenridge to say that if the Union was brought in he had orders "from the big men to close the shop."

Albert Maley credibly testified, "He [Breckenridge] asked who loaded the gun and who fired the bullets, and a statement was made that he knew that Bodey loaded the gun and Castle and Brennan fired the bullets. He told us that the plant would close, they would lock the doors if the union was voted in."

Thomas Brennan corroborated the above. He also credibly testified that Breckenridge said it looked like Bodey had lost his job and that John Brennan and Ralph Castle had lost their jobs but that he, Breckenridge, had saved them. His testimony was that Breckenridge told John Brennan and Castle that it was foolish of them to go to East Palestine after a union because he had "lived out there and all of those people out there knew him and liked him and that he was bound to hear about it." He too understood Breckenridge to say that if the Union came in the plant the shop would be closed.

Breckenridge told the following version of what happened on Sunday, June 10. He testified that he had received a telephone call from employee Glen Rutan around 12 noon. Rutan told him "they" were circulating a petition. Breckenridge then went right out to the plant. He saw Jack Wood in the washroom where employee McIntosh asked Jack if he had signed a petition. Jack replied, "Yes." McIntosh is a fellow employee who also does maintenance on trucks. It is incredible that Breckenridge would rush out to the plant immediately following a telephone call and then say that McIntosh asked Jack Wood if he had signed a petition. Accordingly I credit the testimony of Jack Wood that it was Breckenridge and not McIntosh who questioned him. Additionally Breckenridge admitted asking Wood "who circulated it" whereupon Wood told him that he had been circulated by Castle and John Brennan. Breckenridge also admitted telephoning both Castle and John Brennan thereafter. He told Castle that he had "heard you had been to East Palestine, and I would like to know how you like the Moose Hall?" He admitted asking Castle, "Do you think it was right, not talking this over with me before you did such a thing?" He then told Castle that he was going to call John Brennan.

B. *The discharge of Clarence Bodey*

Of the eight witnesses for the General Counsel, only two were presently employees of Respondent. Of the two present employees only Richard Dunlavy was present at the meeting at Breckenridge's home on Sunday, June 10. He testified that as soon as Bodey arrived, Breckenridge told Bodey he had received a call from East Palestine and that Bodey was fired. Breckenridge told the employees that he had received this call from Respondent's president, Gillies, ordering him to let Bodey go because Bodey was tearing up trucks. Breckenridge admitted so telling the employees. Then later in the trial when Breckenridge testified that he had not talked to anyone in East Palestine, he was confronted with the inconsistency. How could he have received word from Mr. Gillies at East Palestine to fire Bodey if he had not talked to anybody at East Palestine about this? He then admitted that he falsely told the employees he had received the word. The record is:

The WITNESS: I did not receive word from him [Gillies].

TRIAL EXAMINER: When you told the employees that you had received word from him, you had not?

The WITNESS: That is right.

According to Dunlavy, when Breckenridge told Bodey that he was discharged, Bodey seemed a little shocked at first and then said, "Well, that's the way the big ball bounces," and sat down in his chair.

None of the witnesses for the General Counsel were impeached. In the main part, those who witnessed the same event corroborated each other. Witnesses for the

Respondent did not deny the testimony of the General Counsel's witnesses except in a few instances noted above where Breckenridge denied making certain statements.

After Breckenridge had told Bodey he was fired, he told him he had made his bed and would have to lie in it. Castle related this. Castle also recalled that 2 days later on June 12 he had a conversation with Breckenridge during which he asked if there was a chance for Bodey to get his job back. Breckenridge told him that in a predicament like this there would be a "scapegoat." When asked what he meant by "scapegoat" Breckenridge "told us in a situation like this that you could fire a man for one thing and fall back on something else." John Brennan likewise referred to a conversation when Breckenridge used the term "scapegoat" but he places the conversation as taking place on Sunday, June 10. Douglas Stinson testified that Breckenridge told Bodey as he came in the door that he had lost his job. This appeared to stun Bodey for a minute and then he replied, "That's the way the big ball bounces." Albert Maley substantially corroborated this testimony. Thomas Brennan testified that Breckenridge told Bodey shortly after he came into the room that he was no longer working for the Respondent and said something about a "scapegoat." Further, Thomas Brennan testified that in a conversation the following day with Breckenridge, he was told by Breckenridge that Bodey was not fired over the Union but was fired for incompetency as a driver. Also on the day following that, June 12, Breckenridge told Thomas Brennan that Bodey was not fired and if he had come in Sunday night or Monday he could have taken out his orders.⁵

Clarence Bodey testified that on Saturday, June 9, he went to the plant in the morning to get his orders for driving a truck on Monday. He saw Breckenridge and was told that he was going to Charleston, West Virginia, and to a town called "Raid." Bodey said he had to find Raid on his maps for Breckenridge. In the afternoon of Sunday, June 10, Bodey, his wife and children drove to the plant to ready his truck to be taken out on Monday, June 11. He saw Jack Wood and his wife at the plant. Wood corroborates the fact that he saw Bodey doing something with his truck. Bodey testified that he checked over his load and checked his oil, lights, etc., and after Wood had left the plant he took the truck to the gas pump to be filled with gasoline. While he was fueling the truck, the telephone rang. This was Breckenridge asking him to come over to his house immediately. Bodey told Breckenridge he was gassing his truck and it would be about 5, 10 or 15 minutes and wanted to know if he could wait. Breckenridge said, "Yes, come up right after you get it done." On the way to Breckenridge's home Bodey left his wife and children at the home of Tom Brennan and entered the Breckenridge home. He saw Breckenridge with a coffee cup in his hand and joked about where his coffee was and joked about the fact that Breckenridge was not offering him coffee. Breckenridge said, "Bo, I'm going to tell you the same thing I told John and Castle, and that is you are fired." Bodey said that he was stunned for a moment and walked over to his chair and said, "Well, that is the way the big ball bounces." And sat down. Later on in the conversation Bodey said to Breckenridge "Well, Milt, if you can't fight for something you believe in, there is no sense in fighting at all." Breckenridge replied, "That is right, Bo, and you are going to have to be fighting some place else. You made your bed, now lay in it." After the meeting broke up, Bodey spoke to Breckenridge on the way out and was told, "Did you not know that you were going to get fired over this thing?" Breckenridge told him he had received word from East Palestine that Bodey was passing the paper around. Bodey said, "Well, I guess I filled the truck up for someone else." Breckenridge replied, "Yes, it looks that way." Breckenridge did not specifically deny this conversation. He testified that he told Bodey, "I am awfully sorry about this . . . I hope there is no hard feelings." But he did not testify that that was all that was said.

Thus, the credible story emerges that when the seven employees arrived at Breckenridge's home, Breckenridge asked them where Bodey was. When someone mentioned the fact the Bodey had been seen heading toward the plant, Breckenridge telephoned him at the plant. Bodey was gassing up his truck for a delivery he was planning to make Monday. Breckenridge knew this and asked him to come to the house when he had finished his job. When Bodey arrived, Breckenridge told him he was fired. He told him he was fired on orders from his boss in East Palestine, and the reason given for the discharge was that Bodey was tearing up the trucks.

Breckenridge knew of Bodey's union activity. He knew of the union activity of Castle and John Brennan in taking the petition to East Palestine and of Bodey and them going to Wood's for his signature. He either expressly admitted this or did not deny it when it was testified to. As will be seen later on, by his own testimony

⁵ No finding of fact is made on this testimony as it is unnecessary to the resolution of the issues to do so.

he admitted knowing of Bodey's union activity on June 9. He admitted telephoning Castle and John Brennan on Sunday, June 10, and asking them why they went behind his back.

Breckenridge did not deny the reference made to a "scapegoat," nor did he deny telling Bodey that he had made his bed and would have to lie in it.

1. Respondent's defense to Bodey's discharge

Breckenridge, by the way, had been with Respondent at East Palestine for some 12 years and had opened up the plant in Urbana in January 1960, where he has always been the superintendent.

He denied certain testimony of witnesses for the General Counsel, as noted above, and had a sharp conflict with respect to Bodey's discharge. He testified that he discharged Bodey on Saturday, June 9. His story is that on Friday, June 8, McIntosh, who is in charge of repairs to the trucks, came up to him and said, "Have you heard about the latest episode of Bodey?" McIntosh then related an incident that happened on May 18. McIntosh told Breckenridge that on May 18 Bodey had returned his truck from a trip to Toledo with the fan belt off and the generator and water pump not working. Also that the battery was found dead the next day. Breckenridge testified he then told McIntosh, "With this and the other episodes that have happened, I am just about filled up to here [signaling his neck] with Bodey. . . . I am going to have to let him go."

The other "episodes" referred to turned out to be three in number. In 1961 Bodey allegedly had done \$400 worth of damage to two tires on the rear dual wheels of the trailer he was pulling. Second, Bodey had his license revoked in 1961 while speeding in his private car. But he was permitted to work in the plant during the period when the license was revoked. Third, in April 1962, Bodey tore out the grill on his truck when he was attempting to have it pulled to give him a start.

Following the conversation with McIntosh on Friday, June 8, Breckenridge testified that although he went to the plant Saturday he did not see Bodey. (This in effect denies Bodey's testimony about the maps and Raid.) So about 2 o'clock on June 9 he telephoned Bodey at the plant and told him he was discharged. Breckenridge said that Bodey replied, "You are discharging me on account of union activities" to which Breckenridge said he replied, "I am not. If I was, I would discharge Castle and Brennan."

Breckenridge testified that he then received a call from Glen Rutan about 12 noon on Sunday, June 10, as set out above. This was the telephone call that took him immediately to the plant where he talked with Jack Wood and then telephoned both Castle and John Brennan and interrogated them as to their union activities.

As noted above, Breckenridge admitted telephoning Bodey at the plant on June 10 when he did not come with the employees and asked Bodey if he would come up and express his viewpoints on these union activities. Breckenridge said that when Bodey arrived he told him, "These fellows know you have lost your job" and testified that Bodey then walked over to a chair, said "That's the way the ball bounces," and sat down.

2. Examination of the reasons given for Bodey's discharge

Credible and uncontradicted evidence was that the total damage done to the truck by Bodey on the May 18 incident cost the Respondent no more than 25 cents. This was the cost of replacing a lost adjusting bolt for the generator. Without this bolt there would not be sufficient tension on the fan belt to cause the generator to charge the battery. However, there was sufficient tension on the belt to run the water pump and the fan. The motor was uninjured. Of course the battery needed to be recharged because it was left to run the electrical system without being charged by the inoperative generator. Accordingly no other damage was done to the truck, and, according to his credited testimony, Bodey was carefully watching his instruments on his return trip and took reasonable precautions to see to it that damage was not done the engine by the loss of the bolt.

McIntosh was asked why he waited 3 weeks from "the latest episode of Bodey" to tell Breckenridge on June 8 about the May 18 occurrence. As background for his testimony, it should first be noted that Breckenridge was only working at the plant 4 hours each day during the period May 15 through June 10. He had had a back operation following which he was injured in an automobile accident. He was recovering from both incidents during this period. McIntosh testified that he didn't

tell Breckenridge about the May 18 incident because Breckenridge was "In pain and discomfort and I didn't want to upset him with this." The "this" referred to was the 25-cent bolt and the battery recharge referred to above. McIntosh's action in withholding such "upsetting" information from Breckenridge is heartwarming but it is not credible.

As to the \$400 tire damage, Bodey admitted that the dual wheels locked on his trailer and before his helper and he knew about it the tires were damaged. Testimony was adduced that tires are always being damaged in the trucking business and that McIntosh himself even lost two wheels on the front axle of the left-hand side of the dual-wheel trailer he was pulling one day. He drove "for about 5 miles" before he knew the wheels were gone. He and Breckenridge had to retrace the trip from Urbana to Delaware, Ohio, to pick up these two wheels. Nothing was said at the time that either accident was due to negligence or carelessness.

As to the April 1962 incident of the truck grill, Bodey credibly testified that in order to start his stalled truck a fellow employee and he hooked the tow chain to a U bolt in the front of Bodey's truck. But the U bolt pulled out and carried with it the front grill on the truck. When he told Breckenridge of this grill trouble Breckenridge laughed, saying, "Well, the dumb truckdrivers that we have got down here." Further, Bodey testified that no one ever mentioned the May 18 incident to him and all that was said about the 1961 tire incident was that Breckenridge asked him what happened.

The Respondent put Mrs. Breckenridge on the stand as a corroborating witness for Breckenridge. She testified that she overheard Breckenridge's telephone conversation with Castle when Breckenridge said, "Why didn't you come to me? Haven't I always told you that if there was anything wrong we could always talk it over?" She also testified that she overheard snatches of the conversation at the Sunday, June 10, meeting. She said, "Milton said, 'Why didn't you come to me? That was no way of going about trying to get a union. I was a member of the Union for 15 years, and if you wanted a union, you should have come to me. Why didn't you come to me?'" Her testimony and much of that of Breckenridge does not deny the testimony of witnesses for the General Counsel. She did corroborate him on his alleged telephone discharge of Bodey on June 9.

3. Analysis of the testimony

As noted above where there is conflict between testimony of Breckenridge and witnesses for the General Counsel I have credited the testimony of the witnesses for the General Counsel. These witnesses in no way were impeached as to their testimony whereas Breckenridge even admitted telling a lie to the employees. He admitted telling the employees that he had received word from his president to let Bodey go when as a matter of fact he had not received such word. He testified that he knew of the union activities of his employees on Tuesday or Wednesday preceding Friday June 8. He admitted learning of the union activities of Bodey and Castle and John Brennan on June 9 when he telephoned Bodey even crediting him that he did telephone and fire Bodey on June 9. However, I do not credit this testimony. It is unbelievable. If Bodey were fired on June 9 why would he gas up a truck on June 10 for a delivery on June 11? When Breckenridge knew Bodey was gassing the truck on June 10 he did not treat him like a discharged employee and tell him to leave the Respondent's equipment alone. Rather he asked him to come to a meeting of employees at his house as soon as he had finished his job.

Likewise his question of "Where is Bodey?" which he uttered as soon as the seven employees entered his house on Sunday, June 10, is not a question I can reasonably expect from a man who had fired Bodey the day before. Finally, the testimony of the other witnesses as to what Breckenridge said to Bodey as soon as Bodey entered the room and the impact it had on Bodey establishes the fact that Bodey was fired on Sunday, June 10, in the presence of seven employees. Breckenridge's testimony that he told Bodey on Sunday, June 10, "These fellows know you have lost your job" is quite similar to what Bodey said Breckenridge told him. Bodey testified that Breckenridge told him, "I am going to tell you the same thing I told John and Castle, and that is you are fired." It is conceivable that what is meant by this last statement is that John and Castle had been told by Breckenridge that he was going to fire Bodey. And even though some may have known Bodey was going to be fired, the actual act of firing him took place as Bodey and the other witnesses testified to. He was fired on Sunday, June 10. Breckenridge did not say, "you have been fired," or "I fired you yesterday." Such a discharge, if made because of Bodey's union activities, vio-

lates the rights of employees to organize and join labor organizations as it certainly would discourage union activities.⁶

The inference is that Bodey was discharged for his union activities. Breckenridge was upset about the circulation of the petition behind his back. He demanded to know why his employees were doing this to him. He threatened them with a plant closing if the Union came into the plant. He told them he had just as much to lose as they did when the plant would close down. He promised to make overtime more equitable—all this because of the possibility the Union might become the collective-bargaining representative of the employees. He told them Bodey loaded the gun and Castle and John Brennan fired the bullets. He told the employees all of the latter three had lost their jobs but he had saved Castle and John Brennan from being fired. Then he fired Bodey in the presence of the employees who favored the Union, telling him as he fired him that he had made his bed and must lie in it and referring to him as a scapegoat. The only inference possible to explain what he meant by "bed" is Bodey's union activities.

Breckenridge attempted to show he fired Bodey because of his incompetence as a truckdriver—because he was tearing up the trucks. And the straw that broke the camel's back, or, as he phrased it, the thing that fed him up to his neck about Bodey's driving was the story about Bodey's driving that cost 25 cents for a new adjusting bolt and the cost of recharging the battery! And this took place some 3 weeks earlier! Yet no criticism had ever been leveled at Bodey for causing \$400 damage to tires a year before, damage to his grill, or losing his chauffeur's license by driving his own car too fast. Indeed, the record shows that others damaged tires and damaged fenders and if Bodey really were a careless driver a good opportunity to drop him when he lost his driver's license. But rather than being fired then, he was put on other work in the plant, yet his regular work was as a truckdriver to which he returned as soon as his license was returned to him. The only meaningful event that took place prior to the discharge was Bodey's union activities. It is not denied that Bodey was the one that originally went to East Palestine. He, together with Castle and John Brennan, went to Jack Wood to secure his name on the petition which Castle and John Brennan later took to East Palestine. There is credible evidence that Breckenridge knew of the visit to Wood's.

Accordingly I find that Bodey was discharged on June 10 in violation of Section 8(a)(3) and (1) of the Act.⁷

C. Finding of interrogation

Breckenridge's interrogation of employees Castle and John Brennan and his threats to them about loss of their job rights if they continued their union activities, his interrogation of Jack Wood, and his interrogation of the group of employees on Sunday, June 10, with the threat that the plant would be closed if the Union came in, were coercive and constituted interference with the employees' rights under the Act in violation of Section 8(a)(1) thereof.⁸ In this case there were explicit threats plus a discharge during the group interrogation. *N.L.R.B. v. Firedoor Corporation of America*, 291 F. 2d 328, 331 (C.A. 2), (1961).

I also find an independent violation of Section 8(a)(1) of the Act when Breckenridge told the assembled employees on Sunday, June 10, that he had received word from Respondent's president in East Palestine to fire Bodey for tearing up trucks.

⁶ Respondent comments in its brief that the meeting at Breckenridge's was friendly with the employees discussing fishing to baseball and that it was incredible for a man of Bodey's temperament to accept his discharge so placidly if he really were fired on Sunday, June 10. I agree that the record shows subjects ranging from fishing to baseball were discussed. But the purpose of the meeting was the union activities of certain employees and the impact that might have on their jobs. As to Bodey's temperament, I believe it is far more likely for him to keep quiet as if in shock over a discharge that day. Surely if he had been discharged the day earlier he would have said more, if he would even attend the meeting.

⁷ Respondent's brief notes "for some unexplained reason" the General Counsel never called the seventh employee, Otis Smith, who arrived with the group at Breckenridge's home. John Brennan testified that Otis Smith was there. I can make nothing out of the fact that Otis Smith was not called as a witness. If he had good evidence for the Respondent, the Respondent was free to call him.

⁸ *Wilder Finishing Co., Division of Jervis Corporation*, 138 NLRB 1017; *R. E. Edwards, d/b/a Edwards Trucking Company*, 129 NLRB 385; *Tru-Line Metal Products Company, et al.*, 138 NLRB 964.

It matters not that the statement was admittedly false. The statement made in this charged atmosphere, during which Breckenridge was continually asking his employees why they went behind his back, is coercive and constitutes interference with the employees' rights in violation of Section 8(a)(1) of the Act. The employees knew there was no cause for Bodey's discharge other than for his union activities. Breckenridge told them he had saved Castle and John Brennan, the ones who fired the gun that Bodey loaded.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations 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 thereof.

V. THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action which, it is found, is necessary to effectuate the policies of the Act.

It has been found that the Respondent terminated the employment of Clarence Bodey on June 10, 1962, in violation of Section 8(a)(3) and (1) of the Act. Accordingly, I shall recommend that the Respondent offer Clarence Bodey immediate and full reinstatement to his former or substantially equivalent position (*The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827) without prejudice to all rights and privileges to which each employee is entitled. I shall also recommend that the Respondent make whole Clarence Bodey for any loss of pay he may have suffered as a result of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned from June 10, 1962, to the date of a proper offer of reinstatement, less net earnings. The payment provided for hereunder is to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. In addition, I shall recommend that the Respondent be ordered to pay interest on the backpay due Clarence Bodey at the rate of 6 percent per annum in accordance with *Isis Plumbing & Heating Co., Inc.*, 138 NLRB 716.

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

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Charging Party is a labor organization within the meaning of Section 2(5) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed by Section 7 of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1), of the Act.
4. By discharging employee Clarence Bodey because of his union activities, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) 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 foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that Respondent, Adamson Company, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:
 - (a) Interrogating employees concerning their union membership, affiliations, or sympathies, in a manner interfering with, restraining, or coercing employees in the exercise of their rights as guaranteed by the Act.
 - (b) Threatening to close its plant if the employees bring in a union and threatening to discharge employees by reason of their union activities.
 - (c) Discouraging membership in United Steelworkers of America, AFL-CIO, or any other labor organization of its employees, by discharging its employees because of their concerted or union activities, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

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

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer Clarence Bodey immediate and full reinstatement to his former or substantially equivalent position, without prejudice to all rights and privileges to which he is entitled.

(b) Make whole Clarence Bodey in the manner set forth above in the section entitled "The Remedy"

(c) Preserve until compliance with any order for reinstatement or backpay made by the Board is effectuated, and make available to the said Board and its agents, upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records relative to a determination of the amount of backpay due, and to the reinstatement and related rights provided under the terms of any such order.

(d) Post at its plant at Urbana, Ohio, copies of the attached notice marked "Appendix A."⁹ Copies of said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by a representative of Respondent, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter in conspicuous places, including places where notices to its 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.

(e) Notify the Regional Director for the Eighth Region, in writing, within 20 days from the receipt of this Intermediate Report, what steps have been taken to comply herewith.¹⁰

It is further recommended that, unless within said 20 days the Respondent shall have notified the said Regional Director that it will comply with the foregoing recommendations, the National Labor Relations Board issue its order requiring the Respondent to take the action aforesaid.

⁹ 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 Recommended Order 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."

¹⁰ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, 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 Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT interrogate employees concerning their union membership, affiliation, or sympathy, in a manner interfering with, restraining, or coercing employees in the exercise of their rights as guaranteed by the Act.

WE WILL NOT threaten to discharge any employee or to close our plant by reason of union activities.

WE WILL NOT discourage membership in United Steelworkers of America, AFL-CIO, or any other labor organization, by discharging any of our employees because of their concerted or union activities or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their 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, or to refrain from any or all of 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 em-

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

WE WILL offer immediate and full reinstatement to Clarence Bodey.

WE WILL make whole Clarence Bodey for any loss he may have suffered as the result of the discrimination against him.

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

ADAMSON COMPANY, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland 15, Ohio, Telephone No. Main 1-4465, if they have any question concerning this notice or compliance with its provisions.

Construction, Shipyard and General Laborers Local 1207, AFL-CIO; and Building and Construction Trades Council of Tampa, Florida and Alfred S. Austin Construction Company, Inc.
Case No. 12-CP-20. March 8, 1963

DECISION AND ORDER

On September 5, 1962, Trial Examiner Leo F. Lightner issued his Intermediate Report in this proceeding, finding that the Respondents 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 attached Intermediate Report. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief. The General Counsel submitted a brief generally supporting the conclusions of the Trial Examiner.¹

The Board² 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 case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner except as modified hereafter.

In finding the violations alleged, the Trial Examiner held that an object of Respondent Union's picketing³ was recognition and concluded that while the picketing was for a dual purpose, i.e., informational as well as recognition, it was still violative of the Act because

¹ The Charging Party filed a motion to remand for the taking of additional evidence with respect to the effect of the picketing. In view of our conclusions herein, the motion is denied.

² 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].

³ The parties stipulated that the picketing occurred here during three intervals, April 2 to 4, April 30 to May 11, and from May 22 to June 6, 1962 (all dates inclusive), by Laborers Local 1207.