

tion 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 the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act:

1. The Respondent shall cease and desist from failing to bargain in good faith, refusing to meet with the Union at reasonable times and at a mutually convenient place or places in Spartanburg, South Carolina, and failing to observe diligence in the seeking with the Union a collective-bargaining agreement, the terms of which be stated in writing when agreement is reached.

2. Further meetings looking forward to the reaching of a collective-bargaining agreement shall be spaced at least for three times during any 1 week, unless the representatives of the parties mutually agree to extended times for meetings.

3. The Respondent cease and desist from making or putting into effect any wage increase or increases, during negotiations, without the consent of the representatives of the employees within the bargaining unit.

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

#### CONCLUSIONS OF LAW

1. International Union of Electrical, Radio and Machine Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. Insulating Fabricators, Inc., Southern Division, is now, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By refusing to bargain in good faith with respect to the terms and conditions of employment of employees within an appropriate bargaining unit, as provided in Section 8(a)(5) of the Act, the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

4. 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 omitted from publication.]

### Tomahawk Boat Manufacturing Corporation *and* Gerhard Heil.

*Case No. 18-CA-1571. November 4, 1963*

#### DECISION AND ORDER

On August 14, 1963, Trial Examiner Lee J. Best 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 and the General Counsel filed exceptions to the Intermediate Report and briefs in support of their exceptions.<sup>1</sup>

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

<sup>1</sup> The Respondent's request for oral argument is hereby denied as, in our opinion, the entire record in this case, including the exceptions and briefs, adequately set forth the issues and positions of the parties.

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 case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner as modified below.<sup>2</sup>

### ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner<sup>3</sup> with the following modifications:

Delete paragraph 2(a) and (b) and substitute therefor, as paragraph 2(a), the following:

Make whole Gerhard Heil (employee) for any loss of pay and other emoluments he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to the amount he would have earned as salary or wages from the date of his discharge on October 19, 1962, to February 4, 1963, the date on which Heil was replaced as an employee for reasons unconnected with the exercise of his statutory rights.

The balance of paragraph 2 shall be relettered accordingly.

The notice shall be amended by deleting therefrom the paragraph which begins "WE WILL offer to Gerhard Heil (employee) . . ." and substituting therefor the following:

WE WILL make Gerhard Heil (employee) whole for any loss of pay or earnings he may have suffered by reason of our discrimination against him from the date of his discharge on October 19, 1962, to February 4, 1963, the date on which he was replaced as an employee for reasons unconnected with the exercise of his rights under the Act.

<sup>2</sup> The Trial Examiner found, and we agree, that Respondent violated Section 8(a) (3) of the Act when it discharged Gerhard Heil on October 19, 1962. To implement this finding, the Trial Examiner recommended that Heil be reinstated by Respondent and that he be awarded backpay from the date of his discharge until the date of his reinstatement. The record shows, and the Trial Examiner found, that Respondent had contemplated replacing Heil more than a month before his discriminatory discharge for reasons unconnected with the exercise of his statutory rights, and that Respondent was able to obtain a suitable replacement on February 4, 1963. In view of the foregoing, we shall not order Heil's reinstatement and we shall limit backpay for the period from October 19, 1962, to February 4, 1963. We shall therefore modify the Trial Examiner's Recommended Order accordingly.

<sup>3</sup> The Recommended Order is hereby amended by substituting for the first paragraph therein, the following paragraph:

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Tomahawk Boat Manufacturing Corporation, its officers, agents, successors, and assigns, shall:

## INTERMEDIATE REPORT

## STATEMENT OF THE CASE

This proceeding, brought under Section 10(b) of the National Labor Relations Act, as amended, 29 U.S.C. 151, *et seq.*, herein called the Act, was heard pursuant to notice at Tomahawk, Wisconsin, on April 24 and 25, 1963, with all parties present before Trial Examiner Lee J. Best. Based upon a charge filed with the Board on February 8, 1963, by Gerhard Heil (an individual), herein called the Charging Party, the General Counsel on March 13, 1963, issued a complaint against Tomahawk Boat Manufacturing Corporation, herein called Respondent, alleging that the Respondent had engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act. The complaint more specifically alleges that the Respondent on or about October 19, 1962, discharged Gerhard Heil (employee) by discrimination in regard to hire or tenure of employment to discourage membership in a labor organization, thereby interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act. Thereafter on March 21, 1963, the Respondent filed an answer admitting the discharge for cause; but denies that any unfair labor practice was thereby engaged in for the reason that Heil was a confidential employee and supervisor within the meaning of the Act, betrayed the trust of his employer, and otherwise failed to perform efficiently the duties of his employment.

All parties were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues involved, to present oral argument on the record, and to thereafter file written briefs with the Trial Examiner. Written briefs submitted by counsel for all parties have been given due consideration.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

## FINDINGS OF FACT

## I. BUSINESS OF RESPONDENT

Tomahawk Boat Manufacturing Corporation is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, having its principal office and place of business at Tomahawk, Wisconsin, where it is engaged in the fabrication and sale of fiberglass products including boats, saddle bags, carts, containers, and cabs. During the past 12 months, which period is representative of all times material in this case, Respondent manufactured and sold products valued in excess of \$200,000 of which amount more than \$100,000 in value consisted of shipments directly to customers outside the State of Wisconsin. By reason of such interstate operations, I find that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

At all times material to this case, supervisors of the Respondent (within the meaning of the Act) included Frank P. Winter, president and general manager, William J. Harley, vice president, Otto P. Resech, treasurer, Lloyd Gordon Mitchell, secretary and sales manager, George L. Zinser, production engineer, and Harold Irmischer, plant superintendent.

## II. LABOR ORGANIZATION INVOLVED

The International Woodworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act, existing in whole or part for the purpose of representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.

## III. THE UNFAIR LABOR PRACTICES

## A. Organizational activities

At the hearing in this case, the complaint was amended to clarify paragraph 5 by alleging in substance that the Respondent discharged Gerhard Heil for the reason that he failed to assist the Respondent in carrying out a plan to unlawfully discriminate against Gene Seipp (employee), and assisted the International Woodworkers of America, AFL-CIO, by revealing to Seipp its unlawful plan of discrimination against him.

Prior history of labor relations at the Tomahawk plant shows that on May 4, 1960, Tomahawk Boat Manufacturing Corporation Independent Union, herein called the

Independent, was certified by the Board as exclusive bargaining representative in an appropriate unit consisting of "All manufacturing and maintenance employees at the Employer's Tomahawk, Wisconsin, plant; but excluding all office clerical employees, sales personnel, guards, and supervisors as defined in the Act." The latest collective-bargaining agreement with the Independent expired on December 31, 1962. At a meeting of the Independent in September 1962, Gene Seipp advocated affiliation with the International Woodworkers of America, AFL-CIO, and on October 5, 1962, that organization filed a representation petition with the Board in Case No. 18-RC-5286. Factional strife developed among the employees represented. All incumbent officers of the Independent resigned in a group, and Seipp was elected as president to promote affiliation with the Woodworkers Union. The opposing faction led by Frank Heindl and Jack Taylor (leadmen in the finishing department) initiated rumors in the shop that the International Woodworkers of America, AFL-CIO, was affiliated with communistic organizations, and at a meeting of employees in the plant on October 19, 1962, advocated affiliation with the National Industrial Workers Union. At a representation hearing on October 30, 1962, this latter organization was permitted to intervene in the pending representation case. Thereafter, a Board election was conducted on December 6, 1962, as a result of which the National Industrial Workers Union was certified as exclusive bargaining representative of Respondent's employees in an appropriate unit consisting of "All production and maintenance employees of the Employer at its Tomahawk, Wisconsin, plant; excluding office clerical employees, sales employees, guards, and supervisors as defined in the Act." Thereupon, the Independent was dissolved.

Gene Seipp was first employed by the Respondent in the spring of 1962, and assigned to work as a carpenter in the millroom, where he would be somewhat protected from the fiberglass dust that pervaded other parts of the plant. He was afflicted with sinus trouble and bronchitis, and frequently wore a mask furnished by the Respondent to protect his allergy. Most of the fiberglass dust was created in and around booths provided for sanding operations on boat hulls and other fiberglass products. By reason of his affliction, Seipp was under medical care and absent from work from Thursday, October 11, to Tuesday, October 16, 1962. Later, in December 1962, he voluntarily resigned from employment with the Respondent, underwent hospital treatment for his bronchial and sinus condition, and thereupon accepted other employment more conducive to his health.

Gerhard Heil migrated from Germany in 1955 and in due course became a naturalized citizen of the United States. Prior to that time he had acquired education and practical experience in accounting work over a period of 7 years in his native land. Thereafter he pursued a course of study in accounting at the Correspondence School in Scranton, Pennsylvania, and acquired further practical experience in his profession over an additional period of 5 years. He also passed a civil service examination in accounting with a rating of GS-11. On May 10, 1962, Heil was hired as an accountant by the Respondent to work under the supervision of LLOYD GORDON MITCHELL (secretary and sales manager). His primary duties consisted of posting the general ledger, preparing financial statements, setting up a cost accounting system, and reordering supplies for the inventory account, none of which included the authority of a supervisor. He clearly occupied the status of a professional or clerical employee within the meaning of the Act, and was excluded from the appropriate bargaining unit. His accountability to President Frank P. Winter was limited to the duties of an inventory clerk in reordering supplies and materials for use in the shop. He occupied a desk in a cubicle along the hallway leading from the private office of President Winter to the reception room of the open plant office occupied by other clerical employees. Production Engineer GEORGE L. ZINSER occupied a desk in the same cubicle, and there was no privacy except behind the closed office door of President Winter. All clerical employees were in a position to hear and observe practically all discussions throughout the plant office. By reason of personality clashes, Heil became very unpopular with both supervisors and fellow employees. Although not participating in the organizational activities of the employees, he early antagonized management personnel including President Frank P. Winter, so much so, that on September 14, 1962, the board of directors authorized management personnel to obtain a replacement for Heil whenever another suitable accountant could be hired. Thereupon, Treasurer OTTO P. RESECH requested the personnel supervisor, JOHN R. JOERG, of Harley-Davidson Company (parent corporation), Milwaukee, Wisconsin, to assist the Respondent in locating suitable applicants for the job of accountant. Through employment channels such as the Wisconsin State Employment Service, National Clerical and Executive Bureau, Butterfield Employment Service, and other agencies, several

applicants for this position were screened and interviewed throughout the fall of 1962, but no suitable replacement was found or hired until February 4, 1963. The incumbent (Gerhard Heil) admittedly learned that action was being taken to replace him.

In the meantime Heil overheard much discussion in the office about the organizational activities of production and maintenance employees in the shop. During the week beginning September 9, 1962, he heard President Frank P. Winter cursing, swearing, and causing quite an uproar in the front office about Gene Seipp trying to bring in the International Woodworkers of America, AFL-CIO, which was the same union that had tried to organize the employees in 1956. Winter was instructing Gordon Mitchell, sales manager, and Marie Davenport, receptionist-typist, to find some records in the office files about that union. At a later date Heil heard Plant Superintendent Irmischer tell President Winter that Frank Heindl was spreading rumors in the shop to the effect that the Woodworkers' Union was a Communist organization—then after an interval of 3 or 4 days he saw Frank Heindl go into the private office of President Winter. Upon departure from the office, Heil overheard President Winter tell Heindl that he would be made a foreman.<sup>1</sup> Shortly thereafter in the early part of October 1962, Heil inquired of Plant Superintendent Irmischer as to why President Winter was so excited, and the plant superintendent replied to the effect that it was because Gene Seipp was trying to bring in the I.W.A., which had previously tried to get into this Company, and that it was a "big boner" to have Frank Heindl spreading such rumors.

While at work in his office about 7 p.m. on October 12, 1962, Gerhard Heil overheard a discussion between President Frank P. Winter, Plant Superintendent Harold Irmischer, Sales Manager Gordon Mitchell, Production Engineer George L. Zinser, and Leadman Frank Heindl. President Winter was talking about getting rid of Gene Seipp, and some of the others were making suggestions as to how it could be accomplished. Zinser mentioned the fact that Seipp had been complaining about the fiberglass dust obstructing his breathing and affecting his health, and Heindl confirmed the fact that Seipp just could not endure the fiberglass sanding operations. Thereupon, President Winter instructed Plant Superintendent Irmischer to assign Seipp to sanding work so that he would be exposed to the fiberglass dust—that maybe this would force him to quit or be discharged for failure to perform that work. At the same time, President Winter related how on a former occasion he had gotten rid of a union instigator by assigning him to arduous and unpleasant work for a period of 2 days and caused him to quit the job of digging into piles of sawdust with his bare hands—that he had paid the man extra wages for 2 days, but it was worth it to get rid of a troublemaker at that time. Following this discussion, Heil went to the home of Gene Seipp about 10 p.m. that night and revealed to Seipp what he had heard in the office. At that time Seipp was undergoing medical treatment and remained absent from work until the following Tuesday, October 16, 1962. At a meeting of all employees on the loading dock at the plant on October 19, 1962, Seipp reported the information furnished to him by Gerhard Heil. It became known immediately to President Winter that Heil was the informer. Within a few minutes after adjournment of the meeting, President Winter called Irmischer, Mitchell, and Heil into his private office, and closed the door. There he interrogated Heil about his visit to see Gene Seipp, inquired whether he had made a statement to the effect that "there is nothing wrong with unions," and then said "Get out—You're fired." Heil requested that he be furnished a statement in writing showing the reason for his discharge, and the following statement was assigned and tendered by President Winter, as follows:

This is to inform you that you are fired as of this day. Reason: Failure to cooperate and perform duties expected in your line of work.

#### Concluding Findings

There is no substantial dispute as to the facts in this case, and the principal issue is a question of law, whether Gerhard Heil should be denied protection of the Act by reason of the nature of his employment as an accountant in the office of Respondent, and excluded from the appropriate unit. There is no evidence that Heil was a supervisor within the meaning of the Act. The fact is that he was a professional employee within the definition of Section 2(12) of the Act, and it seems clear that such employees are included in the definition of "employee" as defined

<sup>1</sup> A new organizational chart (General Counsel's Exhibit No 8) was adopted by the Respondent in November 1962, listing thereon Jack Taylor and Frank Heindl as "Finish-  
ing Foremen"

in Section 2(3) of the Act. Professional employees, therefore, have all of the rights granted to employees in Section 7 of the Act, including 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.

Notwithstanding the intention of Respondent to eventually replace Heil by employing another accountant, it is admitted that the immediate cause for discharge was for reporting to Gene Sepp that the Employer was planning to impose arduous duties to force his resignation or discharge by discrimination for promoting the organizational activities of a labor organization. The summary discharge of Heil for such reason belies the contention of the Respondent that such plans were a joking matter. Such conduct by the Respondent, even in jest, cannot impose a confidential relationship upon employees who are entitled to protection of the Act, and I find no breach of trust by Gerhard Heil in this case. His revelation of the proposed discrimination was an exercise of the rights guaranteed to employees in Section 7 of the Act, and his discharge by the Respondent for that reason constituted unfair labor practices proscribed by Section 8(a)(1) and (3) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The conduct of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, has an intimate and substantial relation to trade, traffic, and commerce among the several States, and tends 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 the unfair labor practices set forth above, I shall recommend that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Respondent offer to Gerhard Heil (employee) immediate and full reinstatement to his former or substantially equivalent position as an accountant in the office of Respondent at Tomahawk, Wisconsin, without prejudice to his seniority or other rights and privileges of employment, and make him whole for any loss of pay and emoluments he may have suffered by reason of the discrimination against him by the payment to him of a sum of money equal to that he would normally have earned as salary or wages from the date of his discharge by the Respondent on October 19, 1962, to such date as the Respondent shall offer to him proper reinstatement as herein provided, less his net earnings during that period. Such backpay shall be computed on a quarterly basis in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and shall include interest at 6 percent per annum as prescribed by the Board in *Isis Plumbing & Heating Co.*, 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. Tomahawk Boat Manufacturing Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Woodworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By discriminating in regard to the hire or tenure of employment of Gerhard Heil to discourage membership in a labor organization, and thereby interfering with, restraining, and coercing 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) and (3) of the Act.
4. 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, conclusions of law, and the entire record in the case, I hereby recommend that the Respondent, Tomahawk Boat Manufacturing Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the International Woodworkers of America, AFL-CIO, or any other labor organization, by discharging its employees or otherwise discriminating in regard to their hire and tenure of employment, or any term or condition of employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist the International Woodworkers of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in any or all of such activities, except to the extent that such right may be affected by an agreement 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 designed to effectuate the policies of the Act:

(a) Offer to Gerhard Heil (employee) immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges

(b) Make whole Gerhard Heil (employee) for any loss of pay and other emoluments he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to the amount he normally would have earned as salary or wages from the date of his discharge to the date on which Respondent shall offer him proper reinstatement in the manner provided above in section V entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records in its possession, which may be necessary to analyze, compute, and determine the amount of backpay and other emoluments due and payable under the terms and conditions specified in this Recommended Order.

(d) Post in its plant, offices, and warehouses at Tomahawk, Wisconsin, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of said notices to be furnished by the Regional Director for the Eighteenth Region, shall, after being signed by an authorized representative of Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of 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 to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Eighteenth Region, Minneapolis, Minnesota, in writing, within 20 days from the date of this Recommended Order, what steps Respondent has taken to comply herewith.<sup>3</sup>

<sup>2</sup> In the event 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 "A Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "A Decision and Order"

<sup>3</sup> If 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 Respondent has taken to comply herewith."

## APPENDIX

### 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 National Labor Relations Act, we hereby notify our employees that:

**WE WILL NOT** discourage membership in or concerted activities on behalf of the International Woodworkers of America, AFL-CIO, or any other labor organization, by discharging our employees or otherwise discriminating in regard to their hire or tenure of employment or any other 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 the above-named or any other labor organization, to bargain collectively through representatives of their own choosing and engage in other concerted activities for their 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 employment, 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 to Gerhard Heil (employee) immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges of employment, and make him whole for any loss of pay or earnings he may have suffered by reason of our discrimination against him.

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

TOMAHAWK BOAT MANUFACTURING CORPORATION,  
Employer.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 consecutive days from 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, 316 Federal Building, 110 South Fourth Street, Minneapolis, Minnesota, Telephone No. 339-0112, Extension 2601, if they have any questions concerning this notice or compliance with its provisions.

**International Union of Operating Engineers, Local No. 542, and its Agents, Robert Walsh and Robert P. Cahill and The Bell Telephone Company of Pennsylvania**

**International Union of Elevator Constructors, Local No. 5, and its Agent, Robert M. Williams and The Bell Telephone Company of Pennsylvania.** *Cases Nos. 4-CD-86 and 4-CD-87. November 4, 1963*

### DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the Act, following a charge filed by The Bell Telephone Company of Pennsylvania, herein called Bell, alleging that International Union of Operating Engineers, Local No. 542, herein called the Engineers, and its Agents, Robert Walsh and Robert P. Cahill, and International Union of Elevator Constructors, Local No. 5, herein called the Constructors, and its Agent, Robert M. Williams, induced or encouraged employees to engage in a strike, and threatened, coerced, or restrained persons engaged in commerce in order to force or require Bell to assign particular work to employees who were members of their respective unions. A hearing was held before Hearing Officer Jerome F. Connor between January 11 and March 15, 1963, at which all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing upon the issues.<sup>1</sup> The rulings of the

<sup>1</sup>The Engineers alleges that the Hearing Officer did not afford it a full opportunity to be heard by not allowing further evidence to be presented as to area practice, by cutting off some of its questioning of witnesses, and by closing the hearing while Engineers' counsel was not present. The Board has considered the briefs and the entire record in this case, and finds no merit in these allegations. We are satisfied from the record that the Hearing Officer made every possible effort to cooperate with Engineers' counsel,