

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, Fifth Floor, Squibb Building, 745 Fifth Avenue, New York, New York, Telephone No. 751-5500, if they have any questions concerning this notice or compliance with its provisions.

C. L. Frank, Inc. and Chauffeurs, Teamsters and Helpers Local Union 215, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Case No. 25-CA-1863. October 30, 1964*

DECISION AND ORDER

On July 15, 1964, Trial Examiner William J. Brown issued his Decision in the above-entitled proceeding, finding that 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 Trial Examiner's Decision. The Trial Examiner also found that Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision, and a supporting brief.

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

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 Trial Examiner's Decision, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board adopts as its Order, the Order recommended by the Trial Examiner and orders that Respondent, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This case commenced with a charge filed on December 12, 1963,¹ by the Charging Party, hereinafter sometimes referred to as the Union. Thereafter the

¹ Dates hereinafter refer to the year 1963 unless otherwise indicated.

General Counsel of the National Labor Relations Board, acting through the Board's Regional Director for the Region 25, issued the complaint herein pursuant to Section 10(b) of the National Labor Relations Act, as amended, hereinafter sometimes referred to as the Act, on February 10, 1964. The complaint alleged that the Respondent, C. L. Frank, Inc., engaged in unfair labor practices within the purview of Section 8(a)(1) and (5) of the Act. The Company's duly filed answer admits the jurisdictional allegations of the complaint, denies the commission of the unfair labor practices alleged.

On the complaint and answer a hearing was held at Evansville, Indiana, on March 19 and 20, 1964, before the Trial Examiner William J. Brown at which all parties appeared and participated, being accorded full opportunity to present evidence and argument on the issues. Subsequent to the hearing briefs were received from the General Counsel and the Respondent and they have been fully considered.

Upon the entire record herein and on the basis of my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT EMPLOYER

The pleadings and evidence herein indicate and I find that the Respondent Employer is a corporation organized under the laws of the State of Indiana with its principal office and place of business at 300 East Indiana Street, Evansville, Indiana, where it is engaged in the wholesale sales and distribution of fruits and produce. During the year preceding issuance of the complaint herein, admittedly a representative period, Respondent sold and distributed fruit and produce having a value in excess of \$50,000, and which was shipped from Respondent's Evansville operation directly to points outside the State of Indiana. I find, as Respondent concedes, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. I find that the volume of operations are such as to justify and require the exercise of jurisdiction on the part of the Board.

II. THE LABOR ORGANIZATION INVOLVED

The pleadings and evidence indicate and I find that the Union is a labor organization within the purview of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Introduction to the issues*

C. L. Frank, Inc., is a family held corporation, its shareholders consisting of C. L. Frank, James E. Wallace, son-in-law of Frank, their wives and Wallace's children. Frank is the Company's president and Wallace its vice president and general manager. The Company's fruit and produce business is conducted in a one-story building, measuring 116 by 100 feet. Wallace is a working manager, personally acquainted and friendly with employees, and frequently appears in the work areas among the rank and file. The immediate supervisor of the employees in the bargaining unit herein involved is Wilbur Barnes. Next to Barnes in seniority is Harold Herron, claimed by the General Counsel to have been made a supervisor on November 25.

In November 1963, six employees signed cards authorizing the Union to act as their collective-bargaining representative.² The Union's business manager, Clifford Arden, promptly communicated with the Company, demanding recognition. Thereafter, under circumstances more fully detailed hereinafter, the employees' interest in union representation appeared to lessen. The Company admittedly has refused to recognize and bargain with the Union, asserting that it had a good-faith doubt of the Union's claim to a majority and that in fact the Union did not have a majority at the time of its demand for recognition.

The Union filed a representation petition on November 26 and its representative signed an agreement for a consent election on December 3, the Employer signing on December 6, and the Board's representative also signing on the latter

² As explained more fully hereinafter there were eight employees in the appropriate bargaining unit.

date. The Regional Director's approval of the consent-election agreement was withdrawn by letter dated March 5, 1964, following issuance of the complaint in the instant case.

The issues in the case concern events occurring immediately after the receipt by the Company of the Union's demand for recognition. In addition to the alleged refusal to bargain in violation of Section 8(a)(5) the General Counsel alleged and introduced evidence designed to support violations of Section 8(a)(1) in the nature of interrogation of employees, direction of a poll concerning union representation, direct bargaining as to grievances and supervision and announcement of wage increases—all designed to dissipate employee interest in the Union as statutory representative of employees.

B. *Interference, restraint, and coercion*

The complaint alleges the commission by the Respondent Company, through the agency of its vice president-general manager, Wallace, of four specific unfair labor practices in the nature of interference, restraint, and coercion. These were alleged to have been committed on a single day, November 25, 1963.

1. Interrogation

Wallace is charged with having interrogated employees concerning their union membership, activities, and desires. The evidence relating to this aspect of the case consists of the contents of a conversation with employee John Hall on the morning of November 25, and a discussion with the entire group of employees on the afternoon of the same day. In evaluating the testimony in this area it is necessary, in line with the principles of *Blue Flash Express, Inc.*, 109 NLRB 591, to appraise the totality of the Employer's conduct to form a judgment as to whether, under all the circumstances surrounding the questioning, the interrogation had the inherent capacity to restrain, coerce, or interfere with employees in the exercise of their statutory rights guaranteed under Section 7 of the Act.

The issue here must be approached with recognition of the undisputed indications that the Respondent's operations are those of a small, family held corporation, in which the principal operating executive, Wallace, works closely with and is personally and familiarly acquainted with all the employees. In short, a conversation between the Respondent's vice president and an employee appears to be a far less terrifying encounter than such a meeting between a worker and the top executive of a large corporation where the rank-and-file worker is many steps removed from top company officials.

Furthermore there appears, prior to the events of November 25, to have been no precedent instances of hostility to employee self-organization. The evidence, on the contrary, reveals that in the distant past the Respondent had recognized and had a bargaining relationship with the Union. This relationship apparently lapsed during the manpower shortage era of the World War II period, when the Union was no longer able to refer employees and management had to hire from other sources unconnected with the Union. In fact, as more fully appears hereinafter, the recrudescence of organization here involved appears to have been spontaneous among employees rather than due to outside organizational effort on the part of the Union, with the virtually inescapable conclusion that there was no demonstration of union animus prior to the completion of the self-organization here involved.

On Friday, November 22, following the receipt of authorization cards from six of the employees in the agreed-upon appropriate unit, *viz.*, all truckdrivers, warehousemen and helpers, exclusive of professional employees, guards, and supervisors, the Union mailed to the Respondent its letter (in evidence as General Counsel's Exhibit No. 2) asserting its majority claim in the above unit, demanding recognition and asking for a negotiation meeting within the next 24 hours. The letter concluded with an offer, in the event of employer doubt of the majority claim, to prove the majority status by any mutually agreeable means. The letter was dispatched by certified mail, return receipt requested, and apparently was accepted by Respondent's president, Frank, on Sunday, November 24. Its existence came to Wallace's attention first on that Sunday when Frank stopped by Wallace's home and inquired as to whether there was "any union trouble." The letter was not opened by Wallace until his arrival at the plant on Monday morning.

During the course of that morning Wallace met employee Hall, one of the card signers and, apparently, a leader in the organization of the others in the plant. According to Wallace's testimony he asked Hall whether Hall knew anything about the "union deal." Hall replied that the employees had all changed their minds. Wallace testified, and I credit him in this, that he told Hall on that occasion that whatever the boys wanted was all right with him.

Wallace thereafter discussed with his wife, apparently also a worker in the Respondent's operations, the union letter and the statement of Hall concerning employee disaffection and she suggested that he talk to the others. There is a conflict in the testimony as to whether Wallace called the boys to a meeting in the plant that afternoon or whether he happened in upon them while they were all working in the backroom. I think that the truth is that Wallace summoned the men together into an audience and that this is revealed by the fact that he gathered Herron and Barnes to accompany him. This conclusion is also supported by Wallace's pretrial affidavit, received in evidence as that of a party for its admissions, indicating that Wallace did in fact call the men to the meeting in the backroom.

This backroom meeting was conducted about 2:30 p.m. The nature of the talk between Wallace and the employees was recounted by Wallace and employees Herron³ and Stirsman. According to Wallace's account he asked the employees, assembled per his order as I find, what they knew about the Union's letter asserting a representation claim. Herron and Stirsman generally confirm this account of Wallace's questioning at the afternoon meeting. Apparently Wallace assured employees that whatever the men decided would be acceptable to him.

The sum total of the evidence relating to alleged interrogation establishes that Wallace, rather than attempting to discover the identity of the organizational leaders or joiners, was genuinely surprised at the assertion of the majority claim and sought to learn whether it had substance or not by the relatively innocuous questions set out above. Under all the circumstances of this case, even taking into account the commission of other unfair labor practices hereinafter set forth, I am unconvinced that the evidence preponderates in favor of a finding that Wallace's questioning constituted interference, restraint, or coercion within the scope of Section 8(a)(1). I shall recommend dismissal of this count of the complaint.

2. Direction of poll concerning representation

Wallace is alleged, in the course of the backroom talk with employees on the afternoon of November 25, to have engaged in an unfair labor practice within the scope of Section 8(a)(1) by directing employees to conduct a poll among themselves concerning union representation.

Wallace, Herron, and Dexter testified concerning the alleged direction of employees to poll themselves. According to Wallace's account, after some initial inquiries as to the nature of their problems he instructed the boys to do whatever they wanted but to let him know their decision in order that he could reply to the Union's demand. His testimony clearly indicates that he ordered the men to determine, then and there, their preference for or against union representation. He directed the foreman, Barnes, to leave with him so that the men could decide the issue among themselves. Furthermore, Wallace appears by his own account to have gone to the timeclock area at checkout time to learn the results of the employee deliberations. Finally, he directed the men to have one of their number call the Union to inform him of their decision. Herron and Dexter⁴ do not dispute this account of the events.

The evidence thus reveals that the "polling" of employees complained of herein consisted solely of an instruction to employees that they caucus among themselves and inform him of the result. If this stood alone or merely in conjunction with the instances of interrogation noted above it would appear to be either no unfair labor practice or one of so slight impact as not to warrant a remedial order. But as noted hereinafter the direction of employees to poll themselves occurred in a context of other unfair labor practices in the nature of the announcement of improvement in wages and working conditions which appear to me to have been effected and announced for the purpose of affecting employee interest in outside organization. Accordingly in the circumstances here present I

³ The status of Herron is discussed hereinafter

⁴ Dexter appears to have gone out on a delivery shortly after Wallace's talk to the employee group. He returned in time to learn of the results and to be selected as the one to call the Union and inform Arden of the employee renunciation.

find and conclude that the action of Wallace in directing employees to take a poll of their number as to their continued interest in union representation—now that the new benefits had been revealed to them—constituted interference, restraint, and coercion and an unfair labor practice within the scope of Section 8(a)(1) of the Act. See *Stainless Ware Company of America*, 87 NLRB 138; *Standard Rate & Data Service, Inc.*, 133 NLRB 337.

3. Adjustment of grievances and announcement of benefits

This aspect of the case concerns the allegations of the complaint and assertions of the General Counsel that in the course of his discussion with employees on the afternoon of November 25, Wallace, for the purpose of undermining the Union's support among employees, adjusted their principal grievance by advancing their choice for the post to a supervisory position⁵ and in the same discussion announced a forthcoming wage increase.

The circumstances surrounding the antecedents of the afternoon meeting in the backroom on November 25 have been set forth above. It appears from Wallace's testimony that after inquiring of the assembled employees what brought on the union demand he was informed by employee Dexter that the employees were discontented over the absence of any direction of their work in loading orders on the platform. The situation appears to have been one of "all Indians and no chief" with the result that the workers felt discontented over their mutual uncertainty as to the order in which customers' orders should be loaded on the trucks. It was made plain to Wallace, in other words, that the lack of a leader in this operation was the main cause of employee interest in the Union.

At this point Wallace inquired of the group as to whom they wanted to be their boss in connection with the loading problem. Dexter spoke for the group and stated that they wanted Harold Herron to be the man to direct the flow of work on the platform. Wallace immediately assented to this. While Herron clearly is shown not to have been elected to supervisory status, his assignment to a leadman role plainly was an effective settlement of the outstanding grievance and the conclusion is virtually inescapable that the action was taken as an adjustment of the grievance which had led to union interest. By this action the Respondent plainly interfered with the right of employees to continue their interest in self-organization free and clear of employer interference in the matter. I find that the announcement of Herron's new role was an unfair labor practice within the scope of Section 8(a)(1) of the Act.

With respect to the announcement of the wage increase, it is undisputed that in the course of his talk Wallace informed the assembled employees that a wage increase was scheduled for the first of the year. Respondent contends that the increase had been determined upon some considerable time prior to the meeting of November 25 and in the circumstances plainly could not have any effect on union sympathy of the listeners since the announcement, according to Respondent, was made after Wallace learned that employee interest in the Union was due to something other than any discontent with wages.

Wallace testified that it was sometime in September or early October that the decision was made to effectuate a 10-cent-per-hour wage increase on the first of the year. It appears from his testimony that prior practice had been to announce such wage increases shortly before the effective date and that in the case of the present increase the initial plans were to announce it on the occasion of the annual Christmas party which would be a week or so before its effective date.

Wallace's account that the decision to increase wages as of the first of the year, 1964, finds support in the testimony of Herron and Dexter that the forthcoming increase was revealed to them sometime early in October. I credit Wallace's testimony that the amount and date of the increase had been determined prior to the advent of the union campaign.

⁵ The General Counsel's brief tempers this assertion somewhat by substituting "boss" in lieu of "supervisor." The evidence respecting Herron's duties and authority clearly establishes that his duties are essentially the same as other rank and file workers except for the November 1963 grant of authority to direct the order of loading on the platform. He is the senior employee but appears to be compensated on the same basis as other workers and to have no authority except that of directing the order of loading. This does not appear to involve or require the use of independent judgment. I conclude that Herron never was a supervisor at any material time.

Respondent contends that any inference that the announcement was made in the course of the November 25 talk to employees for the purpose of dissuading employees from union sympathy is rebutted by the evidence tending to indicate that the reference to the scheduled increase was made only after Wallace had been apprised that any discontent was bottomed on working conditions, viz, the uncertainty as to assignments on the loading dock, as distinguished from wage rates.

Appraising the testimony of Wallace and Dexter together with the pretrial affidavit of Wallace, it is my conclusion that the preponderance of the evidence indicates that Dexter replied, when Wallace at an early stage in the course of the November 25 afternoon talk in the backroom inquired as to what brought the union matter about, that it was more likely working conditions than wages. It was, I find, then that Wallace announced the scheduled wage increase. The fact that the employees regarded the platform loading uncertainties as a more potent argument for unionization, does not necessarily preclude the wage announcement's having an inherently coercive effect. It may well have been regarded by all concerned as an added inducement served up to allay whatever discontent existed among employees.

The evidence preponderates in favor of the conclusion that the announcement of the forthcoming wage increase at the particular time and under the particular circumstances necessarily had the potential effect of interfering with employee adherence to their support of the Union. That Wallace may not have had the specific intent to coerce is not determinative; the *mens rea* is not an essential element of an unfair labor practice.

C. The refusal to bargain

On November 19, 1963, employee John Hall, apparently the leader in employee self-organization, went to the union hall together with his fellow workers Eisenhauer, Krohn, and Stursman. Business Manager Arden discussed membership with the group and gave them authorization cards. The following day, according to undisputed testimony of Hall, he signed a card and employees Eisenhauer, Krohn, and Stocker signed cards in his presence. Employee Brown signed a card the following day⁶ in Hall's presence and employee Stursman, either on November 20 or 21, delivered to Hall an authorization card which he had previously signed. Hall and Eisenhauer delivered five of the cards to the union business manager on November 20 and the next day delivered Jack Brown's card. The cards constitute applications for membership and authorizations for representation.⁷

The six employee authorization cards delivered to the Union on November 20 and 21 indisputably constitute a majority of employees in the agreed-upon appropriate unit of drivers, warehousemen, and helpers at Respondent's plant. On their receipt Arden directed his secretary to forward them to the Indianapolis office of the Union for transmittal to the Board in support of a representation petition. The cards were apparently received in the Board's Regional Office sometime on November 26 and a petition was filed the same day. Arden also, on November 21, instructed his secretary to write the Respondent demanding recognition and under date of November 22 the letter, as noted above, was sent to the Respondent. Wallace learned from Frank of the existence of a letter from a union but apparently did not open the letter until his arrival at the plant on Monday, November 25.

The Respondent presented evidence designed to establish that Wallace was informed on the morning of November 25 that most of the employees had withdrawn their support of the Union, that Wallace was therefore in good-faith

⁶ Brown apparently predated his card since it bears the date of November 20. There is no question as to its authenticity or effectiveness.

⁷ The cards also contain the following provision:

. . . it being understood that in the event this application and authorization has been signed during the organization of my fellow employees by the union then I agree that I have no right to revoke, cancel or withdraw such during the organization efforts of the union, such period however not to exceed one year from the date hereof.

The General Counsel appears to contend, citing *Bonne Lass Knitting Mills, Inc.*, 126 NLRB 1396, 1408, that this provision would preclude employee withdrawal of their authorizations. This position seems doubtful, no consideration being furnished for the irrevocability feature, and I do not rely on any conception that employees here *could not* cancel their authorizations.

doubt as to the Union's right to recognition, which doubt was resolved by the informal poll taken in the afternoon of that day. Respondent would see the evidence as requiring the conclusion that there either was no majority at the critical time or, at least, that Respondent in good faith doubted a majority and had a right to await a Board certification.

The workday at the Frank plant and warehouse starts fairly early, about 4 a.m. or thereabouts. Hall testified, as also did Stirsman and Stocker, that they expected Arden to meet them at or near the plant early on the morning of November 25 for the purpose of presenting the Union's proposed form of agreement to the Company. None of these witnesses impressed me as conscientiously truthful but their account is undenied by Arden and I find that the employees were awaiting Arden and were outspoken in their disappointment at his nonappearance.⁸

Wallace's testimony is to the effect that on the morning of November 25 he met Hall in the banana room and asked Hall what, if anything, he knew about the union claim which Wallace had just received. According to Wallace, and he is confirmed by Hall, Wallace was told that the men had changed their minds and if an election were held that day they would vote against the Union. Wallace does not appear to have had any other information on the morning of November 25 except the union letter on the one hand and Hall's report on the other. It is impossible to make a good-faith doubt out of the mere assertion by Hall that employees had changed their minds. But the contention is advanced that the morning discussion with Hall in conjunction with the events of that afternoon together form the basis for Wallace's good-faith doubt of the Union's claim to representative status. We turn to closer examination of the events of the afternoon.

As noted above, I find that the November 25 afternoon meeting in the plant's backroom was in effect called by Wallace. Wallace was accompanied to the meeting by House Foreman Wilbur Barnes and by senior employee Harold Herron. The discussion appears to have opened with Wallace's reference to the union letter and his inquiry as to what the men knew about the situation. Praising Wallace's account on the witness stand in the light of his pretrial affidavit, I find the evidence to preponderate in favor of the conclusion that at an early point in his talk, which apparently lasted only about 10 minutes or so, he asked the employees what had led to their interest in the Union, in other words what grievance⁹ they had. This interpretation of Wallace's inquiry finds support in the testimony of Dexter who stated that Wallace inquired of the assembled employees, after referring to the union letter, as to what was the "trouble," plainly susceptible only of the interpretation that the "trouble" in question was what had generated the union interest.

As appears from the testimony of Wallace, Dexter, and Stirsman, Wallace was informed that the "trouble" was the difficulty of scheduling the loading on the platform without one man in charge to line up the loading orders. Wallace asked the men whom they wanted to do this work and they appear to have settled on Herron as their choice. As the senior and apparently trusted employee, Herron was agreeable to Wallace and he then and there informed employees that their wish was granted. As noted above, I do not find that Herron was then elevated to supervisory status, but the evidence shows that his new assignment was made pursuant to the employees' request as a settlement of their grievances and as a means of quieting the "trouble" that had produced the interest in the Union leading to the latter's demand for recognition.

After announcing the new assignment of Herron, Wallace instructed employees to discuss the matter among themselves and to let him know so that he could reply to the Union. Dexter appears to have been a leader in declaiming against the Union, in the ensuing caucus during the brief period he attended it. Dexter, a former member of the Union, who did not sign a card and apparently was not asked to in the November 1963 campaign, appears to have been outspoken in opposition to the Union. From the import of his testimony I conclude that the employees' discontent had not produced a majority against the Union until the caucus of November 25 in the afternoon, after Wallace had adjusted the principal grievance.

⁸ General Counsel requests that the Trial Examiner judicially note November 25 as a national day of mourning for President Kennedy. The request is granted but its significance does not appear controlling.

⁹ On the stand Wallace could not recall but was not asked to deny that he used the term "grievance." I find that he either used it or its equivalent.

At about the clocking-out time, 3 p.m., Wallace stationed himself near the timeclock and was informed that the men had decided against the Union. Dexter called Arden and later Wallace called Arden.

It is undisputed that the employee-signatories to the authorization cards never notified the Union of their cancellation and that their notification to Wallace of their discontinuation of interest in the Union followed only after his grievance adjustment.

The credible evidence as summarized above reveals that while Wallace might, for a fleeting moment, have had a good-faith doubt as to a union majority on the basis of Hall's morning answer to Wallace's question in the banana room, any doubt arising from that relatively innocuous conversation was not the basis of Wallace's refusal to bargain. Rather it clearly appears that the real basis for Wallace's action was the afternoon caucus which followed upon his action in adjusting their grievances which had led to unionization.

I find and conclude that the Respondent's refusal to bargain was not based on a genuine and good-faith doubt as to the Union's claim. Since the Union had a clear majority at the time it asserted a demand for recognition, Respondent's refusal was an unfair labor practice within the scope of Section 8(a)(5). In arriving at this conclusion I analyze the evidence as clearly indicating that at a time when the Union had requested bargaining and had the support of a majority in the appropriate unit, Respondent, through Wallace's actions on the afternoon of November 25, brought about the dissipation of the majority through his undertaking to inquire as to the causes of the employee support of the Union and taking action to remove the causes. Respondent by its direct dealing in the face of a bargaining demand from the majority representative engaged in unfair labor practices and cannot now be heard to complain that the Union no longer has a majority.

Respondent's unfair labor practices were effected in full on the afternoon of November 25 and the circumstances that the Union subsequently filed a representation petition and even agreed to a consent election cannot be regarded as militating against inquiry into the nature and effect of its actions on that afternoon nor as precluding remedial relief against the consequences of its acts.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

In view of the findings set forth herein to the effect that the Respondent's act in refusing to bargain with the Union constituted an unfair labor practice within the purview of Section 8(a)(5) I shall recommend that the Respondent be required to cease and desist from such refusal to bargain and, upon request, bargain with the Union and embody any understanding reached as a result of such bargaining in a written and signed memorandum of agreement. In view of the findings that Respondent has engaged in acts of interference, restraint, and coercion within the purview of Section 8(a)(1) I shall recommend that it be required to cease and desist from such conduct and any like or related conduct. I shall recommend the posting of an appropriate notice.

On the basis of the foregoing findings of fact and upon the mature record in this case, I make the following:

CONCLUSIONS OF LAW

1. Respondent's operations affect commerce within the meaning of Section 2 (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All truckdrivers, warehousemen, and helpers employed in Respondent's plant, exclusive of office clerical employees, professional employees, guards, and supervisors as defined in the Act constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. By refusing from and after November 25, 1963, to bargain in good faith with the Union as exclusive bargaining representative of employees in the above

appropriate unit, Respondent has engaged in and is engaging in unfair labor practices defined in Section 8(a)(5) and (1) of the Act.

5. By directing employees to conduct a poll as to their authorization of the Union to act as their bargaining agent, and by announcing wage increases and adjusting employee grievances for the purposes of undermining employee support of the Union, under the circumstances set forth above, Respondent has engaged in unfair labor practices defined in Section 8(a)(1) of the Act.

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

7. Respondent has not been shown to have interrogated employees as alleged in the complaint herein.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this case I recommend the Respondent, its officers, directors, agents, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith with the Union as to wages, hours, and terms and conditions of employment covering employees in the unit herein found appropriate.

(b) Directing employees to poll themselves as to their collective-bargaining representative, announcing wage increases, and adjusting grievances for the purpose of dissuading employees from support of the Union as their bargaining representative.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action which appears necessary and appropriate to effectuate the policies of the Act.

(a) Upon request, bargain collectively in good faith with the Union as the exclusive representative of employees in the unit herein found appropriate and incorporate in a written and signed memorandum any understanding reached as a result of such bargaining.

(b) Post at its Evansville, Indiana, plant and warehouse, copies of the attached notice marked "Appendix."¹⁰ Copies of said notice to be furnished by the Regional Director for Region 25, shall, after being duly signed by a representative of Respondent, be posted by it immediately upon receipt 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 Respondent to insure that said notices are not altered, defaced, or covered by other material.

(c) Notify the Regional Director for Region 25, in writing, within 20 days from receipt of this Decision what steps it has taken to comply herewith.¹¹

It is recommended that unless within the aforesaid 20-day period, Respondent notify the Regional Director, in writing, that it will comply with the Order recommended herein, the National Labor Relations Board issue an order requiring Respondent to take the action recommended.

¹⁰ If this Recommended Order is 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. If the Board's Order is enforced by a decree of the United States Court of Appeals, the notice will be further amended by the substitution of the words "a Decree of the United States Court of Appeals, Enforcing an Order" for the words "a Decision and Order."

¹¹ If this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 25, in writing, within 10 days from the date of this Order, what steps the 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, as amended, we hereby notify our employees that:

WE WILL bargain upon request with Chauffeurs, Teamsters and Helpers Local Union 215, as exclusive representative of employees in the appropriate unit, namely, drivers, warehousemen, and helpers in our Evansville plant.

WE WILL try in good faith to reach agreement with the above union and if agreement is reached we will embody such agreement in a written, signed agreement.

WE WILL NOT refuse to bargain with the above Union nor will we direct employees to poll themselves as to their support of the above union, adjust grievances or announce wage increases for the purpose of undermining union support among employees.

WE WILL NOT in any similar manner interfere with employees rights under section 7 of the National Labor Relations Act.

C. L. FRANK, 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, 614 ISTA Center, 150 W. Market Street, Indianapolis, Indiana, Telephone No. Melrose 3-8921, if they have any question concerning this notice or compliance with its provisions.

**Equitable Life Insurance Company and Insurance Workers
International Union, AFL-CIO.** *Case No. 8-CA-3482. October 30, 1964*

DECISION AND ORDER

On August 4, 1964, Trial Examiner A. Bruce Hunt issued his Decision 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 Trial Examiner's Decision. Thereafter, Respondent filed exceptions and a brief in support of the exceptions.

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

The Board has considered the Trial Examiner's Decision and the entire record in this case, including the exceptions and brief of the Respondent, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order, the Order recommended by the Trial Examiner, and orders that the Respondent, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.