upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material. A copy of the aforesaid Appendix shall also be mailed by Respondent to each employee on its payroll on May 15, 1963, and who is not presently employed by it, at his or her last known address, and to the aforesaid Local No. 26.

(c) Preserve and, upon request, make available to the Board and its agents, for inspection and reproduction, all books and records necessary or helpful in determining the identity of the employees to whom vacation pay is due as provided herein, and in computing the amount thereof.

(d) Notify the aforesaid Regional Director, in writing, within 20 days from the receipt of this Decision, what steps it has taken to comply herewith.[11]

IT IS FURTHER ORDERED that paragraphs 13 and 14 of the complaint herein, as amended at the hearing, be, and the same are, dismissed.

[11] In the event that this Recommended Order is 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 it 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 Labor-Management Relations Act, you are hereby notified that:

WE WILL NOT withhold vacation pay from, or in any other manner discriminate against, our employees in regard to hire or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist unions, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL pay to each employee on our payroll on May 15, 1963, who qualified for vacation pay under the terms of article VIII of our contract with Local 26, which became effective April 1, 1960, and who has not heretofore received the same, the vacation pay due June 28, 1963, under the terms of the aforesaid contract.

GREAT DANE TRAILERS, 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, 528 Peachtree-Seventh Building, 50 Seventh Street NE., Atlanta, Georgia, Telephone No. 876-3311, Extension 5357, if they have any question concerning this notice or compliance with its provisions.

Alpine Coal Company *and* Clyde Scott *and* Howard Scott *and* Warren Scott. *Cases Nos. 5-CA-2708-1, 5-CA-2708-2, and 5-CA-2708-3. December 16, 1964*

DECISION AND ORDER

On September 22, 1964, Trial Examiner George L. Powell issued his Decision in the above-entitled proceeding, finding that the Re-

spondent 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, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom 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,[1] and hereby adopts the Trial Examiner's findings, conclusions, and recommendations to the extent consistent herewith.[2]

We agree with the Trial Examiner that Respondent violated Section 8(a)(1), and also refused to rehire the Scotts, in violation of 8(a)(3), because of their union activities.[3] With respect to the 8(a)(3) violations, we rely principally on the testimony of Howard Scott, whom the Trial Examiner credited. He testified that he was told by Wooters, Respondent's president, that if he (Wooters) had known earlier of the Scott brothers' union activities, he would have fired them earlier. We also rely on employee Owen Long's testimony, credited by the Trial Examiner, that he was told by Evans, assistant to Wooters, that had he (Evans) known of the Scotts' union activity at the time of their employment, they would never have been hired. The record discloses that the Scotts were highly qualified employees, and yet after the layoff they were refused reinstatement while others were either hired or transferred to do the same type of work as the Scotts had done before the layoff. We are satisfied that the Scotts' union activities were the real reasons motivating Respondent's refusal to recall them to work following the layoff.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order the Order recommended by the Trial Examiner with the following modification, and

[1] As the record and brief adequately present the issues and positions of the parties, Respondent's request for oral argument is hereby denied.

[2] Respondent, in its exceptions, has accused the Trial Examiner of bias and prejudice because of his credibility findings. After careful study of the record, we find this exception to be without supporting evidence, and further find no reason to disturb the credibility findings.

[3] The Scott brothers all worked on the second shift. The entire shift had been laid off on December 20, 1963, for economic reasons, and the complaint does not allege that the layoff was unlawful.

orders that Respondent, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order as modified below:

1. Delete subparagraph (c) of paragraph 1 and substitute the following:

"(c) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all 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 by Section 8(a)(3) of the Act, as amended."

2. Delete the last indented paragraph in the attached notice to the Trial Examiner's Decision marked "Appendix," and substitute the following:

> WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed to them by Section 7 of the Act, except to the extent that such rights 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.

TRIAL EXAMINER'S DECISION

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, was heard before Trial Examiner George L. Powell at Oakland, Maryland, on May 12 and 13, 1964, pursuant to charges filed by three individuals on January 30, 1964, and a complaint dated March 31, 1964. The issues in the case, joined by Respondent's answer denying the essential allegations of the complaint, are whether Alpine Coal Company [1] through its agents interrogated and threatened its employees in violation of Section 8(a)(1) of the Act and whether Respondent has refused to employ Clyde Scott, Howard Scott, and Warren Scott because of their membership in, assistance to, or activity on behalf of, the United Mine Workers of America, herein called the Union, or because they engaged in concerted activities with other employees for the purpose of collective bargaining or other mutual aid or protection, all in violation of Section 8(a)(3) and (1) of the Act.[2]

[1] Title of Respondent as amended at the hearing.

[2] Sections 7 and 8(a)(1) and (3) read as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right 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).

[Footnote continued on following page.]

Upon the entire record in the case, including my observation of the witnesses, and due consideration of the briefs filed by the parties on or about June 16, 1964, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Alpine Coal Company, herein called Respondent, is a West Virginia corporation having a principal place of business in Bayard, West Virginia, where it is engaged in the mining and sale of coal. In the operation of its business, Respondent, during the 12 months preceding the issuance of the complaint, shipped coal valued in excess of $50,000 from its mine in Bayard, West Virginia, directly to points located outside the State of West Virginia. During the same period, Respondent received goods and materials valued in excess of $50,000 directly from points located outside the State of West Virginia. I find that Respondent at all material times herein has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Mine Workers of America, herein called the Union, is an organization of employees having bylaws and a constitution. Employees participate in it in order to bargain with employers over wages, hours, and conditions of employment. I find it is a labor organization within the meaning of Section 2(5) of the Act.[3]

III. THE UNFAIR LABOR PRACTICES

The complaint alleges that Dale Evans, an agent of Respondent, threatened employees at the Respondent's mine. Respondent denied that Evans was its agent, alleging instead that Evans was only an employee.

Dale Evans

Dale Evans, a high school graduate with bookkeeping experience, was hired as a clerk by Cherry River Construction Company, the company that was doing construction at the mine site before the mine was open. His duties with Cherry River were the same as they are with Respondent. He handles the time and payroll record, does the emergency purchasing, requisitions supplies, and does bookkeeping and clerical work. In the clerical end he receives applications for employment, keeps a file on

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

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

* * * * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later . . . .

[3] Respondent denied that the Union is a labor organization. An offer of proof was made that in a recent Sixth Circuit Court case entitled *"Pennington and Others* v. *United Mine Workers of America"* (Opinion 14809–10), the court found that the UMW was an owner of Nashville Coal Company and West Kentucky Coal Company. "Respondent argued that as the UMW is an employer engaging in competing business with Respondent that it cannot be also a labor organization representing the employees of competing coal companies. There is no merit to this position. But I make no finding as to whether Respondent would have to bargain with the Union as that is not involved. See *Bausch & Lomb Optical Company,* 108 NLRB 1555, 1556, 1563, wherein the Board found the employer did not refuse to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act by refusing to deal with the duly certified representative of its employees because such representative had established a business enterprise in the same locality and industry as that of the employer. In his concurring decision, Member Murdock stated, "I believe that engaging in a competitive business as here is . . . conduct which is not consistent with good-faith bargaining on the part of a union."

job applicants, gives Robert Wooters, president of Respondent, employment application cards, and files and keeps them when returned. He credibly testified that applicants come to the office, which, prior to late December 1963 (during the critical period), he shared with President Wooters, where he talks with them personally and refers some to Wooters. He would hand job applicants their application form and as a rule they would take them, fill them out, and mail them back. Knowing the type of personnel needed at a particular time he would bring job applications to the attention of Wooters. When Wooters wants a particular man he tells Evans to call him. On cross-examination he testified that, when asked, he tells the employees as they are hired what their classification and wages were to be. (The wage scale was posted in the lamp office so employees had opportunity to know their wage scale.) In situations where President Wooters hired for specific jobs, Evans told them what jobs they were hired for. He saw from 20 to 25 percent of all job applicants by himself, the remainder being referred to Wooters. He has from 3,000 to 4,000 job applications on file. He has checked out job applicants with their former employers.

Evans was hired on June 24, 1963. On July 1, 1963, the entire 1,000 application forms he had were exhausted. Thereafter, until additional forms were received, he took job information on yellow sheets of paper and made up forms later when needed.

Robert B. Wooters, president, credibly testified that he had sole authority to hire. Although he did not personally speak to every job applicant, any applicant who wished to wait for him to return to the office would usually be seen. Some days, apparently when he was in the office, he talked to every applicant. He personally selected each applicant to be hired but would tell Evans to notify the applicant to get the necessary physical examination and put him to work and would tell Evans at what job classification they were to be put. (The mine superintendent and the foreman in the mine likewise do not have the right to hire or fire. They, however, do recommend hiring and firing to Wooters.) Additionally, only Wooters can make layoffs. He credibly testified that Evans was not employed as a supervisor nor did he carry out any supervisory authority. However he admitted relaying authority through Evans on many occasions.

It is not clear to me that Evans would recommend hires to Wooters but it is clear that he screened applicants. Wooters testified that, "I made the decision to hire a man on his [Evans'] recommendation, merely on the basis of analysis of the information he presented to me." Wooters made no "independent check" on "a number of people who were hired on the description and say so of Mr. Evans . . . and their application." Wooters testified that the Scotts themselves were hired from their applications in that Wooters told Evans to "put them to work . . . if [they] come up. . . ."

I find that insofar as the public or job applicants were concerned, Evans was either part of the responsible management of Respondent or so closely connected to it in carrying out duties in the same office or offices of the president of Respondent that management should be held accountable for his conduct particularly that conduct which management knew Evans was engaged in or which paralleled conduct of known supervisors. (See *International Association of Machinists, Tool and Die Makers Lodge No. 35 (Serrick Corp.)* v. *N.L.R.B.*, 311 U.S. 72.)

8(a)(1) Activities

President Wooters and Dale Evans each admitted telling employees when they were hired that the mine was to be a nonunion operation. For example Wooters admitted telling employee Russell Swietzer when he was hired, "you have been around here long enough—this construction is a non-union job." He admitted telling "a fair percentage of" other employees besides Swietzer ". . . to the effect that this was a nonunion operation" and he also told them that he ". . . hoped it stayed that way."

Owen Long, whom I generally credit, testified that when he was hired on November 13 [4] Dale Evans told him "it would be a non-union operation." To show how serious Dale Evans considered the policy of keeping the mine "a non-union operation," Evans told Long, according to Long, on November 11 that if he [Evans] had ". . . known [of the labor dispute at Grafton Coal Mine] he wouldn't have put the Scott brothers to work." In this same conversation, Evans told Long that he had found out that there was a labor dispute involving the Lee-Nourse Miners at the Grafton Coal Company and because of the dispute Grafton took the Lee-Nourse Miners out of its operation but that after the labor dispute was over the "miners" would put them back. (The Scott brothers were laid off at Grafton on October 16 when it removed the use of its Lee-Nourse Miners and they were hired immediately there-

[4] All dates are in 1963 unless otherwise noted.

after by Respondent. Clyde and Warren Scott were hired on October 16 and Howard Scott was hired on October 17.) [5]

Long related the conversation he had had with Evans to Howard Scott who went to see Evans about it. Howard Scott testified that Evans told him the same thing that he had told Long, that is, if Evans had known of the Scotts being mixed up in the union at Grafton, ". . . we [the Scotts] would never have gone to work over there . . . ."

Likewise, Respondent's policy of keeping the mine nonunion is further established by statements made by President Wooters and Grant King, general foreman, and by additional statements of Evans. Howard Scott credibly testified that on January 20, 1964, while seeking reemployment at Respondent's mine, Wooters told him that if he had known of the Scotts' union activities they would have been fired earlier. (The Scotts were laid off with the whole second shift on December 20, 1963.) Evans told Howard Scott, according to Scott, when he was hired on October 17 that ". . . there would never be a union there. They would shut it down first." Evans also told Clyde Scott, according to Clyde, that the wage raise given on November 16 was "To discourage the union." Likewise Grant King told Howard Scott that the raise on November 16 was ". . . to keep the union out." King told employee Glenn Wilcox that the union "wasn't any good any more," and the Respondent ". . . would shut the mine down if it went union." Howard Scott testified that he heard King say the mine would close down if it went union. According to Clyde Scott, King told him the Respondent ". . . would shut the mine down before they would sign a contract with the union."

Conclusions as to the 8(a)(1) Evidence

I credit the above witnesses for the General Counsel and find that the statements alleged to have been made by President Wooters and General Foreman King were made. Also that the statements attributed to office employee Evans were likewise made. I also find that Evans was reiterating and carrying out the company policy of keeping the mine "non-union." Not only did these General Counsel witnesses stand up well under most skillful and hard-pressed cross-examination, but they impressed me with simple sincerity. It is also noted that Long was an employee of Respondent at the time of the hearing and hence had the difficult job of testifying against the interest of his employer. It also appeared that this was not an easy task for him to do. On the other hand, Evans impressed me as a witness who was exceeding the natural limits of loyalty by deliberately conforming his testimony in order to place Respondent in the best possible position. Accordingly I find that statements attributing the reason why wage increases had been granted were made in order to restrain union activities; statements that Respondent's operations were nonunion and would be kept that way even to the extent that if certain union activities had been known earlier the employee participating in them would have been fired earlier, or, that had the full union activities of certain employees been known at the time they applied for work they would not have been put to work; and finally, statements that the mine would close down if the union were to come in, are all statements which coerce employees and interfere with their free right to engage in union activities guaranteed them under the Act. Accordingly, I find these statements violated Section 8(a)(1) of the Act and I will recommend that the Respondent cease and desist from this type of activity.

The Scott Brothers

The complaint alleged that Respondent refused to reinstate the Scott brothers after they had been laid off, and this refusal to reinstate them violated Section 8(a)(3) and (1) of the Act. In setting out the testimony on this phase of the case, certain evidence previously set out is restated in order to maintain proper continuity.

Clyde, at 49, was the oldest of the three Scott brothers. His brother Warren was 40 years old and his brother Howard was 39. All three had worked on Respondent's second shift (3 to 11 p.m.) where Clyde and Howard each operated a Lee-Nourse Continuous Miner. Warren operated a shuttle car. The three brothers, while working at the Grafton Coal Company some 75 miles southwest of Respondent near Monterville, West Virginia, had applied for employment with Respondent. Thus when they were laid off at the Grafton Coal Company on October 16, 1963, Respondent was able to hire them immediately. Clyde and Warren Scott were hired by Respondent on October 16,[6] and Howard was hired on October 17.

[5] Evans denied telling Long that if he had known of the labor dispute at Grafton he would not have put the Scott brothers to work, but the denial is not credited.

[6] Howard Scott places this as October 17, but Clyde gives it as October 16. When hired, according to Howard Scott's credited testimony, he and Clyde operated the only two Lee-Nourse Miners that Respondent had at the time.

When the Scotts began work at Respondent, the mine was so new that it only had two Lee-Nourse Miners and coal was not yet being processed. The coal that was being mined was simply stockpiled to await later cleaning as the cleaning plant was in process of being built.

On December 20, President Wooters, at the conclusion of the second shift after 11 p.m., laid off the complete second shift (26 employees). This layoff is not an issue in this case. It was made, according to the credited testimony of Wooters, because the cleaning plant could not take care of all the coal production and hence production had to be curtailed. At the time of the layoff, the Respondent employed approximately 85 employees. Also laid off, on December 20, were certain employees on the first and third shifts who had not worked out as well as had been expected and nine of these vacancies were filled with qualified employees who were laid off on the second shift. There was no work for the remaining 17 on the second shift.

Of this latter group of 17 employees, all have been recalled by Respondent except for the 3 Scott brothers and employee Robert Dawson. On December 26, 11 of the 17 were recalled and 2 were recalled in January 1964. As for employee Robert Dawson, it appears that he was slow in catching on, and he is not involved in the case.

At the time of the hearing, Respondent had a large operation employing some 16 Lee-Nourse Continuous Miners and other complicated modern coal mining machinery. As part of its operating policy it has a training program. For example, it had trainees and helpers on complicated machinery in order that they could advance into the operator category when needed. This training program began before and had continued after the December 20 layoff. The names of the Miner operators and 13 buggy (shuttle car) operators employed by Respondent at the time of the hearing, the dates of their hire, and their former experience is as follows:

Name	Date of employment	Became Lee-Nourse Miner operator
Miner operators:		
1. Phillip Ferguson	1/2/64 Former Cherry River employee.	1/2/64.
2. Steve Revsz	11/1/63 Trainee	12/26/63
3. Wayne Lions	11/16/63 Went to Lee-Nourse training school.	11/16/63.
4 Enoch Davis	11/19/63	11/19/63.
5. Richard Bolyard	11/1/63 Buggy operator	Approx March 1964.
6. Gerald Wisner	10/17/63 Miner helper	12/26/63.
7. Owen Long	11/13/63	11/13/63.
8. Austin Van Meter	11/1/63 Miner helper	Late December 1963.
9. Howard Messenger	11/12/63 Miner helper	January 1964
10. Howard Stewart	11/1/63 Miner helper	February 1964
11. Robert Ketchem	3/18/64	3/18/64.
12. Blain McGlaughlin	11/12/63 Miner helper	2/20/64.
13. Willard Ridenour	2/26/64	2/26/64.
14 Jerry Westfall	1/3/64 Utility belt man and helper	2/20/64.
15. Paul Arnold	11/1/63 Buggy operator	February 1964.
16. Marland Ketchem	11/1/63 Roof belt machine operator	April 1964

Buggy operators hired Name:	*Date of employment*
1. Wesley G. Paugh	2/4/64
2. Leroy Steward	2/4/64
3. Robert Belt	2/5/64
4. Clarence Wade	2/20/64
5. Charles Moore	2/20/64
6. Ernest Kovalch	3/4/64
7. Arnold Snyder	3/11/64
8. Frank Calvert	3/16/64
9. Theodore Reese	3/16/64
10. Foster Williams	3/24/64
11 Arthur Garletts	3/30/64
12. William Braham	4/2/64
13. Terry Louk	4/28/64

Efforts To Seek Reemployment

Crediting the testimony of Howard Scott, it is noted that following their layoffs on December 20, the three Scott brothers went to Respondent on December 26 and asked Wooters for a job. He turned them down saying he needed a conveyor belt first before they could be put back to work.

There is no question but what the Scott brothers were highly qualified and competent employees. As far as Clyde and Howard Scott were concerned, Gooding, the general mine foreman, told Clyde Scott, "We need men like Howard [Scott] and you, on these Miners [the Lee-Nourse Miner]." [7]

On January 2, 1964, the three again saw Wooters who gave them the same answer. Earlier on the same date they saw Grant King, general mine foreman on evening shift, in Thomas, West Virginia, who told them he did not know why they had been laid off as he had their names on a list of those Respondent should keep on the job.[8]

On January 6, 1964, Wooters told the Scotts he had not yet completed the dryer for the coal so he did not need them. On the same day Jim Miller, section foreman, told them that he and Charlie Gooding, general mine foreman, and Arley Meadows, superintendent, had asked Wooters to rehire the Scotts but "they didn't get any satisfaction on it." Miller told Howard Scott that Wooters "didn't give any reason why he wouldn't put us back to work." Later on the same evening the Scotts talked to Charlie Gooding at his house and he told them, "Right now I've got room for six men. I could put them to work right now." He said he needed experienced men for the job. When they told him they had signed union cards at Grafton Coal Company, Gooding said, "Maybe that's it," referring to a possible reason for Wooters not taking them back.

Conclusions and More Evidence

In the light of the above chart of hires of the 16 Miner operators, during which 4 new employees were hired and 9 others were reclassified as Miner operators after Scotts' dismissals, together with the above evidence that Grant King thought enough of their ability to have them on a list of those to keep when the layoff was made (or for Wooters to use in hiring), and Gooding called them good workers and told them he needed 6 experienced men, why was it that Wooters would not hire them? Wooters gave them excuses such as lack of a conveyor belt and cited the fact that the dryer was not yet completed but Wooters would not tell Miller, Gooding, and Meadows, all management men, just why he would not put the Scotts back to work.

Additional evidence throws light on this. Credited testimony is that Grant King told Glenn Wilcox that the mine would close if it went union and also told Clyde Scott it would shut down if the Union were to get in the mine. Dale Evans, working in the same office with Wooters, had told Howard Scott there never would be a union in the mine. King had told Howard Scott and several other employees that a raise given in November 1963 was given to keep out the Union and that the mine would close before they would sign a contract.[9] Finally both Dale Evans and Robert Wooters testified that they informed employees, when they were hired, that the mine was a nonunion operation, and, in substance, that they wanted it to remain that way.[10] Thus it was common knowledge the plant was nonunion and was to remain that way.

In conclusion, Wooters was asked by Howard Scott on February 8, 1964, if there was any use of talking about being put back to work. Wooters in effect told him there was no further use in asking to be put back to work. He, Wooters, had just

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[7] From Clyde Scott's credited testimony.

[8] Wooters, on cross-examination, was asked if he knew what list, if any, King was working on. His reply was:

> I had instructed King . . . several days prior to that date I announced this layoff to make a list of the people that he had working and the jobs that they were doing and the vacancies which existed on all shifts. So he could use some intelligent means of deciding . . . we could, for me to hire.

[9] Wooters' denial of authorizing anyone to make any such statement is irrelevant It is sufficient that such a statement was made by one in a managerial position.

[10] Owen Long credibly testified that he was "hired" by Dale Evans on November 13, 1963, but that when applying for work on November 11, 1963, Evans told him that if he [Evans] had known of the Scotts' activity at the Grafton Coal Mine he would not have "put the Scott boys to work." Dale Evans also told Long that the Grafton Coal office had told Evans that Grafton took out the Lee-Nourse Miner when union activity took place at Grafton but that when the "trouble" was over they were going to put the Miner back in operation.

received a copy of the charge in this case at the time, and replied to Howard Scott's question, ". . . under the circumstances I don't see why there should be and we parted company, I haven't talked to them [the Scotts] since." [11]

Respondent attempted to show, through the testimony of Wooters, that the union activity of the Scotts at the Grafton Mine was known by Wooters before they were hired and hence the reason they were not put back to work could not have been based on their previous union activity. On the other hand, the General Counsel argued in his brief that when Wooters told job applicants that the mine was nonunion and that he hoped it stayed "that way," it was unreasonable to think that he would knowingly employ three individuals who had been so actively engaged in union activities in a neighboring mine as to have been the subject of retaliation. This position of the General Counsel would seem logical but it is not necessarily conclusive. It could well be that Wooters may have been in such sore need for competent Lee-Nourse Miner operators and buggy operators at the opening of the mine that he would still hire the Scotts, then train new operators and at the first opportunity get rid of the Scotts and keep them out. He had a training program and used it to justify his actions in putting on new Lee-Nourse Miner operators after December 20, 1963. From the above facts, it is apparent that Wooters does not want to rehire the Scotts. He has rehired all others who were on the second shift. The Scotts are highly competent. The reason he has not taken on the Scotts since December 20, 1963, I find, is because they are active union members and he wants to have a nonunion job. Such conduct tends to discourage membership in the Union as well as to discourage union activities of employees and as such violates the Act in Section 8(a)(3) and (1).

The earliest opportunity Respondent could have hired Howard and Clyde Scott as Miner operators, according to the chart above, was on December 26, 1963, when Gerald Wisner was transferred from Miner helper to Miner operator, and on January 2, 1964, when Phillip Ferguson was hired as a Miner operator.

The first opening which could have been used for Warren Scott as a shuttle car (or buggy) operator was on February 4, 1964, when Wesley Paugh and Leroy Steward were hired.

Accordingly, I will recommend as a remedy in this case that the Respondent employ the three Scott brothers in the same or equal jobs they had prior to December 20, 1963, discharging, if need be, the more recent Lee-Nourse Miner operators and buggy operator. As I have found that if it had not been for their union activities one of the Scott brothers could have been hired as a Miner operator on December 26 and the other on January 2, 1964, and because Clyde Scott had seniority over Howard Scott I will order backpay for Clyde Scott to begin on December 26, 1963, and backpay for Howard Scott to begin on January 2, 1964. Howard Scott and Clyde Scott should be made whole for any lack of earnings caused by the failure of Respondent to reemploy them by paying them what they would have made had they been hired on January 2, 1964, and December 26, 1963, respectively, less their interim earnings. As the earliest date on which Warren Scott could have been rehired as a buggy operator was on February 4, 1964, I will recommend that the Respondent make Warren Scott whole by paying him as backpay the amount of money he would have earned had he been working with Respondent since February 4, 1964, as a buggy operator less his interim earnings.

THE REMEDY

The appropriate remedy for the failure to hire the Scott brothers is to hire them and pay them backpay with interest computed under the formula approved in *F. W. Woolworth Company,* 90 NLRB 289 and *Isis Plumbing & Heating Co.,* 138 NLRB

[11] Wooters' record testimony on this point follows:

> I remember that date very well, Howard [Scott] came along that day, it was February 8th. That was the date that was developed this morning on the receipt [of the charge]. He was in the office again, asking me when I was going to put them [the Scotts] back to work, assuring me that in each case this had been information volunteered by him, that there was nothing of any talk to union activity, when I was called to the phone, with my wife telling me she had a registered letter from the National Labor Relations Board, and I asked her to read it to me over the phone. This is the first inkling that I had that a charge had been made and I went back to my office and Howard said something to the effect, well is there any use to talking about being put back to work and I said, under the circumstances I don't see why there should be and we parted company. I haven't talked to them [the Scotts] since. I believe they were back to the office to put . . . to pick up low earning slips on a couple of other occasions.

716, from the dates set out above. The Respondent will also be ordered to cease and desist from discriminating against employees because of their concerted activity and from any like or related violations of employee rights under the Act.

The appropriate remedy for the coercion and interference with employee rights as set out above is to order the Respondent to cease and desist from engaging in these or any like or related violations of employee rights under the Act.

Finally, I shall recommend the posting of an appropriate notice.

CONCLUSIONS OF LAW

1. By threatening employees with closing operations if the Union came in and by telling them that wage increases were given in order to keep out the Union and by telling employees that certain employees would not have been hired had their previous union activities been known at the time of hire or that they would have been fired earlier had their union activities been known, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.

2. By refusing to rehire Clyde Scott, Howard Scott, and Warren Scott under the circumstances, and for the reasons described above, the Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Sections 8(a)(3) and (1) and 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law and upon the record as a whole, I recommend that the Respondent Alpine Coal Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discriminating against employees because of their activity on behalf of the United Mine Workers of America, or any other union, or because of other union or concerted activity for mutual aid or protection.

(b) Telling employees wage raises were given in order to discourage union activity, telling them that Respondent's operation would close down if any union came in, and telling them that employees would not be hired if their previous union activity were known or would be fired if their union activity were known.

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

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

(a) Offer to hire Clyde Scott, Howard Scott, and Warren Scott to their former and substantially equivalent jobs, without prejudice to their seniority or other rights and privileges, and make them whole in the manner described in the portion of the Trial Examiner's Decision entitled "The Remedy" for any loss of earning suffered by reason of the discrimination against them.

(b) Notify Clyde Scott, Howard Scott, and Warren Scott, if they are serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

(c) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms hereof.

(d) Post at its mine in Bayard, West Virginia, copies of the attached notice marked "Appendix."[12] Copies of such notice, to be furnished by the Regional Director for Region 5, shall, after being duly signed by the authorized representative of the Respondent, be posted immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all

[12] In the event that this Order is adopted by the Board, the words "as Ordered by" shall be substituted for "as Recommended by a Trial Examiner of" 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 of" shall be inserted immediately following "as Ordered by."

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 Region 5, in writing, within 20 days from the date of the receipt of this Decision, what steps Respondent has taken to comply herewith.[13]

[13] In the event that this Order is 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

NOTICE TO ALL EMPLOYEES

As recommended by a Trial Examiner of the National Labor Relations Board, we are posting this notice to inform our employees of the rights guaranteed them in the National Labor Relations Act:

WE WILL offer Clyde Scott, Howard Scott, and Warren Scott their former jobs and pay them for wages they may have lost since December 26, 1963, January 2, 1964, and February 4, 1964, respectively.

WE WILL NOT discharge or otherwise discriminate against any employee for engaging in activity on behalf of United Mine Workers of America, or for engaging in any other union or concerted activity for mutual aid or protection of employees.

WE WILL NOT threaten our employees with closing the plant, discharge them or lead them to believe that wage increases are granted in order to discourage union activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in their right to form, join, or assist any labor organization or engage in any concerted activity or to refrain from such union or concerted activity.

ALPINE COAL COMPANY,
Employer.

Dated_____ By_____
(Representative) (Title)

NOTE.—We will notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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, Sixth Floor, 707 North Calvert Street, Baltimore, Maryland, Telephone No. 752-8460, Extension 2100, if they have any question concerning this notice or compliance with its provisions.

Local No. 320, International Union of Operating Engineers, AFL-CIO [R. W. Hughes Construction Company, Inc.] *and* C. V. Stelzenmuller, Attorney. *Case No. 10-CB-1445. December 16, 1964*

DECISION AND ORDER

On June 2, 1964, Trial Examiner W. Gerard Ryan issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of the Act and recommending that Respondent cease and