

**A. C. Rochat Company and E. R. Beeler, Director of Organization, Region III, Sheet Metal Workers International Association, AFL-CIO.** *Case No. 10-CA-5676. January 29, 1965*

### DECISION AND ORDER

On November 3, 1964, Trial Examiner C. W. Whittemore 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 his attached Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision.

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

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, with the following additions and modifications.

The Trial Examiner found *inter alia* that the Respondent violated the Act by discriminatorily discharging certain employees and by abandoning thereafter its sheet metal shop and installation work in order to avoid bargaining with the Union. To remedy these violations, the Trial Examiner recommended that the Respondent resume its sheet metal shop and installation work, and that the employees discriminatorily discharged and those laid off as a consequence of its unlawful abandonment of part of its business be reinstated and made whole for loss of earnings suffered by reason of the discrimination against them. The Respondent raises in its exceptions the contention that it is now practically out of business, that it would require a capital outlay of some \$50,000, which is not available to it, to resume its abandoned operations, and that to order such resumption would impose a financial hardship upon it.

While it is clear that the Respondent abandoned its business in order to avoid bargaining with the Union and that such conduct was a deliberate violation of its statutory obligations, we nevertheless do not believe that, in the circumstances of this case, it would be appropriate to order Respondent to resume a business operation

he no longer desires to pursue and whose resumption would apparently impose an undue financial hardship upon him.<sup>1</sup>

The violations engaged in by the Respondent are, however, of a serious nature and should not go unremedied. Although the Respondent maintains that it has no present intention of resuming its former operations, we note that it still has a presently functioning business and it is conceivable that it may resume full-scale operations. We deem it appropriate, therefore, to provide for the following alternative methods by which the Respondent may remedy its unfair labor practices.

We shall order the Respondent, in the event it resumes its operations, to offer to all employees who were discriminatorily discharged or laid off immediate and full reinstatement to their former or substantially equivalent positions and make all such employees whole for any loss of earnings they may have suffered by reason of the unlawful discrimination against them in the manner set forth in the section of the Trial Examiner's Decision entitled "The Remedy."

We shall order the Respondent to create a preferential hiring list, notify its employees of said list, and, in the event it resumes its former operations, offer to all employees who were discriminatorily discharged or laid off immediate reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed.

We shall also order Respondent to make whole the employees who were discriminatorily discharged or laid off for any loss of pay suffered by reason of the discrimination against them by paying to each of them a sum of money equal to the amount he would normally have earned as wages from the time of his discriminatory discharge or layoff until such time as each secures, or did secure, substantially equivalent employment with another employer, or from Respondent in the event it resumes its former operation.

In fashioning this remedy we are conscious, of course, of the fact that we have affixed no cutoff date for termination of the Respondent's backpay liability. However, the absence of such terminal date is not to be construed as imposing backpay without limitation. On the contrary, as we indicated in our supplemental opinion in *Savoy Laundry*<sup>2</sup> it is our intent that in formulating this backpay remedy, established backpay rules governing the conduct of discriminatees will apply and that circumstances which we cannot now foresee will dictate a limitation on the amount of backpay to be awarded.

We also expressly reserve the right to modify the backpay and reinstatement provisions of this Decision and Order if made neces-

<sup>1</sup> *Bonne Lass Knitting Mills, Inc.*, 126 NLRB 1396.

<sup>2</sup> *Savoy Laundry, Inc.*, 148 NLRB 38.

sary by a change of conditions in the future, and to make such supplements thereto as may hereafter become necessary in order to define or clarify their application to a specific set of circumstances not now apparent.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, A. C. Rochat Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Sheet Metal Workers International Association, as the exclusive representative of all production and maintenance employees at Respondent's Knoxville, Tennessee, shop, including outside refrigeration mechanics and outside sheet metal mechanics, but excluding office clericals, guards, professional employees, salesmen, technical employees, engineers, and supervisors as defined in the Act; and from unilaterally changing its operations so as to affect the wages, hours, and other terms and conditions of employment of its employees within the aforementioned unit without prior consultation with the above-named Union, or any other union which they may select as exclusive bargaining representative.

(b) Discouraging membership in the above-named or any other labor organization of its employees by discharging or laying off any of its employees or otherwise discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(c) Threatening employees to discontinue any operations or departments or to discharge any of them or to take other reprisals because of membership in, or activities on behalf of, the above-named or any other labor organization.

(d) Interrogating employees concerning their activities in behalf of the above-named Union, or any other labor organization, in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

(e) Threatening its employees that it will not bargain with the above-named Union or any other labor organization notwithstanding the fact that it is certified by the National Labor Relations Board as the representative of the Respondent's employees.

(f) Creating among its employees the impression that they are being surveilled in their union activities in a manner constituting interference, restraint, and coercion in violation of Section 8(a)(1) of the Act.

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

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) If and when the Respondent resumes its shop and installation operations, bargain, upon request, with Sheet Metal Workers International Association, AFL-CIO, as the exclusive representative of all employees in the appropriate unit described in the Trial Examiner's Decision, and embody any understanding reached in a signed agreement.

(b) Make whole C. D. Candler, Gene Bruce, Louie Mills, Ralph Cox, and Bobby Dukes, who were discriminatorily discharged and all of the employees who were discriminatorily laid off at the discontinuance of the shop operations in March 1964, for any loss of pay they may have suffered by reason of the discrimination against them in the manner set forth in the section of the Trial Examiner's Decision entitled "The Remedy" as modified by our Decision herein.

(c) Create a preferential hiring list containing the names of all those individuals included in paragraph 2(b), above, as being entitled to reinstatement if and when the Respondent resumes its sheet metal shop and installation operations, such reinstatement rights arising from the time such individuals were discriminatorily discharged or laid off. The Respondent shall notify the Union and all employees so listed of the establishment of said list and its content and shall offer all said individuals full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, if and when the Respondent resumes its former operations, all as set forth in the section of the Trial Examiner's Decision entitled "The Remedy," as modified by our Decision herein.

(d) Notify the above-named individuals, 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.

(e) Inasmuch as the posting of a notice as customarily required would result in a notice posted in a plant with drastically reduced operations and would, therefore, be inadequate to inform affected parties, the Respondent shall mail an exact copy of the attached notice marked "Appendix,"<sup>3</sup> to the Union and to each of the listed

<sup>3</sup>In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

employees. Copies of said notice, to be furnished by the Regional Director for Region 10, shall, after being duly signed by an authorized representative of the Respondent, be mailed immediately after receipt thereof.

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

(g) Notify the Regional Director for Region 10, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the Board reserves to itself the right to modify the backpay and reinstatement provisions of this Order, if made necessary by circumstances not now apparent.

## APPENDIX

### NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order 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, if and when we resume sheet metal shop and installation operations, upon request, bargain with Sheet Metal Workers International Association, AFL-CIO, as the exclusive representative of all our employees in the unit described below, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is:

All production and maintenance employees employed at our Knoxville, Tennessee, shop, including outside refrigeration mechanics and outside sheet metal mechanics, but excluding office clericals, guards, professional employees, salesmen, technical employees, engineers, and supervisors as defined in the Act.

WE WILL NOT unilaterally make changes in the wages, hours, and other terms and conditions of employment for the employees in the above-stated appropriate unit without prior consultation with the said labor organization, or any other union which they may lawfully select as their exclusive bargaining representative.

WE WILL NOT discourage membership in the above-named or any other labor organization of employees by discharging or

laying off any of our employees or otherwise discriminate in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT threaten to discontinue our business or to discharge any of our employees or to take other reprisals against them because of their membership in, or activities on behalf of, any labor organization.

WE WILL NOT interrogate our employees concerning their union activities in a manner constituting interference, restraint, and coercion in violation of Section 8(a)(1) of the Act.

WE WILL NOT create among our employees the impression that they are being surveilled in their union activities in a manner constituting interference, restraint, and coercion in violation of Section 8(a)(1) of the Act.

WE WILL make whole C. D. Candler, Gene Bruce, Louie Mills, Ralph Cox, and Bobby Dukes and all of the employees laid off at the discontinuance of the shop operations in March 1964 for the discrimination practiced against them.

WE WILL offer the above-named employees immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, if and when we resume sheet metal shop and installation operations.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the Act.

A. C. ROCHAT COMPANY,  
*Employer.*

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

NOTE.—We will notify the above-named and described 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, 528 Peachtree-Seventh Building, 50 Seventh Street, Atlanta, Georgia, Telephone No. Trinity 6-3311, Extension 5357, if they have any question concerning this notice or compliance with its provisions.

## TRIAL EXAMINER'S DECISION

## STATEMENT OF THE CASE

Upon a charge filed on April 20, 1964, by the above-named union official the General Counsel of the National Labor Relations Board on June 4, 1964, issued his complaint and notice of hearing. Thereafter the Respondent filed an answer and an amendment thereto. The complaint alleges and the answer denies that the Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1), (3), (4), and (5) of the National Labor Relations Act, as amended. Pursuant to notice, a hearing was held in Knoxville, Tennessee, on September 29, 1964, before Trial Examiner E. W. Whittmore.

At the hearing all parties were represented and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. A brief has been received from General Counsel.

Upon the record thus made, and from his observation of the witnesses, the Trial Examiner makes the following:

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENT

A. C. Rochat Company is an individual proprietorship, with its principal office and place of business at Knoxville, Tennessee, where it is engaged in the nonretail purchase, sale, and installation of refrigeration equipment.

During the year 1963 the Respondent purchased and received goods valued at more than \$50,000 directly from suppliers located outside the State of Tennessee.

The complaint alleges, at the hearing the Respondent admitted, and it is here found that it is engaged in commerce within the meaning of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

Sheet Metal Workers International Association, AFL-CIO, is a labor organization admitting to membership employees of the Respondent.

## III. THE UNFAIR LABOR PRACTICES

A. *Setting and major issues*

All events and conduct involved here followed concerted efforts on the part of the Respondent's some 20 employees, in November 1963, to organize for purposes of collective bargaining in the above-named labor organization. The complaint alleges and the answer generally denies that such efforts met with unlawful interrogation and threats of reprisals by responsible supervisory agents of the Respondent. It is also alleged and denied that, shortly after the Board certified the said Union on December 5, 1963, the Respondent unlawfully discharged or laid off five employees (C. D. Candler, Gene Bruce, Louie Mills, Ralph Cox, and Bobby Dukes).

It is also alleged that (1) in March 1964 the Respondent "sold and transferred his business operations" to evade its obligation to deal with the Union as the exclusive bargaining representative of all employees in an appropriate unit, and (2) since early January 1964 it has unlawfully refused to bargain with the Union.

B. *Interference, restraint, and coercion*

The credible testimony of the employees involved establishes the following facts:

(1) Nick Holbert, apparently the only foreman of the Respondent, was informed by employee Candler early on the morning of October 18 that he was to be present at the Board representation hearing scheduled for that day. In the presence of other employees, Candler was told by the foreman, "So you're the one. I've been trying to find out who it was. You've had it now." (As discussed below, Candler was there-after discharged.)

(2) Before the Board-conducted election, held November 26, both Foreman Holbert and Sales Manager John Rochat, brother of the owner, warned employees, in effect, that if the Union won they would all lose their jobs, because A. C. Rochat would not deal with a union. Indeed Holbert, as a witness, admitted that he told "every man there" that he believed Rochat would go out of business and all would lose their jobs if the Union won the election.

(3) Just before the election John Rochat asked employees Gaddis and Wright what they wanted for wage increases, and after they told him, promised to "see what he could do" because of his "pull" with A. C. (Rochat).

(4) Shortly after the election Holbert told employee Bruce, in the presence of other employees, that he could "point out the ones on the seniority list who voted for the Union."

(5) Also after the election Holbert warned employees that Rochat would not deal with the Union, and that they would lose their jobs.

(6) Employee Mills was interrogated by Foreman Holbert as to what was done at union meetings he had attended.

It is concluded and found that by the above-described conduct of Holbert and Rochat, interrogation as to union matters, threats of loss of jobs, threats that the Union would not be recognized or dealt with, promises of benefit, and clear implication of surveillance, the Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

### C. *The discharge of Candler*

There is no real dispute that this employee, who had worked for the Respondent since May 1962, was the leader in the self-organizational movement, and that Foreman Holbert not only accused him of it but told him and others that if the Union won the election he would be the first to go.

The Union won the election and on December 5 was certified by the Board. Candler was summarily discharged the following week, December 12.

Shortly before the discharge, it is undisputed that Holbert came to an installation job where Candler and two other employees were on their lunch period, sitting in a truck. Holbert did not see Candler and asked the others where he was. They told him he was in the back of the truck. The foreman then declared that they ought to "whip" him for "trying to put us out of a job."

It is also undisputed that before the election Candler asked Holbert if he was to be fired the day after the election. The foreman replied that he did not think it would happen "that fast."

Despite these undisputed threats of discharge because of his union leadership, Foreman Holbert claimed that he recommended the dismissal because he left a piece of cable on a job. It is admitted that neither Holbert nor Rochat even bothered to ask Candler about the item, or how he happened to leave it, if he did. There is no evidence of loss, or even of minor inconvenience, so far as the record shows.

Under these circumstances, the Trial Examiner is convinced that the cable incident, even if one actually existed, was used merely as a pretext to cloak the real and repeated threat to fire him for his union activities. The Trial Examiner is convinced, and finds, that Candler was discriminatorily discharged on December 12, 1963, to discourage union membership and activity, and that thereby the Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.<sup>1</sup>

### D. *The unlawful layoffs*

It is undisputed that four employees were laid off in December 1963, after the election, being told that such action was because of "lack of work." Gene Bruce was first laid off on December 6, permitted to return the following day, and then permanently laid off on December 27. Louie Mills was laid off on December 13, while Bobby Dukes and Ralph Cox remained until December 27, 1963.

It is Rochat's claim that he had no work for them to do because it was a "slack period." The claim, however, is unsupported by any documentary evidence. In view of the pretextual nature of Candler's discharge, described above, the Trial Examiner cannot credit Rochat's unsupported testimony as to "lack of work." In any event, he admitted that although similar periods had existed in past years, he had not laid employees off, thus establishing that he violated his own past practice in the 1963 layoff. Furthermore, it is undisputed that Foreman Holbert told employee Mills

<sup>1</sup> The complaint alleges that Candler was unlawfully discharged because he "gave testimony under the Act in Case No. 10-RC-5723." The Trial Examiner finds no proof in the record that he actually testified at the hearing, but only that he "attended" the hearing and told Holbert that he was going. For this reason the Trial Examiner cannot find a violation of Section 8(a)(4) of the Act as to this employee, but only of Section 8(a)(1) and (3). The ultimate remedy, in any event, remains the same.

that shortly after the election Rochat had instructed his salesmen to stop selling anything that required labor to install. There is ground, therefore, for more than a faint suspicion that if a shortage of work actually existed, this shortage was created by Rochat himself, in retaliation for the union victory at the election.

When the foregoing facts are considered in the light of Rochat's admission that immediately after the election he tried to sell his business in order to avoid signing a contract with the Union, the conclusion is inescapable, in the opinion of the Trial Examiner, that the four named employees were laid off to discourage union membership and activity, and that such unlawful discrimination interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

#### E. *The refusal to bargain*

Concerning this issue there is no dispute as to the following facts and conclusions:

(1) Pursuant to a Board-conducted election the Union was certified on December 5, 1963, as the exclusive bargaining representative of all employees in an appropriate unit consisting of:

All production and maintenance employees at the Respondent's Knoxville, Tennessee, shop, including outside refrigeration mechanics and outside sheet metal mechanics, but excluding office clericals, guards, professional employees, salesmen, technical employees, engineers, and supervisors as defined in the Act.

(2) On January 2, 1964, the Union asked to meet with the Respondent to negotiate an agreement.

(3) Although it does not appear that a representative of the Respondent has refused to meet with union representatives, Rochat's counsel has repeatedly stated his client's adamant position to be that he would never, because of his "religious" beliefs, negotiate or sign a contract.

(4) At the hearing Rochat himself confirmed the position transmitted to the Union by his counsel.

(5) Although through counsel for the Respondent the Union was informed that Rochat wanted to sell his business shortly after the Board's certification—and although the Union itself endeavored to find a purchaser—it is clear, and is found, that the Union was not informed or consulted before the actual sale or transfer of the installation part of the business by A. C. Rochat to his brother, John Rochat, a transaction which occurred in early March 1964.

(6) Not until a month after this transaction, on April 6, was the Union formally notified that the Respondent was no longer operating as a sheet metal company and had no employees within the certified unit.

(7) Much of A. C. Rochat's equipment and trucks, as well as many of the Respondent's employees, were taken over by John Rochat, who now performs much of the same installation work previously done by the Respondent.

Whether the sale and transfer of the major portion of the Respondent's business to the brother of the Respondent's owner meets requirements under other statutes, it plainly does not fulfill the Respondent's obligations under this Act. The claim of A. C. Rochat that he took this action because, if he carried out his obligations under the Act he would violate certain religious beliefs, and would be "serving two masters," has been held invalid. (See *Western Meat Packers, Inc.*, 148 NLRB 444.)

The foregoing facts establish beyond question that the Respondent abandoned that portion of his business involving the employees in the appropriate unit and represented by the certified bargaining agent in order to evade its responsibility under the Act.

It is concluded and found that since January 2, 1964, the Respondent has failed and refused to bargain collectively with the Union as the exclusive agent of employees in an appropriate unit, and that thereby the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

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

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

## V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative steps to effectuate the policies of the Act.

It will be recommended that the Respondent resume its sheet metal shop and installation work at its plant in Knoxville, Tennessee, and offer the five employees named above, as well as all others laid off at the discontinuance of shop and installation operations in March 1964, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges.<sup>2</sup> It will be further recommended that the Respondent make all such employees whole for any loss of earnings they may have suffered by reason of the unlawful discrimination against them by payment to each of them of a sum of money he normally would have earned as wages from the date of the discrimination to the date of offer of full reinstatement, less his net earnings during this period, and in a manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and with interest on the backpay due in accordance with Board policy set out in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

It will be further recommended that, upon request, the Respondent bargain collectively in good faith with the certified Union and, if an understanding is reached, embody such understanding in a signed contract.

Finally, in view of the serious and extended nature of the Respondent's unfair labor practices, it will be recommended that it cease and desist from in any manner infringing upon the rights of employees guaranteed by Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case the Trial Examiner makes the following:

## CONCLUSIONS OF LAW

1. Sheet Metal Workers International Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. All production and maintenance employees at the Respondent's Knoxville, Tennessee, shop, including outside refrigeration mechanics and outside sheet metal mechanics, but excluding office clericals, guards, professional employees, salesmen, technical employees, engineers, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

3. By virtue of Section 9(a) of the Act, at all times since December 5, 1963, and continuing to date, the above-described labor organization has been the exclusive representative of all employees in the above-described appropriate unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

4. By refusing to bargain in good faith with the above-named labor organization as the exclusive representative of all employees in the said unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By discriminating against employees as to tenure of employment to discourage membership in and activity on behalf of the above-named labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

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

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

<sup>2</sup>The Trial Examiner agrees with General Counsel that under the circumstances of this case the most appropriate order should require resumption of the business abandoned for the sole purpose of evading obligations under the Act. As General Counsel notes in his brief, this is not a situation where ownership of a company has been completely dissolved, or assets sold. The business remains at the same plant A C Rochat's brother is presently operating the same type of business, in the same area, and with some of the same employees.

8. The evidence is insufficient to establish that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(4) of the Act.

[Recommended Order omitted from publication.]

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**Roofers Union Local No. 36, AFL-CIO [Pioneer Roofing and Floor Co.] and Jones and Jones, Inc., and Interstate Employers, Inc.** *Case No. 21-CC-737. January 29, 1965*

### DECISION AND ORDER

Upon charges duly filed by Jones and Jones, Inc., and Interstate Employers, Inc., herein called respectively Jones and Interstate, the General Counsel of the National Labor Relations Board by the Regional Director for Region 21 issued a complaint dated June 19, 1964, against Roofers Union Local No. 36, AFL-CIO, herein called Respondent, alleging that Respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i), (ii)(A) and (B) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served upon Respondent. Thereafter, Respondent duly filed an answer denying the commission of the alleged unfair labor practices.

On September 4, 1964, all parties to this proceeding filed a stipulation of facts and jointly requested the transfer of this proceeding directly to the Board for findings of fact, conclusions of law, and a Decision and Order based thereon. The parties have waived a hearing before a Trial Examiner, the making of findings of fact and conclusions of law by a Trial Examiner, and the issuance of a Trial Examiner's Decision. On September 8, 1964, the Board granted the request to transfer the case to the Board.

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

Upon the basis of the stipulation of facts and the entire record in the case, including the brief filed by the General Counsel, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE EMPLOYERS INVOLVED

Pioneer Roofing and Floor Co., herein called Pioneer, is engaged in Garden Grove, California, as a roofing and floor contractor in the  
150 NLRB No. 132.