

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

CONCLUSIONS OF LAW

1. Retail Clerks Union, Local 1557 is a labor organization within the meaning of Section 2(5) of the Act.
2. Amalgamated Meat Cutters & Butcher Workmen's Union, Local 405, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. The Company has not engaged in unfair labor practices within the meaning of Section 8(a)(3) or (1) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the complaint be dismissed in its entirety.

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**United Park City Mines Company and Frank E. Stindt.** *Case*  
*No. 27-CA-1576. April 29, 1965*

DECISION AND ORDER

On February 8, 1965, Trial Examiner David Karasick 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, the Respondent filed exceptions to the Trial Examiner's Decision and a brief in support thereof.

Pursuant to the provision of Section 3(b) of the National Labor Relations Act, as amended, 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 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 hereby adopts as its Order, the Order recommended by the Trial Examiner and orders that the Respondent, United Park City Mines Company, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, with the following modifications:

As Utah is a right-to-work State, the phrase "except as authorized in Section 8(a)(3) of the Act" is deleted from paragraph 1(d) of the  
152 NLRB No. 18.

Recommended Order; and the phrase "except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a) (3) of the Act" is deleted from paragraph 1(e) of the Recommended Order.

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

This proceeding was heard before Trial Examiner David Karisich in Salt Lake City, Utah, on June 23 and 24, 1964, upon a complaint alleging that United Park City Mines Company, herein called the Respondent, had engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act.<sup>1</sup>

Upon the entire record, including consideration of briefs filed by the Respondent and the General Counsel, and upon my observation of the demeanor of the witnesses, I hereby make the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OPERATIONS OF THE RESPONDENT

The Respondent, a Delaware corporation authorized to do business in the State of Utah, is engaged in mining and operates a ski lift and recreational facilities in Park City, Utah. The Respondent annually sells materials valued in an excess of \$50,000 to United States Smelting and Refining Company and to International Smelting and Refining Company, each of which enterprises annually sells and causes to be shipped directly from places located within the State of Utah to places located without the State of Utah goods and materials valued in excess of \$50,000. The Respondent admits that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

Salt Lake Building and Construction Trades Council, AFL-CIO, herein called the Union, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE FACTS

##### A. *Alleged interference, restraint, and coercion*

In December 1963 the Respondent placed in operation its ski lift located in Park City, Utah. Approximately 17 persons were employed as ski-lift operators. One of these was Frank E. Stundt. Shortly after the ski-lift operations had begun, the employees began to discuss among themselves the advisability of seeking a union to represent them.

Timothy Heydon, activities director of the Respondent, admittedly was aware of the interest of the employees in securing a union to represent them. On February 17 or 18, Heydon asked employee John Nichols what Nichols thought about a union.

On February 19,<sup>2</sup> while Stundt and employees Mike McKissick, Frank Lake, and John Nichols were riding together in one of the ski gondolas, McKissick asked Stundt if he knew anybody that he could get to help organize a union and Stundt replied that he did. Shortly thereafter, Stundt spoke to Edward Grose, gondola foreman, about the matter and Grose said he would go around and see if the employees were interested in joining a union. That evening, a meeting, attended by 13 to 15 of the approximately 17 ski-lift operators, was held in the fire hall in Park City. The employees present decided that they would like to explore the possibility of having the Union represent them and Stundt agreed to make arrangements for a representative of the Union to meet with them at a later date. On the following day, Foreman

<sup>1</sup> The complaint, issued on May 5, 1964, is based upon a charge filed on March 11, 1964.

<sup>2</sup> All dates hereafter refer to 1964 unless otherwise indicated.

Grose told Stindt that Activities Director Heydon had told Grose that, if the employees organized a union, Heydon would fire the whole crew and get a bunch from Salt Lake and that the Respondent would support him.<sup>3</sup>

Sometime between February 19 and 23, Heydon asked employee Frank Lake whether Stindt had talked to Lake about the Union and further asked Lake if he was going to attend the union meeting. On or about February 27, Heydon asked Lake and employee Mike McKissick if they had signed union cards, and, when they stated they had, he further asked them whether everyone else had done so. On February 28 or 29, Heydon told employee Pete Solis that Heydon had heard that a hundred percent of the employees had signed cards to get a union and asked Solis if he knew anything about it. Solis replied that he had signed a union card but did not know about the other employees. On March 1, Heydon asked employee Freddie Martinez how the union meeting had gone<sup>4</sup> and 1 week or 10 days later he asked Martinez why he had joined the Union.<sup>5</sup>

On February 23, the Respondent terminated the employment of Frank Stindt and on the following day hired a new employee, Don Neal, to replace Stindt.

On February 29, Activities Director Heydon called a meeting of all the ski-lift operators of the Respondent at which he spoke to them about the Union.

At this meeting, Heydon told the employees that he understood that: they were forming a union; he felt bad because they had not come to him to work out their problem; the Union would not do them any good, they would not get any more money and they probably would get less; he was saving a lot of odd jobs to keep the men employed during the slack season but if the Union got in he would forget these jobs and lay off the men; if they had a union they would have to punch a timeclock; the employees at that time were paid on a salary basis and if they took time off or were sick their pay continued but if the Union got in they would not be paid for the days they were off; if things worked out, medical benefits would be extended to cover the families of the employees; it had taken the employees at the ski resort at Aspen, Colorado, 2 years and they had had to spend \$1000 to obtain union representation; and it was a long and tedious process and would take more money than the employees or Union had.<sup>6</sup>

<sup>3</sup> The foregoing is based upon the testimony of Stindt. Grose denied that he had made the statement regarding Heydon attributed to him by Stindt. As between the two witnesses, I was more favorably impressed by the demeanor of Stindt. In addition, I found Grose's testimony in other respects to be of questionable accuracy. Thus, Grose was called as a witness by the Respondent on the first day of the hearing and testified that Stindt had told him that he was going to quit his job with the Respondent, if he could get a job with Howard Paulsen. On the second day of the hearing, the Respondent recalled Grose as a witness and he then testified that at about the same time he had been told by Stindt that if Stindt could not get a job with the Respondent as a maintenance man, he would quit his job as a ski-lift operator. No reason was offered to explain why Grose did not relate this when he testified on the first day of the hearing, although his testimony on both occasions dealt with the question whether Stindt had quit—a crucial issue in this case. I credit the testimony of Stindt, as above related. The statement attributed to Heydon by Grose, as recounted by Stindt, constitutes an admission made by the Respondent as a party to this proceeding and is therefore an exception to the general rule against hearsay. *N.L.R.B. v. Thomas W. Dant, et al., d/b/a Dant & Russell, Ltd.*, 207 F. 2d 165 (C.A. 9); *Grove Shepherd Wilson & Kruge, Inc., et al.*, 109 NLRB 209, 215; 20 *Am. Jur.*, sec. 544.

<sup>4</sup> A second union meeting of the employees was held on February 24 or 25.

<sup>5</sup> The testimony of employees Lake, McKissick, Nichols, Solis, and Martinez with respect to the foregoing instances of interrogation on the part of Heydon is uncontradicted. Heydon admitted that he had asked employees Lake, McKissick, and Solis if they had signed union cards and whether other employees also had done so. He also admitted that all of the instances of interrogation above related might have taken place though he could not recall them specifically.

<sup>6</sup> The foregoing findings are based upon the testimony of 8 of the approximately 17 ski-lift operators who attended the meeting in question. None of their testimony was denied. According to Heydon, he told the employees that: he was sorry they had not felt free to come to him about their problem and had to take these steps instead, benefits such as days off, wages, hours, and such matters as hospitalization would have to be negotiated and would be more difficult for the employees to work out to their advantage rather than talk over among themselves as they had tried to do before; the operation was new but, as the Respondent gained more experience, it would be able to maintain a staff of employees on a year-round basis and could add further benefits and pensions; he had been making a list of small jobs which needed to be done and the Respondent would be willing to keep as many employees as it could through the slack

*B. The alleged discriminatory discharge of Frank Stindt*

Frank Stindt began work for the Respondent as a ski-lift operator on December 3, 1963. Previously, Stindt had worked for Cannon Construction Company which had built the recreational facilities at the site of the Respondent's ski lift. On about February 10, Stindt, in a conversation with Howard Paulsen, who had been superintendent for Cannon Construction Company, stated that he had heard that Paulsen had a job in the Mexican Hat area of Utah, and asked Paulsen if he could go with him. Paulsen replied that he did not have the job yet but was going down to look at it and would be back around February 15 and would then let Stindt know whether or not the job was available.

On February 12, Stindt spoke to Heydon about being transferred to the maintenance crew. Stindt at that time was being paid \$410 a month as a ski-lift operator. Heydon offered him \$25 a month more if he transferred to maintenance. Stindt replied that he had experience as a journeyman machinist in maintenance work and skiing equipment, that he felt he was worth more, and asked for a salary of \$500 per month. Heydon refused to pay that amount. Stindt testified that he then told Heydon that Paulsen was to return from the Mexican Hat area on February 15 and would advise Stindt whether he would employ him and that if Paulsen did offer to employ him, Stindt would leave and that he wanted to leave in good standing so that he could come back if the need should arise.

According to Heydon, however, Stindt on this occasion said that he had a job with Paulsen and that he would quit at the end of the following week. Stindt denied that he had made such a statement and his denial is convincing in light of other evidence in the record. Stindt's testimony that Paulsen had said that he would return to Park City on February 15 and at that time would advise Stindt whether he could offer him a job was corroborated by employee Freddie Martinez who testified without contradiction that on February 10 or 11 Paulsen also had told the same thing to him. In light of this testimony, it is not reasonable to believe that on February 12 Stindt would have told Heydon that he was quitting at the end of the following week in order to go to work for Paulsen when he did not yet know whether Paulsen would have a job to offer him. This conclusion is further confirmed by the testimony of Construction Superintendent Markus Jolley, a witness called on behalf of the Respondent, who corroborated the testimony of Stindt that on February 14 Stindt told Jolley that he would accept a job with Paulsen if and when Paulsen began operations in the Mexican Hat area. Jolley also testified that he then asked Stindt how long it would be before he would leave, that Stindt replied that he would not know until Paulsen returned and that he gave Jolley no definite date when he was going to quit. The testimony of Stindt and Jolley that Stindt had said he would leave only if he first secured a job with Paulsen finds additional corroboration in the testimony of Lift Superintendent Ardo Perri and employee John Nichols, each of whom testified that Stindt had made such a statement to him. As noted above, Foreman Grose first testified that he had been told by Stindt "that he was going to quit, if he could get a job with Howard Paulsen" but, upon being recalled as a witness by the Respondent on the following day, then testified that at about this time Stindt had told him that he would quit unless he was given a job in maintenance and paid \$460 a month, which was the wage rate for maintenance work. I do not credit this later testimony of Grose nor that of David Parkinson, business manager of the Respondent, who testified that, about a week before February 12, Stindt told him that he was going to quit if he did not get a job in maintenance and that Parkinson thereupon referred Stindt to Heydon. The only testimony in the record that Stindt had said that he was going to quit at any definite time is that of Heydon, and this testimony was unequivocally denied by Stindt. For the foregoing reasons and upon the basis of the record as a whole, I credit Stindt in this regard and find that he did not tell Heydon on February 12 that he would quit at the end of the following week.

periods until the summer construction program began Heydon also testified that, in referring to Aspen, he was trying to point out that a formation of a union there constituted a hardship for the employees. In essence, while Heydon's version of his speech differed in emphasis and degree of detail, his testimony in this regard substantially corroborates the recounting given by the employees. While I accept as true his testimony that he also told the employees at this time that he had been a union man and was not opposed to unions, that he thought they were good things, that he was not trying to influence them in any way, that any decision they would make regarding this would have to be done by themselves, and that, regardless of which way they decided to go, their employment would not be affected, I do not believe that such remarks immunized the Respondent from responsibility for the remaining statements which he made on that occasion.

Stindt testified that on February 19, Ardo Perri, then maintenance foreman and later lift superintendent, stated to Stindt that Heydon wanted to know when Stindt was going to quit because Heydon was ready to make out the blue slip for his termination and that Stindt told Perri that Paulsen had not returned, that Stindt had changed his mind about quitting and when he was ready to quit he would personally tell Heydon.<sup>7</sup>

On February 22, about 3 p.m., Business Manager David Parkinson was riding in a gondola to the top of the ski lift. Stindt testified that, as the gondola passed, Parkinson reached out of the window, handed Stindt a separation notice, said to him, "pick up your check tomorrow," and without further conversation proceeded on his way.<sup>8</sup> The separation notice was dated February 23 and stated that the reason for the termination was "reduction of force." On March 6, Stindt received a second separation notice from the Respondent, also dated February 23, which stated that the reason for his termination was "to accept other employment." No explanation was ever given Stindt for sending him the second separation notice.<sup>9</sup> On the following day, the Respondent hired Don Neal, a new employee, to replace Stindt as a ski-lift operator.

On March 29, the Respondent laid off 8 or 9 of the remaining ski-lift operators. Each was notified that other jobs with the Respondent were available. Stindt, however, was not so notified, although Heydon admittedly thereafter saw and spoke to him in Park City on several occasions and knew that he had not secured a job with Paulsen.

### C. Concluding findings

#### 1. Interference, restraint, and coercion

By Heydon's statement that if the employees organized a union, he would discharge the whole crew; by his interrogation of employees Nichols Lake, McKissick, Sohis, and Martinez regarding their own and their fellow employees' interest in and activities on behalf of the Union; by the termination of Frank Stindt on February 23, as found hereafter; by Heydon's speech on February 29, in which he stated that, if the employees chose a union to represent them they would receive less employment during the slack season, would secure no increase in wages, but would probably be paid less and would be subjected to less favorable working conditions, and implied that if they repudiated the Union they would receive extension of medical benefits to cover their families, the Respondent interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed them in Section 7, thereby violating Section 8(a)(1) of the Act.<sup>10</sup>

<sup>7</sup> Perri testified that he advised Stindt to be definite about whether or not he was going to quit but denied that he told Stindt that Heydon wanted to know when Stindt would quit because Heydon was ready to make out the separation notice. From the manner in which the testimony of the two witnesses was delivered and the substance of the recountings themselves, I regard that of Stindt to be the more accurate and find that the conversation occurred as he testified.

<sup>8</sup> Parkinson testified that other people were in the gondola at the time and he therefore did not discuss the matter with Stindt.

<sup>9</sup> In view of the conclusions reached hereafter, I do not regard it as necessary to pass upon the question whether, as the Respondent contends, the reason for the termination stated on the separation notice originally given Stindt was an inadvertent error which, when later discovered, was corrected.

<sup>10</sup> The record shows that Foreman Edward Grose joined in the early efforts to organize a union, asked a number of employees if they were interested in joining, and in general stated his approval of a union. Shortly thereafter, he apparently became aware of the fact that, as a supervisor, he should not participate in the union activities of the rank-and-file employees. Employee Arnold MacNaughton testified without denial that on February 19 Grose asked MacNaughton if he was interested in joining a union and stated that the employees were planning on having an organizational meeting that night; that later that day MacNaughton called Grose to talk to him further about the matter and at that time Grose said that if MacNaughton had anything more to do with the Union he should discuss the matter with Stindt or someone else and should not talk to Grose about it since MacNaughton should understand Grose's position. In the circumstances of this case, I do not believe that these activities of Grose were regarded by the employees as representative of the Respondent's attitude. Instead, I believe that the employees looked upon this conduct as a display of personal interest on the part of Grose as an individual. For that reason and for the added reason that the conduct in question was isolated and short-lived, I do not believe that it properly may be regarded as unlawful interference attributable to the Respondent.

## 2. The termination of Frank Stindt

The General Counsel contends that Stindt was discriminatorily discharged while the Respondent asserts that he voluntarily quit. It is apparently the Respondent's position that Heydon was told on February 12 that Stindt would quit at the end of the following week, which would be February 23,<sup>11</sup> and that Heydon, acting on this information, terminated Stindt on that date. I find it difficult to believe that if Stindt had voiced a definite intention to quit on February 12, as the Respondent contends, no attempt would have been made before his termination to check with him for the purpose of determining whether he had changed his mind in the interim since the Respondent was in need of his services, as is shown by the fact that on the next day a new employee was hired to replace him. In this connection, it may be noted that the very manner in which Parkinson delivered the separation notice on February 23 precluded the possibility of altering the course of events leading to Stindt's removal from employment.

For the foregoing reasons and for the reasons previously set forth concerning the events which occurred on February 12 and thereafter, I find that Stindt did not tell Heydon on February 12 that he would quit on February 23 and that he did not actually quit on the latter date.

The record shows that Stindt was the most active proponent of the Union among the Respondent's employees; that the Respondent knew of his activities prior to February 23;<sup>12</sup> that the Respondent was opposed to the Union, as shown by Heydon's interrogation of employees as to the extent of their own and other employees' interest and activities on behalf of the Union and by his statements made to the employees in his speech on February 29; that Stindt was abruptly terminated without explanation; that a new employee to replace Stindt was hired the day after Stindt was terminated; and that, unlike other ski-lift operators who were later laid off, Stindt was not informed of the availability of other jobs with the Respondent, even after Heydon knew that Stindt had not gone to work for Paulsen and despite the fact that Stindt was regarded by Heydon as one of the more experienced employees.

For the foregoing reasons, and upon the record as a whole, I find that Stindt was discharged on February 23, 1964, because he had manifested an interest in the Union and had engaged in protected concerted activities and that his termination constituted an act of discrimination which discouraged union membership within the meaning of Section 8(a)(3) and in addition interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7, thereby violating Section 8(a)(1) of the Act.<sup>13</sup>

#### 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.

<sup>11</sup> The Respondent's workweek ran from Monday through Sunday. February 23 would thus have been the end of the workweek in question.

<sup>12</sup> The Respondent sought to show that one or more other employees were more active on behalf of the Union than was Stindt. The record on the whole is to the contrary. In any event, whatever the degree of his participation, Stindt's union activities were admittedly known to Heydon. Moreover, it is clear that Heydon had such knowledge prior to Stindt's discharge for, according to the uncontradicted testimony of employee Frank Lake, as previously recounted, Heydon asked Lake sometime between February 19 and 23 whether Stindt had solicited Lake to join the Union.

<sup>13</sup> The Respondent does not here contend that, even if Stindt had not voluntarily quit, the Respondent acted on a mistaken but honest belief that he had. Even if such a contention had been advanced however, it would find no support in this record. The evidence as a whole, together with the evidence related immediately above concerning Heydon's failure to notify Stindt that other jobs were available with the Respondent, as had been done in the case of other employees who had been terminated, even after Heydon knew that Stindt had not gone to work for Paulsen and the abrupt manner in which Parkinson delivered the separation notice to Stindt lead to the reasonable inference that the Respondent did not believe, mistakenly or otherwise, that Stindt had quit or intended to quit.

## V. THE REMEDY

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

Having found that the Respondent discriminated with respect to the hire and tenure of Frank E. Stindt, it will be recommended that the Respondent offer said employee immediate and full reinstatement to his former or substantially equivalent position of employment without prejudice to his seniority or other rights and privileges. See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827. It will further be recommended that the Respondent make said employee whole for any loss of pay suffered by reason of its discrimination against him. Said loss of pay, based upon earnings which said employee would have earned as wages from the date of the discrimination to the date of offer of reinstatement, shall be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. Interest thereon at the rate of 6 percent per annum shall be added, as provided in *Isis Plumbing and Heating Co.*, 138 NLRB 716.

The unfair labor practices committed in this case strike at the very heart of the Act. *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F. 2d 532 (C.A. 4). The inference is therefore warranted that the Respondent maintains an attitude of opposition to the fundamental purposes of the Act designed to protect the rights of the employees. It will accordingly be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

## CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in this proceeding, I make the following conclusions of law:

1. The Union is, and has been at all times material to the issues in this proceeding, a labor organization, within the meaning of Section 2(5) of the Act.
2. The Respondent is, and has been at all times material to the issues in this proceeding, an employer, within the meaning of Section 2(2) of the Act.
3. By discriminating with respect to the hire and tenure of employment of Frank E. Stindt, thereby discouraging membership in a labor organization, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
4. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed them in Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this proceeding, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that the Respondent, United Park City Mines Company, Park City, Utah, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
  - (a) Interrogating employees with respect to their union activities in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.
  - (b) Threatening employees with discharge, less employment, lower wages, or less favorable working conditions because they have engaged in union activities.
  - (c) Promising medical or other benefits to employees for the purpose of inducing them not to join or assist a union.
  - (d) Discouraging membership in Salt Lake Building and Construction Trades Council, AFL-CIO, or any other labor organization of its employees, by discharging or in any other manner discriminating in regard to hire, tenure of employment, or any term or condition of employment except as authorized in Section 8(a)(3) of the Act.
  - (e) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Salt Lake Building and Construction Trades Council, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from 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 in Section 8(a)(3) of the Act.

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

(a) Offer to Frank E. Stindt immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges.

(b) Make whole Frank E. Stindt for any loss of pay suffered by reason of the discrimination against him in accordance with the method set forth above in the section entitled "The Remedy."

(c) Notify the above-named employee, if presently serving in the Armed Forces of the United States, of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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

(e) Post at its usual place of business located in Park City, Utah, copies of the attached notice<sup>14</sup> marked "Appendix."<sup>15</sup> Copies of said notice, to be furnished by the Regional Director for Region 27 of the National Labor Relations Board, shall, after being duly signed by an authorized representative of the Respondent, be posted by it immediately upon receipt thereof and 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 by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 27, in writing, within 20 days from the date of the receipt by the Respondent of a copy of this Decision, what steps the Respondent has taken to comply therewith.<sup>16</sup>

It is further recommended that unless on or before 20 days from the date of the receipt of this Decision the Respondent notify the Regional Director that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

<sup>14</sup> Since notices are customarily framed in the language of the statute and because of their technical nature are often difficult for employees to understand, I am recommending that the notice in this case embody the simplified form which appears in the Appendix.

<sup>15</sup> In the event that this recommended order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of the United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order"

<sup>16</sup> In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply therewith."

## APPENDIX

### NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of 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 NOT** discharge or threaten to discharge our employees, and will not threaten them with less employment, lower wages, or less favorable working conditions because they have engaged in union activities.

**WE WILL NOT** promise our employees medical or other benefits for the purpose of inducing them not to join or assist a union.

**WE WILL** offer immediately to Frank E. Stindt the job he held before he was discharged, or a job like it, without loss of seniority or any other rights and privileges, and we will give him whatever backpay he has lost.

All our employees have the right to join or assist, or to refrain from joining or assisting, Salt Lake Building and Construction Trades Council, AFL-CIO, or any other union. WE WILL NOT question our employees as to whether they engage in union activities or threaten them for doing so or take any action against them for doing so.

UNITED PARK CITY MINES COMPANY,  
Employer.

Dated----- By-----  
(Representative) (Title)

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

Information regarding the provisions of this notice or compliance with its terms may be secured from the Regional Office of the National Labor Relations Board, 609 Railway Exchange Building, 17th and Champa Streets, Denver, Colorado, Telephone No. 297-3551.

C. & H. Mason Contractors, Inc. and Sherman M. Hawkins  
Local 98, International Union of Operating Engineers, AFL-CIO,  
and Peter R. Tiberio, Its Business Agent (C. & H. Mason Contractors, Inc.) and Sherman M. Hawkins. *Cases Nos. 1-CA-4660 and 1-CB-954. April 29, 1965*

### DECISION AND ORDER

On March 9, 1965, Trial Examiner W. Edwin Youngblood issued his Decision in the above-entitled case, finding that the Respondents had engaged in certain unfair labor practices alleged in the complaint and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondents filed exceptions to the Decision and briefs in support thereof. The General Counsel filed a brief in answer to Respondents' exceptions.

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 of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision and the entire record in the case, including the exceptions and briefs, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

### 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.  
152 NLRB No. 27.