

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT interrogate our employees concerning their union membership, sentiments, and desires.

WE WILL NOT deny to our employees the right to solicit on behalf of United Metaltronics, Ceramics, Technicians and Helpers, International Union of United Brick & Clay Workers of America, AFL-CIO, or any other labor organization, on company property during nonworking hours, and WE WILL NOT deny to our employees the right to distribute literature on behalf of said Union, or any other labor organization, in nonworking areas on company property during nonworking hours.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to join or assist the aforesaid union, 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.

All our employees are free to become, or remain, or to refrain from becoming or remaining, members of the above-named or any other labor organization, except to the extent that such right may be affected by an agreement authorized by Section 8(a)(3) of the Act.

PHARMASEAL LABORATORIES, 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, 849 South Broadway, Los Angeles, California, Telephone No. 688-5204, if they have any question concerning this notice or compliance with its provisions.

Standard Tank Cleaning Co., Oil Sales and Processing Corp. and Coastal Petroleum Transport Co., Inc. and International Union of Operating Engineers, Local 68, AFL-CIO. *Cases Nos. 22-CA-2002, 22-CA-2002-2, and 22-CA-2002-3. June 7, 1965*

DECISION AND ORDER

On March 10, 1965, Trial Examiner John H. Eadie 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 supporting brief. The General Counsel did not file exceptions or a brief.

Pursuant to the provisions 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 briefs, and the entire record in this case, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order, the Order recommended by the Trial Examiner, and modified herein, and orders that the Respondent Standard Tank Cleaning Co., Oil Sales and Processing Corp., and Coastal Petroleum Transport Co., Staten Island, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified.

Add the following immediately below the signature line of the attached Appendix to the Trial Examiner's Decision:

NOTE.—We will notify the aforementioned 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.

¹The Respondent has excepted to the Trial Examiner's credibility resolutions, but we are not persuaded that a clear preponderance of all the relevant evidence is contrary to the Trial Examiner's credibility findings. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd 188 F. 2d 362 (C. A. 3).

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding was held before Trial Examiner John H. Eadie in Newark, New Jersey, on September 24 and 25 and October 1, 1964, on the complaint of the General Counsel and the answer of Standard Tank Cleaning Co., Oil Sales and Processing Corp., and Coastal Petroleum Transport Co., Inc., herein referred to jointly as the Respondent and severally as Standard, Oil Sales, and Coastal.¹ The issues litigated were whether the Respondent constitutes a single employer within the meaning of the Act and whether the Respondent violated Section 8(a)(1) and (3) of the Act. At the close of the General Counsel's case and again at the close of the whole case, the Respondent moved to dismiss the complaint. Ruling was reserved.

¹The charge in Case No. 22-CA-2002 against Standard and Oil Sales was filed and served on June 8, 1964. The charges in Cases Nos. 22-CA-2002-2 and 22-CA-2002-3, each against Standard, Oil Sales, and Coastal, were filed and served on June 10 and 23, 1964, respectively. An amended charge in Case No. 22-CA-2002 was filed and served on July 17, 1964. The complaint issued on July 23, 1964.

The motion to dismiss is disclosed of as hereinafter indicated. The General Counsel and the Respondent filed briefs after the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

A. Ownership and operation

Standard, Oil Sales, and Coastal are New York corporations with their principal office located at 19 Park Lane, Staten Island, New York. Evelyn Frank is the president of each of the corporations; her brother, Morris Berman, is vice president of each, and her other brother, Nathan Berman, is secretary of each. They also are the sole stockholders and directors of the corporations. Nathan Berman is general manager and is responsible for setting the labor relations policy of each corporation.

Standard is engaged in the business of cleaning tank barges at its place of business located at Second and Ingraham Avenues in Bayonne, New Jersey. A powerhouse is on the premises. It provides the steam which is used at the dock for the barge-cleaning work. The steam is carried from the powerhouse to the dock by pipelines. The steam removes the residual oil from the barges and the mixture resulting therefrom is pumped into tanks. This mixture is then separated and the oil is stored. This oil is used to fire the boilers in the powerhouse.

Oil Sales is engaged in the business of providing and performing general laboring services. It supplies the necessary labor to Standard for the barge-cleaning operation. The "muckers," who perform the barge-cleaning work for Standard, and the engineers, who operate the powerhouse for Oil Sales, are paid by checks of Oil Sales. Upon occasion, when there is no work "to do in the yard for Oil Sales," but there is "an outside job to do away from the Bayonne property," employees are placed on Standard's payroll and work for Standard.

Coastal, at the Bayonne plant, at 2631 Richmond Terrace, Staten Island, New York, and at various other places of business in the States of New York and New Jersey, is engaged in the business of providing and performing oil products transportation and related services. The number of the telephone for Standard and Coastal is the same; there is no telephone listing for Oil Sales. Separate payroll records are maintained for each of the three corporations. The same office employee keeps all of such records. The Bayonne plant is generally known as "Standard Tank"; and in any correspondence relating to the operations there, including the powerhouse, this name is used. The employees of Oil Sales and Standard are covered under group hospital-medical and life insurance policies issued to Coastal.

It is found that Standard, Oil Sales, and Coastal are affiliated businesses with common officers, ownership, directors, and operators, and constitute a single integrated business enterprise, with the same owners and operators formulating and administering a common labor policy affecting the employees of said corporations. Accordingly, it is found that Standard, Oil Sales, and Coastal constitute a single employer within the meaning of the Act.

B. Commerce

Standard, during the period of 12 months preceding the date of the complaint herein provided and performed tank- and barge-cleaning services valued in excess of \$50,000, of which such services valued in excess of \$50,000 were provided and performed for other enterprises, including, *inter alia*, Seaboard Shipping Corp., McAlister Bros., Inc., and Bouchard Transportation Co., Inc., all located in the State of New York, each of which other enterprises either annually shipped goods valued in excess of \$50,000 directly to points located outside the State of New York, or annually performed services valued in excess of \$50,000 in States of the United States other than the State of New York.²

During the same period of time, Coastal provided and performed transportation services valued in excess of \$50,000, of which services valued in excess of \$50,000 were provided and performed within States of the United States other than the State of New York.

II. THE LABOR ORGANIZATION INVOLVED

International Union of Operating Engineers, Local 68, AFL-CIO, herein called the Union, is a labor organization which admits to membership employees of the Respondent.

² At the hearing the parties stipulated to the above and that the identical stipulation applied also to Oil Sales and Coastal.

III. THE UNFAIR LABOR PRACTICES

A. *Sequence of events; interference, restraint, and coercion*

The State of New Jersey requires that the engineers who operate the equipment in the Respondent's powerhouse at the Bayonne plant have "blue seal" certificates and that a "gold seal" engineer be in charge of the powerhouse. From about February 1963, until the early part of May 1964, when he quit his job, Harold Byberg was the gold seal engineer.³ Immediately prior to Byberg's quitting, the blue seal engineers were John Klimek, Thomas Finnegan, and Westley Joiner. They were paid at the rate of \$3 per hour, and received certain benefits, such as "major holidays," vacation "based upon one day a month," and group hospital-medical and life insurance.

On May 15, 1964, while Nathan Berman was away on vacation, Joiner, Klimek, and Finnegan signed authorization cards of the Union. On May 19 the Union filed a petition for certification with the Board.⁴ About the latter part of May and the early part of June, Joiner had two telephone conversations with Evelyn Frank. During the first conversation she asked him if he had signed a union card. He replied that he could not "say anything at the present time." About 1 week later she called him and again asked him if he signed a union card. He answered, "No." She then said that if there was an election, "most likely the Company will win the election, four to three."⁵ It is found that Frank's interrogation was violative of Section 8(a)(1) of the Act.

On May 27 Nathan Berman returned from his vacation. Shortly thereafter, he talked to Finnegan. He asked Finnegan if it was true that the employees were talking about the Union. Although Finnegan replied that he did not care to discuss it, Berman asked him if he would speak to the employees to see if they would "talk things over" with him (Berman) "before they decided to join the union"⁶ It is found that Berman's interrogation of Finnegan constitutes interference, restraint, and coercion.

Klimek, Joiner, and Finnegan were not paid for Memorial Day, May 30. On June 2 John Powell, a gold seal engineer, was hired by Nathan Berman as a replacement for Byberg.

On Saturday, June 6, Nathan Berman came to the plant and had a conversation with Klimek. He asked Klimek if he wanted the Union. When Klimek answered "yes," Berman said, "That's all I want to know. That's all I want to know" Berman then left the boilerroom, "waving his hands and hollering."⁷ It is found that Berman's interrogation of Klimek was violative of Section 8(a)(1) of the Act.

Klimek worked on Sunday, June 7. At 7:50 a. m. on June 8, Nathan Berman called Klimek and told him that he was discharged. Berman did not give him any reason. During the same day Berman notified Joiner⁸ and Finnegan that their rate of pay had been reduced from \$3 to \$2.58 per hour. Also during June 8, about 9 30 a.m., a

³ The Respondent admits that Byberg was a supervisory employee within the meaning of the Act

⁴ Case No 22-RC-2505.

⁵ Joiner testified credibly to the above. Frank testified that "She had only one conversation with Joiner about the Union; it took place about May 21, when she asked Joiner if he was "part of this union deal," he answered, "yes"; she said, "Well, how come you didn't tell me about it? I have no objection to the union except that I think you might have told me about it before you did it", she asked Joiner if he had joined the Union, and he replied that he was not "sure yet" as he did not know what he was "going to do"; she did not discuss the election with him; she asked Finnegan if he was "part of the union," and he answered that he could not discuss it since she was part of "management" I credit Joiner's version of the conversations

⁶ Finnegan testified credibly to the above conversation. Berman denied having a conversation with Finnegan about the Union. His denial is not credited

⁷ Klimek testified to the above conversation. Berman testified that "He told Klimek that he (Berman) knew that he was joining the Union; he (Berman) said, "it was rather surprising to me that this would happen while I was away on my vacation"; he then asked Klimek if he knew how to test water for the boiler and if he knew about the firefighting equipment in the plant; Klimek answered "no" to each question; and he ended the conversation by telling Klimek, "This is outrageous I don't think you know your job" Klimek denied that Berman asked him these questions. I credit Klimek's version of the conversation.

⁸ Joiner testified that he received a call from Berman about 7 50 a.m.

conference between the parties in the representation matter was held at the Board's office in Newark. Klimek and Finnegan were present.⁹ Klimek's discharge was discussed; and the Union filed an unfair labor practice charge in his behalf.

B. *Loss of benefits*

Finnegan was hired by the Respondent during October 1963. At the time he was advised by Byberg of the benefits that he would receive. Without being questioned by the Respondent as to whether or not he wanted to be covered by Blue Cross-Blue Shield insurance, he received a policy through the mail. He did not receive holiday pay for July 4, 1964. During the early part of July, he received a letter which notified him that his Blue Cross-Blue Shield policy was canceled.¹⁰ Thereafter, he complained to Powell about cancellation of this insurance and about not receiving his vacation¹¹ and holiday pay. He asked Powell to find out for him the answer to these questions. Through Powell, Nathan Berman later sent word to Finnegan that "whatever obligations he [Berman] felt he had toward us in the past he has none now."

Joiner was hired by the Respondent on or about April 7, 1964. At the time he was told by Byberg that after 3 months of employment he would receive Blue Cross-Blue Shield insurance. He did not receive an application form for this insurance until about September 29, 1964.¹² As of the close of the hearing herein he had not received a life insurance policy. He also did not receive any holiday or vacation pay.

Concerning the reason why he reduced the wages of Finnegan and Joiner, Nathan Berman testified, "Well, I felt that they weren't taking care of the boiler house properly, they were not treating the water properly, and they weren't under the supervision of Mr. Byberg, and there was nobody supervising them or watching over them, I felt they were not worth any more than \$2.58 an hour." As to the reason why he canceled Finnegan's Blue Cross-Blue Shield policy, Berman testified, "I just got angry with Mr. Finnegan and I cooled off and reinstated the policy."

The Respondent offered no evidence or explanation as to why it discontinued vacation and holiday pay or why it failed to provide Joiner with life insurance.

I find that the action taken by the Respondent on and after May 30, 1964, namely, by discontinuing holiday and vacation pay, reducing the rate of pay of Finnegan and Joiner, canceling Finnegan's health insurance, and failing to provide health and life insurance for Joiner, as related and found above, was in reprisal against its employees because of their union membership and activity. I find that such conduct was in violation of Section 8(a)(3) and (1) of the Act.

⁹ John Brown, a business representative of the Union, testified to the effect that Nathan Berman objected to the presence of Klimek and Finnegan.

¹⁰ In this connection the Respondent's attorney made the following statement for the record:

On the part of the Respondent, the cancellation was vacated upon notice to the company, and that the policy was restored to the men as of the date effective prior to the cancellation, in the same group.

¹¹ The evidence shows that the Respondent issued checks in July and January for vacation pay accrued in the preceding 6 months.

¹² In this connection, Nathan Berman testified as follows:

These policies are given every three month period. In other words, if you want to join, you have to first apply to join. We just can't give you the policy. In Mr. Joiner's case, he was sent an application blank to sign to join the Blue Cross and Blue Shield. He has never returned that card and that's reason he has never got on the plan. It's entirely voluntary. We will provide the service, but they have to want it. In Mr. Joiner's case, he never wanted it.

As a matter of fact, right now we have cards out for Mr. Finnegan and Mr. Joiner and they haven't returned the cards yet. So if they have no Blue Cross benefits, we can't be blamed. We can't do anything except give them the card to sign. If they don't sign them, we can't put them on the plan. And that's the case right now. But in Mr. Joiner's case, he only came on April 7th and it takes three months to get him on the plan, and during that period he got the application blank, but he has never turned it in. So therefore, he doesn't want the plan, and we can't force him to join a plan he doesn't want to join.

Joiner testified credibly that he did not receive an application blank until September 29,

C. The discharge of Klimek

Klimek was hired by the Respondent on September 30, 1963. At the time he had a "fireman-in-charge" or "black seal" license.¹³ By letter dated October 15, 1963, employees Francis Brown and Frank Coffee, who had been employed as engineers by the Respondent until October 6, 1963, made a complaint to the New Jersey Mechanical Inspection Bureau to the effect that Byberg had endorsed Klimek's "fraudulent statement of experience" and that Klimek had "stood watch without properly licensed Engineer with him."¹⁴ On November 7, 1963, Klimek obtained his blue seal license.¹⁵

On May 20, 1964, the New Jersey Mechanical Inspection Bureau received another letter from Brown in which he complained that 7 months had passed since he and Coffee had preferred charges against Klimek and that the matter had been mishandled by the bureau. The bureau answered Brown by letter, dated May 28, 1964, advising him, in effect, that the matter was closed insofar as the bureau was concerned.

On June 5, 1964, Nathan Berman rehired Coffee as a blue seal engineer.¹⁶ As found above, Berman questioned Klimek concerning the Union on June 6 and discharged him on June 8.

Jacob Frank, Respondent's attorney, wrote to the Mechanical Inspection Bureau on September 4, 1964, calling attention to the fact that Klimek's application for a blue seal license listed the necessary experience as being with the Respondent on and after October 17, 1962. He stated that Klimek was employed for the first time on September 30, 1963. His letter continues.

My clients (both corporations mentioned hereinabove), therefore believe that he is not legally entitled to his blue seal license and that his license should be revoked, and that any other licensed persons acting in concert with him should similarly receive appropriate action

Under the circumstances we believe that it is necessary for you to call upon my clients, and they are at all times available with their books, records and witnesses for the prosecution of any charges you may deem necessary.

¹³ Under the laws of the State of New Jersey a black seal licensee cannot make application for a blue seal license until he has had experience of at least 6 months as a fireman-in-charge, and only a blue seal engineer can stand a shift alone

¹⁴ In answer to Coffee's complaint, Byberg sent the following letter, dated October 22, 1963, to the Bureau:

As for your instructions to me during our telephone conversation today, Oct 22nd 1963, with regards to watch-standing by John Klimek, license number B-52372 I offer the following explanation:

Mr Klimek stands watches under my supervision as a fireman. Our plant does not operate on a 24 hour basis, 7 days a week but rather only as need for steam for tank cleaning operations on oil barges. If the need arises that Mr Klimek has to stay over on his shift then I stay with him. He is alone in the Boiler Room, only when the boilers are secured, and no steam is up, to work on house keeping, i.e., cleaning or painting

Other licensed operators in the plant are; Thomas Finnegan, A-387099; George Gunzelman, A-38621. Mr. J. Joseph Coffey who made the complaint was fired from this plant for reading magazines, and sleeping on shift duty. He was warned but repeated and let go for reasons of safety.

Byberg testified without contradiction that he showed the above letter to Nathan Berman before mailing it and that Berman approved it.

¹⁵ The evidence discloses that Klimek filed an application for a blue seal license on or about August 8 1963, and that in this application he stated that he had worked as a fireman for the Respondent since October 17, 1962

Byberg testified that he at one time had been married to Klimek's sister; that starting about March of 1963 Klimek "with the express consent and knowledge of Mr. Berman" worked at the Respondent's plant "three to four days a week" without pay in order to gain experience as a fireman; that Nathan Berman knew that Klimek was making an application for a blue seal license on the basis of such experience, and that "it was at Mr. Berman's insistence that John Klimek quit his job at Malinckroot to come to work at Standard Tank Cleaning."

¹⁶ As of the above date the Respondent also employed blue seal engineers Klimek, Finnegan, and Joiner. The record shows that the normal complement of such engineers was three. As related above, Powell was hired on June 2, 1964.

It is further requested that if there are any charges to be initiated they be initiated forthwith and that you keep me informed as to the action your office is taking in this matter.

After further correspondence with the Respondent, the Mechanical Inspection Bureau, by letter dated September 14, 1964, advised Klimek, in substance, that he should return his "Blue Seal License to this Bureau immediately" if the Respondent's charge against him was true. Thereafter, Klimek relinquished his blue seal license. The New Jersey Department of Labor and Industry restored Klimek's blue seal license on November 6, 1964.¹⁷

As related above, Nathan Berman testified that on June 6 he questioned Klimek with respect to his knowledge about water testing and the plant's firefighting equipment. Concerning the reasons why he questioned Klimek, as above, Berman testified to the effect that: During early October 1963 Coffey advised him that Klimek had operated a shift alone and that he "didn't have a proper license", he did not take any action at the time because he did not "take all those rumors into account"; John Wagner¹⁸ replaced Byberg on the day shift after the latter left the Respondent's employment; he hired Powell on June 2, 1964, "a day or two" later he and Wagner inspected the plant with Powell; Powell told him that since Byberg had left "there was no one taking care of the boilers. There was no water treatment being taken care of"; during the early part of June, 1964 he heard "rumors" from Wagner and Coffey to the effect that Klimek had obtained his (blue seal) license under false representation; he asked Powell "if he knew or felt that Mr. Klimek knew about the boiler treatment"; and Powell told him that he had not asked Klimek about it but that he "felt" that Klimek did not know the operation.¹⁹ Berman testified to the following with respect to his reasons for discharging Klimek:

¹⁷ By letter, dated November 10, 1964, the General Counsel requested the Trial Examiner to take official notice of the above action. A copy of this letter having been sent to the Respondent's attorney by registered mail and no objection having been made, the General Counsel's letter and the enclosed photostatic copy of the license are received in evidence as Trial Examiner's Exhibits Nos 1a and 1b, respectively.

¹⁸ Berman testified that Wagner "was employed in the boiler house since January of 1963." Wagner, who was called as a witness by the Respondent, testified that. He got his black seal license in September 1963 and his blue seal license in May 1964, he was hired during January of 1963; during all of his employment he worked on the day shift, or from 8 a.m. to 4 p.m.; he worked with Byberg on that shift, performing odd jobs. He first saw Klimek at the plant "around August" 1963; at the time Klimek and Byberg "had a lot of discussions . . . inside, outside" of the boilerroom; he did not see Klimek perform any work before he was hired on September 30; he (Wagner) operated the day shift alone after Byberg quit and until Powell was hired; and that since that time he has worked on the day shift with Powell. Byberg testified that Wagner did not work in the boilerhouse while he (Byberg) was employed by the Respondent. I credit Byberg's testimony in this connection. It was stipulated by the parties that Wagner's application for a black seal license, made during August 1963, was endorsed by Coffey and Brown. In his Decision and Direction of Election, dated September 4, 1964, the Regional Director found as follows:

With respect to Wagner and Schipiani, who are licensed as engineers, the record shows that, until recently, both were full time maintenance employees. On the day before the hearing herein, however Schipiani was assigned to work as an engineer. He observed Finnegan on his shift. Schipiani did not do any of the functions required to maintain the boiler. Several weeks previously, Wagner had been assigned to Powell's shift. The Employer's general manager testified that Wagner and Schipiani have been assigned to work with Powell and Finnegan respectively in order to learn the operations so that, if one of the regular engineers is sick, they will be able to serve as replacements. He further testified that he has no plans to fill their maintenance jobs.

¹⁹ Powell testified that the water for the boilers had not been treated since Byberg had left; and that the water should be tested and treated "every day." In his affidavit Powell states in part as follows:

When I became acquainted with the plant I found that Klimek, Finnegan, Joiner and later, Coffey, who were hired, to my knowledge and information from Mr. Berman, as engineers, were performing the responsibilities only of a fireman. I reported this to Mr. Berman [Nathan]. I told him that they knew little or nothing of the actual maintenance of the boilers or the fire prevention system, although they were doing a good job as fireman. We also have a maintenance engineer, John Wagner. . . .

Thinking it over over the weekend, I decided this chap was too dangerous to have in the boiler house, especially when you don't know how to put a fire out. Not only that, what worried me was that his ineligible license, if I were caught short, if there was an accident in the boiler house in the tank form, and it was discovered that he got a license improperly, and I still kept him on as a fireman, I would be economically involved. And based on that consideration, plus the fact that he did not know his business in the boiler house or how to put a fire out, although he knew how to start a fire out, he couldn't put it out, so I decided to let him go.

I am convinced that the reasons advanced by Berman for Klimek's discharge were pretexts. Berman had heard "rumors" about Klimek's license in October 1963. He took no action until 8 months later, and then only after he learned that Klimek was an adherent of the Union. Also, he did not question Klimek about his license or check with the New Jersey Mechanical Inspection Bureau before the discharge.

Insofar as Klimek's alleged lack of knowledge of the job, the evidence shows that it was the custom to perform the water testing-and-treating operation on the day shift and that Wagner operated this shift alone for some 2 weeks after Byberg quit the job. Although Powell reported to Berman that all of the engineers, including Coffee, "knew little or nothing of the actual maintenance of the boilers or the fire prevention system," it does not appear that Berman was concerned. He did not question Wagner or reprimand him for failure to perform the water testing-and-treating operation. Nor did he question the other engineers. He was only concerned when Klimek was involved.

At the hearing in the representation matter Berman testified that Coffee was hired as a replacement for Klimek. Coffee was rehired on June 5, or 1 day before Berman claims he questioned Klimek and discovered that "he did not know his business in the boiler house." Further, Berman testified that he did not decide to discharge Klimek until after their conversation on June 6. These facts stretch my credulity. As the General Counsel points out in his brief, there can be no doubt but that Coffee was rehired as a replacement. The question is for whom. In my opinion, Berman got his answer when Klimek admitted that he was for the Union. As found above, Berman ended the conversation by saying, "That's all I want to know."

Accordingly, for the above reasons and on the record as a whole, I find that the Respondent's discharge of Klimek on June 8, 1964, was violative of Section 8(a) (3) and (1) of 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 Respondent's operation described in section I, above, have a close, intimate, and substantial relationship 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 certain unfair labor practices, it will be recommended that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act.

As far as Klimek is concerned, I would put him in the same experience and capability category as the other engineers.

I did not make a special report to Mr. Nat Berman about Klimek, but rather, reported on all engineers the same way.

As Chief Engineer I am responsible for the safe operation of the plant and the generation of steam. I am also responsible for the maintenance of the complete boiler house. I tell the engineers what to do, make out their work schedules and assign them their duties. They cannot do water treatment.

Mr. Berman did not discuss Klimek's discharge with me before Klimek was fired. It came as a surprise to me because I was not consulted. After I was here a few days, Mr. Berman asked me if the men knew how to treat the water in the boilers, and I said, to my knowledge, no. Then Mr. Berman said, is Klimek included? and I said, yes.

Byberg testified that: He instructed Klimek in water testing and treating; Klimek performed this operation under his supervision; knowledge of the water testing-and-treating operation was not required of a blue seal engineer; about January 1964 he himself installed a firehose in the boilerhouse; and that such equipment was not in the plant before that time.

It has been found that the Respondent discharged John Klimek on June 8, 1964. Accordingly, it will be recommended that the Respondent offer Klimek immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights or privileges, and make him whole for any loss of pay suffered by reason of the discrimination by payment to him of a sum of money equal to that which he would have earned as wages from the date of the discrimination to the date of reinstatement, excluding the period when he did not hold a blue seal license, less his net earnings during such period in accordance with the formula prescribed in *F. W. Woolworth Company*, 90 NLRB 289, together with interest on such sum, such interest to be computed in accordance with the formula prescribed by the Board in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

It has also been found that the Respondent discriminatorily reduced the rate of pay of Finnegan and Joiner; did not give holiday pay to Klimek, Finnegan, and Joiner for Memorial Day, 1964, and to Finnegan and Joiner for Independence Day, 1964; did not give Finnegan and Joiner their vacation pay for 1964; canceled Finnegan's health insurance; and failed to provide health and life insurance to Joiner. Accordingly, it will be recommended that the Respondent make whole Klimek, Finnegan, and Joiner for the losses of pay resulting from the above discrimination, together with interest thereon, as above, reinstate Finnegan's health insurance, and provide Joiner with health and life insurance.

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

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.
2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed 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.
3. By discharging John Klimek, by reducing the rate of pay of Thomas Finnegan and Westley Joiner, by failing to give holiday pay to Klimek, Finnegan, and Joiner, by failing to grant vacation pay to Finnegan and Joiner, by canceling Finnegan's health insurance and by failing to provide Joiner with health and life insurance, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that the Respondent, its officers, agents, successors, and assigns, shall be ordered to:

1. Cease and desist from:
 - (a) Discouraging membership in the Union, or any other labor organization of its employees, by discharging employees or otherwise discriminating against them in regard to their hire and tenure of employment or any term or condition of employment.
 - (b) Interrogating its employees concerning their membership in or activities on behalf of the Union.
 - (c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named labor organization, or any other labor organization 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, or to refrain from any or all such activities, 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, as modified by the Labor-Management Reporting and Disclosure Act of 1959.
2. Take the following affirmative action which I find will effectuate the policies of the Act:
 - (a) Offer John Klimek immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights or privileges, and make Klimek, Thomas Finnegan, and Westley Joiner whole in the manner set forth in the section of the Decision entitled "The Remedy."
 - (b) Notify John Klimek 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.

- (c) Reinstate Finnegan's health insurance.
- (d) Provide Joiner with health and life insurance.
- (e) Preserve and, upon request, make available to the National Labor Relations Board or its agents for examination and copying all records necessary for the determination of the amount of backpay due under these recommendations.
- (f) Post at its plant in Bayonne, New Jersey, copies of the attached notice marked "Appendix."²⁰ Copies of said notice, to be furnished by the Regional Director for Region 22, shall, after being duly signed by the Respondent or its authorized representatives, be posted by Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.
- (g) Notify the Regional Director for Region 22, in writing, within 20 days from the date of the receipt of this Decision, what steps it has taken to comply herewith²¹

²⁰ 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 a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order"

²¹ 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 herewith"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that.

WE WILL NOT discourage membership in International Union of Operating Engineers, Local 68, AFL-CIO, or any other labor organization of our employees, by discriminating in regard to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT interrogate our employees concerning their membership in or activities on behalf of the above Union, or of any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Union of Operating Engineers, Local 68, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or mutual aid or protection, or to refrain from any or all such activities, 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, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer John Klimek immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make whole John Klimek, Thomas Finnegan, and Westley Joiner for any loss of pay suffered as a result of the discrimination against them.

WE WILL reinstate the health insurance policy of Thomas Finnegan and provide health and life insurance for Westley Joiner.

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

STANDARD TANK CLEANING CO., OIL SALES AND PROCESSING
CORP. AND COASTAL PETROLEUM TRANSPORT CO., INC.,

Employer.

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 614 National Newark Building, 744 Broad Street, Newark, New Jersey, Telephone No. Market 4-6151, if they have question concerning this notice or compliance with its provisions.

St. Louis Stereotypers' Union No. 8, International Stereotypers' and Electrotypers' Union, AFL-CIO and The Pulitzer Publishing Company. *Case No. 14-CD-187. June 7, 1965*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding pursuant to Section 10(k) of the National Labor Relations Act following a charge filed by The Pulitzer Publishing Company, hereinafter called the Employer, alleging that the St. Louis Stereotypers' Union No. 8, International Stereotypers' and Electrotypers' Union, AFL-CIO, hereinafter called Respondent, violated Section 8(b) (4) (D) of the Act. The charge alleges in substance that the Respondent threatened to strike the Employer with an object of forcing or requiring the Employer to assign particular work to employees represented by Respondent rather than to employees represented by St. Louis Typographical Union No. 8, International Typographical Union, AFL-CIO, hereinafter called the Printers. Thereafter, a hearing was held before Hearing Officer Victor L. Smedstad, on March 3, 1965. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. The briefs filed by the Employer, the Respondent, and the Printers have been duly considered.

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 [Members Fanning, Brown, and Jenkins].

Upon the entire record in the case, the Board makes the following findings:

1. The business of the Employer

The Pulitzer Publishing Company is a Delaware corporation engaged in, among other pursuits, the business of printing and publishing newspapers. The parties stipulated that the Employer is a member of the Associated Press, publishes and advertises nationally sold products, and has a gross volume of business annually in excess of \$200,000. We find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.