

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 469 (S. M. McCulloch d/b/a McCulloch Plumbing Company) and James Toliver Bridges. Case 28-CB-358.
June 23, 1966

DECISION AND ORDER

On February 10, 1966, Trial Examiner David F. Doyle issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of the National Labor Relations Act, as amended, and recommending that the Respondent 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 thereto. The General Counsel filed a brief in answer to Respondent's exceptions and in support of the Trial Examiner's Decision.

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 made by the Trial Examiner at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and the briefs, and the entire record in this case, and finds merit in certain of the Respondent's exceptions.

The issue in this case is whether, on April 28, 1965, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 469, herein called the Union, by threats of picketing, caused McCulloch Plumbing Company, herein called the Company, to discharge Bridges, the Charging Party, because he was not a member of the Union, in violation of Section 8(b) (1) (A) and (2) of the Act. The Trial Examiner found, as alleged in the complaint, that the Union did so violate the Act. We do not agree.

It is undisputed that on June 1, 1963, an agreement, known as the Arizona Pipe Trades Agreement, was executed by the Union and the Plumbing and Air Conditioning Contractors of Arizona, an association of employers engaged in the plumbing and air conditioning business in the State of Arizona, and that the Company was a party to this agreement at the time the events herein occurred.

This agreement covered all plumbing jobs, and provided that all employees doing plumbing work in the bargaining unit shall be employed through the Union's local hiring hall. The agreement further provided that such referral from the hiring hall shall be on a nondiscriminatory basis "and shall not be based on or in any way affected by Union membership, by-laws, regulations, constitutional provisions, or any aspect or obligations of Union membership, policies, or requirements."

It is likewise undisputed that Bridges started working for the Company around January 1960 as a laborer and prior to the Company's execution of the contract with the Union, and that Bridges continued working, with the exception of certain periods during which he was temporarily laid off, until the above incident. The Trial Examiner found, and the record indicates, that the contract between the Company and the Union did not apply to Bridges in his employment as a laborer. Nor does the record disclose any incident in which Bridges' work as a laborer was ever interfered with by the Union.

On the basis of the credited testimony of Bridges and Samuel McCulloch, owner of the Company, the Trial Examiner found that the following events took place on April 28: Bridges was working on a job site for the Company doing plumber's work described as "sweating pipe," i.e., running and soldering pipe in the walls, and to various plumbing fixtures. Kienstra, the business agent for Respondent, approached him, asked him his name, and inquired whether or not he was member of the Local. Kienstra also asked him what his wages were and when informed by Bridges, said he was not making plumber's wages, and Bridges agreed that he was being paid as a laborer. Kienstra then asked who had sent Bridges to the job. On being informed that he had been assigned to the job by the Company and not through the hiring hall as provided in the contract, Kienstra told Bridges that he could not order him off the job, but that he would close it down and put a picket line around it. Bridges then told Kienstra that he was going to call McCulloch.

Thereafter, in Kienstra's presence, Bridges called McCulloch and told him what Kienstra had said about the picket line. McCulloch then asked to talk to Kienstra. The Trial Examiner credited Bridges' testimony that he heard Kienstra ask McCulloch if he did not know "that he was in violation of the union contract by having Bridges on the job." In addition, McCulloch credibly testified that Kienstra further told him that Bridges "was working with plumber tools and would have to get off the job or he would picket or pull

the men out of the shop." There is no showing from the credited testimony of Bridges or McCulloch that Kienstra made any mention to McCulloch of Bridges' lack of union membership, but only that Kienstra was concerned solely with Bridges' performing plumbing work in violation of the collective-bargaining agreement. Subsequently, it appears, McCulloch called Bridges into the office, and Bridges was laid off the next day.

Contrary to the Trial Examiner, we do not conclude from the above credited facts that the Respondent, by inquiring of Bridges whether he was a member of the Union, the wages he was being paid, how he was hired, and in requesting that McCulloch remove him from performing plumbing work under the threat of a picket line, illegally caused Bridges' removal. Indeed, it is clear that Respondent was merely policing and enforcing the terms of its collective-bargaining agreement with the Company which provided that no employee be permitted to do plumbing work without having been duly referred from the Respondent's hiring hall under the terms of the contract.¹ Admittedly, Bridges was a laborer, was performing plumbing work, and was not referred as a plumber through Respondent's hiring hall. In these circumstances, we find that the actions of Kienstra, resulting in the removal of Bridges from the plumbing work, were lawful actions taken to enforce the collective-bargaining agreement. Accordingly, we hold that the actions of the Respondent in causing McCulloch to remove Bridges from the plumbing work were not violative of Section 8(b)(1)(A) and (2) of the Act.²

[The Board dismissed the complaint.]

¹ The Trial Examiner credibly found that Bridges had tried to become a member of the Respondent Union over a period of years and had unsuccessfully attempted to become enrolled in its apprenticeship program. However, the complaint does not allege, nor was the issue litigated, that the Respondent's hiring hall referral is restricted only to union members. Moreover, the Trial Examiner makes no finding in this regard, and in his Remedy merely provides that the Respondent withdraw its objections to the employment of Bridges "as a laborer" and requests McCulloch to offer Bridges employment "as a laborer on any construction project now in progress." The record does not indicate that the Respondent ever objected, or currently objects to, Bridges' employment as a "laborer."

² See *Local 357, International Brotherhood of Teamsters (Los Angeles-Seattle Motor Express) v. N.L.R.B.*, 365 U.S. 667; cf. *District Council of Painters No. 52, AFL-CIO, Brotherhood of Painters, Decorators and Paperhangers of America (Maynard C. Belvoir)*, 150 NLRB 1094.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard by Trial Examiner David F. Doyle in Phoenix, Arizona, on October 5, 1965, on complaint of the General Counsel and answer of the Respondent. The issue litigated was whether the

Respondent had violated Section 8(b)(1)(A) and (2) of the Act by certain conduct more specifically described hereinafter.¹

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE COMPANY

It is undisputed that Samuel McCulloch is the individual proprietor of a business conducted under the trade name and style of McCulloch Plumbing Company, with its principal office, plant, and place of business in the city of Phoenix, Arizona. At all times material herein, the Company has been engaged in the business of plumbing and related plumbing construction. During the 12-month period prior to the issuance of the complaint, the Company, in the course and conduct of its business operations, purchased, transferred, and had delivered to its Phoenix operation, pipe, plumbing equipment, supplies and related goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported to said Phoenix operation from other enterprises, including, *inter alia*, Arizona Pipe and Supply Co., Phoenix Pipe and Supply Co., and Smith Pipe and Steel Company. These companies, located in the State of Arizona, had received the said goods and materials directly from States other than the State of Arizona.

It is found, therefore, that the Company is now and at all times material herein has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is conceded, and I find, that the Union is, and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The issues*

The complaint in substance alleges: (1) that on April 28, 1965, the Union by threats of picketing caused the Company to discharge Bridges, the Charging Party, from its employment because of his lack of membership in the Union.

The answer denies the commission of any unfair labor practices and affirmatively alleges that the Company and the Union are parties to the Arizona Pipe Trades Agreement which contains an exclusive, non-discriminatory hiring hall provision, and that the Company violated said agreement by permitting Bridges, the Charging Party, to perform work covered by the agreement without complying with the hiring hall provision, and that the Union advised the Company and the Charging Party of said violation and insisted that the Charging Party be removed from the work covered by said agreement. The Union also alleged expressly that it had advised the Company and the Charging Party that the Union had no objection to the employment by the Company of the Charging Party as a laborer.

B. *The undisputed background; the contract*

It is undisputed that on June 1, 1963, an agreement, known as Arizona Pipe Trades Agreement, was executed by the Union and a sister Local No. 741, and the Plumbing and Air Conditioning Contractors of Arizona, an association of employers

¹In this report, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 469 is referred to as the Union or the Respondent; McCulloch Plumbing Company is referred to as the Company or the Employer; the National Labor Relations Board, as the Board; the General Counsel of the Board and his representative at the hearing, as the General Counsel; and the Labor-Management Relations Act, as amended, as the Act.

The original charge herein was filed by James T. Bridges on June 18, 1965, and the complaint was issued by the Acting Regional Director, Region 28, Albuquerque, New Mexico, on July 27, 1965.

It should be noted that all dates in this Decision are in the year 1965 unless specified otherwise.

engaged in the plumbing and air-conditioning business in the State of Arizona. It is undisputed that the Company became a party to this collective-bargaining agreement long before the events at issue here occurred.

It is likewise undisputed that Bridges, the Charging Party, started work for the Company in *January 1960*, as a laborer. His commencement of work with the Company was some years prior to the Company's execution of the contract with the Union. Bridges worked for the Company for approximately 4 years, when he was laid off temporarily. Shortly thereafter, he was recalled by the Company and remained in its employ, except for one short layoff, until the incident occurred which is the source of this controversy.

C. The testimony in conflict

James T. Bridges testified credibly that he was employed by the Company on a job at the Tempe Elementary School located at Tempe, Arizona, a town close to Phoenix. He was engaged in "sweating pipe" to various lavatory fixtures when A. J. Kienstra, business agent of the Union, came on the jobsite. Kienstra approached Bridges and asked him his name. Bridges gave his name and then Kienstra said, "You are not a member of the local, are you?" Bridges replied, "No, sir, I ain't. I have been trying to get in for the last four or five years but for some reason or another I just never made it." At that point, Melbourne Butler, the coordinator for the Phoenix Pipefitting Trades Joint Apprenticeship Committee, who had come on the jobsite with Kienstra, joined the other two men. Butler said, "Yes, I know, Mr. Bridges. He has been trying to get into the union for some time now." Kienstra then asked what rate of wages Bridges was being paid. Bridges said that he was making \$3.29 per hour. Kienstra then said, "That is not plumbers' wages." Bridges agreed, saying that it was "laborer's wages." Kienstra then asked who sent Bridges to this job, and Bridges replied that he was assigned to the job by the Company so he just came out and went to work. Bridges then asked Kienstra, "What do you want me to do?" Kienstra said, "Well, I can't order you off the job but if you don't get off this job I'm going to close it down and put a picket around it." Bridges then said that he would go to the phone and call McCulloch and ask what he should do. All three men then went to the small shack which served as office of the Company, and Bridges called Samuel McCulloch, the owner of the Company. Bridges told McCulloch that Kienstra was there and that Kienstra had told him that, "if he didn't get off the job he was going to close it down, put pickets around it." McCulloch then asked to talk to Kienstra and Bridges turned the phone over to Kienstra. Bridges heard Kienstra ask McCulloch if he did not know "that he was in violation of the union contract by having Bridges on the job." Bridges did not hear McCulloch's reply but he heard Kienstra say that if McCulloch didn't get Bridges off the job, Kienstra was going to close it down and put a picket on it. Kienstra handed the phone back to Bridges, and McCulloch then ordered Bridges to report at the main office. Bridges worked around the shop the remainder of the day, and worked 3 hours the next morning, when he was terminated by McCulloch. In parting, McCulloch told him that as soon as "we get this straightened out I would like to have you come back and work for me."

Bridges testified that he had tried to get in the Union over a period of years. He first tried to get in the Union in 1961. At that time, Butler, coordinator of the apprentice program, told him that he should take the General Education Development Test under the apprenticeship program, and if Bridges passed that test he would be taken into the Union. Bridges studied for about a week and then took the test which he passed, and thereafter he received a diploma certifying his success in the examination.² Upon receipt of his diploma, Bridges took it to Butler who told Bridges that there were "about 13 or 14 ahead of Bridges and that Butler had to lean a little bit towards contractors' sons and plumbers' sons." Butler said that he couldn't take Bridges in right then. Thereafter, both Bridges and McCulloch talked to Butler on several occasions trying to have Bridges accepted in the apprenticeship program.

After the incident on the school jobsite, Bridges also talked to Saunders, the president of the Union. On this occasion, Bridges was accompanied by McCulloch. Saunders told Bridges and McCulloch that there were too many young men out of work and he couldn't get Bridges in as a journeyman, but that he would talk to

² General Counsel's Exhibit 2 in evidence.

Butler and see if he could get Bridges in as an apprentice. Saunders told Bridges that he would let him know in about a week, but Bridges never heard from Saunders. Bridges stated that he had been licensed as an apprentice plumber in both the city of Scottsdale and Phoenix, Arizona.³

Samuel McCulloch, owner of the Company, also testified as a witness for the General Counsel. McCulloch is a pleasant, elderly gentleman who said that he was retiring from the plumbing business because he had reached the age of 78. He testified that he had no personal interest in this case and that his relationship with the Union had always been amicable. He testified that he signed an agreement with the Union in 1963 which was several years after he had first hired Bridges. McCulloch said that Bridges called him on April 28 and said, "that Mr. Kienstra was there and said that he was working with plumbers tools and would have to get off the job or they would put a picket line on it." Then McCulloch talked to Kienstra who said that Bridges would have to get off the job or he would picket or pull the men out of the shop. McCulloch then testified, "I told him (Bridges) to come in. That was the end of it. I laid him off. That was as far as I could go. That is as far as I have any interest in the case at all."

A. J. Kienstra, then the business agent and later the business manager of the Union, furnished a quite different version of his conversations with Bridges and McCulloch on April 28. Kienstra testified that on April 28 he arrived at the school site in Tempe around noontime. He was accompanied by Butler, the coordinator for the Plumbers and Pipefitters Apprenticeship Program. They saw a man, who later said that his name was Bridges, doing some plumbing work on the job.

At that point, in his direct examination, Kienstra testified as follows:

Q. What happened then after you saw Mr. Bridges?

A. I asked Mr. Bridges if—who he was working for.

Q. Go ahead. If there was a conversation, give it to us.

A. He said he was with the McCulloch Plumbing Company.

I said, "In what capacity?" and he said he was working as a plumber.

I asked him if he was referred from the plumbers hall, and he said, "No," he was not.

And I said, "Well," I said, "as far as the hiring hall is concerned, Mr. McCulloch has an agreement with us that all of his men would come through the hiring hall and through the pipe trades agreement."

And he says, "What do you want me to do?"

I said, "I don't care what you do. That is strictly up to you." I said, "Mr. McCulloch is in violation of the hiring hall procedures which we have in our agreement."

And he says, "Well, I will get off the job," or, rather, at that time he says, "I have tried to get into your Union."

And I said, "I am not involved with the Union at all." I said, "What I am concerned about is in the violations of the hiring hall procedures." I said, "It makes no difference whether you are union or not." I said, "The hiring hall procedures is what I am referring to."

So he says, "What do you want me to do?" He says, "I will get off the job."

I said, "I don't care what you do." I said, "I'll just notify Mr. McCulloch he is in violation of our agreement concerning the hiring hall."

And I did not mention one word of union.

Q. Go ahead. Then what happened?

A. Then Mel Butler—rather, Mel Butler came over there before that, and he said that he knew Jim Bridges from coming around to the apprentice office. So Jim said, "I tried to get into your local," or it was into the apprenticeship program, rather. He said, "Yes, I notified you one time to come on in, but I could not locate you."

And he said, "I'm going to leave the job."

I said, "That is up to you."

So Mel Butler and I walked over toward the car and he went over to make a phone call.

Then he said, "Mr. McCulloch wants to talk to you."

³ These licenses are General Counsel's Exhibit 3.

So Mr. McCulloch asked me what the trouble was. I told him. I said, "You are in violation of the pipes trades agreement in regard to the hiring hall procedures."

He said, "Why is that?"

I said, "Your man was out here doing plumbing work."

"He said, "Well, he is not supposed to be doing plumbers' work."

I said, "Well, he was doing plumbers' work."

He says, "Well, you tell him to come on in."

I said, "I don't care if the man stays here or anyone else; the only thing I am concerned about is if the man is going to do pipefitter's or plumber's work."

And he said, "Let me talk to Mr. Bridges—to Jim."

I said, "All right."

So he talked to him, and I guess whatever he told him was to come off the job.

I said, "I want you to understand—" —and I also told Mr. McCulloch, "I want you to understand I am not telling you to take him off the job, just to keep him off of our work."

Q. Was there anything further in that conversation?

A. I told him is in violation. I said, "I will take whatever action is necessary to prevent you from violating our contract that we have an agreement with you on."

On cross-examination, Kienstra testified that when he saw Bridges on the job doing plumbing work, that he did not ask Bridges if he was a member of the Union. When queried further on this topic, Kienstra was evasive, to the point that I interrupted the cross-examiner and proposed the question to the witness. Kienstra finally replied that when he went on a jobsite that it made no difference whether a man belonged to the Union or not. Further, in the course of his cross-examination, Kienstra maintained that he "didn't mention one word to Bridges about the Union," and insisted that Bridges *voluntarily* offered to leave the job.

Butler, the coordinator of the apprentice program, was also called as a witness by counsel for the Union. Presumably, he was to corroborate Kienstra's testimony, but Butler's testimony was marked by uncertainty and vagueness. On direct examination, when he was asked if Kienstra had asked Bridges whether he was a member of the Union or not, Butler's answer was, "Not to my knowledge, sir." Also, Butler testified that he wasn't "present or close by during the entire conversation of Kienstra with Bridges," so could not corroborate some items. When questioned as to his presence in the room when Kienstra talked on the telephone to McCulloch, Butler was also uncertain. When asked if he was present during the entire conversation, he replied "I wouldn't say through the entire conversation." Butler appeared to be a most reluctant witness, who cautiously inserted reservations of this type throughout his testimony.

The counsel for the Union also called Neil Ansnes as a witness for the Union. He is a plumber and a member of the Union, and is employed as a foreman by the Company. Ansnes was called ostensibly to furnish a presumably contradictory account of Bridges as to Kienstra's and Bridges' conversation at the jobsite. However, upon being questioned, Ansnes stated that on the day of his termination, Bridges told him that he had told Kienstra and Butler that he had been trying for a long time to get in the Union and that Butler had agreed with Bridges' statement. When Ansnes was asked, "Would you deny that Bridges may have told you that Kienstra inquired as to whether he was a union member or not," the witness replied, "I'm afraid I can't deny it, no, sir."

The charge in this case was filed with the Regional Office on June 18, 1965, and the complaint was issued on July 27, 1965. On the latter date, counsel for the Union wrote the following letter to the Company and to Bridges:

Re: *NLRB Case No. 28-CB-358.*

Gentlemen:

The purpose of this letter is to reiterate that which in substance has been said to you by representatives of Plumbers Local 469 on previous occasions: Local 469 has no objection to McCulloch Plumbing Company employing James T. Bridges in any capacity, except that of a plumber or pipefitter, and then only if the exclusive, non-discriminatory hiring hall provisions of its collective bargaining agreement covering such work are *not* complied with.

Said hiring hall agreement contains preference provisions whereby those persons who have been, generally speaking, regularly employed by signatory

employers in the plumbing industry in the State of Arizona have a kind of seniority right or prior right to perform all such work. Mr. Bridges is not one of that group. However, Plumbers Local 469 has no objection to Mr. Bridges registering on the appropriate hiring hall list, nor to his being dispatched in accordance with said hiring hall provisions.

Further, Local 469 has no objection to Mr. Bridges doing anything or working anywhere *simply because he is not a member of Local 469*. However, Local 469 will not knowingly tolerate an employer or employee breaking any part of its collective bargaining agreement, including its hiring hall provisions.

Yours very truly,

A. D. Ward.

Concluding Findings

The resolution of this proceeding depends upon an issue of credibility between the two sets of witnesses. However, there are certain undisputed facts in the record which must be considered in connection with the conflicting testimony. It is undisputed that Bridges was a longtime employee of the Company. His employment antedated the signing of the labor contract between the Company and the Union. By its terms, the contract setting up the hiring hall and its procedures was prospective as to time and did not apply to Bridges, who was then employed as a laborer by the Company. Thus the contract between the Company and the Union did not apply to Bridges in his employment as a laborer.

It is likewise undisputed that for several years Bridges, who had a license as a plumber from the cities of Phoenix and Scottsdale, Arizona, had been trying to be admitted to the apprentice program, which was the initial step necessary to eligibility to union membership. It is undisputed that Bridges took the prescribed examination and passed it, but was not admitted to the apprenticeship program because the sons of plumbing contractors and plumbers had a preference and it appears that there was always someone ahead of him. Thus Bridges could not become a part of the apprentice program and thereby was foreclosed from becoming a member of the Union. From these undisputed facts, it is clear that for its own reasons the Union sought to maintain a closed or restricted union by having a restricted preferential apprentice program which excluded persons in the position of Bridges from becoming members of the Union. The facts of this situation shed considerable light on the conflicting testimony.

Bridges as a witness appeared to be fair, frank, and forthright. He exhibited no rancor toward the Union or the coordinator of the apprentice program. He testified to his dealings with Kienstra and his experience with the apprenticeship program in clear and simple language. I credit Bridges' entire testimony.

Samuel McCulloch, the elderly gentleman who is the proprietor of the Company, was an unusually persuasive witness. On the witness stand, McCulloch was the embodiment of disinterested position as between the parties to the proceeding. He made it clear that he had no interest in the case and had nothing to win or lose by its outcome, inasmuch as he was retiring from business at the age of 78 years. His testimony was short, simple and to the point, and it is worthy of note that the cross-examination of McCulloch was very brief as to what happened on April 28.

On the other hand, I have set out the testimony of Kienstra at considerable length, because in my judgment the exposition of the testimony shows its extreme implausibility. According to Kienstra, when he went on the jobsite at the school, ostensibly for the purpose of seeing that union members or union apprentices were doing the work on the job, he did not inquire of Bridges whether he was a member of the Union or not. Kienstra, in his testimony, claimed he was not interested in the fact of Bridges' membership when he went on the jobsite. This is highly implausible. Furthermore, according to Kienstra, he did not tell Bridges that he would have to leave the job or he would picket the jobsite. According to Kienstra, Bridges *voluntarily stated* that he would get off the job. The claim that Bridges acted in such an accommodating manner I cannot accept. Bridges had good reason to resent his unfair treatment at the hands of the Union, and that he would voluntarily walk off the job is simply not believable. Finally, McCulloch's straightforward, honest testimony gives the lie to Kienstra. McCulloch testified that Kienstra told him that Bridges would have to get off the job or he would picket or pull the men out of the shop.

Therefore, upon my observation of the demeanor and bearing of the witnesses upon the witness stand and a consideration of the various testimonies in the light of the undisputed facts, I find that the Union violated Section 8(b)(1)(A) and (2)

of the Act, as alleged in the complaint. In my judgment, Kienstra's claim that he was concerned only with enforcing the provisions of the hiring hall agreement when he went on the jobsite is a flimsy invention, which he hoped would explain his conduct on the jobsite on April 28.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Union, set forth in section III, above, occurring in connection with the operations of McCulloch Plumbing Company, 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 Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act, as amended.

Having found that in violating Section 8(b)(1)(A) and (2), the Union has deprived James T. Bridges of employment by McCulloch Plumbing Company on its construction project in the vicinity of Tempe, Arizona, it will be recommended that:

1. The Union notify McCulloch Plumbing Company, and Plumbing and Air Conditioning Contractors of Arizona, in writing, and furnish copies of said notification to Bridges, that it has withdrawn its objections to the employment of Bridges as a laborer by the McCulloch Plumbing Company or any member of Plumbing and Air Conditioning Contractors of Arizona, and request McCulloch Plumbing Company to offer Bridges employment as a laborer on any construction project now in progress.⁴

2. The Union make James T. Bridges whole for any loss of earnings he may have suffered by reason of the Union's conduct in causing the above-named Company to discriminate against him in regard to his hire and tenure of employment. The employee will be made whole in accordance with the formula of the Board set forth in *F. W. Woolworth Company*, 90 NLRB 289.⁵

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

CONCLUSIONS OF LAW

1. S. M. McCulloch is and has been at all times material herein an individual proprietor doing business under the trade name and style of McCulloch Plumbing Company, and is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipe fitting Industry of the United States and Canada, Local Union 469, is a labor organization within the meaning of Section 2(5) of the Act.

3. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b) (1) (A) of the amended Act.

4. By causing McCulloch Plumbing Company to discriminate against James T. Bridges in violation of Section 8(a)(3) of the Act, the Respondent Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) of the amended Act.

5. The aforementioned unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publications.]

⁴ Notification to members of the Association is deemed necessary to return Bridges to the employment position he had prior to the discrimination against him.

Also, if the Company has gone out of business, the Union need not request the Company to offer Bridges employment.

⁵ In the event the Company has gone out of business, the terminal date of the backpay computation shall be the latest date upon which the Company employed a laborer.