(c) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps Respondent has taken to comply herewith.[36]

[36] In the event that this Recommended Order is adopted by the Board this provision shall be modified to read: "Notify the aforesaid Regional Director for Region 15, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL MEMBERS OF CARPENTERS DISTRICT COUNCIL OF NEW ORLEANS AND VICINITY, AFL–CIO, AND MEMBERS OF OUR AFFILIATED LOCAL 1846

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 you that:

WE WILL NOT engage in, or induce or encourage any individual employed by Southern Builders, Inc. of Tennessee, or any other person engaged in commerce or in an industry affecting commerce, except Delta Painting Co., Inc., to engage in a strike or a refusal in the course of their employment to perform any services, where an object thereof is to force or require Southern Builders, Inc. of Tennessee, or any other person, to cease doing business with Delta Painting Co., Inc.

WE WILL NOT threaten, coerce, or restrain Southern Builders, Inc. of Tennessee, or any other person engaged in commerce or an industry affecting commerce, where an object thereof is to force or require Southern Builders, Inc. of Tennessee, or any other person, to cease doing business with Delta Painting Co., Inc.

CARPENTERS DISTRICT COUNCIL OF NEW ORLEANS AND VICINITY, AFL–CIO,
Labor Organization.

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.

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, T6024 Federal Building (Loyola), 701 Loyola Avenue, New Orleans, Louisiana 70013, Telephone 527–6391.

Procon, Incorporated *and* Grover W. Rose. *Case 31–CA–283. November 25, 1966*

DECISION AND ORDER

On August 23, 1966, 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 supporting 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 [Chairman McCulloch and Members Brown and Zagoria].

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 Respondent's exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board adopted the Trial Examiner's Recommended Order.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This matter was heard before Trial Examiner David Karasick at Los Angeles, California, on June 21 and 22, 1966. The complaint [1] alleges that Procon, Incorporated, herein called the Respondent, had engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act. Following the close of the hearing, the General Counsel filed a brief; the Respondent did not. Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OPERATIONS OF THE RESPONDENT

The Respondent is now, and has been at all times material herein, a corporation engaged in construction in various States of the United States including that of California. During the preceding calendar year, the Respondent performed construction services in excess of $50,000 in the State of California for the Mobil Oil Company. The Mobil Oil Company maintains facilities within the State of California and such facilities annually receive from other States goods and materials valued in excess of $50,000. I find, as the complaint alleges and the answer admits, that the Respondent is, and has been at all times material herein, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 606, herein called Local 606, has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES ALLEGED

A. *The issues*

1. Whether the Respondent unlawfully terminated the employment of Grover W. Rose on January 11, 1966.
2. Whether statements made to Rose by Alfred Derwent, a foreman of the Respondent, in about the middle of December 1965, and by R. D. Wilson, assistant superintendent of the Respondent, on or about December 20, violated Section 8(a)(1) of the Act.

B. *The facts*

At all times material herein, the Respondent has been engaged in the construction of a refinery in Los Angeles, for the Mobil Oil Company. The Respondent is a member of the National Constructors Association and as such is party to an agreement with the International Brotherhood of Teamsters, with which Local 606 is affiliated, as well as agreements with the Operating Engineers Union and other building trades and craft unions. The Respondent pays to Local 606, health and welfare, vacation, holiday, and pension benefits covering its teamster employees.

Grover W. Rose, a member of Local 606, was dispatched from its hiring hall and began work for the Respondent as a dump truckdriver on November 15, 1965. After he had begun work, Rose observed that certain trailers used on the job were being

[1] Complaint was issued on March 9, 1966, following the filing of a charge on January 11, 1966, by Grover W. Rose, an individual.

operated by employees who were members of the Operating Engineers Union. Rose believed that this work belonged to the employees who were members of Local 606 by virtue of the contract between the International Brotherhood of Teamsters and the Respondent. Within a couple of weeks after he began work, Rose complained about this matter to one Wallace, job steward for Local 606. He also voiced such complaints to John Masterson, foreman of the Operating Engineers, as well as to the job steward of that union.

In approximately the middle of December, according to the uncontradicted testimony of Alfred Derwent, Assistant Superintendent Wilson asked Derwent, who was then foreman of the truckdrivers, if the latter would talk to Rose and get him off his union complaints which were getting annoying.[2] Later that day or shortly thereafter, Derwent told Rose that his complaints were annoying everybody and that if he continued, he was liable to lose his job.

On Saturday evening, December 18, 1965, Rose attended a meeting of Local 606. Wallace, the job steward, was also present along with other members of the local. During the meeting, Rose protested that the Respondent was violating its contract in permitting the Operating Engineers to pull trailers and by permitting members of other craft unions to perform work which rightfully belonged to members of Local 606.

On the following Monday, December 20, according to the undenied testimony of Rose, Assistant Superintendent Wilson asked Rose what right he had in going to the union meeting and "blowing his top" about conditions on the job and why instead he had not come to Wilson and talked about the matter to him. Wilson also stated that in the future Rose was to come and talk to Wilson if he wanted to discuss matters relating to the job.

Shortly before January 11, 1966, Wilson told Derwent that there was to be a reduction in force among the truckdrivers by one man and that Derwent should lay off whomever he wanted. Derwent decided to lay off John Myers, who was the last truckdriver to be hired, and so informed Wilson. Wilson agreed. Derwent thereupon instructed the Respondent's office to make out a termination check for Myers. Thereafter, and before the termination went into effect, Wilson told Derwent that he had canceled the layoff of Myers and was going to leave things as they were.

Shortly thereafter, on January 11, 1966, Rose was terminated upon Wilson's orders and Derwent was relieved of his duties as a foreman and took Rose's place as a driver.

About a week after Rose had been terminated, the Respondent began to hire new drivers who operated the Respondent's trucks and also worked in the warehouse where members of Local 606 were employed. At the same time, the Respondent also added owner-operated dump trucks and flat-rack trucks for use in its construction work at the project.

At the time Rose was terminated, the Respondent had five truckdrivers, including Rose, on its payroll. Of these, Rose and one Ted Ringos each operated a dump truck while the remaining drivers operated different kinds of vehicles.[3] In May or June 1966, a new man was hired to drive the dump truck which until then had been operated by Ringos and the latter was assigned to drive a flat-rack instead.

C. *Concluding findings*

The Respondent contends that Rose was laid off because of a reduction in force and not, as the General Counsel asserts, for reasons violative of the Act. Assistant Superintendent Wilson testified that the Respondent did not follow seniority; that it was necessary to reduce the force of truckdrivers by one man; that he decided that he did not need a foreman; that he terminated Rose, removed Derwent as foreman, and assigned him to drive in Rose's place; and that he selected Rose because Ringos, who drove the other dump truck, also performed the duties of lubricating and servicing vehicles operated by the Respondent.

Although Wilson testified that the drivers who were retained on January 11, 1966, were doing a good job, he did not deny the testimony of Rose, corroborated by

[2] Derwent testified that he was hired on December 6 and that Wilson's conversation occurred approximately a week after he was first employed.

[3] The following truckdrivers were employed by the Respondent as of January 11, 1966:

Driver	*Vehicle driven*	*Date hired*
Ted Ringos	Dumptruck	November 10, 1965
Grover Rose	Dumptruck	November 15, 1965
Merlle White	Flat-rack	December 1, 1965
Gordon Jones	Flat-rack	December 6, 1965
John Myers	Pick-up	December 29, 1965

Foreman Derwent, that there had been no complaints regarding Rose's ability or performance as a truckdriver, or the further testimony of Rose that he was a truckdriver of long experience who could drive virtually any type of automotive equipment. Nor did Wilson explain why he had decided that he could dispense with the services of a foreman when the uncontradicted evidence shows that, within a week or two after Rose was terminated, the Respondent enlarged its truckdriving operations by hiring new truckdrivers and by increasing the number of owner-operated trucks being used at the project. Although Wilson testified that the Respondent did not follow seniority, he did not contradict the testimony of Derwent that, shortly before Rose was terminated, Wilson had instructed Derwent to choose one of the drivers for layoff; that Derwent had selected Myers, who was the last man hired; that Wilson had agreed; and that, immediately before Myers was to be laid off, Wilson had canceled Myers' scheduled termination and stated that he was going to let things stand as they were. Nor did he explain why, shortly after this incident, he suddenly changed his mind again and decided on this occasion not to permit Foreman Derwent to select the employee to be terminated but instead made the choice himself.[4]

The undenied evidence in this record shows that in approximately the middle of December 1965, Assistant Superintendent Wilson asked Foreman Derwent to try to induce Rose to cease his complaints regarding work assignments to members of unions other than Local 606; that, pursuant to such requests, Derwent warned Rose that he was annoying everybody by such complaints and was liable to lose his job if he kept it up; that a few days later, Wilson questioned Rose's right to express such complaints at a union meeting and directed him to discuss conditions on the job with Wilson in the future; that shortly before Rose was terminated, Wilson told Derwent to lay off one of the truckdrivers and left the choice to Derwent, that Derwent chose Myers, the last man to be hired, with Wilson's approval; that thereafter Derwent, without explanation, canceled the scheduled termination of Myers; that, shortly thereafter, Derwent discharged Rose and replaced him by Derwent; that there had been no complaints regarding Rose's work; that Rose was an experienced truckdriver who could operate any of the vehicles used by the Respondent at the jobsite; and that shortly after Rose was discharged, the Respondent hired new drivers to operate its trucks and work in its warehouse and also increased the number of owner-operated trucks used at the project.

Upon the basis of the foregoing evidence and upon the record as a whole, I find that Rose was discharged on January 11, 1966, not for the reasons asserted by the Respondent, but because Rose had voiced complaints that work assigned by the Respondent to employees who were members of other unions properly belonged to members of Local 606 and that such assignments violated the provisions of the collective-bargaining agreement. These complaints were made for the purpose of preserving job opportunities for members of Local 606 at the construction site, were a legitimate union activity, and the discharge of Rose because of such complaints discouraged membership in Local 606 within the meaning of Section 8(a)(3) of the Act.[5]

Moreover, Rose's complaints also fell within the realm of protected concerted activity, whether viewed as grievances under the contract which affected the rights of all employees covered by its terms [6] or regarded as an attempted implementation of the collective-bargaining agreement, applicable to him and to other drivers as well, thereby constituting "but an extension of the concerted activity giving rise to that agreement." [7] Therefore, his discharge for such complaints also constituted an independent violation of Section 8(a)(1) of the Act.[8]

In addition, the warning of Alfred Derwent, the foreman of the truckdrivers, to Rose in approximately the middle of December that Rose's union complaints were

[4] On at least one other occasion prior to the discharge of Rose, Derwent had been permitted to make an initial recommendation, subject to the approval of Wilson, as to the termination of a truckdriver.

[5] *Sandpiper Builders, et al.*, 152 NLRB 796.

[6] *New York Trap Rock Corporation etc.*, 148 NLRB 374.

[7] *Bunney Bros. Construction Company*, 139 NLRB 1516.

[8] *Sandpiper Builders, et al, supra.* The foregoing findings are based upon the theory, advanced by the General Counsel at the hearing, that the reduction in force was valid but that the selection of Rose was unlawful. I therefore make no determination whether the record supports the conclusion that the discharge of Rose may be regarded as unlawful on the additional theory that the reduction in force was in itself discriminatorily motivated.

annoying everybody and that he was liable to lose his job if he kept them up and Assistant Superintendent Wilson's interrogation and statements directed to Rose on December 20 in which he asked Rose what right the latter had in going to the union meeting on the prior Saturday and complaining about conditions on the job and directing that in the future Rose was to come and talk to Wilson if he wanted to discuss matters relating to work likewise violated Section 8(a)(1) of the Act.

IV. THE REMEDY

It has been found that the Respondent has engaged in unfair labor practices and it will therefore 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 unlawfully discharged Grover W. Rose, it shall be recommended that it offer him immediate and full reinstatement to his former or substantially equivalent position of employment, without prejudice to his seniority or other rights or privileges. It also shall be recommended that the Respondent reimburse Rose for any loss of pay he may have suffered by reason of his unlawful discharge by paying to him a sum of money equal to the amount he normally would have earned as wages from January 11, 1966, to the date of the Respondent's offer or reinstatement, less his net earnings during that period. Backpay should be computed as prescribed in *F. W. Woolworth Company*, 90 NLRB 289, and interest at the rate of 6 percent per annum shall be added to the backpay to be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

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. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Local 606 is a labor organization within the meaning of Section 2(5) of the Act.
3. By discriminating in regard to the hire and tenure of employment of Grover W. Rose and thereby discouraging membership in, or activities on behalf of, Local 606, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
4. By interfering with, restraining, and coercing its employees in the exercise of the right guaranteed in Section 7 of the Act to engage in concerted activities for mutual aid or protection, the Respondent has engaged in and is engaging 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 entire record in these proceedings and the foregoing findings of fact and conclusions of law, I recommend that the Respondent Procon, Incorporated, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Directing employees to cease engaging in union or other protected concerted activities.

(b) Warning employees that they are liable to be discharged if they engage in union or other protected concerted activities.

(c) Questioning employees concerning their union or protected concerted activities.

(d) Discouraging membership in any labor organization of its employees by discriminating in regard to their hire, tenure, terms or conditions of employment.

(e) Interfering with, restraining, or coercing employees in the exercise of their right to engage in concerted activities for mutual aid or protection as guaranteed in Section 7 of the Act.

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

(a) Offer Grover W. Rose 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 he may have suffered by reason of the discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

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

(c) Notify Grover W. Rose 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, as amended, after his discharge from the Armed Forces.

(d) Post at the Mobil Oil Company jobsite in Los Angeles, California, copies of the attached notice [9] marked "Appendix." [10] Copies of said notice to be furnished by the Regional Director for Region 31, after being duly signed by an authorized representative of the Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Decision, what steps have been taken to comply herewith.[11]

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[9] 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.

[10] In the event that this Recommended Order is 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 is 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."

[11] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 31, 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 interfere in any way with the exercise by our employees of those rights.

WE WILL NOT discharge our employees or threaten to discharge them for union activities or other protected concerted activities.

WE WILL NOT direct our employees to stop engaging in union or other protected concerted activities.

WE WILL NOT question our employees concerning their union or other protected concerted activities.

WE WILL offer immediately to Grover W. Rose the job he held at the time he was discharged on January 11, 1966, or a job like it, without loss of seniority or any rights or privileges and WE WILL give him whatever backpay he has lost.

WE WILL notify Grover W. Rose, 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 of the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

All our employees have the right to join any union of their choice and to engage in union activities, including the right to seek benefits to which they may be entitled under the provisions of a collective-bargaining contract, and our employees also have the right not to join a union and not to engage in such activities, except that the right not to join a union may be affected by a valid contract requiring membership in a union as a condition of employment.

PROCON, INCORPORATED,
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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 215 West Seventh Street, Los Angeles, California 19914, Telephone 688–5840.

Patterson Menhaden Corporation, d/b/a Gallant Man, and Fletcher Miller, Agent; Surprise, Inc., d/b/a Surprise, and Fletcher Miller, Agent *and* Fishermen's Union Local 300, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL–CIO. *Case 15–CA–2475. November 28, 1966*

AMENDED DECISION AND AMENDED ORDER

On September 29, 1965, the National Labor Relations Board issued its Decision and Order [1] in the above-entitled proceeding, adopting, with modifications,[2] the findings, conclusions, and recommendations of the Trial Examiner. By that Decision, the Board found, *inter alia*, that Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended, by threatening employees with loss of future employment if they selected the Union as their bargaining representative; by creating the impression of surveillance of union activities; and by threatening to discontinue loans to employees because of their support for the Union. The Board further found that Respondent violated Section 8(a)(3) and (1) of the Act by reducing the wage rates of five employees in retaliation to their activity in behalf of the Union.

Acting on its own motion, the Board [3] has reexamined its Decision and Order herein, as well as the entire record and, for reasons stated below, deletes that portion of the Decision and Order which relates to the above-mentioned violations of Section 8(a)(1). With respect, however, to the unlawful wage reductions, we adhere to, as explained below, our original Decision and Order.

The Board, in adopting in principal part the Trial Examiner's findings, conclusions, and recommendations, found that an antiunion speech delivered by Respondent-Agent Captain Miller, prior to a Board-sponsored election conducted on October 18, 1963, violated Section 8(a)(1) of the Act. The Board, however, failed to note that

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[1] 154 NLRB 1795.

[2] The Board dismissed the complaint to the extent that it alleged that Respondent violated Section 8(a)(3) and (1) of the Act by reducing the wages of Supervisor Matthew J. Hooper and refusing to employ Hooper and Supervisor Desire Bishop, because of their activities on behalf of the Union.

[3] 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 Zagoria].