

(e) Post at its plant in Skokie, Illinois, copies of the attached notice marked "Appendix B."³⁴ Copies of said notice, to be furnished by the Regional Director for Region 13, after being duly signed by Respondent's authorized representative, shall be posted by Respondent 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify said Regional Director, in writing, within 20 days from receipt of this Decision, what steps have been taken to comply therewith.³⁵

I FURTHER RECOMMEND that Respondent's separate defense in its answer as amended at the conclusion of the hearing be, and the same is hereby, dismissed.

³⁴ 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."

³⁵ In the event that this Recommended Order is 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 Respondent has taken to comply herewith."

APPENDIX B

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 HAVE taken steps to withdraw, cancel, and remove, retroactively to June 3, 1965, the rider to your group insurance policy which on June 3, 1965, we reinstated into effect. All payments of insurance benefits made to employees under that rider, as well as all payments made under the rider of February 23, 1965, will be recomputed so that all employees will be paid the differences between benefit payments received by them under the rider and the benefit payments they would have received if the rider had not been in effect, plus interest.

WE WILL NOT without prior notice to, and giving reasonable opportunity to bargain by, your Union, Local 1031, International Brotherhood of Electrical Workers, AFL-CIO, change your terms and conditions of employment, such as the insurance benefits under your group insurance policy.

WE WILL NOT modify or attempt to modify our collective agreement with you, without giving advance notice to your Union, offering to bargain, and in other respects complying with the requirements of Section 8(d) of the National Labor Relations Act, as amended.

THE SCAM INSTRUMENT
CORPORATION
(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, Room 881, United States Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Illinois 60604, Telephone 828-7597.

A. S. Hubbs, an Individual, d/b/a A. S. Hubbs Contracting and Peter George Pochatko.
Case 31-CA-306.

March 8, 1967

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH, AND MEMBERS
FANNING AND BROWN

On November 17, 1966, Trial Examiner James R. Hemingway 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 General Counsel filed exceptions to the Decision and a supporting memorandum.

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.

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 memorandum, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modification:

We agree with the General Counsel that the Trial Examiner's Recommended Order provided an inadequate remedy by limiting Pochatko's backpay period to November 29, 1965, the last day for which his services had already been specifically requested by Respondent. It is undisputed that between August 2 and November 22, 1965, Respondent repeatedly requested the Union to dispatch Pochatko when a driver was needed, and that such specific requests were a result of its evaluation of the quality of his work. As nothing intervened to suggest a change in this respect, we find that but for his concerted activity and resulting discharge, Respondent would have continued to request Pochatko by name for similar work after November 29. Accordingly, in order adequately to

remedy the effect of the unfair labor practice committed, we shall extend the backpay period from the date of discharge, November 26, 1965, until February 9, 1966, when Pochatko was no longer available for this type of work, and order backpay for those successive jobs of Respondent where Respondent, on the basis of past experience, would have been expected to request the Union to dispatch Pochatko.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, as modified below, and hereby orders that the Respondent, A. S. Hubbs, an individual, d/b/a A. S. Hubbs Contracting, its agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

Delete subparagraph (a) of paragraph 2 of the Trial Examiner's Recommended Order and insert in lieu thereof the following:

"(a) Make whole Peter George Pochatko for any loss he may have suffered by reason of his discharge on November 26, 1965, by payment to him of a sum of money equal to that which he normally would have earned in Respondent's employ after November 26, 1965, on any jobs where Respondent, on the basis of past experience, would have been expected to request the Union to dispatch him, until Pochatko became unavailable for such work on February 9, 1966, less his net earnings, if any, during said period. Loss of pay shall be computed in accordance with the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, with interest at the rate of 6 percent per annum until paid, as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716."

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JAMES R. HEMINGWAY, Trial Examiner: The Charging Party, Peter George Pochatko, filed a charge on February 1, 1966, against A. S. Hubbs Trucking & Contracting, alleging a violation of Section 8(a)(1) and (3) of the Act. Upon this charge, a complaint issued on April 8, 1966, against A. S. Hubbs, an individual doing business as A. S. Hubbs Contracting, herein called the Respondent,¹ alleging violation of that section and those subsections of the Act.

The complaint alleged in substance that on November 26, 1965, the Respondent had discharged said Pochatko and Arthur Massaro because they sought payment of wage claims under the terms of a collective-

bargaining agreement between Respondent and Construction Teamsters Local No. 606, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and threatened its employees with loss of employment if they asserted wage claims under the terms of the said collective-bargaining agreement. The Respondent filed an answer on April 18, 1966, admitting the discharge of said Pochatko and Massaro but denying that the discharges were for the cause alleged.

Pursuant to notice, a hearing was held at San Bernardino, California, on August 31, 1966. At the close of the General Counsel's case, counsel for the General Counsel moved to delete the name of Arthur Massaro from the complaint. The motion was granted. At the close of the hearing, the parties waived oral argument but asked time within which to file briefs. Such time was granted. A brief was received from the General Counsel only. Following the close of the hearing, the General Counsel moved to correct the transcript. The motion is granted. To the extent that the motion differs from schedule B, it is denied.

From my observation of the witnesses and upon the entire record in the case, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The complaint alleges, the answer admits (for want of any denial), and I find that Respondent is, and at all times material herein has been, an individual proprietorship doing business under the trade name and style of A. S. Hubbs Contracting, with its principal place of business located in Colton, California, where it engages in equipment contracting and hauling.

Respondent, during the past 12 months, which period is representative of all times material herein, performed services valued in excess of \$50,000 for firms within the State of California, each of which annually performs services outside the State of California valued in excess of \$50,000.

Jurisdiction of the Board is uncontested. I find that the Board has jurisdiction and that it will effectuate the policies of the Act to assert jurisdiction.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization having a master labor agreement with Southern California General Contractors for the term from July 1, 1965, to May 1, 1968, which contract covers three employer associations, including Engineering and Grading Contractors Association, Inc., and which covers subcontractors who agree to be bound thereby. Under this contract, the Union maintains a hiring hall and refers workmen requested by employers. The Respondent, although not for 5 years a member of Engineering and Grading Contractors, uses the Union's hiring hall as the source of labor, and he admittedly operates under the terms of the aforesaid contract. I find that Respondent, either expressly or tacitly, had agreed with the Union to be bound by the terms of the aforesaid contract with respect to truckdrivers requested through the Union's hiring hall.

¹ The variance between the name of the Respondent in the charge and in the complaint is an immaterial one and no point was

made of it by Respondent. See *Edward's Super Market and Elm Farm Foods Co.*, 133 NLRB 1633

III. THE UNFAIR LABOR PRACTICES

A. *Discrimination*

1. Applicable provisions of union contract and practices thereunder

The applicable provisions of the union contract under which the Respondent operated are as follows:

1401.8 Travel: Workmen and employees shall travel to and from their work on their own time and by means of their own transportation.

1401.17 When equipment is moved . . . from yard to job site, or visa versa, by an employee covered by this Agreement . . . such transportation shall be under the wage scales and conditions of this Agreement. . . . If the driver does not return in such equipment covered by this Agreement, he will also be given return transportation, or a reasonable allowance therefor, from the point of delivery of the equipment direct to his starting place and pay therefor at the regular straight-time hourly rate for the actual hours spent in traveling. . . .

Under the terms of this contract, an employee's workday would begin, on the first day employment, at the yard at the time that he reports for work, and it would include his time in moving equipment from the yard to the site of the particular job he is to work on. At the end of the first day, if space was available at the jobsite for the equipment, the practice would be to leave the equipment at that place overnight, in which case the employer should furnish transportation to the driver back to the yard where the driver left his private automobile or where he started. The end of the workday in that instance, under the contract, would be the time when the employee would return to the yard at the end of the day. Thereafter, on the same job, the driver would go in his own car or other form of transportation direct to the jobsite at his own expense, and he would return home from the jobsite by his own transportation until the end of the job, when he would have to return the equipment to the employer's yard. On the final day, therefore, the driver would receive compensation until he had returned the equipment to the yard. On a job such as the one on the highway it is possible that no parking place would be available for overnight parking. In such case, the employer would be obliged either to pay for transportation of the equipment back to the yard or would have to make special arrangements for parking at some location near the jobsite. In the case at hand, if the Respondent had intended that the equipment should be left on the highway site, it would have been incumbent upon the Respondent to make arrangements to transport the truckdriver back to the yard where he had left his car. Except for the one time when arrangements were made to leave the equipment at the Winchester Gun Club, it does not appear that the Respondent made any special arrangements either for parking the truck overnight or for transporting the truckdriver back to the yard.

2. Discharge of Pochatko

Peter George Pochatko, in November 1965, was a member of the Union. On August 2, 1965, Pochatko was

² Pochatko testified that Respondent's office manager had told him of the compliments and told him that he would be requested thereafter.

dispatched by the Union to the Respondent upon the latter's request for a driver of a 10-wheeled dump truck. Pursuant to a provision of the aforesaid contract, Respondent thereafter, between August 2 and November 21, 1965, having had favorable comment about Pochatko from the foreman on the job, specifically requested the Union to dispatch Pochatko when such a driver was needed.² There were eight such instances after the first dispatch and before November 22, 1965, when the Respondent requested the Union to dispatch Pochatko, but the record does not disclose the length of time of each employment since no other dispatch slip was needed so long as the employment was continuous. Since the Respondent had a number of pieces of equipment, the Respondent also called upon the Union to supply other drivers. There is no evidence that any other driver was requested by Respondent by name. It is clear that a driver would be called for by name only if the employer particularly liked his work.

On November 22, 1965, the Respondent again called upon the Union to dispatch Pochatko. The Union did so, but the job for which Pochatko was called did not work that day. As was permitted when a man had already been dispatched, the Respondent called Pochatko personally on the afternoon of November 23, 1965, and sent him with a truck to a job for the State Division of Highways near Running Springs in the San Bernardino Mountains about 20 miles (a 30- to 35-minute trip) from Respondent's yard at Colton. Pochatko was on this job, helping to clean mud slides from a highway, each day between November 23 and 26. On each of these days except one, Pochatko reported for work at Respondent's yard, drove the truck assigned to him to Running Springs, and returned to the Respondent's yard after work. The one exception was a day when word was sent to the jobsite that Pochatko and another driver should park, after work, at the Winchester Gun Club, the location of which is not shown in the record. It is not clear whether both were directed to park their trucks and if Pochatko was given a ride in the private automobile of the other truckdriver or if Pochatko alone parked his truck and rode in with the other driver in the latter's truck. The record also does not establish the date of this instance. Pochatko thought it was on either November 24 or 25. On each of the 4 days, as was required by Respondent, Pochatko turned in to Respondent's office manager his own time slip showing his hours for the day. It is impossible to figure out on which day Pochatko parked at the Gun Club by comparing the time slips turned in by Pochatko with the time slips prepared by the Highway Division showing the time of each truck at the jobsite, because, on each of Pochatko's 4 days on that job, Pochatko's time slip showed from 1/2 to 1 hour earlier starting time and later quitting time than the State's time slip showed—November 23, 1 hour earlier start, 1/2 hour later quitting time; November 24, 1/2 hour earlier start, 1/2 hour later quitting time; November 25, 1 hour earlier start, 1-1/4 hour later quitting time; November 26, 1 hour earlier starting time, 1 hour later quitting time. The extra time, Pochatko testified, was accounted for by gassing his truck in the morning, driving to the job, and at night, driving back to the yard (except for the 1 day when he parked at the Gun Club)³ and sometimes cleaning the truck bed of mud and snow before quitting at night. The difference in quitting time of 1-1/4 hours on November 25, Pochatko

³ On that day he would, under the Union's contract, have been entitled to travel time back to the yard, where he had parked his own car.

testified, was partly due to the fact that he and another truckdriver had spent 1/4 hour looking for the foreman to check them off the job, but, when the foreman had signed the Highway Division's time slip that evening, he had shown the time only when the trucks were operating at the jobsite; so it did not show the extra 15 minutes lost by the drivers while waiting for a time slip.

On Friday, November 26, when the foreman gave Pochatko his time slip at 2 p.m., when he was dismissing him for the day, he told Pochatko that on the following Monday, November 29, he should come to the job at Panorama, where mud was likewise to be cleared from the highway.

When Pochatko returned to the Respondent's yard on November 26, he handed to the office manager his time slip together with the one or ones which he had been requested by the office manager that morning to get from the State Division of Highways, and, at the same time, he notified the office manager of the State's request for Pochatko to be at the Panorama job the following Monday. The office manager, Owen Rogers, said, "All right." Hubbs, who was present that afternoon, looked over the tickets Pochatko had turned in and asked Pochatko why he had charged for more time on his company ticket than was shown on the State Highway ticket. Pochatko testified that he answered that, under the Union's contract, the Respondent was obliged to pay his traveltime from the time he left the Respondent's yard until he got to the jobsite as long as he was driving Respondent's equipment. According to Pochatko, Hubbs told him that he was not going to pay any more than the State paid. Whereupon, Hubbs turned to Rogers and said, "Make out this man's time," meaning pay him off because he was being discharged, for otherwise, according to Respondent's practice, Pochatko's pay would have been held back until the following week. Pochatko further testified credibly that, after telling Rogers to make out Pochatko's time, Hubbs remarked to Rogers, "If anyone else turns in more time than it shows on the [State] ticket, lay them off." Other drivers were present at the time.

Hubbs' account of this conversation was garbled and virtually unintelligible. When first asked to relate it, he digressed and testified that, at or about noon on November 26, he had received a telephone call from an unidentified representative of the State Highway Division who had told him that the next week they would need some more trucks at Panorama, "and this job [Running Springs] was completed there, but they didn't want—if we would send this truck that was up there, Truck No. 122. They didn't want the same driver. . . ." At this point Hubbs began to digress further and was interrupted by his counsel, who subsequently asked, "And incidentally, the number of the truck, 222, that is the truck that Pochatko had, is that right?" Hubbs answered affirmatively. It is true that Pochatko was driving truck number 222, but Hubbs, in his earlier testimony about the call from the State agent had given the truck number as 122, which truck had been driven on November 25 by a driver named Sanditch, who did not work on the Running Springs job on November 26. When Hubbs again was asked by his counsel to relate what had occurred when Pochatko was in his office later that day, Hubbs' reply was: "Well, he came in there. I looked at the tickets, and I was—knew that they

[?] were going to give him his time, because the subcontractor [?] had to go out, and in fact the State said they would use four or five trucks, and I told them we didn't have any more trucks, that we had to send that truck back. Consequently we had to have another driver, because he had requested another driver." When his counsel got Hubbs back on the track again, Hubbs testified, after looking at Pochatko's ticket:

which was six, and which naturally didn't appeal to me, but I didn't make an issue out of it. I turned to Owen Roberts, who makes out checks and I told him to make out his check, and we wouldn't be able to use him on the State work any more. But we did use him on other work later as I recall.⁴

The only part of Pochatko's testimony that Hubbs specifically denied was that he had said he would never pay more than the State paid him and that anyone who claimed more than what the State showed on the "State allowance" was to be laid off. Asked if he had laid Pochatko off because Pochatko had asked for traveltime. Hubbs answered, "No." Pochatko's account is accepted as the more credible. Never thereafter did Respondent ask the Union to dispatch Pochatko. He was dispatched to the Respondent once when Respondent asked for a lowboy driver, but Respondent had not asked for Pochatko by name.

Hubbs testified that there was no necessity for Pochatko to bring the truck back to the yard every night because it did not need repairs and it could be gassed at or near Running Springs. Pochatko was asked on cross-examination if other trucks had been left at the Running Springs jobsite overnight and he answered that some had been, but he was not asked whose trucks those were, and this was never established. For all that appears, the trucks which were parked there could have been State-owned vehicles only, and they could have occupied whatever parking area was available. There is no evidence that any of the trucks parked overnight were trucks of Respondent.

Hubbs, in his testimony, was apparently seeking to justify Pochatko's termination on November 26, 1965, on the ground that he had received a call from some unidentified person on the State highway project instructing the Respondent not to return "the same driver" to the job on Monday. Both because of the way in which Hubbs testified and because there was no attempt made to corroborate such a story, I doubt the accuracy thereof. Not only did Pochatko's testimony that the foreman had asked him to return to the job on the following Monday sound truthful, but there was at least this amount of corroboration for Pochatko's testimony; The State always paid the employer for transportation for the truckdriver to the job on the first day and from the job back to the yard on the last day of service. The timeticket of the State Division of Highways on November 26, 1965, showed no traveltime allowed for the driver's return trip. It is inferable that the foreman would have shown traveltime for Pochatko's return trip on the 26th had he not expected him to return on Monday, November 29. Furthermore, anyone as careful about his compensation as Pochatko was would, if he had not expected to return on the following Monday, have seen to it that his traveltime return was shown by the State on its timeticket. I find that if the State Division of Highways, in fact, told Hubbs it

⁴ The one occasion when Pochatko had worked for Respondent after November 26, 1965, was one day in January 1966, when Respondent, without asking for Pochatko, had requested a driver for a "lowboy," which required a higher license than was needed

for a dump truck or water truck. Pochatko's name was highest on the Union's out-of-work list of those drivers qualified to drive a lowboy, so the Union dispatched him.

wanted a different driver, it was speaking of a driver other than Pochatko.

It has occurred to me that Rogers, Respondent's office manager, might have made the arrangements for Pochatko to park his truck at the Winchester Gun Club, expecting Pochatko to do so not merely on one night but on each night thereafter as long as he continued on the job. But Rogers was not called as a witness, and Hubbs was not familiar with the arrangements made with the Winchester Gun Club; and the date when the truck was parked there is not shown. So far as the record shows, therefore, Pochatko never deviated from his instructions. Although questions asked of Pochatko on cross-examination suggested that the Respondent thought Pochatko should have left his truck at the jobsite, I am unable to reach the conclusion that Pochatko should have left his truck at the Running Springs jobsite, because the evidence does not show the availability of space at Running Springs beside the highway for overnight parking, and it does not show that on the first night of the job, November 23, the Respondent had furnished return transportation to Pochatko from Running Springs to Colton. Although, on the morning when Pochatko picked up truck 222 at the Gun Club, he would have been obliged to go there in his own transportation and would not have been entitled to traveltime while going there, he would have been entitled to pay as soon as he started operating the truck at the Gun Club and started to the jobsite. Since there is no evidence of the distance from the Gun Club to the Running Springs jobsite, it cannot be determined whether or not Pochatko claimed more time on that morning than he would have been entitled to. Presumably, he would, on that morning, have had to drive the truck first to a place where he could fill the gasoline tank, and this, as well as travel from the Gun Club to the jobsite, would have consumed extra time.

Although some of the time claimed by Pochatko on his own time slip, on the surface, appears rather liberal, the Respondent at no time claimed that Pochatko had padded his claim for payment. Even by his own testimony, Hubbs revealed his displeasure as stemming from the claim for any traveltime not paid by the State; so his objection was not to the amount of traveltime claimed by Pochatko but to the claim for any traveltime. Although Hubbs did not dispute Pochatko's claim any further after questioning it, and although Respondent paid Pochatko on the basis of his claim, I am sure, and I find, that Respondent would not have terminated Pochatko at the time it did but for Hubbs' displeasure at being called upon to pay the contract rate for traveltime.

The evidence suggests that Hubbs might have assumed that Pochatko could have parked at the jobsite and that he either assumed that Pochatko's transportation back had been properly arranged for by his office manager or else Hubbs completely overlooked, or was unfamiliar with, the contract provision calling for traveltime back to the Respondent's yard the first night that the truck was parked at the jobsite. Even if Pochatko might have claimed traveltime on 1 or 2 days when he should not have been entitled to it, a fact not established by the record, he was entitled to some travel time for which the State would not pay and which Hubbs was obligated under the contract to pay. In any event, therefore, Pochatko had a basis for,

and a right to assert a claim for, traveltime for which Hubbs did not wish to pay. On all the evidence, I find that the Respondent terminated the services of Pochatko because Pochatko asserted a claim under the union contract, a right protected in Section 7 of the Act.

The Board has heretofore held that when an employee attempts to enforce or implement the terms of a collective-bargaining agreement which is applicable to him as well as to other employees of the employer he is engaging in protected concerted activity which is but an extension of the concerted activities that gave rise to that agreement.⁵ The General Counsel contends that Respondent violated both Section 8(a)(1) and (3) by discharging Pochatko. Since the remedial order appropriate for a discharge in violation of Section 8(a)(1) of the Act provides, for all practical purposes, the same relief as one bottomed on a violation of Section 8(a)(3) of the Act, if found, I find it unnecessary to reach or pass on the question whether the Respondent, by the same conduct, also violated Section 8(a)(3) of the Act.⁶

I further find, however, that by Hubbs' instruction to the office manager to lay off any employee who, in effect, claimed more than was shown on the time ticket of the State Division of Highways, Respondent interfered with, restrained, and coerced employees in the exercise of their rights guaranteed in Section 7 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 operations of Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By discharging Peter George Pochatko on November 26, 1965, because he engaged in protected activities under the Act, and by threatening other employees with discharge if they engaged in like conduct, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The unfair labor practices herein found are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that Respondent, A. S. Hubbs, an individual, doing

⁵ *Anaconda Aluminum Company*, 160 NLRB 35, *B & M Excavating, Inc.*, 155 NLRB 1152, *New York Trap Rock Corporation*, *Nytralete Aggregate Division*, 148 NLRB 374,

Farmers Union Cooperative Marketing Ass'n, 145 NLRB 1, *Bunney Bros Construction Company*, 139 NLRB 1516

⁶ *B & M Excavating, Inc.*, *supra* *Bunney Bros Construction Company*, *supra*

business as A. S. Hubbs Contracting, its agents, successors, and assigns, shall:

APPENDIX A

NOTICE TO ALL EMPLOYEES

1. Cease and desist from:

(a) Discharging or otherwise discriminating against Peter George Pochatko or any other employee in regard to hire or tenure of employment, for engaging in any activity protected by Section 7 of the National Labor Relations Act, as amended.

(b) Interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, 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 right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

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

(a) Make whole Peter George Pochatko for any loss he may have suffered by reason of his discharge on November 26, 1965, by payment to him of a sum of money equal to that which he normally would have earned in Respondent's employ on the job for the State Division of Highways, less his net earnings, if any, during said period.⁷ Loss of pay shall be computed in accordance with the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, with interest at the rate of 6 percent per annum until paid, as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

(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 the amount of backpay due.

(c) Post at its office and yard in Colton, California, copies of the attached notice marked "Appendix."⁸ Copies of said notice, to be furnished by the Regional Director for Region 31, after being duly signed by the Respondent, shall be posted by the 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 by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 31, in writing, within 20 days of the receipt of this Decision, of what steps it has taken to comply herewith.⁹

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 discharge or otherwise discriminate against any employee in regard to hire or tenure of employment or any term or condition of employment because he has engaged in any concerted activity protected by Section 7 of the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as amended, except to the extent that those 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 aforesaid Act.

WE WILL make Peter George Pochatko whole for any loss of pay he may have suffered because of his discharge on November 26, 1965, in violation of the said Act.

A. S. HUBBS, AN INDIVIDUAL,
d/b/a A. S. HUBBS
CONTRACTING
(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, 10th Floor Bartlett Building, 215 West Seventh Street, Los Angeles, California, Telephone 688-5850.

Norfolk Livestock Sales Company and Bernard Vyhldal. Case 17-CA-2866.

March 8, 1967

DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On November 17, 1966, Trial Examiner John G. Gregg 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. He further found that Respondent had not engaged in certain other unfair labor practices and recommended that the allegations of the complaint

⁷ I find it impossible, on the evidence adduced, to fashion a remedy which would be based on the assumption that Pochatko would have been preferred by Respondent over any other truckdriver for employment after November 29 and would have been requested by name in preference to any other driver

⁸ 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."

⁹ In the event that this Recommended Order is 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 Respondent has taken to comply herewith."