

A. H. Belo Corporation and Lewis E. Elam, Jr., Donald R. Melton, Ronald J. Payne, and Charles R. Mitchell. Case 16-CA-2678.

May 31, 1967

DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On November 18, 1966, Trial Examiner George L. Powell issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a brief in support of said exceptions, and the Charging Parties filed a brief in opposition to Respondent's exceptions and in support of the Trial Examiner's Decision, and cross-exceptions.

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 and the entire record in the case, including the exceptions, cross-exceptions, and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following addition.

The Trial Examiner failed to conclude, as alleged in the complaint, that the Respondent, in fact, discharged and refused to rehire the 68 mailing room employees named in his Recommended Order. We find merit in the Charging Parties' exception to the Trial Examiner's failure in this regard.

On May 7, 1966, Respondent's mailing room employees engaged in a concerted work stoppage in protest against their terms and conditions of employment and upon Respondent's refusal to discuss such matters with their informally appointed representatives.

The employees' committee confronted Mailing Room Superintendent W. B. Wilson with their grievances and, after a short, abortive discussion, Wilson ordered them out of his office. Shortly thereafter, another supervisor, W. Conkle, shouted to the entire group through his office window, ordering them off Respondent's property and stating

that they no longer worked for Respondent. Finally, that night when the group of strikers appeared at Respondent's premises and unconditionally requested reinstatement to their mailing room jobs, Superintendent Wilson refused them because, as he stated, they had walked off their jobs. Thereafter, Respondent removed the strikers' names from its list of mailing room employees and has persisted in its refusal to reinstate them. In view of the foregoing, and other supportive evidence in the record, we find that Respondent discharged its mailing room employees on May 7, 1966, and has continually refused to reinstate them in reprisal for their engaging in a concerted work stoppage.

We agree with the Trial Examiner that these employees engaged in protected concerted activity within the ambit of Section 7 of the Act.¹ Consequently, the Respondent's conduct in discharging and refusing to reinstate them for this legitimate exercise of their rights is violative of Section 8(a)(1) of the Act; thus, the remedies recommended by the Trial Examiner are appropriate.²

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.H. Belo Corporation, Dallas, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Delete paragraph 2(d) from the Trial Examiner's Recommended Order and reletter present paragraphs 2(e) and (f) as paragraphs 2(d) and (e), respectively. Correspondingly, delete the next to the last paragraph from the Trial Examiner's Recommended Notice.

2. Substitute the following for paragraph 1(b) of the Trial Examiner's Recommended Order:

"(b) In any other manner interfering with, restraining, or coercing any of its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act."

3. Add the following Armed Forces provision contained in paragraph 2(b) of the Trial Examiner's Recommended Order to the Examiner's Recommended Notice:

exclusive representative of all the employees in the appropriate unit in the mailing room." Because material matters relating to a bargaining order were neither alleged nor litigated, we find merit in Respondent's exception.

¹ *N.L.R.B. v. Washington Aluminum Co.*, 370 U.S. 9, affirming 126 NLRB 1410.

² Respondent has excepted to the Trial Examiner's recommendation that it engage in collective bargaining, upon request, with "whatever bargaining agent is designated as the

Note: We will notify each of the above employees 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 discharge from the Armed Forces.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

GEORGE L. POWELL, Trial Examiner: With all parties represented by counsel, this proceeding was heard on July 19 and 20, 1966, in Dallas, Texas, on complaint of the General Counsel of the National Labor Relations Board, herein called General Counsel, and answer of A.H. Belo Corporation, herein called Respondent.¹

The issues raised by the complaint and answer are: Did the Dallas Evening News, through its agents, refuse to consider or process a grievance of certain "extra" boys including "slippers"; because of this refusal did they strike; and did they seek to terminate the strike by making an unconditioned offer to return to work. Also involved were issues of whether they were discharged on May 7—and were refused rehire by Respondent. Section 8(a)(1) of the National Labor Relations Act, as amended, herein called the Act, is involved.

Timely briefs were received from the General Counsel and from the Individuals on August 17, and from Respondent on August 18.²

Upon the entire record, including the parties' briefs and my observation of the witnesses while on the stand, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

It is admitted by the parties, and I find, that Respondent is engaged in publishing the Dallas Morning News and in operating radio station WFAA and television station WFAA-TV in Dallas, Texas. During the past calendar year Respondent, in the course and conduct of its newspaper publishing operations, held membership in or subscribed to various news services including The Associated Press, the United Press International, and the New York Times News Service. It also published various syndicated features including Publishers Newspaper Syndicate and Bell-McClure Syndicate. Further, it advertised nationally sold products and services including American Airlines, Eastern Airlines, and the Manhattan Life Insurance Company. Its gross revenues from its publishing operations were in excess of \$200,000. Accordingly, Respondent admits and I find Respondent to be engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. Employee Status

Lewis E. Elam, Jr., Donald R. Melton, Ronald J. Payne, and Charles R. Mitchell, herein called the Individuals, filed the charges in this case against the Respondent on their own behalf and on behalf of 64 others (listed on Appendix "A" of the complaint), who worked regularly on Wednesday and Saturday nights, and on such other nights

as directed, in the mailroom of the Dallas Morning News "slipping," bundling, and preparing the printed papers for distribution. Respondent employs 9 or 10 "regulars" who work daily in the mailroom but in order to get out the more bulky Thursday and Sunday editions Respondent used these 68 high school and college students aged 16 to 18, calling them "extra boys." Respondent attempted to cast doubt on the regularity of their employment but its supervisor, Wilson, admitted that they worked "every week" on Wednesdays and Saturdays even including holidays and that they also work days on which Respondent posts notices of special runs. Melton credibly testified that he had worked for Respondent for about 2 years prior to May 7, 1966, averaging about 24 hours of work per week over the 2-year period.³

I find the Individuals and the remainder of those listed in the Appendix of the complaint, all herein referred to as "the boys," to be "employees" of Respondent's "mail room" within the meaning of Section 2(3) of the Act.

1. May 7, 1966

During the week before Saturday, May 7, the boys talked among themselves about what they thought to be their low wages, long hours, unsafe practices, lack of safety devices on machinery, and other grievances. The wages ranged from \$1.25 to \$1 50 an hour or \$12.50 for "slipping" 10,000 papers. The hours were very long evidenced by the fact that sometimes the boys would work 15- or 16-hour stretches reporting in at 11 a.m. and work, with little time off, until 2 or 3 a.m. the following morning.⁴ Whatever the cause, be it long hours with little rest or carelessness, there was evidence that Tony Stevens had been hurt falling from a conveyor and another "got his head smashed up" in a similar accident.

¹ The complaint issued on June 22, 1966, based upon a charge filed by the Individuals on May 11, 1966. The answer by Respondent was filed on June 29, 1966. All dates are in 1966 unless otherwise noted.

² Joint exhibits 1, 2, and 3 were received by me on July 25, 1966, with a stipulation by all the parties that they be received into evidence. The stipulation and the joint briefs are hereby admitted into evidence.

³ Wilson's testimony in pertinent part follows

MR WELLS You mean you will put a slip on the board on Wednesday night for these boy[s] to see that the next time they are wanted is, say 8 o'clock on Thursday or 9.30 on Friday, or whatever time it is Saturday?

THE WITNESS [Wilson] We do an extra slip

MR WELLS And you expect these boys that are working there Wednesday night to observe that bulletin board and guide themselves accordingly to come back to work?

THE WITNESS We not only expect it, but they do it

⁴ One of the grievances Lewis Elam tried to bring up before Wilson on May 7 had to do with an accident the preceding morning in which Frost had cut off part of his finger in the moving machinery. The same thing had happened sometime before to Elam. The testimony of Wilson as he was questioned by Mr Wells follows

Q You told him [Frost], "If you just be careful, you wouldn't be cutting your finger?"

A That's true

Q And he [Frost] complained at the time it happened to him at 2 or 3 o'clock in the morning, after he had been working since 11 o'clock the previous morning, and he was tired?

A If a man is tired, does he put his hand on moving machinery?

Q Is that what Mr. Lewis Elam tried to tell you in your office that morning?

A. That is what he said

The boys wanted a wage increase, a minimum guarantee for call-in pay, pay for one-quarter hour's work rather than only for one-half hour's work, and a rest period every 5 hours. The normal work schedule was from 11 a.m., with 30 minutes for lunch between 12 and 12:30 p.m., straight through to 7:30 or 8 p.m. when there was a 30-minute supper break. Then they would work until 10 p.m. After a 1-hour break work began again at 11 p.m. with quitting time at 2 or 3 a.m. the following morning.

These were the matters discussed among the boys on Friday night, May 6, at a meeting in front of the News building attended by about 40 and chaired by James Bennett. Bennett told them "that we . . . were going to get something better for them . . . or we weren't going to work."

The following morning, May 7, the Individuals told Wilson, superintendent of the mailing room,⁵ that they wanted to talk to him. He let into his office a group of 14 of the boys. Wilson then was handed a handwritten list of the boys' grievances. They also complained about the lack of safety features on the machinery. Wilson heard their requests and asked them by "what authority" were they speaking for the boys. They told him to look out the window where he could see the remainder of the more than 60 mailroom employees (the boys) standing looking in the office at a time when they ordinarily would have been working.

They asked Wilson what he was going to do about the grievances. He replied, "Well, I have no authority. . . . All I can tell is tell you I will talk with Mr. Blum and see what I can do in the next 3 or 4 weeks." The boys asked Wilson to telephone Blum. He refused, asserting, "Well, I didn't even know where Mr. Blum is. It is his day off . . . I don't know how to get hold of Mr. Blum." Milton asked him to call Blum's house at his, Melton's, expense but this was refused. Melton then asked Wilson if he, Melton, could call Mr. Blum's house to which Wilson replied that he could not. Melton asked for permission to talk to Blum and this too was refused by Wilson.

Melton then said, "Will you give us something definite, then, give us something we can be sure of?" Further according to Melton's credited testimony, Wilson replied, "Well, no I can't. Maybe in the next 3 or 4 weeks. . . . Now, you all can either get back to work or get out." Melton replied, "I am gone."⁶

The boys then all congregated on the walkway between the Communications Center and the News building, where Melton and Payne reported on the meeting with Wilson, telling them that Wilson would not give them anything definite and would not let them talk to Blum but instead talked of "three or four weeks." A few of the boys, however, some four, five, or six, went to work as scheduled and did not participate in the mass meeting.

Melton and Bennett went back into the News building to get their personal belongings. They were met by Wilson who grabbed Melton by the shirt collar saying, "What are you doing here? You don't work here, get out." However,

Melton was permitted to get his clothing and returned to the assembled boys.

In about 15 minutes Wilson appeared and asked the boys if they were ready now to go to work. Melton requested an additional 15 minutes for the boys to talk it over.⁷

According to Melton's credited testimony the following happened:

Q. Okay. Then what happened? Did any discussion take place within that fifteen minutes or so?

A. Yes, sir, we had a long discussion on what everybody was in agreeance with staying there, some of them wanted to take a vote. I said, "No, no, everybody makes up their own mind. Nobody is going to decide the fate of anybody. It is going to be on an individual basis. If you want to go back to work, nobody is going to say anything about it. If you want to stay here, fine."

Q. Then what happened?

A. I said, "Anybody wants to go back to work, go on, and I will go and tell Mr. Wilson that the rest of us are staying." So I did.

Q. Nobody went back, everybody stayed over there together and made up their own mind?

A. Yes, sir.

Q. Then after that, did you ever have any further contact with Mr. Wilson?

A. Yes, sir, he come back a little later. About ten, fifteen minutes, he came back and told us that we would either have to go back to work or get off the Dallas Morning News property.

Q. At that time, you went to the parking lot?

A. Yes, sir, we were still on the parking lot.

Q. Tell us as slow as you can what he told you?

A. He came walking out of the building, followed by him were security guards stationed there during the day to make sure nobody got on the lot for parking that wasn't supposed to be there. It kind of looked like he meant business. He told us to get off the lot if we weren't going back to work.

After the 14 boys had left Wilson's office but before Wilson came out to ask them if they were ready to go back to work, Wilson had called Blum "at about 11:30 or 11:45" telling him "the boys had walked out." Blum asked Wilson if he were "doing all right getting the paper out." Wilson told him "we are calling in help" and Blum replied, "Well, keep up the good work." No mention was made in the conversation about grievances. Apparently Wilson did not give them much thought as he testified:

Q. Mr. Wilson, if you wanted to be fair to these boys, wouldn't you, when you went out there in that parking lot, wouldn't you have told them, "I have just talked to Mr. Blum, we can set this thing up Monday or Tuesday of next week—now, you all go on back to work so we can get this paper out." Did that ever occur to you?

A. No, I don't think it did.

⁵ Wilson's title was admitted by Respondent in its answer.

⁶ Wilson's testimony is quite similar except he testified that he said, "Then, if you don't want to work, please step out." I do not credit this more gentlemanly statement as it is out of character with his attitude toward the boys as manifested in the trial. Also it is out of keeping with his treatment of Melton later on that morning as will be detailed later.

⁷ Wilson's insistence that he told the boys "next week, if you want a meeting with Mr. Harrison and Mr. Blum, next week I will

set it up next week," is not credited. It is inconsistent with the 3- to 4-weeks' prediction a few minutes earlier without indicating a change of heart. Moreover, although he had meanwhile talked with Blum he had not asked Blum to arrange a meeting with the boys nor did he indicate to the boys that he had talked to Blum. As noted above, a few minutes earlier he had refused to let Melton call Blum, and had told the boys he did not even know where Blum was.

The boys remained in the News parking lot for a short time thereafter, until Supervisor Conkle shouted to them and told them to "get off his property, we didn't work there anymore."

Meanwhile, Wilson returned to the parking lot and told the boys to get off the News' property. The boys thereupon moved in a body to a public park, Ferris Plaza, immediately across the street to the north of the News building. There they wrote out a list of their grievances, designated 5 of their number as "spokesmen," and 63 of them signed the document. This document is reproduced as follows:

Made May 7, 1966

We the undersign [sic] were given the concert [sic] by the extra boys on the folling [sic] page to speak for them at a meeting to review our request and grievances.

Committee members

- | | |
|------------------------|-----------|
| 1. Ronald J. Payne | FE 7-3877 |
| 2. Donald R. Melton | AX 8-2569 |
| 3. Charles R. Mitchell | BR 9-8773 |
| 4. Ruben Walker | FR 1-1990 |
| 5. [blank] | |

These action [sic] are due to the refusal to bargain by the Mailing Room Superintendent Red Wilson. [end of page 1]

Made May 7, 1966 Request & Grievances

1. \$15 for 10,000 papers on Saturday. \$1.50 for 1 thousand papers on Saturday.
2. 15 [cent]—25 [cent] raise for everyone.
3. 5-6 min. for everyone.
4. Safety shields on machines.
5. Brakes [sic] every five hours.
6. Paid by 1/4 hour instead of 1/2 hour.

[end of page 2]

Made May 7, 1966

[There followed sixty-three signatures of the boys working in the mail room.]

About mid-afternoon, Melton and Payne walked across the street to the News building to see Wilson, but the security guard there barred their entry telling them that he had been instructed "to keep us off the property."⁸

The boys remained on the public plaza all day until about 8 p.m. when they were invited to the I.T.U. union hall. At the hall they discussed their problems and decided to return to Respondent's plant and offer to return to work.

The Respondent's answer admitted and Wilson admitted that the boys all sought and were denied reinstatement at or about 10:30 p.m. The credited evidence is that at or about 10:30 p.m. that night the boys returned to the plant in a group where Melton, speaking for the entire group, "told them [Wilson] we'd like to have our jobs back and go back to work right away." Wilson refused to reinstate them telling them, "No, you cannot. You walked off the job." Melton insisted that they had been "fired, discharged." Wilson reiterated that they would not be taken back because "you walked off. . . . you walked off and left a job of your own accord." He made no mention of replacements at the time yet that became one of his positions at the hearing herein.

The boys kept insisting on their jobs and then asked for their pay to date. Wilson refused the job offers but told them they could return for their pay next Wednesday. The boys remained until the police, at the Respondent's

instigation, told them to get off the News' property as they were trespassing.

The following day, Sunday, May 8, Payne went to the News' to work according to the schedule which had been made the previous Thursday. He was stopped by the guard and was told that he was not to be admitted. Payne asked to talk to Conkle, assistant superintendent of the mailing room, on the telephone. The guard permitted the call. Payne's undisputed evidence is:

Q. (By Mr. Wells) What did Mr Conkle say to you, and what did you say to him on the intercom?

A. Well, I picked it up, and I said, dialed the number, and said, "Mailing Room," and I said, "Mr. Conkle, I'd like to talk to you for a few minutes."

He said, "I have nothing to say to you." I said, "Well, Mr. Conkle, I have a right—"and I got about that far, and he hung up the phone.

Q. Is that the extent of the conversation?

A. That was the full extent of the conversation.

The following day, Monday, May 9, Payne, meeting with Blum and Harrison in the News office, handed Blum a written memorandum of the employees' grievances and asked what could be done, Blum replied, "I don't see why you have anything to say. You are not an employee of this company any longer." Blum kept saying, "the extra boys had tried to hold up the operation of the paper, . . . and no individual, or group of individuals, was ever going stop the Dallas Morning News from going out."

On Tuesday, May 10, Melton and Jim Templeton had a similar conversation with Blum and Harrison. Blum again reiterated: "I don't know why you are interested [about resolving grievances] you are not an employee of this company," and "no individual or group of individuals would stop this paper from going out."

Blum was present at the hearing but did not testify. Nor did he make any reference in his conversation that the boys had been replaced.

2. Defense of "replacement"

Wilson insisted at the hearing that the boys had all been "replaced" by 9 p.m., May 7. But on cross-examination he admitted: That since May 7, "We did have a little trouble getting help in the mailing room." He testified:

Q. And you have advertised all over the State of Texas for mailers, haven't you?

A. Yes, sir.

Q. At the same time you were taking these boys that had worked regular extra for you off the list of even probable employment?

A. The boys had quit. I had no choice in taking them off.

Moreover, the alleged "replacements" hired on May 7, were "people out of [the News] office [called] to come help . . . out." Solicitors, who had been asked to get anybody they could get, brought in "their boys," and Boy Scouts of America. Wilson acknowledged that he turned to every possible source "whether or not a man had any skill as a slipper or not." The following excerpt from Wilson's testimony on cross-examination is revealing:

Q. . . . You had to take whatever you could get?

A. Not whatever we could get, no, sir, we had a choice. Fifteen years olds, we didn't work. Fourteen year olds, we didn't work, but we took them from sixteen on up that were able to work.

⁸ This is from Melton's credited testimony.

Q. You take them from sixteen on up whether they are experienced or not or whether you had to get them through the Boy Scouts or from the solicitors or from the office boys up in the News office, or wherever else you could get them, didn't you?

A. Right.

Q. And some of these boys just wore themselves out by 6:00 or 7:00 o'clock and had to leave, didn't they?

A. Had to leave?

Q. Well, at least they said they did?

A. They said they wanted to go. They didn't have to leave, no, it was their choice.

Q. Their choice was because they were not experienced in this work, and they just wore themselves out, even though they were topping and not slipping?

A. The first night I worked, I wore myself out too.

Q. So by 10:30 that night you had the choice of keeping on these people who were worn out tired and unable to slip, and the best they could do was top—that was the choice on the one hand, or on the other hand, you could take your experienced crew of sixty people who were there begging to go back to work, isn't that right?

MR. LESH: I will object to that. I don't believe there is any testimony, and he wouldn't be in a position to testify whether they were too tired, unable to slip.

TRIAL EXAMINER: I will permit the questions.

Q. (By Mr. Wells) Isn't that right?

A. (No response.)

Q. The boys were tired, isn't that right?

TRIAL EXAMINER: Will you read his answer?

(The last answer was read by the reporter.)

THE WITNESS: This crew of sixty told me they didn't care to work for me, so I respected their wishes.

Q. (By Mr. Wells) They were there telling you at 10:30 they wanted to come back to work, and they cared to work for you?

A. They was demanding, then, because they said, "We have the union behind us, we have the Labor Relations Board. You are forced—"

Q. You thought you ought to discipline them because of what they had done earlier in the day?

A. Not at all, because in previous years, whenever a man says he doesn't want to work for us, we respect his wishes. If he comes back two or three times after that, and definitely shows he is interested in working, then I will reconsider him if he is worth taking back on.

Q. Did you tell the boys that at 10:30 that night, or at any other time?

A. I told the boys they had quit, that it was their decision.

Respondent denied having a master payroll but admitted keeping a list of all extra boys in the mailroom. After the hearing in the instant case, I accepted into evidence some joint exhibits filed by all the parties. These joint exhibits are the lists of the boys kept by Respondent. One of them is the list of May 7, one is the list as of May 8, and the other is a list as of the following month of June. It

is noted by comparing these lists, that although the boys' names appear on the May 7 lists they do not appear on the later lists of May 8 or June (except for the few boys who did not walk out on May 7). The General Counsel and counsel for the Individuals emphasize the fact that *the boys who engaged in the walkout on May 7 were not on the May 8 list even though on May 7 at 10.30 p.m. they offered to return to work and at that time permanent replacements had not been hired.*

Wilson admitted that "nobody even suggested to . . . [the May 7 replacements that] . . . they were getting a permanent job." It was not until toward the end of the shift Sunday morning (sometime after 10:30 p.m. Saturday) that the replacements were advised of the availability of future work. Accordingly, I find the boys were not permanently replaced until several hours after they had requested reinstatement.

Wilson testified in effect, that he was following a policy that "where a boy quits, we let him cool off for a while."

B. Analysis and Conclusions⁹

Taking up first the proposition of Respondent that "where a boy quits, we let him cool off for awhile," we have the question of whether this applies to the instant case, and if so is there a violation of the Act by maintaining its established policy.

The evidence reveals that the supervisor told the boys on several occasions over a period of about 4 hours "either go back to work or get off the premises." An employer has this right to require its employees to work or leave the premises. The employees cannot engage in a strike or a concerted refusal to work and at the same time remain at their job stations. The important question to be resolved in this case is whether Respondent was telling the boys to take their concerted activity off the premises (a legal position) or was Respondent telling the boys to abandon their concerted activity or be considered as having "quit" their employment (an illegal position).

The Respondent has consistently maintained the position that the boys "quit." It has never considered their action as a protected concerted activity under Section 7 of the Act. This conclusion follows from actions and statements of Respondent's agents. As illustrations, Respondent followed its procedure relating to boys who quit by letting them "cool off for awhile"; it took their names off the list of extra boys it regularly calls in to work; Wilson refused the boys' application to return to work at 10:30 p.m. Saturday because they "walked off and left a job of [their] own accord"; Conkle refused to talk to Payne on Sunday, the following morning; Blum also refused to talk to Payne on Monday, the next day, telling him "you are not an employee of this company any longer"; and on the very day of the walkout, Saturday, Melton and Bennett attempted to get into the News building to get their personal belongings but were met by Wilson who grabbed Melton by the shirt collar saying, "What are you doing here? You don't work here, get out." I conclude from this evidence that Respondent was giving the boys the "Hobson's Choice," a choice without an alternative, of giving up their right to engage in protected concerted activity or being considered as having quit their

⁹ Sec 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7
Section 7 states—

Sec 7 Employees shall have the right to self-organization

. . . to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .

employment. By making continuous employment conditioned on giving up the right to engage in a concerted walkout, Respondent has interfered with and restrained its employees in the exercise of rights guaranteed in Section 7 of the Act and in so doing has violated Section 8(a)(1) of the Act. The Respondent did not accept the fact that the employees had not only the right to concertedly present their grievance but also the right, under these circumstances, to cease work. Wilson admits he made no adjustments when grievances were presented him on Saturday morning.

But even assuming, without deciding, that the boys in the instant case "quit" their employment because Respondent refused to process their grievances over wages, hours, and working conditions (which indeed was all the boys were interested in), there is a violation of the Act here because at 10:30 p.m., Saturday they applied for reemployment (rather than "reinstatement," the term used if a "strike" rather than a "quit" were involved) an reemployment was denied them. It was denied them admittedly in order to *chill* their concerted action. To force the boys to "cool off for awhile" interferes with, coerces, and restrains them from engaging in the concerted action of quitting brought about by the fact that the grievances over working conditions, etc., were not processed. *N.L.R.B. v. Darlington Mfg. Co.*, 380 U.S. 263, 275 (1965). The policy of the Congress in enacting the Act was to protect employees when they concertedly engaged in just such activities. Accordingly, Section 8(a)(1) is violated.

Not only did the refusal to take the boys back at 10:30 p.m. on Saturday, May 7, violate the Act but again on May 8 when Respondent removed them from the list of the boys, Respondent interfered with, coerced, and restrained its employees who were engaging in protected concerted activities for their mutual aid and protection. The law on these points is set out in the following cases: *Morrison-Knudsen Company, Inc. v. N.L.R.B.* 358 F.2d 411 (C.A. 9); *N.L.R.B. v. Peter Cailler Kohler Swiss Chocolates Company, Inc.*, 130 F.2d 503 (C.A. 2); *N.L.R.B. v. Schwartz*, 146 F.2d 773 (C.A. 5); *N.L.R.B. v. Phoenix Mutual Life Insurance Company*, 167 F.2d 983 (C.A. 7); *Carter Carburator Corporation v. N.L.R.B.*, 140 F.2d 714 (C.A. 8); *N.L.R.B. v. Washington Aluminum Company, Inc.*, 370 U.S. 9.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section II, above, occurring in connection with the Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

It having been found that Respondent violated Section 8(a)(1) of the Act, and in order to effectuate the policies of the Act, it will be recommended that it cease and desist therefrom, offer to reinstate the employees named herein to their same or substantially equivalent jobs, with backpay from 10:30 p.m., May 7, 1966, computed in accordance with the formula set forth in *F.W. Woolworth Co.*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716, and that it post an appropriate notice.

The nature of the unfair labor practices is such that an additional order will also be recommended. As the strike began over the refusal of the Respondent to bargain with its so-called extra employees in the mailroom by refusing to process a grievance over wages, hours, and terms and conditions of employment, it will be recommended that Respondent be ordered to bargain collectively with whatever bargaining agent is designated by a majority of its mailing room employees in an appropriate unit.

Further, as the nature of the unfair labor practices has caused the loss of employment it goes to the very heart of the Act and is such that a broad cease-and-desist order appears warranted and will be recommended. *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532, 536 (C.A. 4).

Accordingly, on the basis of the foregoing findings and conclusions and on the entire record, I make the following:

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The boys are employees within the meaning of Section 2(3) of the Act.
3. By refusing to reinstate the boys to their jobs at 10:30 p.m., May 7, 1966, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Respondent A.H. Belo Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Interfering with, restraining, or coercing its employees from engaging in concerted activities for their mutual aid or protection by refusing them employment or by removing them from the list of employees regularly used by Respondent to fill "extra" jobs in the mailroom of the News.
 - (b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
 - (a) Offer to reinstate (if not already so reinstated) each of the following named persons to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole in the manner described in the portion of this Decision entitled "The Remedy" for any loss of earnings suffered by reason of the discrimination against him.

Aguilar, Glen	Dean, Tommy
Alcala, Joe	Doerr, Mike
Arredondo, Ted	Duncan, Mike
Beard, Jimmy D.	Elam, Lewis E., Jr.
Bennett, James	Gatlin, Bobby
Blackwell, Rickey	Gooch, Jerry
Blythe, Mike	Graves, Jay Kenneth
Burgess, Billy	Hamm, David
Byrd, Larry	Haney, Robert
Carter, Ray	Hilton, Mike E.
Castro, Rosendo	Holleyhead, Jimmy
Chamberlain, Joe	House, Ross T., Jr.
Davis, John	Howard, Parker

Hughhins, Ronald
 Jeter, Ronnie
 Jones, Marshall
 King, Donald
 Land, Jimmy
 Lang, Bruce
 Luckert, Gary
 Luckert, Glenn
 Malone, Ryzie
 Martinez, David
 McCasland, Roger
 McCutchen, Robert
 McCutcheon, David
 Melton, Donald R.
 Miller, Marshall S.
 Milliron, Wesley
 Mitchell, Charles R.
 Mitchell, Richard
 Neal, Steve
 Noah, Victor, Jr.
 Pollock, Larry Paul

Payne, Ronald
 Posey, James
 Raley, Bill
 Salazar, Julian L.
 Sellers, Gary
 Smith, Melvin
 Spears, Eugene
 Stephens, Tom
 Stone, Dewayne
 Swan, Joe
 Funnell, Leo
 Walker, Joe
 Walker, Rickey
 Walker, Ruben
 Whatley, Jimmy
 Williams, Hal
 Williams, Ronnie
 Wilson, Albert
 Yeakley, Mark
 Zimmerle, Robert
 Zipperer, Bob

(b) Notify each of the above 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 discharge from the Armed Forces.

(c) Preserve and, upon request, make available to the Board, or its agents, for examination and copying, all records including, for example, payroll records, social security payment records, timecards, and personnel records and reports necessary to determine the amounts of backpay due.

(d) Upon request, bargain collectively with whatever bargaining agent is designated as the exclusive representative of all the employees in the appropriate unit in the mailing room and embody in a signed agreement any understanding reached.

(e) Post at its place of business at Dallas, Texas, copies of the attached notice marked "Appendix."¹⁰ Copies of said notice, to be furnished by the Regional Director for Region 16, after being duly signed by an authorized representative of Respondent, shall be posted by it immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 16, in writing, within 20 days from the date of the receipt of this Decision, what steps it has taken to comply herewith.¹¹

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 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 discriminate in the hire and tenure of employment of employees who engage in concerted activity for their mutual aid and protection.

WE WILL NOT in any other manner interfere with, restrain, or coerce any of our employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in any other concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act.

WE WILL offer to the following employees their former jobs and make them whole for any loss of pay since 10:30 p.m. May 7, 1966.

Aguilar, Glen	Malone, Ryzie
Alcala, Joe	Martinez, David
Arredondo, Ted	McCasland, Roger
Beard, Jimmy D.	McCutchen, Robert
Bennett, James	McCutcheon, David
Blackwell, Ricky	Melton, Donald R.
Blythe, Mike	Miller, Marshall S.
Burgess, Billy	Milliron, Wesley
Byrd, Larry	Mitchell, Charles R.
Carter, Ray	Mitchell, Richard
Castro, Rosendo	Neal, Steve
Chamberlain, Joe	Noah, Victor, Jr.
Davis, John	Pollock, Larry Paul
Dean, Tommy	Paye, Ronald
Doerr, Mike	Posey, James
Duncan, Mike	Raley, Bill
Elam, Lewis E., Jr.	Salazar, Julian L.
Gatlin, Bobby	Sellers, Gary
Gooch, Jerry	Smith, Melvin
Graves, Jay Kenneth	Spears, Eugene
Hamm, David	Stephens, Tom
Haney, Robert	Stone, Dewayne
Hilton, Mike E.	Swan, Joe
Holleyhead, Jimmy	Funnell, Leo
House, Ross T., Jr.	Walker, Joe
Howard, Parker	Walker, Rickey
Hughhins, Ronald	Walker, Ruben
Jeter, Ronnie	Whatley, Jimmy
Jones, Marshall	Williams, Hal
King, Donald	Williams, Ronnie
Land, Jimmy	Wilson, Albert
Lang, Bruce	Yeakley, Mark
Luckert, Gary	Zimmerle, Robert
Luckert, Glenn	Zipperer, Bob

WE WILL bargain collectively with whatever bargaining agent is designated the exclusive bargaining representative of all the employees in the appropriate unit in the mailing room and embody in a signed agreement any understanding reached.

All our employees are free to engage in concerted activities for their mutual aid and protection.

A. H. BELO CORPORATION
(Employer)

from the date of posting, and must not be altered, defaced, or covered by any other material.

Dated

By

(Representative)

(Title)

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Sixth Floor, Meacham Building, 110 West Fifth Street, Fort Worth, Texas 76102, Telephone Edison 5-4211, Extension 2131.

This notice must remain posted for 60 consecutive days