

**White Chapel Memorial Association and Local 614,
International Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America
(IND.). Case 7-CA-5732**

October 20, 1967

DECISION AND ORDER

**BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND BROWN**

On July 11, 1967, Trial Examiner John M. Dyer issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, 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 briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

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 and hereby orders that the Respondent, White Chapel Memorial Association, Troy, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

¹ The Trial Examiner stated that Maintenance Supervisor Robert Knoll testified that employee complaints against both Lamb and Hughes were one of the factors Knoll considered in transferring Hughes and Lamb from the marker department. However, Knoll's testimony related only to Hughes. This inadvertency does not alter our conclusions.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JOHN M. DYER, Trial Examiner: Following an original and amended charges filed by Local 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Ind.), herein called the Union, and the issuance of a complaint and amended complaint against White Chapel Memorial Association, herein vari-

ously called Respondent or White Chapel, this case was heard in Detroit, Michigan, by me, on March 23 and 24, 1967.¹ Respondent urges that the Board should, as a matter of policy, decline jurisdiction over it, asserting it is engaged in a particularly local type of business and that the amount of its purchases in interstate commerce are merely incidental to the local character of its business. A motion to dismiss the complaints on this basis was denied. Respondent denied that it had violated the Act by its transfer of two employees and the discharge of one of them or that it had violated Section 8(a)(1) of the National Labor Relations Act, as amended. All parties were accorded full opportunity to participate in the hearing and to examine and cross-examine witnesses. The parties engaged in oral argument and a brief received from Respondent has been considered.

Upon the complete record in this case and on my evaluation of the reliability of the witnesses, based both on the evidence received and my observation of their demeanor, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS AND THE LABOR ORGANIZATION

Respondent with executive offices in Detroit, Michigan, maintains its only facility, a garden-type cemetery, in the city of Troy, Michigan, where it is engaged in the sale of burial space rights and in the care and maintenance and providing of other services incidental to the maintenance of its facilities. In the preceding fiscal year Respondent derived \$483,000 from the sale of burial rights and received \$401,000 for its services and the sale of bronze markers which are used to mark the graves. Of this latter amount, Respondent purchased in excess of \$100,000 worth of materials and supplies directly from out of State sources. At the present time there are approximately 1,700 interments a year in the cemetery and approximately 2 percent of these are of persons who have died outside the State of Michigan.

The Board has legal jurisdiction over Respondent and Respondent appears to meet the Board's jurisdictional standards on both the retail and nonretail bases and since the particular industry has not been excluded from its jurisdiction by the Board (*Cemetery Service Corporation*, 149 NLRB 604), I find and conclude that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.²

Respondent admits and I find that the Union herein is a labor organization within the meaning of the Act.

II. THE UNFAIR LABOR PRACTICES

A. Background Facts and Issues

Respondent's cemetery has grown from some 80 acres to over 214 acres of which approximately 165 have been or are being developed into a park-type cemetery divided into a number of sections called gardens. Each of the

¹ Unless otherwise stated all dates herein occurred in 1966.

² Respondent asserts that its operation as a burial park is peculiar in the burial industry and urges as a matter of policy that its operations should be outside of the commerce yardstick in that its sales of burial rights are to Michigan residents and that its business is peculiarly local in character with the amounts of supplies purchased interstate merely incidental to this local business. Respondent's argument goes to Board policy.

gravesites are marked by bronze plaques which are affixed to a concrete block and are placed in the ground at ground level so that the appearance of the grounds will be that of a large park. In addition to burial in the park gardens, Respondent maintains a large marble building which contains facilities for interment, a crematory and various chapels.

Respondent maintains the grounds including grass, trees, shrubs and gardens with its complement of some 20 to 25³ regular men plus summer help who are usually college students. In its answer, Respondent states its one classification of employees is "park and temple employees" and that all of its employees are required to be qualified and capable of performing all of the work functions of "park and temple employees." There is no dispute that where need arises, management moves employees from job to job. However from the testimony it appears that some employees have regular jobs that they perform the majority of the time.

Respondent is very busy in the spring readying the cemetery for Memorial Day. It tries to get all of the grave markers placed by then (grave markers are not installed during the winter months) and have the grounds looking their best. The cemetery stays busy from then through late fall with grounds upkeep (mowing grass, watering, etc.), placement of markers, funeral services, leveling gravesites, etc. The winter season commences with the manufacture and placement of grave blankets (wooden frames thatched with evergreens) and includes other work such as the placing of snow pins marking graves, and snow removal.

Respondent's former President Hunt died in the late summer of 1966, with resultant reorganization in September. Under the guidance of the board of directors is General Superintendent Roy Haney who is assisted by Maintenance Supervisor Robert Knoll, Foreman Henry Brinkey and Assistant Foreman Maynard Schoof⁴ are under Knoll.

Herman Lamb, with Respondent some 19 years, was in charge of the marker (bronze plaque) department some 15 years until he was transferred on June 20, on his return from a week's leave. Among his duties in the marker department were to receive bronze plaques, unpack them, photograph them, see that they were properly affixed to a cement base which was poured in the shop, and maintain records for the department. He also oversaw the removal, shipment, return, and installation of name and date plates on the bronze memorial plaques. After the work in the department grew to warrant it, Lamb had a helper assigned to the department. In 1964 Robert Hughes was assigned as the helper after the previous incumbent died. Hughes remained as Lamb's helper until he was transferred on June 27, following his return from a 2-week vacation. Lamb's and Hughes' principal work was in the marker department with Respondent's records establishing that Lamb spent approximately 80

percent of his time in the marker department, about 6 percent of his time doing ground maintenance work and the balance of his time in carpentry or shop maintenance or related duties. Respondent's records also reflect that Hughes spent about 65 percent of his time in the marker department and the balance of his time in general maintenance of the grounds, digging or filling graves, leveling graves, etc. When the marker department was very busy Respondent would detail another man to assist Lamb and Hughes. In May 1966, Artman was placed in the department to assist and Hughes started teaching him how to set markers in cement. Prior to that time Artman had helped in the marker department on one other occasion. When Hughes and Lamb were on occasions pulled out of the marker department to assist on other things such as funerals, cutting grass, etc., no one replaced them in the marker department and the department's work was allowed to slide until Respondent felt it could allow them to resume their work. In June when Respondent transferred Hughes and Lamb from the marker department they were the only trained employees capable of operating it. Respondent assigned Artman who had worked in there only a few weeks, to run the department although admitting that it would take 7 to 8 months to properly train an employee to operate it.

Respondent, according to its answer, discharged Robert Hughes on September 29, for failure to perform his employment obligations in the form and manner required of all employees.

Early in 1966, Lamb got in touch with the Union through a truckdriver and arranged with a union representative to hold a meeting at his house. Hughes and Lamb and one other employee attended the meeting and agreed to assist in organization. Lamb gave authorization cards to Hughes who circulated them among Respondent's employees and after obtaining signatures returned the cards to Lamb for transmission to the Union. In March the Union demanded recognition and the parties agreed to an election under the auspices of the State Labor Board. The Union lost the election held May 12, by 17 to 8, and the results were certified May 29. Lamb testified that immediately after the election the employees split on the basis of who voted for and against the Union and from then on there was some coolness among the men.

The Company has a seniority system but the parties did not delineate it or in what manner it was used. All of Respondent's regular employees are salaried with first year men earning less than the others. Assistant Foreman Schoof stated he did not know where his salary stood in relation to that of the other employees.

The basic issues are whether the transfer of Hughes and Lamb and Hughes' discharge were discriminatory and whether Respondent violated Section 8(a)(1) by Assistant Foreman Schoof's statement to John Westveer.

³ At the time of the State Labor Board election Respondent has some 25 eligible employees

⁴ Respondent asserts that Assistant Foreman Schoof is not a supervisor within the meaning of the Act, while the General Counsel and the Charging Party maintain that he is. Foreman Brinkey assigns a number of the men to particular jobs in the morning of each working day and then tells Assistant Foreman Schoof what other jobs remain and has him assign the balance of the staff. Schoof thereafter directs those men under him on their jobs, moves them from job to job as he sees the need arise and is

responsible to see that they do the work. Schoof and Brinkey work alternate Saturdays, each being responsible for the working force on his Saturday workday. Schoof also replaces Brinkey when Brinkey takes his 3 weeks' vacation. Schoof allows men overtime, permits them to take a day off if he feels the amount of work will permit it, and some years ago effectively recommended that some individuals be discharged. There is nothing to indicate that his authority is any less at the present. I conclude and find that Assistant Foreman Maynard Schoof is a supervisor within the meaning of the Act.

B. *The Unfair Labor Practices*

Respondent tries to have all the bronze markers it receives prior to Memorial Day placed at the gravesites by that day. According to Lamb, work in the department becomes slack for a short period after Memorial Day until more markers are received. When Lamb returned from his week off in June, he was transferred from the department and assigned to cutting grass on a tractor pulling a "gang mower." Lamb was not assigned again to the marker department until 2 days before the instant hearing and then he was assigned as Artman's helper.

When Hughes returned from his 2-week vacation, he was transferred from the marker department and assigned to cut grass using a push mower. Employees Lamb, Westveer, Artman, and Cowser and Assistant Foreman Schoof verified Hughes' testimony that low seniority employees or college students were assigned to the "Goodall" push mower, with Schoof stating they usually hired students for that job. It entails pushing a lawn mower 8 hours a day and is considered the lowest job Respondent has. Hughes worked at this and other jobs in the cemetery until his discharge on September 29, but was never placed back in the marker department. Schoof also stated he was not consulted about the placement of Hughes on the Goodall or told why it was done, that it was all done over his head. Asked if he knew the reason for this assignment, Schoof stated "Not anything unless it was the union activity."

Respondent made several references to the fact that the employees were permitted to pick their own vacation periods and Respondent sought not to interfere with their choices. Respondent suggested by questions and statements that Lamb and Hughes should not have both been on leave during the same week, leaving the marker department with no one to operate it. However Superintendent Haney states he may have known they were both to be off at the same time and Respondent, if it chose, presumably could have forbidden their both leaving. But Respondent did nothing, nor did it reprimand or even mention the fact to Hughes and Lamb. In these circumstances I can not assume that Hughes' and Lamb's actions in being off during 1 week in June were a disservice to Respondent or an indication that they were not fulfilling their duties as good employees.

Maintenance Supervisor Knoll is the individual who decided to transfer Lamb and Hughes from the marker department. Knoll testified initially that Respondent was in a jam and needed to get production out in the marker department and while Hughes and Lamb were gone he realized he did not have any trained men for the marker department and decided he needed to train men for this department. For that reason he assigned Artman to take over and run the department, telling him to consult with Knoll if he needed any assistance.

It seems elemental that if Respondent were in a jam in that department, it would have retained its trained personnel in that department to run it and give them additional help if they needed it, and had them train additional men in the operations. When Knoll was queried as to why he did not keep the trained personnel in the job, he responded that the marker work was a bit slack so that he could afford to have Artman in the department learning the work. Knoll was asked why he transferred both Hughes and Lamb and stated that he wanted to break other men in on both of their jobs and because of Hughes'

attitude towards the other employees he wanted to isolate Hughes and keep him away from the number of employees as he would be in contact with at the marker department.

In regard to the same question, General Superintendent Roy Haney testified he was advised by Maintenance Supervisor Bob Knoll, no later than June 14 or 15, that he was moving Artman into the department and Lamb and Hughes out, because it was time they had somebody else trained in memorials. Thereafter Haney added that they were receiving quite a few bronze memorials and they were getting complaints from families because they were not being set.

Thus Respondent's reasons for moving Lamb and Hughes vary as between there being a lot of work that needed to be done in the department, and the work in the department being slack so they could train a man, depending on the nature of the questions being asked.

Robert Knoll testified that he heard complaints from some employees in May that they did not want to work with Hughes and Lamb because of the way they were acting and talking and that these complaints started right after the union election on May 12. After May, he says he only heard complaints about Hughes, but that these complaints were one of the factors he considered in deciding to get Hughes and Lamb away from the marker department where there were a lot of men around and place them out in yard maintenance where they would be isolated or separated from the other men.

I fail to understand that if there were legitimate complaints about Lamb and Hughes, how it would help to take them from the department where they worked together and place them with other employees working in the maintenance of the grounds, where there would be of necessity occasions for them to work side by side with other men. There would be no such occasions, when they as the only persons assigned, were working in the marker department. If there was friction, it would seem that Respondent's course of action could only serve to increase it.

There is no doubt that there was some coolness among the men following the election. Lamb testified that Knoll use to come in the marker shop every day and they would converse about various topics prior to the time they started distributing union authorization cards. Thereafter Knoll seldom went to the marker shop and had not conversed with Lamb but twice in the interim and those times immediately preceding the instant hearing, although when there was a discussion as to methods of performing duties, Knoll would single Lamb out saying that the Union would not allow that, would they Lamb. Hughes and Lamb testified that relations between those for and those against the Union were not pleasant at all times and that on a few occasions there had been some name calling between the men. This brings us to Hughes' discharge and the reasons advanced therefor.

On Thursday, September 29, Respondent called a meeting of its employees, at which paychecks were distributed to all employees except Hughes. When Hughes asked for his paycheck the man distributing the checks asked Knoll about it and Knoll responded that his check was in the office. During the meeting the employees were told they were getting an increase in pay and a retirement system. Later in the afternoon Hughes was called to the office where, with Brinkey, Knoll, and Haney present, he was asked if he knew why he was there. Hughes replied

that he guessed so, that he was no longer employed by the Company. Hughes testified he said this because the checks and an envelope were on the table. Knoll said that was right. Hughes asked several times why he was discharged but Knoll did not give a reason. Knoll said Hughes would have to sign for his paychecks and he did so. Hughes asked Knoll whether anyone else was being fired and was told no. Hughes was paid through the following day and told to take the day off.

Knoll stated that it was his decision to request permission from the board of directors to discharge Hughes. He stated he made this decision after receiving a number of complaints from employees about Hughes. The first complaint, shortly after the election, was from employee Dill, who told him that an employee named Meier had been cursed out by Lamb or Hughes calling him "a scab" and another name and Knoll added that he was led to believe that Meier had been called an "S.O.B." Dill testified that in late June, he told Knoll that Meier told him that some of the boys called Meier a scab and another name. When Dill was prompted by Respondent counsel, he stated that the name caller was Hughes and one other person. Dill stated that he did not hear Hughes or the other person talk to Meier. Knoll did not testify that Meier ever told him anything about this incident. However when Meier testified thereafter, he said he told Dill that while walking past the restroom he heard Hughes call him names but that he could not remember them. He said that they amounted to his being no good, would not work, and that Hughes had to carry him. Meier testified that Knoll approached him thereafter and asked if Hughes had said something that he did not like and he reported to Knoll that Hughes had run him down saying he had to carry him. The only run-in that Hughes remembered having with Meier was when Meier called him a name and he responded by saying that at least he was not a charity case.

Respondent by having Knoll testify to the third-hand report which contained vulgar language, and omitting the fact of the rather innocuous direct report from Meier, attempted to color this incident into something it was not. The timing provided by Dill and Meier is considerably different from Knoll's.

The second report, according to Knoll, was by employee Diesing in latter May, saying he was glad to be away from "those fellows," that he did not want to work with them. Diesing testified he told Knoll about a month after the election that Hughes was ignoring them, would have nothing to do with them after the election, and it made it difficult to get along where they were used to helping one another. Diesing admitted that he never worked with Hughes after the election and testified that the friction consisted of Hughes not accepting a ride from him. Contrary to Knoll, he testified that he never told a supervisor that he did not want to work with Hughes.

Knoll testified that in late May, he had a conversation with a group of employees including Kitson, Archer, Stacey, Gearhart, and some others and that Archer and Gearhart said the Company should get rid of "those guys," that they were soreheads and they did not want to work with them. Later in his testimony Knoll identified "those guys" as Hughes and Lamb. Of the group of men named, only Archer was presented to testify. Archer said he told Knoll a month or so after the election that "... it would be nice if we could all get along together if they would get some of them out of there or something but I wouldn't work with those fellows if they wouldn't

cooperate, they wouldn't say nothing to me or speak to me." Knoll asked him if he would work with Hughes and he answered no. He was asked why and told Knoll that it would be difficult to work with a man who would not talk to you.

Knoll also reported a further conversation with Archer in August in which Archer said that everything was coming along fine, but that Hughes was a sorehead who gave him a cold shoulder. Archer could not recall this conversation but admitted that Knoll asked him how things were between him and Hughes.

Knoll further testified that in early June while at the pump pit, he spoke to employee Hunwick, who told him he was glad that he was on a job away from Hughes, that he did not want to work with him, that they might tangle. Employee Hunwick testified that probably in June he had a conversation with Knoll, in which he said something to the effect that he was glad he was working by himself, the way that the feeling was between the men. During the conversation Hughes was mentioned and he said he was glad that he was not working with him directly, that because of the feeling there could be trouble. Hunwick, a relative of Respondent's vice president, said that after the election he approached Hughes because he had heard a rumor that Hughes said the Company had paid him off. He testified that in the conversation Hughes said that the employees were in two groups and they were going to pull the silent treatment. Further he testified he attempted to be friendly to Hughes and was rebuffed, Hughes even refusing to ride with him. In later cross-examination Hunwick admitted that he had ridden Hughes on his motor scooter and they had talked thereafter.

Knoll testified that in July he talked to employee Gearhart who said that he ate by himself since that was the only way he could get a little peace away from Hughes and that he wished he did not have to work by him. Gearhart did not testify. This testimony seems oddly at variance with the complaints of silent treatment.

On the basis of Knoll's version of these reports and in particular Archer's August report, Knoll testified he decided he could not afford the morale of the men, that if that was the way they felt, that he would get rid of Hughes. Knoll told Superintendent Haney he thought he could get a lot more done and the men would work better if they discharged Hughes. Haney testified that Knoll told him that Hughes was harassing the men and that he said he would take it up with the board of directors and did so. The board did not act in August but did in September. Knoll admitted he heard rumors that Hughes could be engaged in union activity but said he really did not know it.

Neither Knoll, Haney, nor any of the other supervisors sought out Hughes or Lamb to ask their version of these occurrences or "harassment" or try to discover the reasons for the coolness or how the problems, if they in truth existed, could be resolved. Assistant Foreman Schoof who knew Hughes for 15 to 18 years said he knew him as a good worker and never received any complaints from men about him and that none of the men told him they did not want to work with Hughes. Foreman Brinkey was not presented by Respondent to testify, presumably because he could not verify the alleged grievances against Hughes. It seems strange that none of the employees complained to their immediate supervisors about Hughes and Lamb. But then looking closely at the testimony, we see that Knoll was soliciting complaints against them, by approaching various employees as to

their feelings about Hughes and Lamb and then taking these solicited comments as complaints and using them as justification to fire Hughes. It is easy to understand that the manner of a supervisor's question may exact an answer he wishes to hear.

This view of Respondent's action is bolstered by the hedging and evasive manner in which Knoll testified. Thus taking the first complaint we have Knoll reporting a third-hand report of an altercation (from Dill) and using this as one of the bases for his final action while not divulging that he had a mild report from one of the participants (Meier). This and other evident attempts to build a case (the altercations or remarks were not in most cases as Knoll reported them) convinces me that Respondent's reasons for firing Hughes are a sham to cover a discriminatory discharge.

In the same manner we have Respondent asserting that it was its (Knoll's) business judgment to transfer Lamb and Hughes from the marker department and since they suffered no loss of wages, there was no discrimination by such transfer. Where "business judgment" flies in the face of commonsense and the reasons advanced are themselves in conflict, I cannot credit Respondent that there was not an underlying motive behind this move. Thus Respondent claimed it was in a jam in the marker department, had memorials that had to be set, and put a partially trained man in to run the department, removed the experienced men and then said work was slack enough in the department where it could afford to use the partially trained men. Respondent allowed this situation to prevail through the balance of 1966, when the marker department is supposed to be busy since it is installing more markers each year. It is true that Hughes and Lamb received the same compensation and possibly more by way of overtime, but their job duties included the lowest job around - one usually reserved for the lowest seniority men or summer replacements, working in the rain when none of the other men were working (Lamb), and finally Lamb's being put back in the department he used to run, as a helper to a man who was once his helper's helper. Being summarily removed from jobs held for years without being given any reason therefore, when Respondent had no qualms with the manner the jobs were performed and against the precepts of commonsense and then assigned lesser jobs could not help but deal a blow to a workman's pride and impress other employees that Hughes and Lamb were being thus dealt with for the only conceivable reason extant, their union activities.

Such treatment was demeaning to Hughes and Lamb, and Respondent has not advanced any sound reason for it, and I conclude and find that it was discriminatorily motivated. It seems evident to me that Respondent was attempting to force Hughes and Lamb to quit, and not succeeding because they stood up to the treatment and did not complain to management, it went further and fired Hughes.

Respondent's employees were surprised by this treatment. Thus Meier told the Board investigator "I was surprised to find out that Hughes was fired because he was his old self again for weeks before he was fired." Assistant Foreman Schoof was surprised by Hughes' discharge saying "I thought it had all blown over." Schoof who was not consulted about the transfer and assignment of Hughes to the push mower when asked if he knew the reason for the assignment said "Not anything unless it was the union activity." Schoof noted further that Hughes had not worked on the "Goodall" (push

mower) prior to his transfer to the memorial department.

In the absence of any warnings or reprimands to Hughes, with no showing of an attempt to examine the "reports" of various employees and indeed it appearing that such complaints were solicited by Knoll, the evident attempts to color these reports, and Respondent's knowledge that Lamb and Hughes were union leaders, convince me, and I find and conclude that they were discriminatorily transferred and assigned lesser jobs and that Hughes was discriminatorily discharged all in violation of Section 8(a)(3) and (1) of the Act.

Employee John Westveer testified to two conversations with Assistant Foreman Schoof neither of which Schoof denied, stating he did not remember them. According to Westveer on each occasion Schoof was riding him in to eat lunch and on the first occasion in June Schoof told him that Hughes would be put on grasscutting along with Westveer when Hughes returned from his vacation. The second conversation, which is alleged by General Counsel as violative of Section 8(a)(1), occurred in August or September. Schoof told Westveer that they were going to try to get rid of both Hughes and Lamb before "blanket-making" season began, which would have been around November. Although this statement by itself does not set out a reason for Respondent taking such action, I find that the full context of the situation, that Hughes and Lamb were union leaders, that the employees and management were aware of that, and of the fact of their discriminatory transfer, provides the setting for the statement and makes the reason for the statement inescapable. As noted above Schoof himself was aware of the context, for, when asked for the reason of Hughes' transfer, he replied - "Nothing unless it was the union activities."

Noting that Schoof was somewhat evasive in his testimony and did not deny these statements, I credit Westveer that Schoof did make these statements and find and conclude that the latter statement violated Section 8(a)(1) of the Act as alleged.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, and therein found to constitute unfair labor practices in violation of Section 8(a)(3) and (1) of the Act, occurring in connection with Respondent's business operations as set forth 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.

IV. THE REMEDY

Having found that Respondent engaged in unfair labor practices as set forth above, I recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act as follows:

Respondent having discriminatorily transferred employees Herman Lamb and Robert Hughes from the marker department to other less agreeable or less prestigious jobs and not thereafter having reinstated them to such former jobs because of their union activities and thereafter having discharged employee Robert Hughes because of his union activities, I recommend that Respondent offer Robert Hughes and Herman Lamb immediate and full reinstatement to their former positions in

the marker department or if those positions are abolished through change in Respondent's operations, then to substantially similar positions, without prejudice to their seniority or other rights and privileges and the Respondent make Robert Hughes whole for any loss of pay he may have suffered by reason of Respondent's discrimination against him, by payment to him of a sum equal to that which he would have normally received as wages from September 29, 1966, the date of his discharge, until the date Respondent reinstates him, less any net earnings for the interim. Backpay is to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, with interest at the rate of 6 percent per annum to be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716. I further recommend that Respondent make available to the Board, on request, payroll and other records, in order to facilitate the checking of the amount of backpay due and the rights of Robert Hughes.

Respondent has also interfered with its employees rights by its discriminatory transfer of employees Hughes and Lamb and by the discharge of Hughes and by the oral threat of the discharge of Hughes and Lamb because they engaged in union activity. It is hereby recommended that Respondent be ordered not to infringe upon the rights guaranteed its employees by violating the Act in the same or any similar manner.

On the basis of the foregoing findings, and the entire record, I make the following:

CONCLUSIONS OF LAW

1. White Chapel Memorial Association 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 discriminatorily transferring Herman Lamb and Robert Hughes on June 20 and 27, respectively, and by discriminatorily discharging Robert Hughes on September 29, 1966, and thereafter refusing to reinstate them to their former positions because of their union sentiments, membership, and activities, Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(3) and (1) and 2(6) and (7) of the Act.

4. By threatening to discharge employees Lamb and Hughes because of their union activity, Respondent engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case considered as a whole, I hereby recommend that Respondent White Chapel Memorial Association of Detroit and Troy, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from.

(a) Discouraging membership in and activities on behalf of Local 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Ind.), or any other labor organization by discriminatorily transferring and by discriminatorily discharging its employees and not reinstating or reemploying them.

(b) Threatening to discharge employees who engaged in union activity.

(c) In any like or similar manner, interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, and to join or assist Local 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Ind.), to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act

(a) Offer to Herman Lamb and Robert Hughes immediate reinstatement to their former positions in accordance with the recommendations set forth in the section of this Decision entitled "The Remedy."

(b) Notify the above-named employee 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) Make Robert Hughes whole for any loss of pay he may have suffered by reason of Respondent's discrimination against him in accordance with the recommendations set forth in the section of this Decision entitled "The Remedy."

(d) 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 records necessary to analyze the amount of backpay due under the terms of this Recommended Order.

(e) Post at its Detroit and Troy, Michigan, facilities, copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by a responsible agent of Respondent 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 the Regional Director for Region 7, in writing, within 20 days from receipt of this Decision, what steps Respondent has taken to comply herewith.⁶

⁵ 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"

⁶ 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 7, in writing, within 10 days from the date of this Order, what steps 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:

Following a trial in which the Company, the Union, and the General Counsel of the National Labor Relations Board participated and offered their evidence, it has been found that we violated the law and we have been ordered to post this notice and to abide by what we say in this notice.

WE WILL NOT transfer, discharge, or otherwise discriminate against employees to try to discourage them or other employees from being or becoming members of Local 614, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Ind.), or any other labor organization.

WE WILL NOT threaten to discharge employees because of their union activity.

WE WILL offer Robert Hughes his former job with all of his rights and any backpay due.

WE WILL reinstate Herman Lamb to his old job.

All our employees are free to become or remain union members.

WHITE CHAPEL MEMORIAL
ASSOCIATION
(Employer)

Dated _____ By _____ (Representative) _____ (Title)

Note: We will notify Robert Hughes 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.

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, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 226-3200.