

American Gypsum Company, Division of the Susquehanna Corporation and Frank Sisneros. Case 28-CA-1802

April 23, 1970

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND JENKINS

On April 25, 1969, Trial Examiner Anne F. Schlezinger issued her 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 the General Counsel and Respondent filed briefs.

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 briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herein.

An economic strike began at Respondent's plant on May 4, 1967. Sisneros, the Charging Party, and a Respondent employee since 1962, participated in the strike. By letter of November 21, 1967, the Union (United Cement, Lime and Gypsum Workers International Union, Local No. 419, AFL-CIO) made an unconditional application for reinstatement on behalf of all the strikers. Respondent did not reply. The strike ended in December 1967, when the Union was decertified. The Union again requested reinstatement of all strikers by letter of February 17, 1968. Again receiving no answer, the Union filed a charge in Case 28-CA-1664 on March 4, 1968.

In April 1968, Hebert, formerly quality control superintendent, became plant manager. He began to hire strikers as they appeared at the plant. This, as he testified, caused an "uproar." Hebert then called upon the Board's Regional Officer for assistance. Sanchez, a company attorney, on the advice of Maydanis, a Board field attorney, sent a preferential hiring list to Respondent, with a letter advising strict adherence to this list, and no new hires until the list was exhausted.

On June 26, 1968, Hebert sent letters to all those on the list, asking whether they were interested in employment as new employees. Sisneros, temporarily employed at the time, received such a letter and returned it to Respondent, indicating that he was interested in a job. He was called for an interview on August 5, 1968.

Hebert had instituted a policy, not alleged to be discriminatory, of having all new employees take a

physical examination, and was applying this requirement to the returning strikers. Therefore, when Sisneros was interviewed on August 5, he was told he had to take a physical examination that day, as the doctor was available.

Sisneros reported to the company physician as requested, and was found to have a hernia. He was informed that he could not possibly be approved for employment since his work involved manual labor. On August 7, 1968, Sisneros called the plant clerk, Hup, who verified that Sisneros could not be hired because of the hernia and that it should be corrected.

Without notifying Respondent of his intentions, Sisneros underwent a hernia operation at the Veterans Administration Hospital on August 23, 1968, the earliest date available. He returned periodically for checkups and was given his final release on September 29, 1968. He immediately went to Respondent to seek employment.

Between the time that Sisneros had been refused employment by Respondent on August 5, 1968, and the time he requested reemployment on September 29, 1968, Respondent had exhausted the preferential hiring list by hiring the last employee to be contacted on September 6, 1968, and had entered into a settlement agreement with the Union, approved by the Regional Director on September 12, 1968. By the terms of the settlement agreement, the Union withdrew the 8(a)(3) charges filed in Case 28-CA-1664.

When Sisneros arrived at the plant on September 29, he showed his hospital release to Davis, head foreman, and asked about getting his job back. Davis said he could not answer until he checked with Hebert, who was not there at the time.

Upon exhaustion of the preferential hiring list, Hebert had made his own list of employees who desired work. At the time Sisneros was released from the hospital, this list contained two names, Moya and Woods. Moya, a returning striker, was ahead of Sisneros on the preferential hiring list, but had been unable to accept employment when offered because he was then employed. He indicated he would work for Respondent as soon as he could leave his job, and Respondent promised him a job when a vacancy arose. Pursuant to this promise, Moya was hired on November 12, 1968. Woods was employed at the time Sisneros was rejected, but was subsequently laid off on August 10, 1968, to make room for a returning striker. He was promised a job as soon as an opening occurred, and as promised was rehired on November 18, 1968.

Sisneros received no offer of employment from Respondent after his operation, and on November 16, 1968, visited the plant again. Hebert informed Sisneros that work was slow and that he would not be able to hire him until after the first of the year.

The Trial Examiner found that Respondent, by its actions, violated Section 8(a)(1) and (3) of the Act by failing to reinstate Sisneros on and after September 29, 1968, ahead of Moya and Woods. We disagree.

Respondent initially refused to honor the Union's request for reinstatement of strikers, which led to the filing of the charge in Case 28-CA-1664. Thereafter,

Respondent's new plant manager sought assistance from the Board's Regional Office in an attempt to effect a settlement of the case. Pursuant thereto, a preferential hiring list was forwarded to the plant manager, who followed it to the letter. Respondent was informed that each person on the list was to be called in order, and that anyone refusing employment when offered was to be stricken from the list. No new hires were to be made until the preferential list was completely exhausted.

The list was exhausted by September 6, 1968, and a settlement agreement, withdrawing the charge in Case 28-CA-1664, was approved by the Regional Director on September 12, 1968. At this time, as well as at the time Respondent had promised to reinstate Moya and Woods, neither the parties nor the Regional Director knew that Sisneros had undergone an operation to correct his hernia, nor did they know that he intended to return to his former position.

In these circumstances, we believe that Respondent has met its obligations, and has not violated the Act. Accordingly, we shall dismiss the complaint in its entirety.

ORDER

It is hereby ordered that the complaint in the instant case be, and the same hereby is, dismissed in its entirety.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

ANNE F. SCHLEZINGER, Trial Examiner. Upon a charge filed on November 25, 1968, by Frank Sisneros, referred to herein as Sisneros or the Charging Party, the General Counsel, by the Regional Director for Region 28 (Albuquerque, New Mexico), issued a complaint dated January 8, 1969, alleging that American Gypsum Company, Division of the Susquehanna Corporation, herein called the Respondent, had engaged in and was engaging in unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. In its answer, duly filed, the Respondent admits some of the allegations set forth in the complaint, but denies that it has committed any unfair labor practices.

Pursuant to due notice, a hearing was held before me at Albuquerque, New Mexico, on March 4, 1969. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce relevant evidence. The Respondent's motions to dismiss the complaint made at the hearing, on which ruling was reserved, are hereby denied on the basis of the findings set forth hereinbelow. Subsequent to the hearing, the General Counsel and the Respondent filed briefs which have been fully considered.¹

¹ The motion to correct transcript appended to the General Counsel's brief to which there is no opposition is hereby granted.

Upon the entire record in this case and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

The Respondent, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware, maintains its principal office and place of business at Albuquerque, New Mexico. It is engaged at its Albuquerque place of business, the only facility involved herein, in the manufacture and distribution of gypsum wallboard. During the last calendar year, the Respondent, in the course and conduct of its business operations, sold and shipped from its Albuquerque place of business goods and materials valued in excess of \$50,000 directly to customers located outside the State of New Mexico. During the same period, the Respondent purchased, transferred, and had delivered to its Albuquerque place of business goods and materials valued in excess of \$50,000 directly from States other than the State of New Mexico. The Respondent in its answer admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II THE LABOR ORGANIZATION INVOLVED

The Respondent in its answer admits, and I find, that United Cement, Lime and Gypsum Workers International Union, Local No. 419, AFL-CIO, referred to herein as the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III THE UNFAIR LABOR PRACTICES

The only issue in this case is whether the Respondent unlawfully failed and refused to reinstate Sisneros following his participation in an economic strike.

The facts are for the most part undisputed. They show that Sisneros had been continuously employed by the Respondent from October 28, 1962, until he went out on an economic strike called by the Union on May 4, 1967. As the Respondent conceded at the hearing, "We don't contend the strike was unlawful. Our position is that because of the strike he [Sisneros] retained the status of an employee under the Act." The strike ended upon the Union's decertification in December 1967. Prior thereto, the Union, on November 21, sent a letter to the Respondent making an unconditional application on behalf of all the strikers "for reemployment in any position that is presently available or will be available at any future time." On February 12, 1968, the Union sent the Respondent another letter requesting reemployment of all the strikers. Williams, president of the Union, testified that the letters brought no results, and that rehiring of strikers began after the filing of a charge.²

² Case 28-CA-1664 arising from this charge was settled prior to

Hebert, who had been hired by the Respondent in August 1967 as quality control superintendent, became plant manager early in April 1968. He testified that he knew, when he became manager, that the strikers had asked for reinstatement; that he was unfamiliar with the action he should take in this situation; and that as manager he hired about 10 of the strikers "as the positions opened and as they walked into the plant" without regard to factors such as seniority, which caused "a little bit of an uproar." Hebert called the Board's Regional Office for assistance in the matter. Thereafter, a preferential hiring list was prepared by Sanchez, a company attorney, and Maydanis, an attorney in the Board's Regional Office. Sanchez sent the list to the Respondent with a covering letter dated June 24, 1968, in which he advised the Respondent to adhere strictly to the list, and to hire no new employees until the list was exhausted. The strikers were classified for rehire purposes as skilled, semiskilled, and unskilled.

Hebert sent letters dated June 26, 1968, to those on the preferential hiring list asking each addressee to indicate whether he was interested in employment as a new employee. Sisneros received one of these letters, returned it indicating that he was interested,³ and was called in for an interview on August 5. He made out the application given him by Hup, the plant clerk, and was told he had to take a physical examination. He had been given such an examination when he was employed by the Respondent in 1962, and Hebert was requiring physical examinations for the returning strikers. Hebert testified that he intended on August 5 to hire Sisneros, that Hup was preparing the papers for this purpose, and that Sisneros would have been put to work subject to a later physical if Dr. Dudley had been unavailable at the time. Dr. Dudley was available, however, so Sisneros was sent to the clinic for examination. The doctor found Sisneros had a right inguinal hernia and, as Sisneros' work involved manual labor, the doctor rejected him for employment and so indicated on the form sent to the Respondent. As Sisneros testified, the doctor said he could not release him for a job until the hernia was "fixed," and when he later called the plant, Hup also said he could not be hired because of the hernia that had to be "fixed." Dr. Dudley testified that such hernias are fairly common and that most employers would take a man back with a corrected hernia after 4 to 6 weeks.

Sisneros underwent a hernia operation at the Veterans Administration Hospital on August 23. He had a final checkup and was given a release by the hospital on September 29, 1968. He went directly to the Respondent, showed the hospital release to Davis, head foreman, and asked about getting his job back. Davis said he could not answer until he checked with Hebert, who was not there. Having heard nothing from the Respondent, Sisneros went to the plant again on November

16, saw Hebert this time, and asked about the possibility of rehire. Hebert said that work was slow and he would not be able to hire anyone probably until after the first of the year.

Hebert testified that he understood hernias can be corrected; that nevertheless, when the doctor reported that Sisneros had a hernia, he no longer considered Sisneros a returning striker; and that he removed Sisneros' name from the preferential hiring list as it was his understanding—no one having told him otherwise—that if anyone on the list did not accept a job, whatever the reason, his name was to be removed.⁴

After Hebert had offered a job to all those on the preferential hiring list, he prepared a list of his own containing the names of men who had been hired as strike replacements and then laid off to make room for returning strikers. Hebert had promised, when he laid off these men, that he would rehire them if possible after the preferential hiring list was exhausted. Hebert's list also contained the name of Moya, a striker who had refused reinstatement when offered about the end of July or the first of August, but told Hebert he was interested in returning when he could leave his current job; and the name of Woods who, as Hebert testified, was laid off on August 10 to make room for a returning striker "for only one reason and that is because he was hired . . . after the Union had applied for positions." Hebert had promised to put both Moya and Woods on his list, which he described as "more of a gentlemen's agreement."

A list placed in evidence, which represents part of the list Hebert prepared, contains six names in the following sequence: Smith, Miranda, Moya, Woods, Sisneros, and Krause. Miranda and Woods are designated on the list as "Non-Union" and the other four as "Union." Hebert explained that, although it did not affect his choice of men for rehire, he designated as "Non-Union" those who worked during the strike, and as "Union" those who went on strike and were named on the preferential hiring list.

Hebert testified that Smith, shown on his list with "Date of Hire" as September 6, 1968, was the last man on the preferential hiring list because of a delay in locating him, and that he, Hebert, prepared his list right after Smith was hired. His list also shows the "Date of Hire" for Miranda, Moya, and Woods as September 19 and November 12 and 18, respectively. Thus Moya and Woods, who like Sisneros were in the semiskilled category, were hired after Sisneros reported to the Respondent that his hernia had been corrected, and more than 3 months after Moya had declined reinstatement and Woods had been laid off. Hebert testified that he was aware that Sisneros reapplied for his job, "I think it was in October or November,"

³ Some employees of the Respondent apparently retained their employee status for considerable periods after sustaining a physical injury. While Hebert testified that "As plant manager I have laid off men for not being physically able to perform their duties," he also testified about an employee who broke his leg not on the job, was retained on the employment record for about 3 months, and was expected back on his job in a few weeks.

issuance of a complaint. Some strikers, including Williams, were reinstated with backpay from the dates of their individual applications.

⁴ Sisneros was working at the time on a temporary job that terminated on January 29, 1969.

but "if there was an opening it was assigned to another man who I felt was ahead of Mr. Sisneros on the hiring list." Hebert explained that, while Moya was hired after Sisneros notified the Respondent of the hospital clearance, Moya "was ahead of Mr. Sisneros on the hiring list" because Moya had been interviewed and the promise made to him before Sisneros so notified the Respondent. Hebert also explained that Woods was given precedence over Sisneros because Woods had been "perturbed" about his layoff, and Hebert had promised to rehire him for the first opening after completing the preferential hiring list. Hebert also testified that neither he nor any other management representative told Sisneros he had been terminated, that he would hire Sisneros if there was a position open for him, and that he thinks "at the time, he was told the first opening that occurred he would be hired. This was after Mr. Woods." He stated further, however, that: "As for positions that are vacant in the plant; yes, there are positions vacant. But about the first of February we had a management meeting . . . and we had a problem on acquiring help. . . . The suggestion was made that we concentrate on going to twelve hour shifts and operate the plant on a five day week. . . . This would eliminate hiring any more help . . . My policy right now, if there is a man at the gate I would hire him or a man in my office, I would hire him . . . Then my theory would be just to call the unemployment office. . . ."

The General Counsel contends that, as a result of the Union's collective requests and Sisneros' individual requests, Sisneros made known to the Respondent his continuing availability as a returning striker; that this status continued for a reasonable length of time after he was found on August 5 to have a hernia; that the Respondent was apprised that Sisneros' hernia had been corrected on September 29, which was within a reasonable length of time; that the Respondent nevertheless removed his name from the preferential hiring list and placed him on a rehire list which included names other than those of returning strikers; and that by placing Sisneros' name below those of Moya and Woods and hiring Moya and Woods and not Sisneros, the Respondent unlawfully discriminated against Sisneros on and after September 29, 1968.

The Respondent argues in its brief that the Respondent had a legitimate and substantial business reason for not hiring Sisneros when it was learned that he had a hernia; that there was no discrimination against Sisneros "inherently destructive of employee rights" because another striker was reinstated when Sisneros was found ineligible in August, and in November also it was another striker, Moya, who was hired rather than Sisneros; and that the General Counsel has failed to prove any unlawful motive in the failure to reinstate or rehire Sisneros.

Concluding Findings

It is admitted by the Respondent that Sisneros on August 5 had the status of a returning economic striker.

As the General Counsel contends, the collective requests of the Union and the individual requests by Sisneros were a clear indication to the Respondent that Sisneros was making a continuing request for reemployment.⁵ The Respondent, in fact, was in the process on August 5 of rehiring Sisneros when the doctor found that he had a hernia and rejected him for that reason. The Respondent argues that its failure to put Sisneros back to work on August 5 was for "a legitimate and substantial business reason . . . i.e., Sisneros had a hernia." The General Counsel does not allege, however, that the Respondent's failure to rehire Sisneros on August 5 was discriminatory. The General Counsel does contend that Sisneros' status as a returning striker was not forfeited because of his unavailability for medical reasons on August 5, particularly as the Respondent knew that a hernia was correctable, and Sisneros took prompt action in having it corrected. I find that Hebert was not warranted in these circumstances in terminating Sisneros' status as a returning striker on August 5.⁶

The General Counsel contends further that Sisneros' status as a returning striker continued for a reasonable period after August 5, and that his availability for work on September 29, immediately made known to the Respondent, was within such a reasonable period. The Respondent in its brief challenges this contention as a "vague theory" that raises many questions such as whether a reasonable period might extend for years and which medical problems would permanently disqualify an employee for a job. There is no issue in this case of status being retained for years, however, and that the hernia did not permanently disqualify Sisneros is apparent from the facts, among others, that Hebert was admittedly aware that a hernia is correctable, and that the doctor testified that a man is generally reemployable 4 to 6 weeks after a hernia operation.⁷

Moreover, the period of less than 2 months that Sisneros was unavailable for work — considerably shorter than the period that the employee who broke his leg was retained on the employment rolls was in the circumstances of this case a reasonable period. In the *Fleetwood Trailer* case,⁸ an employer was held to have violated the Act by failing to reinstate economic strikers who had applied for reinstatement at a time when no jobs were available, but for whom jobs became available some 2 months later. The Supreme Court in that case explicitly rejected the argument that reinstatement rights are determined at the time of initial application, and stated that "the status of the striker as an employee continues until he has obtained other regular and substantially equivalent employment." There is no conten-

⁵ See *American Machinery Corporation*, 174 NLRB No 725; *The Laidlaw Corporation*, 171 NLRB No 175

⁶ See *Forster Manufacturing Company, Inc.*, 175 NLRB No 29

⁷ Additional questions raised by the Respondent's brief which I find it unnecessary in this case to answer, include "what if Sisneros waited a year before consenting to an operation; what if Sisneros happened to be a Christian Scientist; how much medical knowledge is charged to an employer; to what extent can a company rely on the judgement of a medical doctor; etc."

⁸ *NLRB v Fleetwood Trailer Co.*, 389 U.S. 375; see also *The Laidlaw Corporation*, 171 NLRB No 175

tion in the instant case that Sisneros has obtained other regular and substantially equivalent employment. He therefore had a right of reinstatement as a returning striker, and "This right of reinstatement continued to exist so long as [he] had not abandoned the employ of Respondent for other substantial and equivalent employment. Moreover, having signified [his] intent to return by [his] unconditional application for reinstatement . . . it was incumbent on Respondent to seek [him] out as positions were vacated."⁹

Sisneros was therefore entitled to consideration for employment as a returning striker on and after September 29. As such, he should have been given priority for available jobs over a striker who had rejected reinstatement when offered and an employee who had been newly hired after the Union's unconditional request for reemployment of all strikers. Hebert was therefore not warranted, after receiving notice that Sisneros' hernia had been corrected and that he desired reemployment, in disregarding Sisneros' status as a returning striker, and in giving Moya and Woods precedence over Sisneros for available jobs on the basis of the "gentlemen's agreement."

The Supreme Court held in the *Fleetwood case*, *supra*, regarding the reinstatement rights of economic strikers:

. . . unless the employer who refuses to reinstate strikers can show that his action was due to "legitimate and substantial business justifications," he is guilty of an unfair labor practice. *NLRB v. Great Dane Trailers*, 388 U.S. 26, 34 (1967). The burden of proving justification is on the employer. *Ibid.* It is the primary responsibility of the Board and not of the courts "to strike the proper balance between the asserted business justifications and the invasion of employee rights in light of the Act and its policy." *Ibid.*

I find that the Respondent has failed in this case to meet the burden of proving justification imposed by the Supreme Court.¹⁰ The Respondent's assertions that Sisneros forfeited his status as a returning economic striker when it was found that he had a hernia, that Hebert was justified in removing from the preferential hiring list the name of any striker who did not accept reemployment when offered as no one had advised him otherwise, and that Moya and Woods were entitled to preference over Sisneros on the basis of the "gentlemen's agreement," are erroneous views as to Sisneros' rights, and the Board holds that "The Respondent's, good faith but erroneous view of the law in this regard would not be a defense."¹¹ Nor does the fact that Hebert followed the preferential hiring list and reinstated all the other strikers constitute a defense as the Board holds in such cases, "It is immaterial that no showing of discriminatory intent on the part of the Respondent was made."¹²

In conclusion, I find, on the basis of the foregoing and the entire record, that the Respondent, although justified in not putting Sisneros to work on August 5 because of the hernia, was not justified in terminating his status as an economic striker seeking reemployment. I find further that Sisneros' status continued for a reasonable time, that his hospital discharge on September 29 was within a reasonable period of less than 2 months, that the Respondent failed and refused to reemploy Sisneros as vacancies arose on or after September 29, and that the Respondent has failed to meet the burden imposed by the Supreme Court of proving justification therefor. The Respondent's failure and refusal to reemploy Sisneros on and after September 29 was "in effect a 'delayed' discrimination and its effect was to discourage employees from exercising their rights to organize and to strike as guaranteed by Sections 7 and 13 of the Act."¹³ Accordingly, I find that the Respondent, by failing and refusing to offer reemployment to Sisneros when jobs became available on and after September 29, 1968, discriminated with respect to the hire, tenure, and terms and conditions of employment of Sisneros, thereby discouraging membership in or activities on behalf of the Union, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act. I find further that the Respondent, by the foregoing conduct, has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) 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 its operations 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.

V. THE REMEDY

Having found that the Respondent, has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As I have found that the Respondent violated Section 8(a)(1) and (3) of the Act by failing and refusing to offer reemployment to Frank Sisneros on and after September 29, 1968, I shall recommend that the Respondent offer Sisneros immediate and full reinstatement to his former or substantially equivalent employment, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of the discrimination

⁹ *The Laidlaw Corporation, supra*

¹⁰ See *Lamb-Weston, Inc.*, 170 NLRB No. 186

¹¹ *Pioneer Flour Mills*, 174 NLRB No. 174

¹² *NLRB v. Fleetwood Trailer Co., supra, Forster Manufacturing Company, Inc., supra, Lamb-Weston, Inc., supra*

¹³ *NLRB v. Fleetwood Trailer Co., supra, Pioneer Flour Mills, supra*

against him from September 29, 1968, the date of the discriminatory failure and refusal to reemploy him, to the date of the Respondent's offer of reinstatement. Loss of pay shall be computed as prescribed in *F W Woolworth Company*, 90 NLRB 289, and interest on such backpay shall be computed at 6 percent per annum in accordance with *Isis Plumbing & Heating Co.*, 138 NLRB 716. The determination for backpay purposes of the date when an opening arose for which Sisneros would have been medically examined and found qualified, absent the unlawful failure and refusal to reemploy him, is hereby deferred to the compliance stage of this proceeding.

Upon the basis of the above findings of fact and the entire record, I make the following

CONCLUSIONS OF LAW

1 The Respondent is 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 failing and refusing on and after September 29, 1968, to offer reemployment to Frank Sisneros in his former or substantially equivalent employment, the Respondent has violated Section 8(a)(3) and (1) of the Act

4 The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act

[Recommended Order omitted from publication]