

In the Matter of GENERAL CHEMICAL COMPANY *and* UNITED GAS,
COKE & CHEMICAL WORKERS OF AMERICA, AFFILIATED WITH THE
CONGRESS OF INDUSTRIAL ORGANIZATIONS

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CONGRESS OF INDUSTRIAL ORGANIZATIONS

*Cases Nos. 2-C-5176 and R-5025 respectively.—Decided December
21, 1943*

DECISION
AND
ORDER

Pursuant to a Decision and Direction of Election of the Board,¹ an election was held on April 12, 1943, among the employees of General Chemical Company, Edgewater, New Jersey, herein called the respondent, at its plant at Edgewater, New Jersey, to determine whether or not United Gas, Coke & Chemical Workers of America, affiliated with the Congress of Industrial Organizations, herein called the Union, was the representative of the majority of the employees for the purposes of collective bargaining. The Union lost the election. Thereafter, the Union filed objections to the election, alleging, in part, that the respondent had engaged in unfair labor practices which had affected the results of the election. On June 17, 1943, the Regional Director, after investigating such objections, found that they raised substantial and material issues with respect to the conduct of the ballot, and recommended that a hearing be held on such objections. On May 19 and July 22, 1943, the Union filed an original and amended charge, respectively, alleging that the respondent had engaged in unfair labor practices, upon which charges a complaint was subsequently issued by the Board. On July 8, 1943, the Board issued an order consolidating the above proceedings and directing that a hearing be held on the objections to the election and on the alleged unfair labor practices. A hearing was held before a Trial Examiner in Jersey City, New Jersey, from August 16 to 25, 1943, in which the Board, the respondent, and the Union participated by their repre-

¹ 48 N. L. R. B. 923.

53 N. L. R. B., No. 263.

sentatives. During the course of the hearing, the respondent made various motions to dismiss the representation proceeding, in whole or in part, and the Union moved to sever the representation proceeding from the complaint proceeding. These motions, which were referred by the Trial Examiner to the Board, are hereby denied. The Board has reviewed the Trial Examiner's rulings on motions and on objections to the admission of evidence and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On September 18, 1943, the Trial Examiner issued his Intermediate Report, a copy of which is attached hereto, in which he found that the respondent had engaged in certain unfair labor practices. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. In its exceptions, the respondent moved to dismiss the complaint as well as the Union's objections to the election. On November 5, 1943, the Union filed a motion that the representation proceeding be severed from the complaint proceeding and that a further hearing be held in the representation proceeding. These motions of the respondent and the Union are hereby denied. Oral argument was held before the Board in Washington, D. C., on November 23, 1943.

The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except insofar as they are inconsistent with our findings and order hereinafter set forth.

1. We agree with the Trial Examiner's conclusion that the respondent engaged in unfair labor practices, within the meaning of Section 8(1) of the Act. However, we rely solely upon the following events in support of that conclusion: ² (a) Foreman Haring's remarks to Chieco in the early part of February 1943, that the respondent was opposed to the unionization of its employees; ³ (b) Superintendent Elwood's attempt, around the latter part of February 1943, as employees were coming out of the plant, to prevent Mullica, an organizer for the Union, from distributing union leaflets on a sidewalk adjoining a roadway outside the entrance to the plant; ⁴ (c) Elwood's inquiry

² In finding that the respondent violated Section 8 (1) of the Act, we do not rely on the alleged anti-union remarks of Harry Evans or William Heydash, and we accordingly find it unnecessary to pass on the respondent's accountability for their conduct. Nor do we find it necessary to determine the status in this regard of the "chiefs," other than Heydash, who work in Foreman Wallace's department.

³ We credit, as did the Trial Examiner, Chieco's testimony that such remarks were made, against Haring's denial, Chieco having impressed us as the more trustworthy witness.

⁴ Upon all the evidence, we find that Elwood first objected to Mullica's distribution of the leaflets on the ground that he had no permit to do so, and that, when Elwood was advised that no permit was required, he objected to the distribution on the ground that the sidewalk where Mullica was stationed was the respondent's property. We further find that Elwood's action was designed to interfere with and discourage union activity, and not to protect the respondent's property or for any other legitimate purpose.

of Ernst, in March 1943, as to why Ernst was "carrying the ball" in the Union for the other employees, and what he expected in return, and Haring's remark to Ernst, on the same occasion, that the respondent was opposed to the "CIO" because it was composed of "Jews and communists";⁵ (d) Haring's statement, in the early part of March 1943, to Joseph Antol, whose brother was preparing for a better position in the plant than he then occupied, that if Joseph Antol did not "stop" his brother from "talking about the union, in favor of it, to the different fellow workers," Elwood would hear "about [his] brother's favoritism toward the union" and his brother would not obtain that position;⁶ (e) the remarks made by Haring to Mullica, on April 2, 1943, that it was Haring's duty to keep the Union out of the plant and that he would do all he could to accomplish this;⁷ (f) Haring's statement to Joseph Antol, on April 2, 1943, that the Union could not benefit the employees;⁸ (g) Foreman Wallace's statement to Zelenka, on or about April 9, 1943, that if the Union "come in we only work five days,"⁹ which was followed a day later by a remark by Elwood to a union committee that, if the Union lost the election, he wanted "all this union activity stopped" and that he had ways of stopping it, "such as Saturday."¹⁰

It is clear, and we find, that the foregoing statements and acts of the respondent's superintendent and foremen, as well as the demotion of employee Priehl because he was a union member and protagonist, as found below, were integral parts of a course of conduct by the respondent designed to defeat the Union's organizational campaign and to affect the results of the election held on April 12, 1943. We further find that such conduct, which included threats of, as well as actual, economic reprisals for union membership and activity was plainly coercive and violative of Section 8 (1) of the Act.

⁵ Elwood and Haring contradicted Ernst's testimony that such a conversation took place. We believe Ernst to be the more trustworthy witness, and we credit his testimony in this regard.

⁶ This is based on Joseph Antol's version of the conversation, which was different from Haring's. We find Antol to be the more trustworthy witness, and we credit, as did the Trial Examiner, his version of the conversation.

⁷ We credit, as did the Trial Examiner, the testimony that Haring made such remarks, against Haring's and Elwood's testimony that Haring did not make them. As already noted, Haring and Elwood did not, on the whole, impress us as credible witnesses.

⁸ Haring in effect denied that he made this statement, which was attributed to him by Antol. As already indicated, we find Antol to be the more credible witness.

⁹ At that time, the respondent was operating on a 6-day week, with time and a half for work on Saturday. Zelenka impressed us, as he did the Trial Examiner, as a trustworthy witness, and we credit his testimony that the foregoing statement was made, against Wallace's denial.

¹⁰ We credit, as did the Trial Examiner, the testimony that Elwood made that remark, against Elwood's denial. We further find, upon the entire record, that, by such remark, Elwood meant that, if union activity did not cease upon the Union's losing the election, he would reduce the work week from 6 to 5 days, and that the union committee so interpreted his remark.

2. We agree with the Trial Examiner's conclusion that the demotion of Priehl on February 18, 1943, from his position as cooper to a position as paraffiner, was discriminatory.

The respondent contends that it transferred Priehl to a position as paraffiner and retained Galla in coopering work, on February 18, 1943, because it then regarded the two men as being approximately equal in ability as coopers and believed that Galla should be preferred over Priehl because of Galla's plant and departmental seniority. We do not credit this contention. It is hardly likely that the respondent regarded Galla, who had had experience as a cooper for only 4 weeks (January 20 to February 18, 1943),¹¹ and who, during that period, was rated as a second-class cooper,¹² as being approximately equal in ability to Priehl, who we find had for years worked satisfactorily as a first-class cooper when such work was available. Moreover, we are convinced that seniority considerations did not motivate the respondent's transfer of Priehl and retention of Galla.¹³ Thus, while a fixed seniority policy may have been followed by the respondent in lay-offs, the evidence, in our opinion, does not establish that it was customarily followed in transfers.¹⁴ Also, upon all the evidence, we find that Foreman Haring, who made the decision to transfer Priehl and retain Galla on the occasion in question, did not at that time know the nature of the respondent's seniority policy. Nor has any cogent reason been advanced as to why the respondent waited until February 18, 2 days after Priehl had openly declared himself as a union advocate, to give expression to Galla's departmental and plant seniority over Priehl. That Galla's seniority over Priehl was not responsible for Galla's re-

¹¹ Upon the entire record, we do not credit Haring's testimony that Galla, for several months prior to January 1943, was being "broken in" as a cooper.

¹² For the reasons hereinafter set forth, we agree with the Trial Examiner that the respondent's contention that Galla was in fact put on as a first-class cooper on January 20, 1943, and that he was paid 10 cents an hour less than were Priehl and the other coopers only because he did not have his own cooper's tools, should not be credited. Elwood and Haring testified that the respondent had a policy of paying a cooper who did not have his own tools 10 cents an hour less than those who did; yet neither of them was able to cite one instance, other than Galla's, in which such a policy was followed. Also, Galla's employment record lists him as a second-class cooper on January 20, 1943. Further, the fact that Galla had had no experience as a cooper strongly suggests itself as the true reason for paying him 10 cents less than was paid the other coopers, who had had years of coopering experience.

¹³ We, however, do not agree with the Trial Examiner's reason for discrediting the respondent's contention that its transfer of Priehl and retention of Galla were motivated by seniority considerations,—namely, that while Galla had plant and departmental seniority over Priehl, the two men were not in the same grade, and that under such circumstances seniority is not a controlling factor.

¹⁴ Thus, while there is some testimony indicating that on certain occasions an employee's seniority was considered in transfers from one position to another, Foreman Wallace admitted that the respondent had no fixed seniority policy applicable to transfers. Wallace testified as follows:

Q. Do you have any fixed rule on seniority in the plant?

A. During a lay-off, yes . . . All over the plant.

Q. In transfers from one place to another, does seniority control?

A. No, sir.

tention is further evidenced by the fact that, according to Priehl, whose testimony we credit, Haring, in giving Priehl the reason for transferring him and retaining Galla, made no mention of Galla's seniority over Priehl, but merely stated that he wanted to "break in" Galla.

In support of its contention that Galla's seniority motivated its conduct on February 18, 1943, the respondent points to the fact that during the years prior thereto, when coopering work diminished, Priehl would be transferred out of the cooper shop to perform miscellaneous work, while Galla would be retained in the cooper shop as a cooper's helper at a rate higher than that received by Priehl for such miscellaneous work. However, this practice may have been due, not to any seniority considerations, but rather to the inadvisability of effecting two transfers whenever coopering work for Priehl, who was one of a few coopers, was not available,—namely, transferring Priehl to Galla's position as helper, and transferring Galla to other miscellaneous work outside the cooper shop. Further, as already indicated, we are not satisfied that the respondent followed any fixed seniority policy in transfers from one position to another, and Haring, the foreman of the cooper shop, did not know the nature of the respondent's seniority policy. Also, the record discloses at least one instance when Priehl worked as a first-class cooper while Galla worked as a laborer outside the cooper shop at a rate substantially lower than Priehl's rate as a cooper. Moreover, it is clear that up to February 18, 1943, whenever Priehl and Galla worked in the cooper shop, Priehl always enjoyed a higher classification and rate than Galla.

That the respondent's transfer of Priehl and retention of Galla on the occasion in question were discriminatory is evidenced not only by the inadequacy of the reason assigned by the respondent for its action, as found above, but also by the following: (a) the respondent's, and particularly Foreman Haring's, clear hostility towards the Union; (b) the fact that Priehl, 2 days prior to his transfer, openly expressed himself at the plant as a union protagonist;¹⁵ (c) the fact that Haring believed that Priehl was the only employee in the cooper shop who was a union member and made it a point to advise the leader in the cooper shop of that fact; and (d) the fact that Galla was not a union member.

¹⁵ This took the form of a remark by Priehl that the Union was "good," which was made in reply to a statement to the coopers by Nayman, who was the leader in the cooper shop, that if the Union organized the plant, the work week would be reduced to 5 days. That the respondent had knowledge of Priehl's remark is evidenced by the following circumstances as well as the record as a whole: (1) Nayman, while not a supervisory employee, was the leader in the cooper shop, and, judging from Haring's remark to Nayman that "you say to me nobody sign in cooper shop union; Rudy [Priehl] signed already," Nayman kept Haring advised of the union membership and activities of the cooper shop employees; (2) the cooper shop was apparently composed of a small and compact group of employees, and Haring was in close touch with them.

3. We do not agree with the Trial Examiner's conclusion that the decrease in Mojher's rate of pay when he performed laborer's work, commencing on or about February 22, 1943, was discriminatory.

The record discloses that the supply of raw material necessary for the manufacture of aluminum sulphate in the Iron Free Aluminum Sulphate Department, herein called the Alum Department, which is the work in which Mojher was principally engaged, as an operator, was exhausted on or about February 22, 1943, that the respondent did not know when a new supply would be available, and that it therefore transferred Mojher from his position as operator in the Alum Department to another department in which principally laborer's work was performed at a rate of 92 cents an hour. Further, there is evidence which supports the respondent's contention that it followed a practice of paying an employee transferred permanently or for an indefinite period from his regular position to other work, at the rate called for by the other work, whether that rate was lower or higher than the rate of the position from which he was transferred.¹⁶ Also, according to Mojher's own testimony, which we credit, when, in the early part of May 1943, the respondent received a new supply of raw material for the manufacture of aluminum sulphate and transferred Mojher back to the Alum Department as an operator, Mojher received the operator's rate of \$1.06 an hour even though he at times performed laborer's work, thus resuming the practice which obtained prior to February 22, 1943, when Mojher was engaged principally as an operator in the Alum Department.

The Trial Examiner, in finding that the decrease in Mojher's rate of pay on or about February 22, 1943, was discriminatory, relied in part on the fact that different treatment was accorded employees Cervenka, Vach, and McCarney, who, both before and after February 22, 1943, received the rate called for by their regular positions whether they performed work in their regular positions or laborer's work. However, the record discloses that their situations were not comparable to Mojher's. Thus, unlike Mojher, they performed as much or more work in their regular positions after February 22, 1943; as before. There was therefore no reason for decreasing their rates of pay when they performed laborer's work after February 22. Moreover, the record discloses instances, both prior and subsequent to February 22, 1943, when, because of a cessation of operations in the departments to which they were regularly attached, they, like Mojher on February 22, 1943, were transferred to other work calling for a lower rate and received the lower rate.

¹⁶ We note that Mojher himself, in June 1941, was transferred from his position as operator in the Alum Department at a 99-cent rate to a position as "Scaleman" in the same department at an 83-cent rate.

While, in view of the evidence as a whole, the Trial Examiner's conclusion that the decrease in Mojher's rate of pay on February 22, 1943, was discriminatory, is not entirely without foundation, we are not convinced, in the light of the matters set forth above, that the record warrants a finding that such decrease was motivated by Mojher's union membership or activities. We shall, accordingly, dismiss the complaint, as amended, insofar as it alleges that the respondent discriminated against Mojher.

4. We find that, since the respondent engaged in unfair labor practices prior to the election held on April 12, 1943, the election was not an expression of the will of an uncoerced majority of the employees and should therefore be set aside, and we shall so order.¹⁷ When we are advised by the Regional Director that the time is appropriate, we shall direct that a new election be held among the employees at the respondent's Edgewater, New Jersey, plant.

ORDER

Upon the above additional findings of fact and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, General Chemical Company, Edgewater, New Jersey, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Gas, Coke & Chemical Workers of America, affiliated with the Congress of Industrial Organizations, or in any other labor organization of its employees, by demoting or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment;

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

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

(a) Offer to Rudolph Priehl immediate and full reinstatement to the position he would have occupied but for the discrimination against him, or to a position substantially equivalent thereto, without prejudice to his seniority and other rights and privileges;

¹⁷ The Union's objections to the election are sustained only insofar as they allege the commission by the respondent, prior to the election, of the unfair labor practices found herein.

(b) Make whole Rudolph Priehl for any loss of pay he has suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages, had the discrimination against him not occurred, from the date of the respondent's discrimination against him to the date of the respondent's offer of reinstatement, less his actual earnings during such period as an employee of the respondent;

(c) Post immediately in conspicuous places at its plant in Edgewater, New Jersey, and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that the respondent's employees are free to become and remain members of United Gas, Coke & Chemical Workers of America, affiliated with the Congress of Industrial Organizations, and that the respondent will not discriminate against any employee because of membership or activity in that organization;

(d) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

IT IS HEREBY FURTHER ORDERED that the election held on April 12, 1943, among the employees of General Chemical Company, at its Edgewater, New Jersey, plant, be, and it hereby is, set aside.

AND IT IS FURTHER ORDERED that the complaint, as amended, be, and it hereby is, dismissed insofar as it alleges that the respondent discriminated in regard to the hire, tenure, or terms or conditions of employment of Joseph Mojher and Arthur Ernst.

INTERMEDIATE REPORT

Daniel Baker, Esq., of New York City, for the Board.

Wall, Haight, Carey & Hartpence, by *Frederick W. Schumann, Esq.*, of Jersey City, New Jersey, for the respondent.

Samuel L. Rothbard, Esq., by *Clarence Talisman, Esq.*, of Newark, New Jersey, for the Union.

STATEMENT OF THE CASE

Upon an amended charge filed July 22, 1943, by United Gas, Coke, and Chemical Workers of America, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Second Region (New York City, New York), issued its complaint dated July 24, 1943, against General Chemical Company, herein called the respondent, alleging that the respondent, at its plant in Edgewater, New Jersey, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called

the Act. Copies of the complaint and amended charge, accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint as originally issued and served, alleged in substance that the respondent: (1) on or about April 16, 1943, discharged Frank Scozzafaca, an employee at its Edgewater plant; (2) on or about March 5, 1943, decreased the rate of pay of Joseph Mohjer, an employee at its Edgewater plant; (3) on or about April 5, 1943, assigned to more arduous and less agreeable work, Arthur Ernst, an employee at its Edgewater plant and, since the dates of the discharge, the decrease in pay and the assignment to more arduous and less agreeable work described above, has failed, refused and continues to fail and refuse to reinstate the employees above named to their former or substantially equivalent positions or employment because they had joined and assisted the Union and have engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection; (4) from on or about January 1, 1943, to the date of the issuance of the complaint, has vilified, disparaged and expressed disapproval of the Union; has interrogated its employees concerning their union affiliation; has urged, persuaded and warned its employees to refrain from assisting, becoming members of or remaining members of the Union, and threatened its employees with discharge or reprisals if they joined or assisted the Union; has urged, persuaded and warned its employees to vote against the Union in an election conducted by the National Labor Relations Board on April 12, 1943, and has threatened its employees with reprisals if the Union won the said election, and by such acts has interfered with, restrained, and coerced its employees and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act; (5) by the actions aforesaid, the respondent has engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act. On August 17, 1943, during the course of the hearing on the complaint above referred to, counsel for the Board moved to dismiss without prejudice, that portion of the complaint referring to the discharge of Frank Scozzafaca. The motion was granted without objection. Following the above motion to dismiss, counsel for the Board moved to amend the complaint to include an allegation that, in February 1943, the respondent demoted Rudolph Priehl and decreased his rate of pay for the reason that he had joined and assisted the Union and engaged in other concerted activities for the purpose of collective bargaining and other mutual aid and protection. The motion to amend was granted and the right to a continuance for the purpose of answering the allegations of the amendment was waived by the respondent. At the commencement of the hearing, a motion of the respondent for a bill of particulars was granted in substance. The information requested by respondent in its motion for a bill of particulars was informally furnished by counsel for the Board and read into the record and was pronounced by counsel for the respondent to be sufficient for its purposes.

On April 12, 1943, pursuant to an Order and Direction of Election issued in Case No. R-5025, an election was held, under the supervision of the Board, among the production and maintenance employees of the respondent's plant at Edgewater, New Jersey, to determine whether they desired to be represented for the purposes of collective bargaining by the Union. The result of the election was adverse to the Union by a vote of 94 to 93. Following the election, objections thereto were filed by the Union in which it was alleged that the respondent had interfered with the conduct of the election. Following the issuance of the election report by the Regional Director for the Second Region, the Union filed further objections and amended objections to the elec-

tion report. On July 8, 1943, the Board entered an order directing that a hearing be held on said objections and that Case No. R-5025, be consolidated with Case No. 2-C-5176, that being the case in which the amended charge of July 22, 1943, was filed as hereinabove set forth.

The answer of the respondent, as amended to conform to the amendment to the complaint above referred to, admits all the allegations of the complaint with reference to the corporate structure of the respondent and the nature and extent of business done by it, but denies all the allegations of the complaint which in any manner refer to the engagement by respondent in unfair labor practices.

Pursuant to notice, a hearing was held between August 16, and 25, 1943, at Jersey City, New Jersey, before R. N. Denham, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board, the Union, and the respondent were represented by counsel. All parties participated in the hearing where full opportunity was afforded them to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues. At the close of the introduction of evidence by the Board the respondent moved for dismissal of that portion of the complaint referring to the objections to the election of April 12, 1943. The motion was denied. The respondent then moved for the dismissal of the complaint in its entirety, which motion was denied. At the close of all the testimony the above motions to dismiss were renewed. The motion to dismiss with reference to the objections to the election and the election reports was denied. The motion to dismiss the complaint in its entirety was taken under advisement and it is now denied. After the conclusion of all the testimony, counsel for the Board moved to amend the complaint to conform to the proof. The motion was granted to apply to all pleadings herein for the purpose of correcting names, dates and other minor recitals not affecting the issues of the case. Oral argument at the close of the hearing was waived by all parties, as was the privilege of filing briefs with the Trial Examiner.

Upon the basis of the foregoing and after having heard and observed all the witnesses and considered the exhibits admitted into evidence, and upon the entire record herein made, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent General Chemical Company concedes that it is engaged in commerce within the meaning of the Act and for the purposes of this case, is within the jurisdiction of the Board. It is a New York corporation with its principal office at 40 Rector Street in the City of New York, State of New York. It owns and operates a plant at River Road, Edgewater, New Jersey, which is hereinafter referred to as the Edgewater plant and is now and at all pertinent times herein has been continuously engaged at that plant in the manufacture, sale, and distribution of heavy chemicals and related products. During the year ending March 31, 1943, the respondent caused to be purchased, transferred and delivered to its Edgewater plant, sulphur and other materials in excess of 40,000 tons of which approximately 50 percent was transported to such plant in interstate commerce from states of the United States other than New Jersey. During the same period respondent caused to be manufactured at its Edgewater plant, products in excess of 100,000 tons of which approximately 40 percent was transported in interstate commerce to States of the United States other than the State of New Jersey. Approximately 75 percent of the respondent's operations at the Edgewater plant are devoted to the prosecution of the war effort.

II. THE ORGANIZATION INVOLVED

United Gas, Coke & Chemical Workers of America, affiliated with the Congress of Industrial Organizations is a labor organization admitting to membership the employees of the respondent at its Edgewater plant.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint and coercion*

Almost without exception, the testimony of the material witnesses on the opposing sides of this controversy is in such complete conflict both in material and minor matters that the findings made herein are, and must be, in the main based upon the Trial Examiner's determination of the credibility of the various witnesses as reflected by the reasonableness of their testimony, their attitude and demeanor while on the witness stand and whatever corroborating elements may be found in other parts of the record.¹

The respondent's plant at Edgewater covers a space about 900 feet square and consists of a fully equipped chemical plant for the manufacture of heavy chemicals, about 10 of which constitute the major production of the respondent at this plant. The total maintenance and production employment is slightly over 200 persons. Walter L. Elwood, Jr., is the superintendent in general charge and the senior executive officer stationed there. Ernest E. Weldon, Jr., general foreman, is second in charge after Elwood. The plant is divided into 25 separate departments which are supervised by 9 foremen, some of whom have charge of a single department while others have jurisdiction over several. For the purposes of this report, it is necessary to identify only Walter J. Wallace, master mechanic and general foreman over carpenters, pipe fitters, lead burners, riggers, painters, welders and miscellaneous helpers, a total of about 60, and James H. Haring, foreman of those departments which include packaging, cooping, shipping and loading, unloading, all dock operations, waste disposal and miscellaneous common labor not included in Wallace's department. Haring has from 50 to 70 men under him, depending on the plant operations.

In Wallace's department, each subdivision has a key man or pusher who carries the title of "chief." Thus, Hartstein is chief pipe fitter; William Heydash is chief carpenter; Fasciano is chief rigger; Walther is chief machinist and Tucker is chief lead burner. With the exception of Tucker, all the chiefs work on an hourly basis and at a rate somewhat higher than the others in their respective groups. At the beginning of each day, Wallace instructs them as to the jobs to be done and in most instances designates specific men to be assigned to the particular jobs laid out for that day. The chiefs then return to their respective gangs, make the assignments as instructed by Wallace and work along with the men, at the same time doing a certain amount of supervising but with no power to hire or discharge and no specific authority to recommend action with reference to the pay or employment of any of the men in their gang. In the absence of Wallace, or in an emergency, they make their own assignments. Tucker, on the other hand, is a salaried employee in charge of the lead burning division of Wallace's department. He lays out the work, personally supervises all the

¹ In determining which testimony to accept and which to reject, it is to be noted that in no instance has any witness been wholly discredited to the extent that no part of his testimony has been considered. Part of the testimony of several witnesses who are otherwise regarded as generally credible, have been disregarded where they are wholly inconsistent with the general over-all history of the controversy and where they are in conflict with other testimony that is in keeping with the over-all history. Thus, parts of Mullica's testimony have not been credited, while other parts have been accepted in the face of contradictions. The same is true of the testimony of Elwood and others.

lead burners and helpers in his division, keeps their time and is conceded by the respondent to be a supervisory employee. When men are transferred from one type of operation to another, they are told to report to the chief whose crew they are to join. The chiefs transmit Wallace's orders and see that they are carried out. Patently they are in immediate charge of their respective classes of work under the general supervision of Wallace and are recognized by the employees accordingly. In at least one instance, Wallace assembled the carpenter group and announced that they were to take orders from Heydash. Harry Evans is the safety inspector of the entire plant. He reports only to and takes orders only from the superintendent. He has no authority to discipline employees who disobey safety rules but reports such violations to the superintendent who in turn passes the report on to the foreman in whose department the violation may have occurred, for appropriate action. He does not attend the daily meetings of the foremen but does attend the semi-monthly safety meetings of foremen, at which he rotates with the others as presiding officer, and also attends the monthly departmental safety meetings of all employees. At these meetings he, together with the foreman and Elwood customarily address the employees on safety matters. They are the only ones who do so. The respondent denies that the various chiefs² and Evans are supervisory employees or employees for whose conduct it is in any manner responsible. In partial support of this, it pointed out that at the election of April 12, 1943, the Union agreed to their inclusion in the list of eligible voters and that they did in fact vote without challenge. Agreements of this character concerning inclusions in or exclusions from an appropriate unit for election purposes may have a tendency to throw light on the way in which certain employees were regarded by the others, but are not conclusive. Many factors may have influenced the Union's agreement to such inclusion. In fact, there is some evidence that the Union reluctantly accepted the inclusion of these employees among the eligible voters. However, for the purposes of this controversy, the status of the various chiefs and Evans must be and is here determined by the nature of the duties performed by them, regardless of the limitations on their authority to hire or discharge employees or effectively to make recommendations concerning their hire or any other condition of employment. These duties and functions were such that they were regarded by the employees as being representatives of management in a similar manner to those referred to by the Supreme Court in the *International Association of Machinists Case*:³

To be sure, they were not high in the factory hierarchy and apparently did not have the power to hire and fire but they did exercise general authority to translate to their subordinates the policies and desires of the management.

It is found, therefore, that Safety Inspector Evans and the respective chiefs above referred to, including Heydash, were in fact representatives of the respondent in their relations with the employees of the respondent.

In the latter part of 1942, the respondent had authorized a substantial construction program at the Edgewater plant, consisting of the demolition of certain obsolete equipment and replacing it with more modern facilities. At the same time, consideration was being given by Elwood to the matter of employing women in all jobs they reasonably could fill and releasing the men then on such jobs for other and more arduous duties for which women were not considered to be adapted. In connection with this he caused Weldon to make a survey of the various departments and report to him the number of jobs in

² Exclusive of Tucker.

³ *International Association of Machinists etc. v. National Labor Relations Board*, 311 U. S. 72.

each department which could be filled by women. This survey was made while Elwood was on some special duty at the Delaware plant of the respondent during November and December 1942, and part of January 1943. Elwood completed his duties at the Delaware plant in the latter part of January and on Saturday January 23, 1943, returned to his home in New York City. On that date he held a telephone conversation with Weldon concerning the affairs generally at the Edgewater plant and at that time was advised by Weldon that organizational activities by the Union had just been started at the Edgewater plant.

For several years past, the respondent has been under contract with the Teamsters Union of A. F. of L. as to its truck drivers and chauffeurs, but aside from that, the employees have not been organized. There is some evidence that on one occasion in 1941 and on another in 1942, a representative of the Union distributed literature at the gate of the respondent's plant in Edgewater, but efforts by the Union to organize the employees in the plant were not started until the latter part of January 1943, under the direction of Gerard Mullica, an international representative and organizer for the Union. One of Mullica's first moves was to set up an organization committee of some 8 or 10 employees among whom were Arthur Ernst, Joseph Mohjer, John Baum, and Joseph Kubica all of whom were employed in various capacities at the plant. This committee appears to have functioned for all Union purposes during the period here considered.

On Monday, January 25, Elwood returned to the Edgewater plant and resumed his duties as superintendent. On that morning he attended the customary Monday morning meeting of the foremen,⁴ at which the operations of the plant in general were discussed, as was the proposed construction program and the possibility of substituting women for men in some of the jobs in the plant. At this meeting Elwood also called the attention of the foremen to the fact that the union activities had started and cautioned them to assume a neutral attitude and not to discuss union membership with any of the men but rather to advise any who might want to talk about it, that this was a subject which the men would have to decide for themselves and then walk away from the man. In this connection it is to be noted that Evans and the various chiefs did not attend this meeting nor do they ever attend the daily meetings of the foremen.

When the Union activities started in January, the plant was operating on a 5-day—40-hour week. Shortly thereafter, it began operating on a 6-day—48-hour week basis with time and a half paid the employees for Saturday's operation.

Almost as soon as the organizational activity got under way, Evans began a campaign against it. In addition to his duties as safety inspector, Evans is also treasurer of a beneficial association which exists in the plant. As safety inspector, his duties carry him to all parts of the plant and as treasurer of the Association he customarily utilizes company time for the collection of dues. Evans freely admitted on the stand that when the Union began to get under way in January, he spoke to Joseph Mohjer about it during his rounds of the plant; that he asked Mohjer what he knew about the Union; that Mohjer replied that he knew nothing about it, and that he, Evans, entered into a discourse in which he told Mohjer that he thought the Union would be a bad thing for the plant and for all the employees in it, that it would make trouble and that nothing good could come of it. Mohjer testified that during this conversation, Evans told him not to sign a union card; that he had heard the plant was going to go on a 6-day week and that if the Union were to come into the plant, they would not get that extra work. Evans knew of the proposed

⁴ It was customary to hold a foreman's meeting each afternoon except Saturday. The Monday morning meeting was in lieu of the Saturday meeting.

extension of the work week at the time, but could not recall whether he had mentioned it in his conversation with Mohjer. It is found, however, that the conversation included not only Evans' admitted remarks concerning the Union but also those with reference to the 6-day week which were attributed to him by Mohjer.

On January 29, Mullica and Elliott, the Regional Director for the Union in New Jersey called on Elwood to advise him that the Union had instituted organizational activities in the plant; that they did not claim to have a majority at that time but that they were being interfered with by the anti-union activities of Foremen Wallace and Haring, Chief Carpenter Heydash and Safety Inspector Evans, and requested Elwood to instruct these men to stop their interference.⁵ Elwood agreed to do so. Elwood testified that he did in fact caution the foremen and particularly that he cautioned Evans against interfering.

At this meeting they also requested Elwood to bargain with the Union for its members only and to post a notice which they prepared, reading as follows:

Representatives of the United Gas, Coke and Chemical Workers of America, CIO, met with the undersigned on the morning of January 29, 1943, at which time they alleged certain anti-union activities on the part of some of our supervisory staff. The undersigned wishes to state that this company has every intention of living up to the Wagner Act and recognizes the rights of workers to join any union of their choice, as the law provides.

Elwood refused to post the notice or to take any action until he had conferred with counsel. Elliott and Mullica agreed to this.

On or about February 4, 1943, Mullica and Elliott again called on Elwood and this time announced that the Union represented a majority of the employees. They requested Elwood to have a cross-check made of the cards against the pay roll or to hold a consent election. Elwood refused both requests, whereupon Mullica and Elliott announced that if he would not consent to either of these things, he would leave them with nothing to do except to "come in fighting." They again asked Elwood to post the notice they had suggested on January 29. He refused, stating that it contained an admission of having violated the Act. On or about February 5, Mullica and another representative of the Union again called at Elwood's office and repeated the requests made at the previous meeting. These requests were refused, whereupon the petition out of which the election of April 12, 1943, arose was filed at the office of the Board in New York City on the following day. At about that time, Mullica had occasion to pass out union circulars at the plant as the shifts were changing. The plant is partially surrounded by a fence. A roadway and sidewalk, usually used by the employees, extends along an unfenced portion of the plant property. Although this roadway and sidewalk is a part of respondent's property, there is nothing to indicate it as such. On the occasion mentioned, Mullica was standing on the sidewalk close to the point where the employees leave the plant proper, prepared to pass out his circulars. Elwood saw him and asked him whether he had a permit to distribute circulars. Mullica stated that he did not have and did not need a permit for that purpose, and referred to a recent decision of the United States Supreme Court. Elwood then ordered him off the sidewalk,

⁵ Elwood and his general foreman Weldon testified that at the meeting when Mullica complained about the misconduct of the supervisory employees, he was unable to name any of the foremen whom he was charging with such conduct. On the other hand Mullica testified that at that time he named Wallace, Haring, Heydash, and Evans. Although the testimony does not reflect in what respect Mullica accused these men of interfering with the Union's activity, his statement that he did name them is credited.

directing him to go up the street in view of the fact that the sidewalk was on company property. There was an altercation in which a nearby policeman also joined, the outcome of which is both uncertain and immaterial. When asked to explain why he had ordered Mullica off the sidewalk, Elwood testified that he did so merely because he did not want him there.

In early February 1943, James Chicco, an employee in Haring's dock department gang, who, at various times, has had about 2½ or 3 years of employment with the respondent out of the last 4 years, applied to Haring for further employment and was told to come back in about a week. Chicco returned as instructed and saw Haring who indicated there was a job available for him. Before hiring Chicco, however, Haring told him that they were "having a little trouble about union," that he, Chicco, knew the company had been "keeping this plant pretty good," and that they did not want a union, to all of which Chicco replied "O. K." "Don't worry," "I won't be bothered." Chicco was then sent to the doctor for his medical examination and on returning to the office met Elwood who asked him, "Did Jimmy (Haring) explain to you?" When Chicco replied "Yes," Elwood had no further comment to make.⁶

On February 18, Rudolph Priebl, a first class cooper rated at \$1.10 per hour was demoted to a No. 3 cooper job paying 96 cents an hour. This demotion resulted in a committee from the Union consisting of Ernst, Mohjer, Kubica, Baum and others calling on Elwood in protest, without result. A few days later Mullica, upon being advised that the union members were becoming restive and threatening to strike because of the Priebl incident, as well as because of the respondent's consistent refusal to agree to a consent election, communicated with the United States Department of Labor Conciliation Service. Almost immediately Commissioner Cann of that agency made his appearance in Jersey City and arranged for a conference with Elwood and Mullica at the office of Elwood's attorney. This conference produced no results with reference to any of the matters in controversy. By this time the subject of union affiliation had become the primary topic of conversation in the plant and gave rise to many heated and vituperative arguments between the union and anti-union employees. The active union men were well known to all the supervisory staff, not only by reason of the fact that they openly wore their union buttons and talked in favor of the Union, but because of their active participation in committee conferences with Elwood and other representing management.

In March, Florian Zelenka, a brick layer's helper who has been an employee of the respondent for about 15 years, was engaged in conversation in the riggers' shanty with Heydash, the chief carpenter, concerning the Union. The gist of this conversation, so far as Heydash's comments were concerned, was that when the Union came into the plant, they would go back to the 5-day work week and no longer have the benefit of 6 days of work with 1 day on time and a half basis. Two or three days before the election, one of the men in Wallace's department told Zelenka that he should be quiet and not talk so much. When Zelenka asked who had sent that message to him, he was advised that it had come from Wallace. A little later in the day, Wallace came by where Zelenka was working and Zelenka asked him about sending the message above mentioned. Wallace denied he had done so but did engage in some conversation about the Union in which he not only told Zelenka that if the Union came into the plant they would go back on the 5-day basis, but also told him, concerning a raise which Zelenka had recently received, that if he heard any more talk about

⁶ These statements were denied by both Haring and Elwood. Under all the circumstances, however, such denials are not credited and it is found that the statements were made substantially as above quoted.

the Union having been responsible for the raise, he might have to take it back.⁷ The statements concerning the 5-day week were denied by both Heydash and Wallace. The testimony reflects, however that the threat to go back to the 5-day week appeared in so many of the conversations with representatives of management that it takes the form of definite propaganda designed to defeat the Union. In view of this, credence is given to the testimony of Zelenka, who, despite his broken English, displayed frankness and intelligence and an apparent desire to tell the facts as he recalled them. The denials of Heydash and Wallace are not credited and it is found that the conversations referred to took place substantially as above set forth.

The employees of the respondent maintain a bowling team which plays in competition with other teams at what is known as Taylor's Bowling Alley in or near Edgewater. Elwood, Haring, Ernst, Kubica and others who are involved in this controversy, are members of the team and as such, congregate at the bowling alley each Friday night. On one such occasion in March, Elwood and Ernst entered into a conversation concerning the Union, during the course of which Elwood asked Ernst why he was "carrying the ball" for the other men and what he expected to get out of it. Ernst's reply was that he thought the men needed a union for their protection, that he had seen some superintendents at the plant who were far from considerate of the men and that while he was not criticizing Elwood, he felt the men should have protection against the possible changes which might take place in management. Elwood stated he didn't want to make Ernst change his mind but that he did not think the company would approve the CIO coming into the plant; that if it were any other union, the company might not oppose it but that they would not approve the CIO, which he described as an organization made up of Jews and Communists. Elwood denied having had this conversation with Ernst, but in view of all the circumstances, both tangible and intangible, which surrounded the Union's activities of January, February, March and April and the attitude of the representatives of management toward it, it is found that the conversation did take place substantially as related by Ernst.

Joseph Antol, an operator in the platinum recovery department testified that in the early part of March 1943, his brother who was employed as a hypo operator in the plant, had been taking a course in draftsmanship to qualify himself for the job of draftsman in the office. At about that time, Haring approached Joseph Antol and called his attention to the fact that Antol's brother was talking around the plant in support of the Union. He cautioned Antol that unless he stopped his brother from doing this, Elwood would hear of it and his brother would not get the job he was preparing for. While it was not an issue in the case and is not here considered in arriving at any of the findings, there is some testimony to indicate that subsequently, Antol's brother was moved to other work in the plant and shortly thereafter quit the respondent's employ. Haring denied this conversation but as between Antol and Haring it is found that Antol's testimony is creditable and it is accordingly found that such conversation did in fact take place.

The Union's Petition for Investigation and Certification in what is now case No. R-5025, was filed with the Regional Director at New York City on February 6, 1943. On February 24, an amended petition was filed and on March 17, a

⁷ Wallace denied having made the statements about the 5-day week, but admitted having the conversation about the raise. His version of this was that, having given Zelenka a raise, a number of the other men began clamoring for raises and told him that Zelenka had attributed his raise to the fact that he belonged to the Union; that he told Zelenka that if he heard anything more about the Union having been responsible for the raise, he might have to take it back.

hearing was held. On April 1, 1943, the Board handed down its Decision and Direction of Election to be held among the members of an appropriate unit consisting of all production and maintenance employees of the respondent at its Edgewater, New Jersey plant, with certain designated exceptions.

On April 2, Mullica received a copy of this document. He immediately telephoned the Field Examiner for the Board at the New York office who had conducted the preliminary investigation, to inquire when they could expect to have the election held and was advised that it would be within 10 days. That night, being Friday, Mullica went to the bowling alley to advise the members of the union committee, many of whom were on the bowling team, of the Board's action. This precipitated conversations between Elwood, Haring, Ernst, and Mullica as well as other members of the committee, concerning the best date for holding the election. Elwood wanted it held on Wednesday, April 14, since that would be pay day when such men as might be away from the plant would be bound to come in to get their pay and therefore would have an opportunity to vote. Mullica and the union committee held out for an earlier date. After the bowling had ended, some of the men, including Elwood and Haring, repaired to the bar where they engaged in general conversation on the subject of the Union and the forthcoming election. As Mullica approached this group, he heard Antol telling Haring that the latter had made a mistake in talking about the Union to him and taking it for granted that he, Antol, was opposed to the Union when he asked him to get his father and his brother to stop talking in favor of it, because, in fact, he, Antol, was and always had been a good union member. Shortly after this, Mullica engaged Haring in a conversation about the prospects of the Union being successful in the election and showed him a bundle of cards, asked him to count them to satisfy himself of the Union's majority and told him he would find 137 signed cards, of which 110 represented paid up memberships. Haring did not inspect the cards or attempt to count them. According to Mullica, a little later Haring called him to one side together with Ernst and Kubica and explained that he was working for the company, that it was his job to keep the Union out, and that he was going to do all in his power to keep the Union out but if it once came in he would work with the Union men. Also during the course of the general conversation, when Mullica was talking with Elwood about the Union in the plant, Elwood voiced the objection to the Union in substantially these words "if the Union comes in the plant and takes all authority away from the superintendent, he is nobody in the plant once the Union comes in."⁸

At a meeting held in the office of the Board in New York City on April 7, the respondent produced a pay-roll list representing the employees in the appropriate unit who, according to the contention of the respondent, would be entitled to vote in the election. Because the respondent was under contract with the American Federation of Labor Teamsters Union representing its truck drivers and chauffeurs, the employees who were in that general classification were stricken from the list. Certain office employees and the various pushers or chiefs above described, with the exception of Tucker, the chief of the lead burning

⁸ Concerning these conversations, Haring admitted that he had a short conversation with Mullica. He stated, however, that he talked with Mullica alone and not in the hearing of any other men; that he prefaced the conversation by warning Mullica that he was a 100 percent company man and that during the course of this conversation, Mullica showed him some cards and told him there were 137 signed cards in the lot. He denied, however, any of the other matters attributed to him by Mullica, as did Elwood. The foregoing incidents and conversations, as outlined in the text, are corroborated by the testimony of several of the Union men who were bystanders. The denials of Elwood and Haring are not credited.

department, were originally included, as were a number of the chemists. This list was studied at length by Elwood, Weldon and the respondent's attorney, on behalf of the respondent, and by Mullica and several of the members of the union committee, on behalf of the Union. A number of objections to the list were voiced by the Union, but after eliminating the truck drivers, chemists, and some of the clerical workers, the respondent refused to make any further concessions on the matter of eligibility. After further discussion, the Union agreed to the list as amended by the above exclusions, but stated, as to one Nicholas Mascio that they would reserve the right to challenge his vote as not being properly within the unit. The Union raised no objection to the inclusion of the chiefs and Evans, the safety inspector, on the eligibility list after the eliminations above referred to were agreed to by the respondent. During the 5 or 6 days preceding the election, interest in the outcome became more pronounced in all quarters. Notwithstanding the instructions he had previously received from Elwood, Evans continued his activities against the Union and admitted in his testimony that on the day before the election he held a conversation with Tom Borecki, an employee of some 15 years standing, which in substance was about the same as the one he had held in January with Mohjer. Borecki testified that this time, the 6-day week having in the meantime been instituted, Evans stated that if the Union were to win the election the company would go back to the 5-day week and the men would lose the benefit of the time and a half for the work done on Saturdays. In this instance, as in his testimony concerning his conversation with Mohjer, Evans was unable to remember whether he had made such a statement. It is found however, that the statement was made to Borecki as above set forth on the eve of the election of April 12, 1943.

In these days, the respondent evidenced much more than a passive interest in the election. It assumed the position that the election was a contest between the Union and the company and conducted itself accordingly. Evans freely admitted his participation in the pre-election activities. On the date of the election Chieco was in the hospital suffering from an injury he had received at the plant in February. On that day Elwood had occasion to be at the hospital for a personal examination and while there took occasion to call on Chieco in company with the company's doctor. While at Chieco's bedside, Elwood noticed an envelope laying on the table which he recognized as one containing a ballot for use in the election. He told Chieco that it should have been marked and sent in. Chieco expressed a desire to vote and asked Elwood if he would take the ballot in and deliver it at the polls. Elwood agreed to do this but told Chieco that he and the doctor would have to go outside or move to another part of the room where they could not see him as he marked his ballot. This was done and Chieco accordingly marked his ballot without being observed by Elwood and without any further comment from Elwood as to his voting. The ballot was then sealed by Chieco and handed to Elwood who in turn handed it to the woman who was driving his car, with instructions to deliver it at the polling place. The ballot was duly delivered and counted.⁹

⁹ While the foregoing incident reflects no impropriety on the part of Elwood, it has a material bearing on the over-all picture when considered in the light of Elwood's previous statements on the same subject. The foregoing reflects Chieco's testimony. Elwood's testimony is in substantial conformity to Chieco's. However, shortly after the incident occurred, Elwood made a comprehensive statement on this and other subjects related to this controversy, to the Board's Field Examiner. This statement was reduced to writing and submitted to Elwood for signature. At that time, Elwood's recital of the Chieco incident was wholly different from the foregoing. On receipt of the statement from the Field Examiner, Elwood found it did not contain what he conceived to be a correct statement of

Among the employees whose names were on the list of eligibles, was one Caufield who had been employed by the respondent to drive its small bus or station wagon on errands and other company business. It will be recalled that all parties had agreed that the members of the American Federation of Labor who were represented by the Teamsters Union would not be eligible to vote. A day or two prior to the election, Mullica inquired of Caufield whether he carried a card in the Teamsters Union and was told that he did carry such card and that it was kept paid up. When Caufield appeared to vote, his vote was challenged on the ground that he was a member of the Teamsters Union with whom the company had a contract and therefore was not eligible to vote.¹⁰ Shortly after Caufield's vote was challenged, he advised Elwood of this fact. Elwood immediately went to the polling place, called out the company's observer and verified the report that Caufield's vote had been challenged, whereupon he instructed his observer to challenge the vote of another person then employed in the lead burning shop, on the ground that he, too, carried a card in a union affiliated with the American Federation of Labor. It developed, however, that the party referred to had previously voted so that Elwood's instructions could not be carried out.¹¹

Just prior to the election, the Union committee of which Ernst was a member, called on Elwood to discuss the eligibility of one of the employees. After the matter had been disposed of, Elwood said in substance, "if the Union loses the election, I want all this Union business stopped, and I have ways of stopping it, such as your Saturday overtime."¹²

It is found from the foregoing conduct of the representatives of management at the Edgewater plant, that the respondent has interfered with, coerced and restrained its employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

In connection with the allegation of interference with the employees in general and especially as to their voting in the election, counsel for the Board laid much stress on a visit which Elwood paid to the "farm" 2 or 3 days prior to the election. The farm is the name given to a plot of ground some 10 miles from the plant which is used for dumping certain waste products. The number of men working on the farm varies from one to three depending upon the quantity of waste products being produced. In April 1943, there were three men so engaged, one who was generally in charge and the other two serving as common laborers. The two laborers referred to were respectively, Mike Strubbe and Frank Pana both of whom are Italians and almost wholly unable to speak the English lan-

the facts. He accordingly rewrote the document, signed it and sent it to the Field Examiner. Pertaining to this matter, Elwood's statement recites:

I believe Chieco's ballot was brought to the plant by Miss Holmes. A man named Loftfield was hurt on April 12, 1943, and was driven to North Hudson Hospital in the station wagon driven by Miss Holmes, the new driver. I accompanied them to have a personal examination made. On that occasion, in company with Loftfield, Miss Holmes and Dr Evans, I visited Chieco briefly. Loftfield and Miss Holmes remained with Chieco for a few minutes after the Doctor and I left the bedside. She later told me that she had Chieco's ballot but it was not delivered in my presence.

Elwood's only explanation of this variation was that, when he wrote the statement, he did not have the facts clearly in mind and that his recollection had been refreshed after hearing Chieco's testimony.

¹⁰ When Mascio who has heretofore been referred to, appeared to vote, he was permitted to vote without challenge.

¹¹ This incident was admitted by Buckhotz, the observer, and by Elwood, to have occurred as above set out.

¹² Elwood denied this statement. It is found, however, that, in substance, it was made as quoted.

guage understandably. Mullica and Edwald Sandner, present Regional Director for C. I. O. in New Jersey, testified that both Strubbe and Pana attended a meeting which was held by the Union on the Sunday preceding the election and that at such meeting, Strubbe announced that Elwood had visited the farm 2 or 3 days previous, had held an extended conversation with him principally bearing upon the character of treatment the company had accorded him and his length of service with the company, finally concluding with an instruction to vote against the Union at the forthcoming election, for which purpose, he, Elwood, was said to have used a sample ballot and pointed to the "No" square in which Strubbe was to make his mark. These same witnesses stated that Pana was present and either nodded or otherwise confirmed Strubbe's statements. At least two other witnesses produced by the Board confirmed this testimony in substance, with the exception that their testimony was that they heard Strubbe make these remarks in conversations either with them or with other persons which they overheard. When Strubbe and Pana were called as witnesses, they were wholly unable to testify or make an understandable statement without the use of an interpreter. On being questioned through the interpreter, Strubbe testified that Elwood had visited the farm 2 or 3 days prior to the election; that he had no conversation with Elwood at the time, and that the only thing Elwood did, so far as he was concerned, was to wave to him from a distance, shout "hello" and then go on. He further testified that at the time Pana was not at work on the farm but was on vacation. Concerning the Union meeting on the day preceding the election, Strubbe testified that he attended the meeting but that he made no speech and that he told no one that Elwood had had any of the conversations with him which were testified to by the other witnesses. Pana, likewise through an interpreter, testified that he was at the farm at the time Elwood visited it, that Elwood had merely shouted a greeting to him, that he had no conversation with Elwood and that he did not attend the Union meeting on the day preceding the election. Elwood testified that he visited the farm on wholly legitimate business in connection with the water supply which was obtained from a neighboring farmer, that he did not speak to either Strubbe or Pana, although both were there, other than to shout a greeting to them and then go about his business. Elwood stated that he never talked with either of these two men, for the reason that he could not understand them nor could they understand him. With this conflict in the evidence coming from witnesses who otherwise appeared to be credible in a large degree, the Trial Examiner called four employees who had attended the meeting and knew Strubbe, as his own witnesses. They were placed upon the witness stand without any knowledge as to the facts concerning which they were to be called upon to testify. One stated he had attended the meeting but left early and did not see Strubbe. Another testified that he does not recall having seen Strubbe; a third testified that Strubbe had been drinking and that he was feeling "pretty good"; that he talked in a loud voice and walked around the meeting hall a good deal but that he did not hear him make any statement concerning Elwood. The fourth testified that he not only saw Strubbe but sat along side him during the meeting and talked with him at length on various subjects; that during the meeting the forthcoming election was the only topic under consideration and that sample ballots were passed out to everyone present, but that during his entire conversation with Strubbe, no mention was made of Elwood.¹³ This incident is dwelt upon at length because counsel for the Board indicated in the early part of the hearing, that some of the Board witnesses had been tampered with, and their

¹³ This witness is of Czechoslovakian birth and stated that while he and Strubbe do not speak the same language, they can understand each other.

testimony affected thereby. That is a serious charge and obviously referred to Strubbe and Pana, but it is not in issue here except as it might affect the findings on the objections to the election and in some degree, on the matter of interference, restraint and coercion. For the purpose of this report, however, it is neither feasible nor necessary, in the light of the record, to make a specific finding on that score. The language difficulty experienced by both Strubbe and Pana may have resulted in their being misunderstood by the witnesses. However, it is highly improbable that either of these men could have made a declaration at the meeting preceding the election, as extensive as the one attributed to them by the Board's witnesses, which would have been understandable to those present.¹⁴

B. *The alleged discriminations*

The amended complaint alleges that the respondent discriminatorily demoted Rudolph Priehl, that it assigned Arthur Ernst to less desirable work and that it reduced the rate of pay of Joseph Mohjer and assigned him to more arduous and less agreeable work, all because of the activities of the respective named employees on behalf of the Union.

The work in practically all the departments of the respondent's plant is fluctuating in nature with the result that employees frequently are moved from one type of work to another and from one department to another in order to accommodate the requirements of the various operations and departments. Elwood stated that it is the general rule when a man is temporarily transferred from his regular employment to a lower rated job within the same department he is carried on the pay roll at his original or higher rate of pay but that if a man is transferred within his department to a higher rated job, he is carried at the rate of pay indicated by the higher paid job which he is performing. The rule was further stated that if a man is to be transferred out of his department and to a job carrying a lower rate of pay, he is given 2 days notice of the forthcoming transfer and when transferred after such a notice, is immediately placed on the pay roll in the new department at the rate of pay called for by the job he is performing. He further stated that where a man is transferred without notice, he is carried in the new department at his original rate of pay for 2 days and then is reduced to the lower rate called for by the job he is performing. Such records as were made available during the course of the hearing indicate that while this rule may exist, it does not appear to have been closely followed. The work records of some of the employees which are in evidence indicate that they fluctuated from one rate to another within the same department on numerous occasions during their employment, while on the other hand, others moved from department to department so far as their actual occupation is concerned, and, regardless of the type of work they did, were maintained on the pay roll at a constant wage figure. The rule appears to have been one of convenience that was applied as to some and ignored as to others.

Rudolph Priehl is primarily a cooper. He was first employed by the respondent in December 1936. After 2 weeks he was placed in the cooper shop

¹⁴ There is nothing in the record nor was there anything in the demeanor of any of the witnesses to indicate that any of those who testified concerning what they heard Strubbe say could either speak or understand the Italian language. It is therefore presumed that their testimony referred to remarks alleged to have been made by Strubbe in English. Under all the circumstances, the Board has failed to prove by substantial evidence that Elwood did in fact talk with Strubbe and Pana at the time alleged a few days prior to the election. Because of this failure of proof and the notable conflict in the testimony and all the circumstances surrounding the incident, no finding is made in this regard, since it would not, in the last analysis change or affect the ultimate conclusions herein made.

and remained there until July 30, 1937 when he was temporarily assigned to a laboring job at a reduction in pay of about 19 cents per hour. In October 1937, he again went to the cooper shop at what appears to be first class coopers' pay, stayed about 5 weeks and was again put on a laboring job at 19 cents reduction. It is conceded that Priehl worked as a cooper when there was such work to be done and that when not so employed, he took miscellaneous other jobs at varying pay rates which ranged from dock labor at 63 cents to cooper at 92 cents. In May 1941, the cooper first class rate was raised to 97 cents and Priehl was given the benefit of it. In October 1941, it was raised to \$1.04 and again Priehl benefited. In February 1942, it was raised to \$1.10 which is the present wage of a first class cooper. In February 1942, Priehl was taken off coopering and performed miscellaneous laboring and manufacturing operations at from 88 to 92 cents per hour. In December 1942, he returned to the cooperage shop but did the work of a helper or number 3 cooper, paraffining barrels at 96 cents. On January 20, 1943, the respondent having received an order which required the services of all available coopers to prepare barrels in which to make shipment, Priehl was again put to work as a first class cooper and on February 18, 1943, at the completion of the order, was returned to paraffining at 96 cents. Although the cooper shop has consistently used an additional cooper since February 18, 1943, Priehl's employment has remained the same except for about 3 weeks in July 1943, when he did some labor work at 88 cents.

In the almost 7 years that Priehl has been an employee of the respondent his regular work has been in the cooper shop, doing the work of a first class cooper at the pay of a first class cooper which, since 1937 has been raised by gradual increases from 82 cents per hour to the present rate of \$1.10 per hour. There are three classes of coopers in respondent's shop. The first class man builds and repairs barrels. The second class man or No. 2 cooper works on repair of barrels but does not quite equal the first class cooper. The third class man or No. 3 cooper paints and paraffines the barrels and otherwise does only a handling job. The helper makes himself generally useful in the shop where special skill is not required. When work is slack, men are taken from the cooper shop and placed on miscellaneous jobs in the plant. Priehl's work record shows that each year he has spent a total of several months at such miscellaneous jobs in lower pay brackets and at the lower pay rate. In September 1942, after about 7 months at miscellaneous low pay jobs, Priehl was returned to the cooper shop and put to work paraffining. There is no evidence that there was a place then open for him as a cooper. As previously stated, on January 20, 1943, he went to the bench as a No. 1 cooper at \$1.10 per hour. A. Galla, a cooper helper who had been employed as such in the cooper shop almost continuously since March 1936, was put to work as a No. 2 cooper at \$1.00 per hour. On February 18, 1943, when the rush order was completed, Priehl was demoted to No. 3 cooper at 96 cents per hour and directed by Nayman, the leaderman in the cooper shop to resume his paraffining job. Galla was retained and on May 31, 1943, was promoted to No. 1 cooper at which he was still working at the time of the hearing.

Priehl is a member of the Union and was such while he was working as a No. 1 cooper in February of 1943. During that period, Nayman addressed some general remarks to all the other coopers who were present concerning the Union and expressed the opinion that if the Union came into the shop they would go back to the 5-day week. At this point, Priehl told the other men not to listen to Nayman, and that the Union was a good thing. Two days later he was taken off the coopers bench and put back to his former job of paraffining. He complained to Nayman about this demotion and, in the course of the con-

versation, was told that Haring, who is foreman of the cooper shop, had criticized Nayman for having reported to him that none of the coopers belonged to the Union whereas Haring had learned that Priehl was a member. The day that Priehl resumed paraffining, he asked Haring why he had been taken off the cooperage work and told Haring he believed it was because he belonged to the Union. Haring protested that that had nothing to do with it and that he had taken Priehl off and left Galla at the work because he wanted to break him in. Galla had about 3 years plant seniority over Priehl and both had started work in the cooper shop in 1936. Galla started in March 1936 at 48 cents. Priehl started in December 1936 at 64 cents. Up to January 20, 1943, although Galla had received 96 cents as a helper, he had never had even a No. 3 rating. On that date, however, he was employed at \$1 per hour and rated on his employment record as No. 2 cooper. Haring and Elwood testified that Galla actually was employed, as a No. 1 cooper and normally would have received a wage rate of \$1.10 per hour beginning January 20, except for the fact that he did not have his own tools, and was compelled to use the company's tools, and that it is customary to cut the wages of a cooper by 10 cents an hour when he does not furnish his own tools. There is no history to support this. Elwood eventually testified that he knew of no such custom and that the case of Galla was the only one he had ever heard of. In the face of such facts and Galla's rating as a No. 2 cooper on the respondent's records, these statements are not credited. It is found that up to May 31, 1943, Galla never was rated or regarded as more than a No. 2 cooper but that on January 20, 1943, and for a long time prior thereto, Priehl was rated and regarded as a No. 1 cooper. The explanation given by both Haring and Elwood of the demotion of Priehl and the retention of Galla was that they were both of about equal ability on February 18, 1943, when it became necessary to take some of the men off the work, that Galla had more seniority than Priehl, and that the selection was made on the basis of seniority alone. This explanation, however, does not coincide with the facts. Galla did have seniority in both the plant and department, but the two men were not in the same grade. Under such circumstances seniority is hardly a controlling factor. Priehl's work had always been satisfactory. He was a member of the Union and openly advocated it. Galla was not a Union man. Although Nayman was called the foreman of the cooper shop by some of the employees he received only No. 1 cooper's pay of \$1.10 per hour and was no more than a leading man working closely under Haring's supervision. It was Haring's testimony that he (Haring) and he only, gave orders in the cooper shop. From his conversation with Priehl on the day of his demotion, it is obvious that the change was made on his orders. Not only did Haring know before Priehl was demoted that he was the only Union man in the cooperage shop but he took occasion to criticize Nayman for not telling him about it. The explanation offered concerning Priehl's demotion on the basis of seniority alone, is not convincing. In the light of all the circumstances, it is found that Priehl was selected for demotion from No. 1 cooper to No. 3 cooper, at a reduction in pay from \$1.10 per hour to 96 cents per hour instead of Galla who was retained as No. 2 cooper and later promoted to No. 1 cooper, because of Priehl's membership in and support of the Union, and to discourage membership in the Union.

Arthur Ernst was first employed by the respondent in 1925 and from then until September 1929 served as a rigger, pipefitter helper, store house helper, and machinists' helper until April 1930 when he was laid off. He was rehired in September 1937 and worked at various jobs, principally on construction work in the mechanical department, until October 1941 when he was placed in the lead burning department as a helper. He remained in that department until

the latter part of March 1943 when he was transferred to the rigging department for work on the demolition and new construction heretofore referred to. In the lead shop Ernst's pay was raised to 94 cents per hour. On January 25, 1943, when Elwood returned from his temporary duty in Delaware, it was determined that Ernst's job in the lead shop as well as a number of other jobs throughout the plant, could adequately be performed by women, thus releasing the men for more arduous work for which they were qualified. It was then decided to transfer Ernst from helper in the lead shop to the rigging department in which he was to have and has the classification of mechanical helper, at the rate of \$1 an hour. Because of lack of necessary equipment, a transfer could not immediately be made but nevertheless Ernst was advised by both Elwood and Wallace, who had general supervision of the lead shop, that his rate had been raised to \$1 an hour. He was not advised, however, of the pending transfer. In the latter part of March or about April 1, 1943, when the necessary equipment to carry out the new construction program was received and set up, Ernst was transferred to the rigging crew and two women were employed for the work in the lead shop. While it was well known that Ernst was an active leader in Union affairs, there is nothing to indicate that his transfer from the lead shop to the rigging crew was discriminatory. By experience he could qualify to work in the rigging crew. It is well known that throughout industry women have been hired to do certain jobs normally performed by men in order to relieve the men for more arduous tasks. That is what took place in this instance. It is found that no discrimination was practiced with reference to Ernst in the change of his job which has been complained of here.

On June 24, 1943, Ernst filed a formal written grievance requesting his return to the lead shop on the basis of seniority over the women who were then being taught lead burning. A meeting was held with Elwood and others representing management. There is no serious controversy as to what transpired. He had been raised from 94 cents to \$1 per hour when it was definitely decided to put him in the rigging crew. Although he was not advised of the pending transfer when he received his raise, the records of the respondent reflect that his transfer to mechanical helper was the basis of the raise. At the grievance meeting, Ernst was told that there was then no place for him in the lead shop but when a vacancy occurred, they would return him to the lead shop at his helpers' rate of 94 cents per hour. They also cautioned him that if he left his job as mechanical helper in the rigging crew at \$1 per hour and was replaced by some man with more seniority, he could not expect to go back to his mechanical helper job if things should not turn out right in the lead shop. This was a normal action for the respondent to take under the circumstances and does not infringe on any rights guaranteed in Section 7 of the Act.

In none of the foregoing acts with reference to Ernst, has respondent discriminated against him because of his membership in or activity on behalf of the Union.

Joseph Mohjer was first employed by the respondent in October 1936 as a laborer. He was laid off from time to time because of lack of work but nevertheless advanced in the plant until in 1942 he had become an operator, manufacturing iron free aluminum sulphate, commonly known as alum. In November 1942, at the request of Elwood, Mohjer, who was then employed elsewhere, called at the office to see Elwood about returning to work. They discussed rates of pay and Mohjer returned to work with the understanding that he would not be paid less than \$1 per hour and \$40 per week. At this time the 40-hour week was still in effect and apparently nothing was said about a possible increase of the workweek by adding Saturday. The manufacture of alum is not a constant operation, but, from the beginning of his employment in Novem-

ber 1942 up to about February 20, 1943, he was paid \$1.06 per hour regardless of what he did, although his employment during this period covered packaging chemicals which is a laborer's job, manufacturing alum, packing alum, grinding nitre cake, unloading nitre cake and other miscellaneous jobs. It was not until the week ending February 20, 1943, that the respondent made any differential in the pay rate received by Mohjer. In that week they assigned him to unloading nitre cake and packaging glaubers salt, and reduced his pay from \$1.06 to 92 cents per hour. From that time up to the present his pay rate has fluctuated almost daily as the character of his work performed each day changed. In this manner, they would pay him \$1.06 for manufacturing alum, but only 92 cents when he was engaged at the work which falls into the laborer classification, for which he previously had been paid his regular going rate of \$1.06. At the time this change in pay policy with reference to Mohjer occurred, the Union activities were at their height in the plant, and Mohjer was well known as a Union man and an active participant on the union committees then coming in contact with management. When Mohjer was first subjected to this pay decrease, he immediately complained to Elwood, stated that other men working with him on the same work were still receiving their original higher pay rate and pointed to the cases of one McCarney, normally an employee of the cooper shop, Martin Vach, a sort of handyman operator and J. Cervenka, a grinder who normally worked with Mohjer in the alum plant. Elwood called attention to the fact that he had promised Mohjer not less than \$40 per week and pointed out that he was still getting that much, but he failed to account for the fact that he only got it because of the added working time on Saturdays. He also explained that McCarney and Vach were old time employees who were handy men all over the plant and were kept on at a regular rate because of this, but he did say that if Cervenka's pay had not been adjusted downward, it would be. There is no record of this having ever been done. Such exhibits as are in evidence disclose a continuing rate to Cervenka of \$1.06 per hour up to May. They show nothing beyond that date. McCarney's work record discloses that throughout the period from November 1942 to the latter part of May 1943, he has worked in numerous departments including the unloading of nitre cake, the packaging of glaubers salt, the piling of nitre cake, and various other jobs in no way related to coopering, although it was the testimony of Elwood that primarily McCarney's job in the various packaging operations is to act as a cooper by putting the heads in the barrels after they are filled. While this may be true with reference to some of the packaging, it cannot be reconciled with the job of grinding nitre cake or unloading nitre cake or other purely handling jobs. Notwithstanding, during the entire period, McCarney maintained his constant rate of \$1 per hour regardless of what he was doing. In the case of Vach, his work history reflects that he enjoyed a constant pay rate of \$1.06 regardless of what he did and that he spent extended periods engaged in the various departments performing ordinary laborer work such as the packaging of glaubers salt and other similar jobs. For these, his pay of \$1.06 per hour was continued while Mohjer was reduced to 92 cents when he performed the same duty. The same was true in the case of Cervenka, who also devoted a very substantial portion of his time to ordinary laborer operations in the various other departments, similar to the work done by Mohjer. Regardless of this, neither McCarney, Vach or Cervenka, whose current work histories parallel that of Mohjer, were subjected, to any reduction in pay, while Mohjer, beginning in the middle of February 1943, was so reduced. Elwood attempted to justify this, by stating that the three other men were old employees and that while they physically went to work in other departments, actually they were retained for technical

reasons in their original departments. This statement is not reflected in the respondent's records. It is a clear case of discrimination as between these men for which no plausible reason has been given. There appears to have been no criticism of Mohjer's work and, with the change in policy toward Mohjer coming as it did in the middle of the Union activities with which he was prominently identified and in the light of the other incidents which have been previously reported herein, it is found that the respondent's discriminatory treatment of Mohjer was brought about by reason of his membership in and support of the Union and to discourage membership in the Union.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. It has been found that Rudolph Priehl and Joseph Mohjer have been discriminated against by the respondent as to certain conditions pertaining to their pay and other conditions of employment. It will be recommended as to Rudolph Priehl, that he be offered reinstatement to his employment as first class cooper on such occasion as there is employment for a first class cooper in the cooper shop of the respondent, in advance of any person or persons not rated and carried as a first class cooper on the rolls of the respondent prior to January 20, 1943. As to Joseph Mohjer, it will be recommended that cognizance be taken of his normal rating as an operator, at the going operator's pay which in February 1943, was \$1.06 per hour, and that in the future, when he is transferred to work other than that of an operator, he be accorded the same treatment as to rates of pay, as is accorded to men standing in the general position of McCarney, Vach, and Cervenka when they are transferred from their normal employment as operators, coopers or grinders, to perform other jobs normally classed at a lower rate of pay. It will also be recommended that the respondent make the said Rudolph Priehl and Joseph Mohjer whole for any loss of pay they respectively may have suffered by reason of the respondent's discrimination in their respective rates of pay and other conditions of employment, by the payment to them, respectively, of sums of money equal to the amount each normally would have earned as wages had the discrimination against them not occurred, less the amount actually earned by them from the time of the first discrimination in each instance, to the time when they shall be reinstated to their original status without loss of seniority or other privileges.

It will further be recommended that the complaint be dismissed insofar as it pertains to the alleged discrimination against Arthur Ernst.

On the basis of the above findings of fact and upon the entire record in the case the undersigned makes the following:

CONCLUSIONS OF LAW

1. United Gas, Coke, and Chemical Workers of America, affiliated with the Congress of Industrial Organizations is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

3. By discriminating in regard to the hire and tenure of employment and the conditions of pay and employment of Rudolph Priehl and Joseph Mohjer, thereby discouraging membership in United Gas, Coke, and Chemical Workers of America, affiliated with the Congress of Industrial Organizations, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

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

5. By changing the type of employment of Arthur Ernst as alleged in the complaint and as is found above, the respondent has engaged in no unfair labor practice within the meaning of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, General Chemical Company, and its officers, agents, representatives and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Gas, Coke, and Chemical Workers of America, affiliated with the Congress of Industrial Organizations or any other labor organization of its employees by discriminating against such employees in any manner in regard to their hire, pay, tenure of employment, or any term or condition of employment.

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

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

(a) Offer to Rudolph Priehl, without prejudice to his seniority and other rights and privileges, full and immediate reinstatement to his position as first class cooper, for employment as such on those occasions where there is employment for a first class cooper at its Edgewater plant in addition to those who were regularly so employed prior to January 20, 1943, in advance of employment of any person or persons not rated and carried by the respondent as a first class cooper on its pay rolls prior to January 20, 1943, dismissing or displacing, if necessary, any person presently employed as a first class cooper who was not so employed by the respondent prior to January 20, 1943.

(b) Offer to Joseph Mohjer full and immediate reinstatement to his normal rating as operator at the going pay of an operator, and, in the future, when the said Mohjer may be transferred or assigned to work other than that of an operator, accord him the same treatment as to rates of pay for such other work as may then be accorded to employees standing in the same general positions that are and have been occupied for the past year by McCarney, Vach and Cervenka when they have been or may be transferred or assigned from their normal employment as operators, coopers, grinders, etc., to perform other jobs normally classed at lower rates of pay.

(c) Make the said Rudolph Priehl and Joseph Mohjer whole for any loss they respectively may have suffered as a result of the respondent's discrimination in regard to their respective rates of pay and other conditions of employment, by the payment to them respectively of a sum of money equal to the amount each normally would have earned as wages had the discrimination against them not occurred, less the amount actually earned by them in the employ of the respondent, from the time of the first discrimination in each instance to the time when they shall be reinstated to their original status, but without taking credit for any amount earned by either of them in excess of their normal rates of pay by reason of the performance by them or either of them of jobs carrying a rate of pay in excess of such normal rates ordinarily earned by the said Priehl and Mohjer;

(d) Post immediately in conspicuous places throughout the respondent's plant at Edgewater, New Jersey and maintain for a period of sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraph 2 (a), (b), and (c) of these recommendations; and (3), that the respondent's employees are free to become and remain members of the United Gas, Coke, and Chemical Workers of America, affiliated with the Congress of Industrial Organizations or any other labor organization and that the respondent will not discriminate against any of its employees because of membership in or activity on behalf of this organization or any other labor organization;

(e) Notify the Regional Director for the Second Region in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies the Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

It is also recommended that the complaint herein be dismissed insofar as it contains any allegation that the respondent has engaged in unfair labor practices in respect to Arthur Ernst.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended, effective October 28, 1942—any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

R. N. DENHAM,
Trial Examiner.

Dated September 18, 1943.