

In the Matter of **ROMEC PUMP COMPANY** and **INTERNATIONAL ASSOCIATION OF MACHINISTS (AFL)**¹

Case No. 8-C-1552.—Decided July 11, 1944

DECISION

AND

ORDER

On April 27, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the respondent had not engaged in unfair labor practices in discharging Giles Knepper and Harold W. Benjamin and recommended that the complaint be dismissed with respect thereto.

Thereafter, counsel for the Board filed exceptions relating to those portions of the Intermediate Report recommending dismissal of allegations in the complaint, together with a statement in the nature of a brief. Neither the respondent nor the Union filed exceptions. Oral argument before the Board was canceled upon the request of the parties and none was held. The Board has considered the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the exceptions filed thereto, and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendation of the Trial Examiner.

¹ The labor organization named as a party in the present proceeding at the time of the issuance of the complaint was the Federal Labor Union No 23468, (AFL). At the opening of the hearing, counsel for the Board moved to amend all the formal papers by substituting for the word "Federal Labor Union No 23468, (AFL)", wherever they appear, the word "International Association of Machinists, (AFL)", for the reason that the members of the Federal Labor Union had transferred their membership to the International Association of Machinists, herein called the IAM. Alva Kemp, who appeared in behalf of the Federal Labor Union, concurred in the Board's motion. He stated that by official action of the Federal Labor Union the members voted to change their affiliation to the IAM. D C Brown, Grand Lodge representative of the IAM, stated that his organization had accepted the members of the Federal Labor Union into affiliation with the IAM. The undersigned, without objection, granted the Board's motion as to all formal papers except as to the third amended charge. The undersigned's reservation on that portion of the motion which applied to the third amended charge is hereby denied.

The Board does not intend by any provision contained in the Order set forth below to affect, in any manner, the contract between the respondent and the Romec Employees Independent Labor Association, Inc., dated April 1, 1943.

ORDER

Upon 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, Romec Pump Company, Elyria, Ohio, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Association of Machinists, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discriminatorily discharging 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 employment;

(b) Encouraging membership in Romec Employees Independent Labor Association, Inc., unaffiliated, or any other labor organization of its employees, by according to that organization or any other organization discriminatory privileges;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the International Association of Machinists (AFL) or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, 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 Donald R. Newkirk, immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges;

(b) Make whole Donald B. Newkirk, for any loss of pay which he may have suffered because 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 from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(c) Post immediately in conspicuous places throughout its plant in Elyria, Ohio, and maintain for a period of at least 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), (b), and (c) 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 its employees are free to become or remain members of International Association of Machinists, affiliated with the American Federation of Labor, or any other labor organization, and that the respondent will not in any manner discriminate against its employees because of membership in or activity on behalf of that organization or any other labor organization; and

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

IT IS FURTHER ORDERED that the complaint herein be, and it hereby is, dismissed insofar as it alleges that the respondent has discriminated in regard to the hire and tenure of employment of Giles Knepper and Harold W. Benjamin.

INTERMEDIATE REPORT

Messrs. John A. Hull, Jr., and William O. Murdock, for the Board.
Mr. King E. Fauver, of Elyria, Ohio, for the respondent.
Mr. D. C. Brown, of Akron, Ohio, for the IAM.
Mr. Alva Kemp, of Elyria, Ohio, for the Federal Labor Union

STATEMENT OF THE CASE

Upon a third amended charge duly filed on February 16, 1944, by Federal Labor Union No. 23468, affiliated with the American Federation of Labor, herein called the Federal Labor Union,¹ the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighth Region (Cleveland, Ohio) issued its complaint dated February 17, 1944, against Romec Pump Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices 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, accompanied by notice of hearing, were duly served upon the respondent, the Federal Labor Union, and the Romec Employees Independent Labor Association, Inc., herein called the Independent.

With respect to the alleged unfair labor practices, the complaint as amended at the hearing, in substance states that the respondent: (1) on or about August 17, 1943, discharged Giles Knepper, on or about September 2, 1943, discharged Harold W. Benjamin, and on or about February 10, 1944, discharged Donald B. Newkirk, and thereafter failed and refused to reemploy these individuals, for the reason that they joined and assisted the A. F. L. and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection; (2) through its officers and agents, W. L. Davis, M. L. Mathews, A. A. Anderson, Arthur Hackathorn, Edward Wachter, Edward Mathews, Tony Alberts, Richard Miller and Mark Defibaugh, in the month of March 1941 and thereafter, (a) urged, persuaded, and ordered its employees to form, join, and support the Independent, and to refrain from joining, supporting, or assisting the A. F. L. or any other labor organization, (b) fostered and assisted in the formation of the Independent

¹ The International Association of Machinists and the Federal Labor Union are herein jointly called the A. F. L.

and interfered with its administration by contributing to it financial and other support and assistance, and (c) advised, urged, threatened, and warned its employees to refrain from becoming or remaining members of the A. F. L., interrogated its employees concerning the A. F. L. and other labor organizations, made disparaging and derogatory remarks to its employees concerning the A. F. L. and other labor organizations, and otherwise indicated to its employees its disapproval of and opposition to self-organization of its employees; and, (3) by the acts set forth in (1) above has discouraged membership in the A. F. L., and by all the foregoing acts has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. The respondent, in its answer filed March 1, 1944, admits that it is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act, but denies that it engaged in any unfair labor practices.

Pursuant to notice, a hearing was held at Elyria, Ohio, on March 1 and 2, 1944, before the undersigned Trial Examiner, James C. Batten, duly designated by the Chief Trial Examiner. The Board, respondent, Federal Labor Union, and IAM were represented and participated in the hearing. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the opening of the hearing, the undersigned, without objection, granted the Board's motion to amend the complaint.² Also at the opening of the hearing, Frank E. Stevens, representing the Independent, appeared specially and asked Board's counsel whether or not that organization was being proceeded against in the present hearing. Counsel for the Board stated that the Board was not proceeding under Section 8 (2) of the Act and was not asking for the disestablishment of the Independent or the setting aside of its contract with the respondent, but the Board contended that the respondent had rendered certain assistance to the Independent, which violated Section 8 (1) of the Act. Stevens then withdrew from the hearing. At the close of the Board's case, the respondent's motion for a dismissal of the complaint was denied by the undersigned. At the close of the testimony, the undersigned, over the objection of the respondent, granted the motion of the Board to conform the pleadings to the proof as to minor details. At the conclusion of the hearing the parties informally discussed the issues herein. The undersigned advised all parties that they might file briefs provided that such briefs were submitted within 7 days from the close of the hearing. Briefs were filed by the Board and the respondent.

Upon the entire record thus made and from the undersigned's observation of the witnesses, the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Romec Pump Company, is an Ohio corporation with its office and plant located in Elyria, Ohio, where it is engaged in the manufacture and production of fuel and oil pumps for airplanes. Of the raw materials—steel, aluminum, brass and other metals—used by the respondent in its manufacturing processes, approximately 50 percent are shipped to its plant, through the channels of interstate commerce from points outside the State of Ohio. Of its finished products, the respondent ships approximately 75 percent through the

² The Board moved to amend Paragraph 6 of the complaint by naming additional officers and agents of the respondent, who participated in the activities alleged to have interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

channels of interstate commerce to points outside the State of Ohio. The respondent admits that it is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, affiliated with the American Federation of Labor, Federal Labor Union No. 23468, affiliated with the American Federation of Labor, and Romec Employees Independent Labor Association, Inc, unaffiliated, are labor organizations admitting to membership employees of the respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Independent; other interference, restraint and coercion*

1. The Independent³

Some time in March or April 1941, the A. F. L. engaged in an organizational campaign among the employees at the respondent's plant. This organizational campaign was short-lived. The A. F. L. renewed its efforts to organize the respondent's employees in August 1942, and discontinued its activities shortly thereafter. In July 1943, the A. F. L. again attempted to organize the employees and conducted an intensive campaign, resulting in a substantial number joining that organization. The various attempts of this labor organization to organize the plant met with opposition from the respondent, principally through the formation of the Independent and interference with its administration by contributing financial and other support and assistance to it.

Some time in March 1941, W. L. Davis, then the respondent's vice-president and general manager, in a conversation with employee Thompson stated that he understood either the C. I. O. or the A. F. L. was attempting to organize the plant and that he would not deal with them, but he would deal with the men if they organized their own union. A few days after this conversation the employees were notified⁴ that a meeting was to be held in an abandoned office room and that employee Wimsatt would preside at the meeting. Wimsatt presided at the meeting and after some discussion concerning the organization of a union to bargain with the respondent, a committee was selected, consisting of five employees, to perfect an inside organization. One member of the committee, Charles Wilford, who was in charge of the test room and considered by the employees to be a supervisor shortly after the committee started its activities "was disqualified" because he was in a position to recommend hiring and discharging of employees. This committee, following the group meeting, held at least two meetings in the plant and completed the organization of a labor organization now known as the Romec Employees Independent Labor Association, Inc. The committee after about three weeks of effort prepared a constitution and bylaws, and elected temporary officers. The organizational group meeting, as well as the committee meetings thereafter, were held in an abandoned office room in the plant and the employees and committee members were paid for the time spent attending these meetings. The facts as related above make it plain that the organizational group meeting, as well as the committee meetings of the Independent, were planned and organized by the respondent, and under its complete domination. Under these circumstances, the undersigned concludes and finds that the concept of the Independent originated with respondent, and that

³ Unless otherwise indicated, the facts set forth in this section are undisputed.

⁴ Thompson testified that "word was passed around the shop that we were to have a meeting, from one man to the other it was passed around."

the respondent by holding the group and committee meetings in the plant during working hours, and by the payment of wages to the employees for the time spent in such activities, thereby lent assistance and encouragement to the Independent and was responsible for its formation.

In addition to the holding of the organizational meeting of the Independent in the respondent's plant and on its time, the respondent has contributed directly to the support of the Independent. The respondent permitted the Independent to install and operate coca-cola dispensing machines at its plant for a period from July 1941 to July 14, 1943. The respondent contributed the electrical energy necessary to operate these machines, and permitted the Independent to receive all of the profits from their operation. The Independent had complete charge of the coca-cola machines and furnished all the labor necessary in connection with their operation. The Independent later refunded to the respondent the proceeds from the coca-cola machines for the period March 3, 1943, to July 14, 1943. Subsequent to July 14, 1943, the respondent has operated the machines for its own account, and the proceeds from the machines as well as the proceeds refunded by the Independent have been credited by the respondent to a welfare fund, created by the respondent for the benefit of all its employees. The record does not disclose the exact amount of money the Independent received from the operation of these machines, but the undersigned is convinced that it was a substantial amount. It is found from the facts set forth above that the respondent has contributed a large measure of financial support to the Independent.

In addition to the respondent's formation of the Independent, the encouragement given to it by providing a meeting place and paying the employees and committee members for the time spent in its organization, the respondent has lent other assistance to the Independent. The evidence is hardly in dispute that the intensity of the Independent's activities in the plant was largely determined by whether or not some outside labor organization was conducting an organizational drive amongst the employees in the plant. The Independent was organized in the spring of 1941 when there was some talk of a "CIO or AF of L Union" coming into the plant; thereafter it was comparatively inactive until the summer of 1942 when it again became active concurrently with the renewed efforts of the A. F. L. to organize the plant; and again in the summer of 1943 the Independent, concurrently with the renewal of A. F. L. activities, it became increasingly active.

The success of the Independent is due, in no small degree, to the respondent's attitude with respect to the conduct of the Independent's solicitation of members, collection of dues and the holding of elections in the plant during working hours. The evidence is not in dispute that on at least two occasions the election of an officer for the Independent was conducted by distributing ballots to the stewards in the various departments who, in turn, distributed the ballots to the employees, and after they were marked collected the ballots and returned them to the secretary of the Independent. It cannot be seriously denied that the Independent, on the respondent's time by its secretary and stewards in the various departments, regularly solicited employees to join that organization, and regularly collected dues. The undersigned is convinced and finds that the respondent was fully aware of this assistance and encouragement given to the Independent.

In contrast is the respondent's attitude toward the A. F. L. On or about August 10, 1943, Works Manager Desibaugh called its officers into his office in the presence of several of the respondent's supervisory personnel. Desibaugh at this conference had an A. F. L. application card and stated to the A. F. L. representative that "There had been a lot of those cards floating around the

plant." Defibaugh then advised against organizing on the respondent's time, stating that such activities were slowing up production and disrupting the plant in general. The A. F. L. representatives admitted that production had been slowed up as a result of the organizational efforts of the labor organizations. The A. F. L. representatives then agreed to stop the practice and told Defibaugh that the Independent should also be made to stop their activities in the plant on respondent's time. Defibaugh advised the A. F. L. group that the Independent had already been notified to cease their activities during working hours.⁵

Subsequent to the meeting in Defibaugh's office attended by the A. F. L. representatives, that organization sent out a notice to its members stating in part that:

"On Thursday, August 12, the officers of the A. F. L. entered into an agreement with the Management of the Romec Pump Company, whereby we agreed *not* to solicit any one for membership in the A. F. L. during working hours. We intend to see that this agreement is lived up to."

Such a notice was sent to all of the A. F. L. members and according to the testimony of the Board's witnesses, as well as those of the respondent, the A. F. L. thereafter discontinued its activities during working hours. On the other hand, the activities of the Independent adherents continued during working hours, even though the president of the A. F. L. on more than one occasion complained to representatives of the respondent that the Independent's activities persisted. These activities were so open and widespread that there can be no doubt that the respondent was aware of the Independent's continued efforts in the plant during working time.

It is clear from the above-related facts and the undersigned finds that the difference in treatment accorded adherents of the Independent and the A. F. L. by the respondent would have the effect of assisting the Independent, encouraging membership in it, and discouraging membership in the A. F. L., thereby interfering with, restraining, and coercing the employees in the exercise of the rights to which they are entitled under the Act.⁶

2. Other interference, restraint and coercion

Some time in August 1943, employee Crittenden asked Chief Inspector Richard Miller for a raise,⁷ Miller told Crittenden that he was altogether too active in

⁵ M. L. Mathews, respondent's personnel manager, testified that he was present at the meeting on August 10, 1943, when Defibaugh instructed the A. F. L. representatives to discontinue union activities in the plant during working hours. Mathews further testified that a similar meeting was held with the officers of the Independent. The undersigned does not credit this statement of Mathews. Employee Agate, who is secretary-treasurer of the Independent, testified that Defibaugh did not call in the Independent officers in August 1943, and to his knowledge did not call in any other representatives of the Independent. Agate further testified that subsequent to the time that the A. F. L. representatives were called into Defibaugh's office he heard rumors about the incident. If the officers of the Independent or any of its representatives had been called in to such meeting, it is certain that Agate would have heard about the meeting. The undersigned credits Agate's statement that no such meeting was held by Defibaugh with the officers of the Independent.

⁶ In the discussion hereinafter the discriminatory discharge of Donald B. Newkirk, the president of the A. F. L., further findings in addition to those above disclose that the respondent entered into a maintenance of membership contract with the Independent and purportedly under its terms discharged Newkirk.

⁷ At the time of the hearing Crittenden was a foreman in charge of the gauge and jig inspection. He was promoted to his job about three weeks prior to the hearing herein. However, in August, when the above conversation took place, Crittenden was an employee without any supervisory authority. Richard Miller did not testify. The undersigned credits the testimony of Crittenden in respect to this incident.

union activities for his own good. Crittenden testified that the only labor organization that he had anything to do with up until that time was the A. F. L.

The undersigned finds that the foregoing statement of Miller, as well as the respondent's interference with the Independent, and the discharge of employee Donald B. Newkirk because of his union membership and activities, hereinafter referred to, were integral parts of a course of conduct by the respondent designed to discourage membership in and activity on behalf of the A. F. L. and encourage membership in the Independent. The undersigned further finds that by such conduct the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

*B. The discharge of Donald B. Newkirk*⁸

Prior to his discharge on February 10, 1944, Newkirk had been in the respondent's employ since January 19, 1943. He was regarded by the respondent as a satisfactory and efficient worker. Newkirk joined the A. F. L. in July 1943, and shortly thereafter became its temporary president, which office he held at the time of his discharge on February 10. He was very active in behalf of the A. F. L. and was its chief representative in the respondent's plant.⁹

Some time in February or early March 1943, Newkirk signed a card for membership in the Independent. About 2 weeks later the steward of his department came to him and explained that the original card had been lost and asked him to sign another card.¹⁰ When Newkirk signed the second card for the Independent he also paid a dollar in dues for the months of April and May. Newkirk has never paid any further dues to the Independent. Newkirk was not requested by any representative of the Independent to pay any further dues until some time in August or September 1943, when employee Fries came to Newkirk's bench and in the presence of several other employees stated that he had just been elected steward for the Independent and that one of his duties was to collect dues. Fries further stated that he knew the employees in the group still belonged to the A. F. L. but it was his job to collect dues and he would be around to collect later. The group, including Newkirk, advised Fries that they did not intend to pay any more dues to the Independent.¹¹

About a week prior to Newkirk's discharge on February 10, 1944, Buffington, president of the Independent, informed Newkirk that the Independent had a maintenance of membership clause in its contract and that as a condition of employment in the respondent's plant, Newkirk would have to reinstate himself with that organization. Newkirk advised Buffington that he would think about the matter. A day or two thereafter, when Newkirk was reporting for work Buffington told him that if he did not reinstate himself with the Independent there would be no work for him the next day, he would not be allowed in the plant, and he, Buffington,

⁸ Unless otherwise indicated, the facts set forth in this section are undisputed.

⁹ The respondent and all of its representatives knew that Newkirk was a member of the A. F. L., one of its officers, and its leading exponent in the plant. These facts are not in dispute.

¹⁰ The card read as follows: "I hereby accept membership in the Romec Employees Independent Labor Association, Inc., through its organizers or committees, and of my own free will hereby authorized the Romec Employees Independent Labor Association, Inc., its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment including that of promoting activities conducive to the betterment of the standard of living and the general welfare of local workers."

¹¹ The group addressed by Fries included employees Thompson, Truxel, Zion, Asper, Easterday, and Newkirk, all of whom were members of the A. F. L.

would have Newkirk fired. Later in the same day, Newkirk advised Personnel Manager Mathews and Foreman Gabagan that Buffington had told him that if he did not reinstate himself with the Independent he would not be allowed in the plant the following morning. Mathews and Gabagan told Newkirk to come to work in the morning, that if anyone tried to prevent him from entering the plant to call Gabagan and he would issue a pass permitting Newkirk to enter the plant, and that they were doing the hiring and firing, not Buffington.

On February 8, 1944, the Independent posted on the bulletin board in the plant a copy of Article I (A) of its contract with the respondent. The clause reads as follows:

"All employees who are now members of this Association or who in the future become members of this Association will be required as a condition of employment with the Company to maintain their membership and continue in good standing as to dues during the life of the contract provided that this provision shall apply only to employees who, after the consummation of this agreement individually and voluntarily certify in writing that they will as a condition of their continued employment maintain their membership in the Association in good standing as to the dues during the life of the contract."¹²

On February 8, 1944, Edward C. Buffington, president of the Independent, wrote a letter to the respondent—attention of M. L. Mathews, its personnel manager—stating:

"The R E I L A is hereby asking for the dismissal of Donald Newkirk in regard to his status of non-member of the R. E. I L A and being notified the effect of Article I, sections A and B [of the contract]. He has been given the opportunity to reinstate himself in the Independent Union and refuses to do so."

On the same day that the respondent received the request from the Independent for the dismissal of Newkirk, it also received from D. C. Brown, Grand Lodge representative of the IAM, a letter dated February 7, advising that a majority of the employees in the maintenance and production department of the respondent's plant were members of the IAM and that they had selected that organization as their bargaining agent. Brown's letter also asked that respondent arrange a date in the near future with a representative of the IAM for the purpose of negotiating a collective bargaining agreement. Although the record does not disclose whether or not the respondent ever replied to Brown's letter, it is clear that on February 8, the day that the Independent demanded Newkirk's discharge, it had a notice of a claim by the IAM to majority representation of the employees.¹³ Two days later Newkirk was discharged in accordance with the demand of the Independent.

On the morning of February 10, Newkirk was called into Mathews' office where there were other representatives of the respondent and the Independent present. Forest Smith, a member of the Independent's committee and a departmental steward, told Newkirk that he would have to reinstate himself with the Inde-

¹² The agreement entered into between the respondent and the Independent was dated April 1, 1943, although the contract was consummated and signed April 8, 1943, and made effective as of April 1, 1943.

¹³ It should be noted that the respondent's contract with the Independent, dated April 1, 1943, was for an indefinite period—"from year to year unless at least thirty (30) days prior to such date in 1944, or the same date in any successive year, either party gives to the other party a written and signed notice of the desire and intention to terminate this agreement." Under these circumstances the contract could not be considered a bar to the determination of the question of representation by the Board. It is certain that the respondent had full knowledge of the conflicting claims of the two labor organizations prior to the discharge of Newkirk.

pendent or they would have to insist upon his discharge for refusal to do so. Newkirk refused to reinstate himself with the Independent by the payment of \$150 dues. During the conversation Production Manager Anderson said to Newkirk, "Oh, go on, Newkirk, give it to them. We all have to do some things we don't want to do sometimes during our lives." Mathews then said something about "We all have to eat a little crow now and then." Newkirk told the representatives of the respondent and the Independent that he didn't see why he "should be picked on" when there were a good many others that had not reinstated themselves. After some further conversation as to whether or not several of the employees who had been reinstated had actually paid dues, some of the employees were called into the conference. Employee Fred Smith, one of those called into the conference, when advised by Forest Smith that he was delinquent in dues and that as a condition of his employment he would have to reinstate himself, agreed to do so. Employee Thompson stated that his dues were paid until February 1, and that if he was going to be fired for non-payment of dues, they had better make out his release right then because he absolutely would not pay any more dues to the Independent. Employee Jaycox, when told about the maintenance for membership clause and that he was back 3 months in his dues, refused to pay any more dues in order to reinstate himself in the Independent. President Buffington, who was in attendance at a part of the conference, then spoke up and said, "Well, we aren't getting any place arguing here, let us get down stairs and talk to a few of the employees down there." Forest Smith, Buffington and Newkirk then went down to the assembly room and talked to employee Crittenden. Smith and Buffington explained to Crittenden the maintenance of membership clause in the contract. Newkirk then stated to Crittenden, "Ray, it amounts to this much, I either pay my Independent Union dues, or I don't have a job. What would you do?" Newkirk further stated that he was looking for advice as he did not want to be the first one. Crittenden replied, "Well, I don't know what you should do. I can't tell. But I know what I would do." Newkirk then told Smith and Buffington to go ahead and have him fired, that he would not reinstate himself in the Independent.

Upon Newkirk's refusal to reinstate himself with the Independent, Foreman Gahagan asked him what time he wanted to leave, whether he wanted to finish the day, out or leave at 3 o'clock. Newkirk replied that he might as well go at once. Gahagan then asked Newkirk to stay around for a little while and help out on some "pumps." Newkirk replied that he would do so, but that he would leave at 4 o'clock. He was given a gate pass "out" for 4 o'clock that day. When Newkirk reported to Personnel Manager Mathews' office at 4 o'clock to receive his check, Newkirk signed a "Termination Report" which gave as the reason for his termination "At demand of Romec Employees Independent Labor Association, Inc, pursuant to terms of contract." The report further indicated that the rehiring of Newkirk was recommended, that his "ability" was good, "Productivity" was fast, "Attendance" was regular, and "Department" was cooperative. Under the section of the report headed "EMPLOYEE PROTEST" appears the following statement:

"The union demanded that I become reinstated which is a condition of employment. The foregoing is the reason for the termination of my employment."

Personnel Manager Mathews testified that prior to Newkirk's discharge, in a conversation with Buffington and Forest Smith, officers of the Independent, he asked them, "Why do you pick on a good man [Newkirk] like that?" and that when Buffington replied that the "Independent wanted the source," he [Mathews] understood the remark to mean the leader of the A. F. L. Mathews also testified

that Newkirk would not have been discharged except for the demand of the Independent, and that the termination report correctly set forth the only reason for Newkirk's discharge—"pursuant to the terms of the contract." The respondent, however, concedes readily that there is a defect in the contract and the [membership] card [signed by Newkirk]. The card which has been presented here, signed by Newkirk, does not comply with the requirements of the contract, as to the sort of statement that should be filed with the Company to make the maintenance clause [of the contract] effective on that particular employee. "I [Fauver, counsel for the respondent], don't believe that means that the discharge of Newkirk was in violation of the Act."

The provision of the contract above referred to which provides for the maintenance of membership states that only in those instances where the employees after the consummation of the agreement "individually and voluntarily certify in writing that they will, as a condition of their continued employment [with the respondent], maintain their membership in the Association [Independent] in good standing as to the payment of dues during the life of the contract." The membership card of Newkirk was signed prior to the consummation of the contract¹⁴ It is also admitted that, arguendo, the card was properly dated, it does not comply with the terms of the contract as certifying in writing that Newkirk will, as a condition of employment, maintain membership in the Independent by paying dues

The respondent admits "there is no dispute as to the facts" surrounding Newkirk's discharge, and that the only justification for his discharge is that the Independent said, "he [Newkirk] gets out or we [the Independent] strike." There is no substantial evidence in the record to indicate that the respondent was justified in believing that the Independent would call a strike. Mathews testified that "they [the Independent] intimated that we would have a strike on our hands with the Independent Association," if Newkirk was retained¹⁵ Mathews further testified that the respondent "decided that it was better to go along with 350 employees [members of the Independent] than to cross up the Independent Association" On the other hand, when several of the employees learned of Newkirk's discharge they gathered around him, and had Newkirk not advised them to return to work there would have been an immediate and serious stoppage of work on "important war production."

The entire record requires the conclusion that the operative cause of Newkirk's discharge and the respondent's refusal to reemploy him was his A. F. L. membership and activities. No cogent reason has been advanced for its conduct with respect to Newkirk except the demand by the Independent for his discharge complemented by the "intimation" that the refusal to discharge Newkirk would result in an interruption of work. The respondent had a strong antipathy to the A. F. L., and Newkirk was its most active protagonist as well as its president. That a discriminatory motive underlay the respondent's treatment of Newkirk is further evidenced by the condition imposed by the respondent at the insistence of its dominated Independent—Newkirk, reinstate yourself with the Independent as a condition of employment in the plant. The imposition of such a condition to Newkirk's employment under the circumstances herein is a clear violation of

¹⁴ When Newkirk signed the Independent membership card the latter part of March 1943, he did not date the card, although it bears the date of April 1. The evidence is undisputed that the contract was consummated on April 8 and was made effective as of April 1, 1943.

¹⁵ The respondent in its brief states: "It wasn't particularly material to the Company in attempting to prevent an interruption of important war production, whether the contract requires Newkirk's discharge or not, or why the Independent Association wanted him discharged."

Section 8 (3) of the Act. In addition, the undersigned concludes that the respondent in discharging Newkirk surrendered to the Independent its managerial responsibilities with regard to Newkirk's employment, and without reason acquiesced in and adopted the Independent's functional animus against him. Such action by the respondent was plainly violative of the Act, particularly in this instance where there was no necessity of yielding to the importunities of the Independent. Such an exigency, even if existing, offered the respondent no justification for failing in its affirmative duty to protect Newkirk in his employment.¹⁶ The undersigned finds that by discharging Donald B Newkirk on February 10, 1944, and thereafter refusing to reinstate him because of his failure to maintain membership in the Independent and his membership and activities in the A. F. L., the respondent discriminated against him in regard to his hire and tenure of employment and thereby discouraged membership in the A. F. L. and encouraged membership in the Independent, and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.¹⁷

C. The alleged discriminatory discharge of Knepper

Giles Knepper was employed by the respondent on or about November 11, 1941, and until his discharge on August 17, 1943, served principally as a flier. His employment record was not satisfactory,¹⁸ due in a large measure to the attitude

¹⁶ There is no "closed shop" agreement between the Independent and the respondent that would justify Newkirk's discharge because of his failure to maintain membership in that organization, and while the respondent contends that such discharge was induced by the Independent, the respondent thereby acquired no immunity for the prohibition imposed by the Act. See *Matter of Hudson Motor Car Company and International Union, United Automobile Workers of America*, A. F. L., 34 N. L. R. B., 815, N. L. R. B. v. *Star Publishing Company*, 97 F. (2d) 464, 465 (C. C. A. 9), enfg. *Matter of Star Publishing Company and Seattle Newspaper Guild*, 4 N. L. R. B., 498. See also *McQuay-Norris Manufacturing Company v N. L. R. B.*, 116 F. (2d) 748 (C. C. A. 7), cert. denied, 313 U. S. 565, enfg. *Matter of McQuay-Norris Manufacturing Company and United Automobile Workers of America*, Local No. 226, 21 N. L. R. B., 704, *Wilson & Co Inc v N. L. R. B.*, 123 F. (2d) 411 (C. C. A. 8), enfg. as modified, respectively, *Matter of Wilson & Co Inc and United Cannery, Agricultural, Packing & Allied Workers of America*, Local No. 216, 26 N. L. R. B. 273, and *Matter of Wilson & Co, Inc and United Cannery, Agricultural, Packing & Allied Workers of America*, Local 216, 26 N. L. R. B., 297. Cf. *Matter of Motor Products Corporation and Claude B. Apple, Steve Oullock, Joseph G. Green, Lynn McKechnan and Rosemary O'Mara*, 34 N. L. R. B. 1236.

¹⁷ The respondent contends in its brief that the situation herein is "somewhat similar" to that set forth in the *Matter of New York and Porto Rican Steamship Company, et al.*, 34 N. L. R. B., 1028. The undersigned cannot concur in this contention of the respondent. The facts in this case are plainly distinguishable from those therein. There the respondent maintained a "neutral attitude with respect to the union affiliations of their employees", and it was upon this basis that the Board concluded that while there had been a "technical violation" of the Act it would not effectuate the purposes of the Act to require reinstatement of the employees. In the present case the facts are conclusive that the respondent has not maintained a neutral position, but has, in contrast, by the formation of the Independent, by interfering with its administration, and by financial and other assistance given to it, expressed a preference for that organization.

¹⁸ Knepper testified that he received 55 cents per hour when first employed and 75 cents per hour at the time of his discharge. This testimony apparently was offered to provide a foundation that would support an inference that Knepper was a competent worker. According to Knepper's testimony, he received four raises during the period of his employment. However, the record is incomplete concerning the circumstances under which two of the earlier increases were given. Of the latter increases, one was due to a general raise granted all employees, and the other an individual increase obtained through the efforts of his foreman, Wachter. Wachter testified that while Knepper was a poor worker he had to make a living, and "if he buys a loaf of bread it costs him as much as it costs you and I. It all costs him just as much as you and I." Under the circumstances reflected in the record herein, the undersigned does not believe that the increases which Knepper received during his employment with the respondent were indicative of whether or not he was a competent worker.

which he displayed toward his fellow workers and his foreman. The undersigned's observation of Knepper while testifying supports the respondent's contention that he is distinctly of the noncooperative and irrational type. Knepper joined the A. F. L. shortly before his discharge but was not at all active in its behalf. Foreman Wachter testified that while he was not sure that Knepper belonged to the A. F. L., he assumed that Knepper was a member because most of the employees in his department, according to information he had received from employee Taylor were members.

The respondent contends that Knepper was discharged because he walked off the job without permission and was noncooperative. The facts as testified to by Foreman Wachter are, in most respects, uncontroverted, and are here briefly summarized:¹⁰

On August 17, 1943, shortly after the lunch period, one of the employees in the department in which Knepper worked asked Foreman Wachter if he could turn on the heat as the room was rather cold. Wachter gave the employee permission to light the heater. Knepper shortly thereafter entered into a discussion and argument with the other employees as to whether or not the heat was necessary. After some discussion with the employees Knepper, instead of going to Foreman Wachter about the matter, left the department and went to the guardhouse and inquired of the guard whom he could see that would have authority to turn off the heat. Wachter, who had gone to Plant No. 1, returned to the department and found the employees standing in a huddle. He asked the employees what was the matter and they reported to Wachter that Knepper had insisted upon having the heat turned off, and that after some discussion Knepper left the department and went to the guardhouse to see if he could call up some higher authority. Foreman Wachter then went to the door leading from the department and observed Knepper in the guardhouse. In about 10 minutes Knepper returned and started to work at his bench. Shortly thereafter Wachter asked Knepper, "Who the heck gave you permission to walk off the job?" Knepper replied, "I didn't need any." Wachter then said "If you do that again, I gonna fire you." Knepper then replied, "Hell, you haven't got authority to fire anybody around here." Wachter then went to the time clock and punched out Knepper's time card. Wachter testified that this statement of Knepper made him "kind of sore"; that he decided to find out if he had the right to fire people, and told Knepper that if he did not have such authority he might as well leave the plant himself. Wachter then told Knepper that the latter was through. Knepper replied that he was not going to leave until he received a check for the wages that were due him. Foreman Wachter then went to the pay roll department, had Knepper's check made out and returned to the department. When Wachter returned to the department he requested Plant Guard Heritage to accompany him to Knepper's bench because on several prior occasions Knepper had threatened some of the employees, and "sometimes he went completely out of his mind, the way he acted." Wachter then told Knepper that he was discharged and to check out his tools. After Knepper had checked out his tools Wachter handed him his check, but Knepper refused to accept it stating that he was only being paid until 2.00 p. m. when in fact it was 2 minutes after that time. To satisfy Knepper

¹⁰ The facts herein concerning the discharge of Knepper are based upon the creditable testimony of Foreman Wachter whose testimony was convincing. His testimony was frank and straightforward. In contrast, the undersigned was unimpressed by the testimony of Knepper. Knepper's attitude and demeanor were definitely hostile throughout his testimony, especially when testifying concerning his relationships with his foreman and fellow-workers. In addition, Knepper evidenced a desire, for his benefit, to color his testimony. In those instances where there is any conflict between the testimony of Foreman Wachter and Knepper, the undersigned believes Wachter's version of what occurred on August 17.

per that the time was correct; Guard Heritage accompanied Knepper to the time clock which indicated that it was 2 minutes before 2. Knepper then accepted his check and started another discussion with Wachter, stating, "Do I get fired for joining the A. F. L.?" Wachter replied, "No; you are getting fired for walking off the job." Knepper then said, "You know I was an A. F. of L. man." Wachter said, "Well George [Taylor] told me three weeks ago you joined the A. F. of L., better watch out, all guys in No. 2 plant are A. F. of L. men."

The undersigned now turns to a consideration of the Board's contention that Knepper was discharged because of his union activities. Knepper did not participate in any activities in behalf of the A. F. L. The only incident, aside from the fact that Foreman Wachter assumed that Knepper was a member of the A. F. L., that could possibly provide a foundation which would support an inference that he was discharged because he was a member of the Union or that Foreman Wachter thought he was a sympathizer of the A. F. L., occurred on August 17, the day of Knepper's discharge. According to the testimony of Knepper, Foreman Wachter after discharging him stated that he (Knepper) should have been discharged some time ago when Works Manager Anderson had advised him (Wachter) that Knepper belonged to the A. F. L. Taylor, a former truck driver for the respondent, testified that he was present on the day that Wachter discharged Knepper, and that Wachter, after he had discharged Knepper, told him, "Anderson said we should have fired you long ago when you joined the Union." As heretofore indicated, the undersigned does not give credence to Knepper's testimony, and the undersigned also rejects Taylor's narration of what was said by Wachter. In addition, the testimony of Knepper and Taylor is somewhat inconsistent as to just what was said, and the probabilities inherent in the surrounding circumstances which occurred at the time of Knepper's discharge makes their testimony improbable. Further, it is incredible in view of the activity of the officers and other members of the A. F. L., some of whom worked in Wachter's department, that Knepper should have been selected for discharge. On the other hand, the record contains convincing evidence that Knepper was discharged because of his attitude in the department and leaving the department without permission. Furthermore, from the testimony of Knepper the undersigned believes that he was fully aware of the situation resulting in his discharge. He placed in motion the chain of circumstances which caused the termination of his employment.

The undersigned finds that Giles Knepper was discharged for nondiscriminatory reasons and that the respondent had not discriminated against him in regard to his hire and tenure of employment.²⁰

D. The alleged discriminatory discharge of Benjamin

Harold W. Benjamin started working at the respondent's plant in February 1942, and his employment was terminated on or about September 4, 1943. Benjamin at first worked for the respondent as an inexperienced machine operator at 55 cents per hour. At the time that his employment was terminated he was a Blanchard surface grinder operator receiving \$1.00 per hour. Benjamin was a satisfactory and competent worker. He was active in behalf of the A. F. L. in its organizational campaign conducted in respondent's plant in August 1942. When that organization renewed its activities in the plant in July 1943, Benjamin took no part in the organizational campaign, but did join the A. F. L. on

²⁰ Nothing in the record supports the inference necessary to the finding of discrimination or that Knepper's discharge by Foreman Wachter was made in bad faith, or that the incidents occurring on August 17, 1943, provided a pretext for the discharge of Knepper for union reasons.

or about August 15 Benjamin's employment was terminated for the reason that he "came in late—found another man doing a rush job on his machine and he walked off the job."

The respondent contends that Benjamin was discharged because on or about September 2, 1943, he reported a few minutes late for work, found another operator operating his machine and "walked off the job."²¹ On the morning of September 1 or 2, Benjamin reported a few minutes late and found that the set-up man was operating his Blanchard machine. He did not inquire of his foreman why the machine was in use, but after being advised by the set-up man that he would be through with the machine shortly Benjamin went into one of the other departments, sat down, and read the morning paper.²² In about half an hour Benjamin returned to his machine and found that the set-up man had left it in a very dirty condition. Benjamin then went to Foreman Hackathorn complaining about the condition in which the machine was left. Benjamin was quite excited and requested his foreman to issue him an "out" pass so that he could go home, insisting that Hackathorn was trying to give him a "grand run around." Hackathorn explained that the set-up man was doing a rush job and that there was no "run around" about it. Benjamin then stated that "Well, the way he left the machine, it sure looks like something was going on and I would like [to have] a pass and go home." Hackathorn refused to issue Benjamin a pass and Benjamin then became "hot under the collar" and swore a "little." Finally, upon Benjamin's insistence, Hackathorn issued him a pass. Benjamin went home about 7:00 o'clock in the morning, telling Hackathorn that he would return to work the following morning. Benjamin failed to report for work the following morning, but late in the afternoon of that day Benjamin reported to the office for the purpose of talking to the general superintendent. As Benjamin entered General Superintendent Murray's office, Murray stated to him that he had been "fired for failure to show up for work." During the conversation between Benjamin and Murray, there was some reference to the fact that Benjamin had been late the previous morning, although it was not unusual for Benjamin as well as other employees to come in late in the morning.²³

The Board contends that Benjamin's union activities were instrumental in his discharge, although admittedly he was not an active adherent of the A. F. L. Benjamin testified that in August 1942, Personnel Manager Mathews suggested to him that he was altogether too active in the A. F. L. organization and that the Independent Union was coming back into the plant.²⁴ After this remark by Mathews, Benjamin became inactive in the organizational campaign of the A. F. L., joined the Independent Union and paid a month or two dues to that organization. Thereafter Benjamin evidenced no further interest in the A. F. L. or the Independent, and when the A. F. L. renewed its activities in the plant in July 1943 he remained inactive. Benjamin, on or about August 15, 1943, joined the A. F. L., but there is no evidence to indicate that the respondent had knowledge of his membership. The Board contends that Foreman Hackathorn knew that Ben-

²¹ Unless otherwise indicated, the facts set forth in this section are undisputed.

²² Hackathorn, foreman of Benjamin's department, testified that when Benjamin was late on that particular morning there was a rush job that had to be done, and that the set-up man, finding Benjamin's machine not in use, had set up the job on that machine.

²³ The Board offered a substantial amount of testimony to support its contention that the respondent has never disciplined employees for being late in the morning or for staying out an entire day without notice. That such a situation existed in the plant is clear. While Benjamin was a few minutes late on the morning of September 1 or 2, the undersigned is convinced that this had little, if anything, to do with his discharge, because in the conversation between Hackathorn and Benjamin on the morning that Benjamin left the plant Hackathorn made no reference to the fact that Benjamin was late on that day.

²⁴ This finding is based upon the credible testimony of Benjamin, in some respects corroborated by the testimony of Murray.

jamin was an A. F. L. adherent because in the top of Benjamin's tool box he had an A. F. L. campaign button. There is, however, no evidence to indicate that Hackathorn was aware of the button, nor is the evidence sufficient from which to draw such an inference. Benjamin testified to another incident which occurred about a month before his termination of employment. According to his testimony, Hackathorn and Buffington, president of the Independent, were standing about 20 feet from his machine talking. At the conclusion of their conversation, Hackathorn came over to Benjamin's machine and asked him where he stood with respect to the A. F. L. Benjamin stated that he would back the A. F. L. "all the way through." He also told Hackathorn that he couldn't see the "Company Union" because they had been promising various things and "they had been lying to us a little too long." During the conversation Benjamin also referred to the fact that the Independent Union had taken credit for vacations with pay when, in fact, the respondent had granted the vacations, but made it appear as though the Independent had obtained them, thus giving credit to the Independent. Whether or not Hackathorn discussed the A. F. L. with Benjamin on this occasion does not alter the undersigned's conclusion that Benjamin's employment was not terminated because of A. F. L. membership or activities, for the reason that Benjamin initiated and created the situation which resulted in his termination of employment.

The evidence fails to show that Benjamin's membership or activities in behalf of the A. F. L. induced his discharge. The entire record herein convinces the undersigned that his termination of employment was not discriminatory. The undersigned concludes and finds that the respondent's termination of Benjamin's employment was not motivated by his membership in or activities on behalf of the A. F. L.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III A and B above, occurring in connection with its operations 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

Since the undersigned has found that the respondent has engaged in unfair labor practices, the undersigned will recommend that the respondent cease and desist therefrom and take certain affirmative action which the undersigned finds necessary to effectuate the policies of the Act.

The undersigned has also found that the respondent discriminated as to the hire and tenure of employment of Donald B. Newkirk, because of his membership in and activities on behalf of the A. F. L. In order to effectuate the policies of the Act, the undersigned will recommend that the respondent offer to Donald B. Newkirk, immediate and complete reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges. The undersigned will further recommend that the respondent make Donald B. Newkirk whole for any loss of pay he has suffered by reason of the respondent's discrimination, by payment to him of a sum of money equal to the amount he would have earned as wages from the date of his discriminatory discharge, to the date of the offer of reinstatement, less his net earnings during that period.²⁵

²⁵ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working else-

The undersigned has further found that the respondent by the discharge of Giles Knepper on or about August 17, 1943, and Harold W. Benjamin on or about September 2, 1943, has not discriminated against them in respect to their hire and tenure of employment and the undersigned will therefore recommend that the complaint be dismissed insofar as it alleges such discrimination.

Upon the basis of the foregoing findings of fact and on the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. International Association of Machinists, affiliated with the American Federation of Labor, Federal Labor Union No. 23468, affiliated with the American Federation of Labor, and Romec Employees Independent Labor Association, Inc., unaffiliated, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Donald B. Newkirk, the respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8 (3) of the Act.

3. 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.

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

5. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act, by the termination of the employment of Giles Knepper and Harold W. Benjamin.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned hereby recommends that the respondent, Romec Pump Company, (Elyria, Ohio), its officers; agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Association of Machinists, affiliated with the American Federation of Labor, or in any other labor organization of its employees by discriminatorily discharging 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 employment;

(b) Encouraging membership in the Romec Employees Independent Labor Association, Inc., unaffiliated, or any other labor organization of its employees by according to that organization or any other organization discriminatory privileges;

(c) 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, or to bargain collectively through representatives of their own choosing, or 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.

where than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N L R. B 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.* 311 U S. 7.

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

(a) Offer to Donald B. Newkirk, immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges;

(b) Make whole Donald B. Newkirk, for any loss of pay which he may have suffered because 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 from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during such period;²⁸

(c) Post immediately in conspicuous places throughout its plant in Elyria, Ohio, and maintain for a period of at least 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 the undersigned has recommended that it cease and desist in paragraph 1 (a), (b), and (c) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) and (b) of these recommendations; and (3) that its employees are free to become or remain members of the International Association of Machinists, affiliated with the American Federation of Labor or any other labor organization and that the respondent will not in any manner discriminate against its employees because of membership in or activity on behalf of that organization or any other labor organization; and

(d) Notify the Regional Director for the Eighth Region (Cleveland, Ohio) in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply therewith

The undersigned further recommends that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said 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.

The undersigned also recommends that the complaint be dismissed insofar as it alleges that the respondent has discriminated in regard to the hire and tenure of employment of Giles Knepper and Harold W. Benjamin.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party or counsel for the Board 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. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director for the Eighth Region. 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 within ten (10) days from the date of the order transferring the case to the Board.

JAMES C. BATTEN,

Trial Examiner.

Dated April 27, 1944.

²⁸ See footnote 25.