

In the Matter of MACKAY RADIO AND TELEGRAPH COMPANY and
AMERICAN RADIO TELEGRAPHISTS' ASSOCIATION, LOCAL No. 8

Case No. C-132.—Decided December 29, 1936

Communications Industry—Interference, Restraint or Coercion: discrediting union; expressed opposition to labor organization, threats of retaliatory action; attempts to persuade employees to resign from union, during strike—*Strike—Employee Status:* during strike—*Discrimination:* requiring strikers to make individual applications for reemployment; non-reinstatement following strike—*Reinstatement Ordered, Strikers* discrimination in reinstatement; displacement of employees transferred to strikers' positions during or following strike—*Back Pay:* awarded.

Mr. E. J. Eagen for the Board.

Grosscup, Morrow and Ambler, of Seattle, Wash., and *Mr. J. Harold Merrick*, of New York City, for respondent.

Mr. Joseph Rosenfarb, of counsel to the Board.

DECISION

STATEMENT OF CASE

Upon a charge duly filed by American Radio Telegraphists' Association, Local No. 8, hereinafter called the Union, the National Labor Relations Board, hereinafter called the Board, by Charles W. Hope, Regional Director for the Nineteenth Region, issued its complaint dated June 2, 1936, against the Mackay Radio and Telegraph Company, Portland, Oregon, hereinafter called the respondent. The complaint and notice of hearing thereon were duly served upon the respondent and the Union.

The complaint alleges that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act. The respondent filed its answer to the complaint admitting the general nature of its business and denying the other allegations of the complaint.

Pursuant to notice, a hearing was held in Seattle, Washington, commencing on July 15, 1936, before Harry Hazel, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel. At the opening of the hearing the respondent moved for a continuance on the grounds that the issues in the case were similar to those adjudicated *In the Matter of Mackay*

Radio & Telegraph Company and American Radio Telegraphists' Association, San Francisco Local No. 3, Case No. C-16, decided February 20, 1936 (1 N. L. R. B. 201), that the ruling of the Board in that case was adverse to the respondent, and that a petition for enforcement of the Board's order was pending before the Circuit Court of Appeals for the Ninth Circuit. The motion was denied and it was thereupon stipulated by counsel that the evidence of the witness William F. Heckman would then be taken and thereafter the case be continued to July 22, 1936. Before Heckman testified, counsel for the respondent moved to dismiss the complaint on constitutional grounds and also moved that the hearing be transferred from Seattle, Washington to Portland, Oregon. Both motions were denied.

The hearing was resumed on July 22, 1936, and was concluded on July 27, 1936. Counsel for the Board moved to strike from the complaint the names of Edward Hart and B. C. Springer for the reason that they had since been reemployed by the respondent. There was no objection and the Trial Examiner granted the motion.¹ At the close of the hearing counsel for the respondent again moved to dismiss the complaint. The Trial Examiner reserved his ruling on the motion.

Full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties and a reasonable time was granted for oral argument at the close of the hearing.

Subsequently the Trial Examiner filed an Intermediate Report finding that the respondent had committed unfair labor practices as alleged in the complaint and recommending the reinstatement of the four employees alleged to have been discharged. In the Intermediate Report the Trial Examiner also denied the motions of the respondent to dismiss the complaint. The Intermediate Report was duly served upon the parties. Exceptions to the Intermediate Report were then filed by the respondent. Counsel for the respondent also moved the Board for leave to file briefs and for oral argument. Leave having been granted by the Board, the respondent filed a brief. Pursuant to notice, an oral argument was made to the Board in Washington, D. C., on October 6, 1936, by counsel for the respondent.

In its exceptions, the respondent excepted to the findings and recommendations of the Trial Examiner respecting Hart and Springer. Since their names had been stricken from the complaint on motion

¹The Intermediate Report subsequently filed by the Trial Examiner states that: "Charles Larson was dismissed from the case prior to the conclusion of the testimony." The record fails to disclose the circumstances surrounding the dismissal of Larson's case. However, there were no exceptions to this finding

of counsel for the Board, the Trial Examiner was not warranted in making such findings and recommendations, and the Board hereby sustains the respondent's exception. The other exceptions of the respondent are hereby denied, and the Trial Examiner's rulings on motions are hereby affirmed.

Upon the entire record in the case, including the pleadings, the stenographic report of the hearing, and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Board makes the following:

FINDINGS OF FACT ²

I. THE RESPONDENT AND ITS BUSINESS

The Mackay Radio and Telegraph Company, the respondent, is a California corporation. The respondent is a subsidiary of a Massachusetts voluntary trust having the name "The Mackay Companies". More than 99 per cent of the preferred and common stock of The Mackay Companies is owned by Postal Telegraph and Cable Corporation, a Maryland corporation. All of the common stock of the latter corporation is owned by the International Telephone & Telegraph Company. The Postal Telegraph & Cable Corporation also owns all of the stock of the Mackay Radio and Telegraph Company, a Delaware corporation, and all of the common stock of some 35 operating telegraph companies doing business throughout the United States under the name "Postal Telegraph". Pursuant to a written contract the Postal Telegraph Companies furnish pickup and delivery services for the two Mackay Radio and Telegraph Companies.

The respondent is engaged in the receipt and transmission by radio-telegraph of intrastate, interstate and international communications. Its principal office on the Pacific Coast is in the City of San Francisco, State of California. It also has offices in Oakland, Los Angeles and San Diego, California; Portland, Oregon; Seattle and Tacoma, Washington; Honolulu, Hawaii, and Manila in the Philippine Islands. Its plant at Portland consists of a main office (ND) located in the City of Portland, a receiving station (CR) located within the city limits of Portland, and a transmitting station located in the town of Hillsboro, Oregon.

The Mackay Radio and Telegraph Company of Delaware is likewise engaged in the receipt and transmission by radio-telegraph

² Since much of the evidence, especially as it relates to the operations of the respondent and the strike of October 5-9, 1935, is the same as in the San Francisco case, *supra*, some of the findings made herein are the same as those made in that case

of intrastate, interstate and international communications. It is operated jointly and in connection with the respondent for the continuous transmission of such communications. The Delaware company has offices in and stations in or near the following cities: Boston, Massachusetts; New York, New York; Philadelphia, Pennsylvania; Washington, D. C.; Chicago, Illinois, and New Orleans, Louisiana.

The combined land and ocean system of the Mackay companies and their various subsidiaries and affiliates comprises a network of telegraph lines extending throughout the United States, international, domestic and marine radio stations which supplement the wire and cable properties, and 37,000 nautical miles of submarine telegraph cables which reach from the United States and Canada across the Atlantic to Great Britain and Ireland, France, and the Azores Islands, and across the Pacific to the Hawaiian Islands, Midway Island, Guam, Philippine Islands, and Shanghai (China), with connection to Japan at the Bonin Islands. At the Azores Islands the system connects with direct cables to Germany and Italy. Through an affiliated company, All America Cables, Inc., the system reaches all parts of Central and South America and the West Indies. For Canadian points it connects with the telegraph system of the Canadian Pacific Railway Company, and through its other connections it reaches all other parts of the world.

International circuits of the two Mackay Radio and Telegraph Companies connect the United States with Argentina, Austria, Chile, China, Colombia, Cuba, Denmark, Hawaii, Hungary, Japan, Peru, Philippine Islands, and Vatican City. The radio stations with which the two Mackay Radio and Telegraph Companies connect in Argentina, Chile, Colombia, Cuba, and Peru are owned by other associated companies of the International Telephone and Telegraph Corporation and the stations in Hawaii and the Philippines are owned directly by the two Mackay Radio and Telegraph Companies. The two Mackay Radio and Telegraph Companies also furnish marine radio-telegraph services with ships at sea.

Two point to point circuits operate between Portland and Seattle, Washington, and between Portland and San Francisco, California. The Portland stations also operate ship-to-shore and shore-to-ship circuits. The radio and telegraph operators employed at the Portland plant are the persons who receive and transmit messages on these circuits.

The respondent handles all the messages transmitted from and received in the State of Oregon via radio-telegraph, except messages to and from ships at sea, of which messages respondent handles ap-

proximately 90 per cent. At least 90 per cent of all of the messages handled by the respondent at the Portland plant are interstate or foreign messages.

Ellery W. Stone is operating vice-president of the respondent and of the Mackay Radio and Telegraph Company of Delaware. He was formerly associated with the Federal Telegraph Company, the predecessor of the respondent. His office and that of the president of the respondent are in New York. H. L. Rodman is the general superintendent of the respondent, in charge of its operations on the Pacific Coast. R. T. Spencer is in active charge of the management of the Portland plant. Stone, Rodman, and Spencer are in daily communication with each other regarding the operating problems of the respondent at Portland. Spencer has the authority to hire and discharge operators and exercises daily supervision over them. A Mr. Woodford is traffic manager at Portland and a Mr. Burke is commercial representative.

The aforesaid operations of the respondent constitute commerce and communication among the several States and with territories and foreign countries, and the operators employed by the respondent are directly engaged in such commerce and communication.

II. THE UNFAIR LABOR PRACTICES

A. *The Union and the hostility of the respondent*

The American Radio Telegraphists' Association (hereinafter called A. R. T. A.) is a nationwide labor organization of radio operators. Local No. 8 was organized in Portland in the fall of 1934, and became one of the most powerful of the A. R. T. A. Locals. A. R. T. A. is divided into two branches, the first including point to point operators on land, and the second, the marine operators.

All the operators in the Portland plant were members of the Union with the exception of one Dwyer. Not long after the organization of the Union the respondent manifested hostility to it. According to witnesses for the Board, prior to the organization of the Union the operators' records were not examined unless a customer filed a complaint, but thereafter errors were looked up whether or not a complaint had been filed. The evidence presented by the Board also reveals that after organization of the Union, the respondent required Heckman, Hutchinson, Hickerson, and Swanson, the four employees named in the complaint, to report all errors no matter how trivial, whereas Dwyer was required to report only on major errors. The employees also testified that prior to the organization of the Union the respondent's employees at the Portland plant

were permitted to examine their error records but that thereafter such permission was withdrawn. All this was denied by Spencer, the only witness on behalf of the respondent.

The Union appointed a grievance committee consisting in part of Swanson, chairman, and Heckman. There were frequent meetings between the grievance committee and Spencer, who was duly advised of the membership of the Union. Swanson testified that Spencer frequently tried to dissuade him from belonging to the Union and asked him to form a company union in Portland, and also told him that he, Swanson, would not remain in the employ of the respondent if he did not discontinue his membership in the Union and drop his "communist" and "radical" friends. According to Swanson, Spencer further asserted that the respondent would never deal with the Union. Spencer testified that he never made the statements attributed to him by Swanson.

At one time the grievance committee took up with Spencer the case of one Turner, a part-time employee, requesting the respondent to give Turner enough work to cover at least his fare whenever he was called to work. The immediate result was that Turner was discharged.

B. *The strike*

In September, 1935, the national organization of A. R. T. A. presented to the respondent's officials in New York a general agreement concerning wages and working conditions for the entire Mackay point to point system. This agreement had previously been sent to all of the A. R. T. A. locals and ratified by them. At about the same time A. R. T. A. also presented to the respondent's officials a marine agreement relating to the terms and conditions of employment of marine operators. On behalf of the respondent, Stone, who was then in San Francisco, requested a delay for the purpose of giving the proposed agreement consideration. Such delay was granted and the time for acceptance was continued until September 23.

On October 4, 1935, the A. R. T. A. negotiators at New York decided that a strike was advisable, due to the unsatisfactory state of the negotiations. A strike was therefore called by A. R. T. A. against the respondent and its associated radio telegraph company effective at midnight, Pacific Standard Time, October 4. Notice of the strike was given to the officers of the respondent in New York at 7:30 P. M., Pacific Standard Time.

All of the employees at the Portland station went out on strike with the exception of the District Manager, Traffic Manager, Commercial Representative, Class D Operator Dwyer, and two clerks,

Howbrook and Levis.³ However, the Station Manager at Hillsboro, R. W. Oversby, actually remained away from his post only a few hours.

Elsewhere the strike was not so successful. It was planned and called on a nationwide basis but the response was varied. The strike at Seattle lasted for only a few hours. Only one man went on strike in Los Angeles. No one walked out at the Mackay offices in Washington, D. C.; New Orleans, Louisiana; West Palm Beach, Florida, and Rockland, Maine. A few went on strike in Chicago, but their action was ineffectual. In New York the operators remained on strike for a few hours but by October 5 most of them had returned to work. Some of the men in the New York receiving and transmitting stations remained on strike for a longer period. Only at San Francisco, California was the strike as effective as at Portland.

³The following is a complete list of the employees of the respondent in Portland, as shown by Board's Exhibit C, which is part of the stipulation hereinbefore referred to:

Name, Position and Classification of Each Man Employed Prior to the Strike

NAME	POSITION	CLASSIFICATION
Burke, Wm.....	Commercial Representative.....	None
Dwyer, D P.....	Operator.....	Class D
Hardcastle, W M ¹	Operator.....	Class C
Heckman, W F ¹	Operator.....	Class C
Hickerson, C F ¹	Operator.....	Class D
Howbrook, N C.....	Clerk.....	None
Hutchinson, F L ¹	Check Clerk.....	None
Larson, C E ¹	Operator.....	Class D
Levis, Helen.....	Clerk.....	None
Simpkins, G M ¹	Operator.....	Class D, part time
Swanson, E K ¹	Operator.....	Class C
Waddell, J H ¹	Operator.....	Class D, part time
Wallis, C B ¹	Supervisor.....	Class C.
Woodford, R P.....	Traffic Manager.....	
COUNCIL CREST (Receiving Station)		
Douglas, E K ¹	Marine Operator.....	Part time NRA relief
Hart, E H ¹	Marine Operator.....	
Livingston, J W ¹	Marine Operator.....	
Springer, B C ¹	Station Manager.....	
HILLSBORO (Transmitting Station)		
Lockwood, C A ¹	Operator.....	Part time NRA relief
Lundquist, M W ¹	Operator.....	
Oversby, R W ¹	Station Manager.....	
Schamburg, J C ¹	Operator.....	
Spencer, R T.....	District Manager.....	

¹ Indicates those who went on strike.

On the morning of October 5, Spencer called Rodman at San Francisco and spoke to him concerning the progress of the strike. Spencer then arranged for police protection for the Council Crest and Hillsboro stations. He, together with Burke and Woodford, urged the strikers to return to work, making personal canvass of the respondent's employees and not refraining from using influence with the wives of the strikers. This, however, proved unsuccessful and the peaceful picketing continued until the employees were notified on October 9 by A. R. T. A. that the strike was over.

Heckman testified that on October 8 Spencer sent to the strikers a list of names of those employees whom the respondent would reemploy, advising them to get in touch with him by phone. This list, according to Heckman, did not contain the names of the seven employees listed in the original complaint in this case. Swanson corroborated Heckman's testimony in this respect. Spencer's explanation of this incident is that he had been advised by Stone and Rodman that the strike had been called off, and so informed the strikers in the message, and that as far as he knew there were no names mentioned in this communication. He further made the equivocal statement that if there were, they were merely the names of the men whom he had not up to that time been able to reach with his message.

C. The refusal to reinstate the striking employees

When, during the morning of October 9, the Union received notice of the termination of the strike from the officials of A. R. T. A., the strikers immediately got in touch with Spencer and notified him of their willingness to return to work. About 11 o'clock in the morning the strikers came to the office of the respondent and were interviewed by Spencer three at a time. They told Spencer that since the strike had failed they had no demands to make of the respondent. Spencer required an application for reemployment to be made by each of them, stating that their applications would have to be approved either by Stone in New York or Rodman in San Francisco. He further told them: "I can take your applications for reemployment, but I want you to understand that not all of you will come back because we won't discharge a loyal employee to make room for some of you fellows." All of the employees—about 12—signed applications with the exception of Heckman, who testified that he was told by Spencer that his application would not have "much chance." Spencer denied having made the statement attributed to him by Heckman.

Swanson testified that on October 11, 1935, Spencer informed him that his application had been refused by Rodman and that he.

Spencer, was sorry to see him go as he was one of the respondent's best operators, but that the respondent was letting some of the better operators go, as well as some of the poor ones, for the purpose of bringing it forcibly to the attention of the employees that it would not stand for union activities; that the company had done so at San Francisco and New York. Spencer denied having made this statement.

On October 9, 1935, three operators from New York were transferred to the Portland station of the respondent and began working about one o'clock in the afternoon. Three others had been transferred before October 9 to the Portland station from other stations of the respondent. It is the respondent's position that all of the operators could not be reemployed when they applied since there were no vacancies at that time. This may be subject to doubt since Board's Exhibit 2D shows that although there may not have been enough vacancies in the Portland city office, there were enough vacancies in the Council Crest and Hillsboro stations to enable the respondent to reemploy more of the strikers than it did.⁴ Even assuming, however, that there were no vacancies on October 9, such vacancies have occurred from time to time since, as shown by Board's Exhibit 2E, but Heckman, Hickerson and Swanson, the three operators named

⁴ EXHIBIT 2D

Name, position and classification of each person employed after full service restored, with exact time at which each man was employed or reemployed

PORTLAND CITY OFFICE

Name	Position	Classification	(Re-)Employed	Time
Hardeastle, W M.....	Operator.....	Class C.....	Oct 14	11 a. m
Lee, P A.....	Operator.....	Class D.....	Oct 8	4 p m.
Miller, Martha.....	Cheek Clerk.....	.....	Oct 8	8 a m.
Orrell, D B.....	Supervisor.....	Class C.....	Oct 5	4 p m.
Ratliff, F K.....	Operator.....	Class C.....	Oct. 21	8 a m.
Simpkins, G M.....	Operator.....	Class D part time.....	Oct 9	3 p m
Stoughton, M.....	Operator.....	Class C.....	Oct 14	11 a m.
Waddell, J H.....	Operator.....	Class D part time.....	Oct 9	3 p m.
Wallis, C B.....	Operator.....	Class C.....	Oct 9	3 p m
Behan, J J.....	Operator.....	Class A.....	Oct 9	11 a m.
French, J E.....	Operator.....	Class A.....	Oct 9	11 a m.
Szjana, M J.....	Operator.....	Class A.....	Oct 9	11 a m

COUNCIL CREST (KER) RECEIVING STATION

Thommen, G C.....	Station Manager.....	.....	Oct. 6	
Beaulieu, F E.....	Station Manager.....	.....	Oct 16	
Berry, G R.....	Marine Operator.....	Part time NRA relief.....	Oct 8	8 a. m.
Douglas, E K.....	Marine Operator.....	.....	Oct. 12	
Livingston, J. W.....	Marine Operator.....	.....	Oct. 9	4 p m.

HILLSBORO TRANSMITTING STATION

Lockwood, C A.....	Operator.....	.....	Oct 23	
Lundquist, M W.....	Operator.....	.....	Oct 9	4 p m.
Oversby, R W.....	Station Manager.....	.....	Oct. 5	11 p m.
Schamburg, J. C.....	Operator.....	.....	Oct. 9	4 p m.

in the complaint, have not been reemployed.⁵ Thus, three vacancies occurred on October 16, 1935, when Behan, French, and Szjana, the three transferees from New York, returned to New York. Spencer claims that Hardcastle and Stoughton were hired to take their places. This, however, is subject to grave doubt since they were employed on October 14, and Spencer testified that he did not know until the morning of October 16 that Behan, French and Szjana were returning to New York. Moreover, upon resumption of normal service by the respondent, appointments to positions were made without regard to seniority or experience,⁶ several of the appointees being employees transferred to the Portland station from other stations of the respondent.⁷

The case of the fourth person named in the complaint, Hutchinson, who was a radio check clerk, differs from that of the three operators. When he applied for reemployment on October 9, 1935, his place had already been taken by Martha Miller. However, she left the respondent's employ in April, 1936, and instead of giving the place to Hutchinson, who, together with the other strikers, had filled out an application on October 9, the respondent replaced her with a messenger boy.

The records of the employees named in the complaint do not justify the respondent's failure to reemploy them at the time vacancies which they could have filled existed.

William Heckman has been a radio telegrapher for about 19 years. He was employed as a marine operator in 1923 by Federal Telegraph Company, the respondent's predecessor, and this employment continued for about two years. In 1928 he was employed by the respondent for five months in the summer, and he then worked for

* EXHIBIT 2E

Source from which each new employee obtained

PORTLAND CITY OFFICE

Lee, P. A. Transferred to Portland from San Francisco October 8 during strike (Portland men on strike until 9th).

Miller, Martha. Employed locally as check clerk on October 8 during strike.

Orrell, D. B. Transferred from Seattle on October 5.

Ratliff, F. K. Transferred from New York on October 21 at his own request and expense.

Stoughton, M. Transferred from San Francisco on October 14 at his own request and expense.

Behan, J. J. Transferred from New York via San Francisco—Back to New York Oct. 16.

French, J. E. Transferred from New York via San Francisco—Back to New York Oct. 16.

Szjana, M. J. Transferred from New York via San Francisco—Back to New York Oct. 16.

COUNCIL CREST (KEK) RECEIVING STATION

Beaulieu, F. E. Transferred from Los Angeles on October 16 (Station Manager).

Berry, G. R. Employed locally on October 8.

Thommen, G. C. Marine Inspector, Seattle, temporarily assigned to KEK, Oct. 6—relieved by Beaulieu, October 16, and returned to Seattle.

⁶ Simpkins and Waddel were Class D, part time operators.

⁷ Board's Exhibit 2E, *supra*.

Postal Telegraph for three months as a multiplex operator; subsequently, for about four months, he was with the Associated Press as radio operator. On May 1, 1929, Spencer employed Heckman at Portland where he worked until the strike. He was classified as "Class C" radio telegrapher, the highest classification in the Portland station, at a salary of \$160.00 per month. He had never been laid off on account of his error record.

C. H. Hickerson has been a telegraph operator since 1919. He was first employed by the Federal Telegraph Company and then by the respondent and was continuously so employed until the strike, at which time he was receiving a salary of \$150.00 per month. Since that time he has worked three days for the respondent as a temporary employee, relieving one Lee, who was employed in his place after the strike.

E. K. Swanson was employed by the respondent in December, 1933. His monthly salary was \$180.00. In March, 1935, Rodman, the general superintendent of the respondent, in a letter to Swanson commended him for his interest in the work of the respondent.⁸ Likewise on October 4, 1935, Spencer gave Swanson a written recommendation that: "Mr. Earl K. Swanson's services as radio operator at Portland, Oregon were entirely satisfactory."⁹

F. L. Hutchinson was a radio check clerk and had been employed in 1927 by the Federal Telegraph Company, and then by the respondent, until the strike. At that time he was earning \$79.50 per month.

The respondent's justification for the refusal to reemploy the four men is predicated upon its error records which tend to show that Swanson and Heckman had the highest error records, and that Hutchinson and Hickerson had high error records. However, the error records are of doubtful validity. In the first place, the employees were not permitted to see their error records after the organization of the Union. Again, union members were required to report all errors while Dwyer, the non-union employee, had to report only major ones. Furthermore, employees and the respondent differ as to what a major error is. Finally, there is no evidence that when the respondent refused to reinstate these employees they were told that the refusal was predicated on their error records.

We must, therefore, look elsewhere for an explanation of the respondent's failure to reinstate the four employees. Heckman and Swanson were the most active members of the Union. Heckman was a charter member of A. R. T. A. and in September, 1934, assisted the national organizer in the formation of the Portland local. He

⁸ Board's Exhibit No. 10.

⁹ Board's Exhibit No. 13.

was on the grievance committee for over a year, and, in such capacity, conferred with Spencer, Rodman, and Tuel, Stone's predecessor as operating vice-president of the company, concerning hours, wages, and working conditions. In the summer of 1935 Heckman was offered temporary promotion by Woodford but did not receive it, being told that Spencer had said the general office would not stand for the promotion of a "red". Heckman served on the picket line during the strike. Swanson joined A. R. T. A. in San Francisco in May, 1934. He was later transferred to Portland, where he was elected chairman of the Union and of the grievance committee. Hickerson was a charter member of the Union and served on the picket line during the strike. He was active in union affairs. Hutchinson had joined the Union in July, 1935, and also served on the picket line during the strike.

Analysis of the evidence in this case leads to the conclusion that the hostility of the respondent to the union activities of its employees was a moving cause of the failure to reinstate them. Although the evidence reveals a definite conflict between the parties in the case as to what occurred on many occasions, such conflict is not uncommon in every type of litigation. The argument of counsel for the respondent that the testimony of the complainants is anchored in self-interest applies equally to the testimony for the respondent.

However, the case on behalf of the employees need not rest on any of the conflicting testimony. Spencer admitted that immediately before the strike he warned the union members that if they went out on strike they would not be reemployed by the respondent. Spencer also admitted that soon after the commencement of the strike he received word from Rodman not to reemploy any of the strikers without consulting Stone and Rodman. Spencer himself testified that the applications for work made by the strikers on October 9 were sent to New York for approval. If efficiency and the record of the strikers were the only considerations in reemployment, surely there was no need for such a procedure. Spencer had the right to hire and discharge. He knew the employees better than the officials of the respondent in San Francisco or New York. Apparently, the determining factor in the reemployment which necessitated the remote control which was exercised was something other than efficiency. The evidence points unerringly to the hostility of the respondent to the union activities of the strikers as that factor.

We therefore conclude that by refusing to reinstate to employment William Heckman, C. H. Hickerson, F. L. Hutchinson, and E. K. Swanson, thereby discharging said employees, and by each of said discharges, the respondent has discriminated in regard to hire and

tenure of employment and has thereby discouraged membership in the labor organization known as American Radio Telegraphists' Association, Local No. 8, and by the acts aforesaid, and each of them, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

III. EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The strike of October 5-9, 1935, substantially interfered with the transmission and the reception by the respondent of messages in interstate and foreign commerce.¹⁰ The marine services which the respondent normally furnishes out of Portland¹¹ were completely interrupted for approximately 18 hours, that is, from 8:22 A. M., October 5, to 2:30 P. M., October 6. This abundantly shows the effect that a labor dispute has on the operations of a highly developed and complex communication system like that of the respondent.

It is well recognized that interference with the activities of employees in joining and assisting labor organizations leads and tends to lead to labor disputes that burden and obstruct commerce and the free flow thereof. Furthermore, the acts of the respondent enumerated above occurred in the course and conduct of commerce and communication among the several States and with territories and foreign countries and directly and immediately affected employees engaged in operations in the course and conduct of such commerce and communication, and who, because of their service in connection with the instrumentalities of such commerce and communication, are

¹⁰ EXHIBIT 2B

Record of Traffic Handled Over Point to Point Circuits Operated Out of Portland, Oregon, During Strike, October 5 to 9, 1935

Circuit	Date	Paid Tfc. Load			Normal Paid Tfc. Load ¹
		Sent	Recd	Total	
FD-ND.....	Oct. 5	60	21	81	252
(Morse).....	Oct. 6	Closed as per Schedule			-----
.....	Oct. 7	190	165	355	361
.....	Oct. 8	174	140	314	322
.....	Oct. 9	Normal Operation			-----
HB-ND.....	Oct. 5	(Interrupted)			0
(Morse).....	Oct. 6	Closed as per Schedule			-----
(Morse).....	Oct. 7	41	27	68	690
(Morse).....	Oct. 8	206	105	311	-----
(Radio).....	Oct. 8	0	5	5	-----
Total.....	Oct. 8	206	110	316	616
(Morse).....	Oct. 9	214	23	237	-----
(Radio).....	Oct. 9	67	283	350	-----
Total.....	Oct. 9	281	306	587	614

¹ The figure inserted in this column is one-half the sum of the number of paid messages handled on the corresponding day of the previous week and the number of paid messages handled on the corresponding day of the subsequent week.

¹¹ Board's Exhibit 2.

an integral part of the instrumentalities of such commerce and communication.

The acts of the respondent have led and tend to lead to labor disputes burdening and obstructing commerce among the several States and with territories and foreign countries and the free flow of such commerce.

THE REMEDY

By October 21, 1935, there had been enough vacancies since they had made their applications on October 9 to permit the respondent to reemploy Heckman, Swanson and Hickerson had not the respondent discriminated against them by filling these vacancies either with transferees from other stations of the respondent or with part time employees with lower rating and less seniority.¹² Consequently, by October 21, 1935, at the latest, the discrimination against the three men was complete, and we shall therefore require the respondent to reinstate them with back pay from that date. Such reinstatement shall be effected by the displacement, if necessary, of three operators with lower rating and/or lesser seniority at the Portland station.

The case of Hutchinson, the check clerk, is on a different footing. Since the discrimination against him took place in April, 1936, when Martha Miller resigned, we shall order his reinstatement with back pay from that time.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, the Board makes the following conclusions of law:

1. American Radio Telegraphists' Association, Local No. 8, is a labor organization, within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

2. By discriminating in regard to the hire and tenure of employment of its employees, thereby discouraging membership in the labor organization known as American Radio Telegraphists' Association, Local No. 8, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (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, subdivision (1) of the Act.

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

¹² Ratliff was transferred from New York on October 21. Stoughton was transferred from San Francisco on October 14. Waddell and Simpkins were part time employees.

ORDER

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders the respondent, Mackay Radio and Telegraph Company, and its officers and agents, to:

1. Cease and desist from:

(a) Discouraging membership in American Radio Telegraphists' Association, Local No. 8, or any other labor organization of its employees by discharging, refusing to reinstate or otherwise discriminating against, employees in regard to hire or 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 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.

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

(a) Offer to W. F. Heckman, E. K. Swanson, and C. F. Hickerson immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed, displacing, if necessary, three of the operators with lower rating and/or lesser seniority at the Portland station;

(b) Offer to F. L. Hutchinson immediate and full reinstatement to his former position, without prejudice to any rights and privileges previously enjoyed, displacing, if necessary, the messenger boy who took Martha Miller's place;

(c) Make whole W. F. Heckman, E. K. Swanson, and C. F. Hickerson for any loss of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from October 21, 1935, to the date of such offer of reinstatement, computed at a wage rate each was receiving at the time of his discharge, less the amounts earned subsequent to the discharge by each, respectively, and make whole F. L. Hutchinson for any loss of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned as wages during the period from April, 1936, when Martha Miller resigned her job with the respondent, to the date of such offer of reinstatement, computed at the wage rate he was receiving at the time of his discharge, less the amounts earned subsequent to the discharge;

(d) Immediately post notices to its employees in conspicuous places in its Portland, Council Crest, and Hillsboro offices, stating (1) the respondent will cease and desist in the manner aforesaid; and (2) that such notices will remain posted for a period of at least thirty consecutive days from the date of posting.

The complaint as to Edward Hart, B. C. Springer, and Charles Larson is hereby dismissed without prejudice.

[SAME TITLE]

AMENDMENT TO DECISION

February 17, 1937

The Board, being duly advised in the premises, hereby amends the Decision in the above entitled case by adding the following additional findings of fact, before the paragraph beginning "We therefore conclude . . ." (*supra*, p. 511).

FINDINGS OF FACT

Since the strike was called because of the failure of the respondent and the A. R. T. A. to come to an agreement concerning wages and working conditions, the strike was a controversy concerning terms, tenure and conditions of employment. Heckman, Swanson, Hickerson, and Hutchinson ceased work as a consequence of, and in connection with, this current labor dispute.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, the Board makes the following additional conclusions of law:

2. The strike was a labor dispute, within the meaning of Section 2, subdivision (9) of the Act.

3. Heckman, Swanson, Hickerson and Hutchinson were employees of the respondent at the time of their discharge, within the meaning of Section 2, subdivision (3) of the Act.

It is hereby ordered that conclusions of law now numbered in the decision 2, 3, and 4 be renumbered 4, 5, and 6.