

In the Matter of CLARK & REID COMPANY, INC., and CURTIS & CROSTON, INC. and PIANO & FURNITURE MOVERS, DRIVERS, PACKERS & HELPERS LOCAL UNION No. 82

Case No. C-128.—Decided December 30, 1936

Motor Truck Transportation Industry—Interference, Restraint or Coercion: expressed opposition to labor organization; questioning employees regarding organizational activity—Strike—Discrimination: discharge—Reinstatement Ordered—Back Pay: awarded.

Mr. Edmund J. Blake for the Board.

Mr. Thomas F. Sullivan, of Cambridge, Mass., for the respondent.

Mr. Nathan Greenberg, of Boston, Mass., for the Union.

Mr. Fred. G. Krivonos, of counsel to the Board.

DECISION

STATEMENT OF CASE

Piano and Furniture Movers, Drivers, Packers and Helpers Local Union No. 82, hereinafter termed the Union, having duly filed a charge with the Regional Director for the First Region, the National Labor Relations Board, by its agent, the said Regional Director, issued and duly served its complaint dated May 15, 1936, against Clark & Reid Company, Inc., Cambridge, Massachusetts, and Curtis & Croston, Inc., Boston, Massachusetts, respondents herein, alleging that the respondents had engaged in and were engaging 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 termed the Act.

The complaint, in substance, alleges that the respondents, Massachusetts corporations, with places of business in Cambridge and Boston, Massachusetts, are engaged in transporting, moving, packing, and storing of household furniture and goods in interstate commerce; that on March 28, 1936, the respondents discharged Harry Kaplan, a chauffeur, and on March 30, 1936, discharged Patrick Donaghue, James M. McNeil, Raymond McLeod, chauffeurs, and Harry Letteney, a helper, because of the membership and activity of these employees in the Union.

The respondents' answer admits that the respondents are engaged in transporting, moving, packing and storing of household furniture

and goods in interstate commerce; it admits the discharge of Harry Kaplan, but avers that he was discharged for insubordination and refusal to do his work properly. The answer alleges that McNeil and McLeod were temporary employees; that McNeil was not a chauffeur, but a helper; that the employees named, other than Kaplan, were not discharged, but had applied for reemployment, and that the respondents had agreed "that they could return should they so desire". All other allegations in the complaint are denied.

Pursuant to notice thereof, duly served on the respondents, Robert M. Gates, duly designated by the Board as Trial Examiner, conducted a hearing on May 25, 1936, at Boston, Massachusetts. The respondents appeared by counsel, Thomas F. Sullivan, and participated in the hearing. Nathan Greenberg appeared as counsel for the Union. The Board was represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties.

Upon the record thus made, the Trial Examiner, on July 28, 1936, filed an Intermediate Report, finding and concluding that the respondents, in discharging the employees named in the complaint, had engaged in unfair labor practices as alleged therein, and recommended their reinstatement with back pay.

The respondents, on August 3, 1936, filed exceptions to the Intermediate Report and a request that the case be reopened for the introduction of further testimony. In brief, the exceptions contend that the Trial Examiner's findings and conclusions are "against the weight of the evidence"; and that the respondents' relationship to their employees, although these "may be employed in assisting the movement of interstate commerce", is not "a part of commerce". The request for reopening the case is based on the Trial Examiner's rulings refusing the admission of testimony.

We find that the evidence in the record supports the Trial Examiner's findings and conclusions. We find nothing in the respondents' exceptions to the Intermediate Report which merits discussion at this stage of the proceedings or which requires any material alteration of the Trial Examiner's findings and conclusions. We find no prejudicial error in any of the Trial Examiner's rulings at the hearing, and they are affirmed. The respondents' request that the record be reopened fails to show cause for such action, and is hereby denied.

Upon the entire record in the proceeding, the stenographic report of the hearing, and all evidence, including oral testimony, documentary and other evidence, offered and received at the hearing, we make the following:

FINDINGS OF FACT

I. THE RESPONDENTS AND THEIR BUSINESS

I. (a) The respondents, Clark & Reid Company, Inc., and Curtis & Croston, Inc., are Massachusetts corporations, the former organized in 1931, the latter in 1933. The controlling interest in both corporations is owned by George E. Martin, president of Clark & Reid, and treasurer of Curtis & Croston. He is also the general manager and operating executive of both companies, and his brother, Alfred E. Martin, is an officer in both. The respondents are engaged principally in the business of moving household goods and pianos; they also do some trucking.

(b) The respondent Curtis & Croston maintains an office in Boston to receive orders; the respondent Clark & Reid has its office in Cambridge, where it maintains the warehouse and garage used by both. In fact, the two companies are operated as a single enterprise. The eight trucks owned by both¹ are kept in the Cambridge garage; the trucks are used interchangeably by both respondents, as are the employees, all of whom report for work at, and work out of the Cambridge warehouse and garage. The respondent business is seasonal, with the busiest seasons in the spring and the fall; the volume of business also increases at about the first and 15th of each month. The number of men employed by the respondents varies with their business volume, from six or seven to 25. Except during the winter, about 14 or 15 men are steadily employed; others report every morning and are employed if needed. Additional workers are called during the busiest seasons as required.

(c) The respondents are members of the National Furniture Warehouse Association and of its subsidiary, the Allied Van Lines Association. Through members of the former, the respondents obtain some out-of-town business, and in turn recommend out-of-town members to customers. Allied Van Lines operates as a clearing house through which return loads are booked by the respondents, either for their own trucks on their return to Boston from moving jobs to States other than Massachusetts, or for trucks of other movers returning from Boston to States other than Massachusetts. The respondents, unless assured of such return loads for their own trucks, generally turn long distance moving jobs over to the Allied Van Lines, and receive a commission on such business. However, the respondents' trucks, operated by their employees, make frequent trips, not on regular schedule, but as business requires, to States along the

¹ The respondents operate only seven of the eight trucks owned. Six of the trucks are closed vans.

Atlantic coast other than the State of Massachusetts. About ten per cent of the respondents' business consists of such interstate transportation of goods; the respondents' trucks and the respondents' employees are employed in such transportation.

(d) The respondents, in February, 1936, filed with the Bureau of Motor Carriers, Interstate Commerce Commission, applications for certificates to operate as common carriers of property in interstate commerce, under the Motor Carrier Act, 1935.² In its application, the respondent Clark & Reid, over the signature of its president, George E. Martin, states that the "applicant was in bona-fide operation as a Common Carrier by motor vehicles on June 1, 1935, prior thereto and since, engaged in interstate or foreign commerce in transportation of commodities"; that it has and is engaged in "over the road operations to, from and between all cities, points, places and areas in the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and District of Columbia"; that "principal traffic is to and from Boston, Massachusetts, from and to the principal cities and military posts in the above states"; and that return loads are in part secured by the respondent and in part through brokers or from other interstate common carrier movers of furniture. Its application lists particular transportation operations of the respondent to the above States and the District of Columbia from points in Massachusetts; refers to "numerous additional shipments" not listed; and sets forth the names and addresses of the statutory agents for service of process in such States and the District of Columbia. The application also states that the respondent makes "shipments by freight and steamship to all parts of the world". The application of the respondent Curtis & Croston contains the same statements and lists the same States.³ Both applications specify and describe the trucks owned and operated by the respondents, and list six of the eight trucks so owned by both as "in revenue service" in interstate operations at the date of the applications.

(e) The respondents hold themselves out to the general public and undertake to transport property for hire to States other than the State of Massachusetts and to foreign countries.⁴ The respondents, in public advertisements, hold themselves out as packers and movers

² Exhibits B-6 and B-7, made part of the record by stipulations dated October 26, 1936, between the respondents and the Board

³ The Curtis & Croston application lists one transportation job to Virginia, but lists no transportation jobs to Rhode Island or Delaware. One job from Pennsylvania is listed. Statutory agents for service of process are not specified in its application.

⁴ See statements to this effect in respondents' applications to the Bureau of Motor Carriers for certificates to operate as interstate common carriers under the Motor Carrier Act, 1935. Exhibits B-6 and B-7

“local and long distance”; they advertise “goods packed for foreign and domestic shipment” and “lift van service to all parts of the world”.⁵

II. The respondents are engaged in traffic, commerce and transportation among the several States, and between the State of Massachusetts and foreign countries; the trucks owned by the respondents are instrumentalities of, and the employees of the respondents are directly engaged in such traffic, commerce and transportation.⁶

II. THE UNION

III. Piano and Furniture Movers, Drivers, Packers and Helpers Local Union No. 82, affiliated through the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers with the American Federation of Labor, is a labor organization which includes in its membership employees of the respondents. In about September, 1935, the Union, as part of an effort to organize employees in the moving industry, attempted to enroll the respondents' employees, but because the employees feared Martin's hostility to the Union,⁷ met with no success. Organization efforts were then postponed until after the slack winter season. In March, 1936, there were several meetings between union officials and employees of the respondents. On Sunday, March 22, union officials held a meeting with Ives, Kaplan and Donahue, employees of the respondents. On the following day, March 23, seven of the respondents' employees, Harry Kaplan, Patrick Donahue, Harry C. Letteney,⁸ Raymond McLeod, Dolf Kinsman, Albert Laren, and Walter Ives, became members of the Union.

III. THE UNFAIR LABOR PRACTICES

IV. (a) Harry Kaplan and Walter Ives, both employed steadily as drivers by the respondents, attended the union meeting on Sunday, March 22, and became members on the following day. During this week, the respondents, by Martin, hired two drivers, Caster and Marrs, neither of them a union member, and on Thursday, March

⁵ Exhibit B-3

⁶ The respondents, in their answer, admit that they are engaged in interstate transportation and commerce. At the hearing they made the same admission and admitted that they were subject to the Board's jurisdiction.

⁷ There is testimony that employees of the respondents at that time feared discharge if they joined the Union. Patrick Donahue, then employed by the respondents as a chauffeur, testified that George Martin, about that time, asked him if he had been approached “about the union” and told him that “there will be no union here”, “there will be no delegates coming to my office”. Martin, in his testimony, could not recall any conversation with Donahue in connection with the Union, he denied that he had told Donahue he would throw any union delegate who came to his office through the window.

⁸ The complaint names “Patrick A. Donaghue” and “Harry Letteney”. The spellings and initials used in these findings are as found in the transcript of the hearing.

28, the two men were assigned to drive the trucks normally driven by Kaplan and Ives.⁹ Kaplan and Ives were then assigned to work on a small truck.

(b) Kaplan was discharged by George Martin when he reported for work on the morning of Saturday, March 28. According to Kaplan's testimony, when Martin had assigned trucks and jobs to the other employees, he handed Kaplan his pay and said: "We don't need you any more. You are number one. You can go back and tell Boly Rice he ain't beating up anyone. He ain't dealing with Buckley or Dunn."¹⁰ Martin, in his testimony, denied making such a statement,¹¹ and denied that he had ever heard of or met Boly Rice until the following Monday morning.¹² However, apart from Martin's testimony that Kaplan came to work 10 or 15 minutes late on the morning of March 28, the respondents offered no evidence as to the circumstances and conversation immediately accompanying Kaplan's discharge.

V. (a) On Sunday, March 29, Kaplan discussed his discharge with several other employees of the respondents and union officials at union headquarters. The next morning George Martin, on his way to begin the day's work at the respondents' garage,¹³ noticed five or six of the employees talking to Boly Rice about 300 to 500 feet from the place. Rice and two other union officials followed him into the garage. Rice presented Martin with a copy of a proposed union agreement, and asked to talk to him about Kaplan's discharge; Martin said that he would give his reply in 48 hours.¹⁴

(b) A few minutes later Donahue, Ives, Laren, Letteney and McNeill,¹⁵ all union members, the employees of the respondent who had been talking near the garage with Rice and the other union officials and who were seen by George Martin, reported for work at

⁹ Although the respondents' drivers are not assigned exclusively to particular trucks, each regular (steadily employed) driver is assigned to a truck which he drives most of the time

¹⁰ Boly Rice is the business agent of the Union "Buckley" and "Dunn" are two firms, engaged in the trucking business, which have agreements with the Union.

¹¹ The stenographic transcript of the hearing, on pages 19 to 21, refers to "Kinsman". However, it is obvious from the context that the questions and answers concern Kaplan.

¹² In his Intermediate Report the Trail Examiner on this point states "It is difficult to believe that Boly Rice was unknown to Martin at that time" (Finding 7)

¹³ The working day at the respondents' garage begins at 6:30 a m

¹⁴ While the witnesses agree as to the presentation of the union agreement, the mention of Kaplan's discharge and the 48 hour period specified for Martin's reply, they differ as to the exact language used in the conversation. George Martin and his brother testified that Rice presented the agreement and said Martin had 48 hours to sign it, "or else". Rice's version is that he stated his business, presented the agreement for consideration, asked the reason for Kaplan's discharge, and that Martin said he would let him know in 48 hours. Even if the Martins' testimony be accepted, it is just as plausible to interpret the expression, "or else", as a warning of a possible strike if Martin refused to bargain collectively, as a more serious threat. However, no finding as to the precise language used is necessary to determine the issues of discrimination before us in this case

¹⁵ Named "James M. McNeil" in the complaint

the garage.¹⁶ One or two trucks had by that time been sent out on jobs by George Martin. According to Martin, he said to them: "That is all to-day", or, "That is all this morning, fellows." Donahue, Letteney and McNeill testified that Martin said: "There is no more work here, men", and closed the garage doors. The respondents used 15 men on that day, and four or five of the trucks.

(c) The five men then left the garage and returned to where Rice and the two other union officials were waiting. The Union interpreted the incident as a discharge of the five employees and as cause for a strike, and they began picketing the respondents' garage later that day. McLeod, an irregularly employed driver and a union member, after his return to the garage from a trip to New York the next day, did not go back to work but joined the pickets.

VI. About two weeks later Ives and Laren arranged through an intermediary, according to Martin, to return to work for the respondents. As a result, because they had gone to work during the strike, their union membership was automatically suspended and a few days later they gave up their union buttons and other union credentials to Rice upon his demand. Shortly thereafter, through the intervention of a friend of Kaplan who was a customer of the respondents, Martin had conferences with Kaplan, and then with Kaplan and Donahue, about returning to work. Martin expressed his willingness to put Kaplan and Donahue back to work. According to Martin, the two employees agreed to return to work on Monday, April 27. However, Kaplan and Donahue testified that they had merely agreed to think the matter over and to let him know of their decision. There is no doubt that Martin was well aware, from the experience of Ives and Laren, that individual return to work during the strike, and without a collective settlement of the strike through the Union, mean loss or suspension of union membership. His offer to reinstate Kaplan and Donahue was necessarily subject to the condition of their ouster or suspension from the Union. Kaplan and Donahue knew this, too. Neither of them returned to work. Martin also told McLeod's wife that he would put him back to work, if he quit the Union, according to McLeod, and if he quit drinking, according to Martin. Under the circumstances, McLeod could not have returned to work without giving up union membership, as Martin was well aware.

¹⁶ The testimony of Martin and that of the union witnesses conflict as to the precise timing of the events of Monday morning. Martin testified that Rice came in to see him at 6:30 and that these men arrived for work at 6:40. Rice's testimony is that he spoke to Martin at 6:15, and the men testified they came in to work at 6:20 or 6:25. We concur in the Trial Examiner's statement in his Intermediate Report (Finding 10) that: "The evidence does not warrant a finding that the five men did or did not report on time, i. e. by six thirty. Instead the facts must be considered as showing a fast moving series of events occurring between 6:15 and 6:45 o'clock."

VII. (a) Harry Kaplan had been steadily employed by the respondents since April, 1934. For about two months, beginning about May, 1935, in addition to driving trucks, he acted as foreman, but without additional pay. According to George Martin, he demoted Kaplan from the foremanship because of complaints from other employees. Kaplan testified he voluntarily relinquished these duties because of the uncompensated "headaches" connected with them. He continued as a driver. During the slack winter months the respondents kept Kaplan and several other steadily employed workers occupied on odd jobs. In his testimony, Martin characterized him as "a pretty good driver". He was paid \$35 a week at the time of his discharge.

(b) Patrick Donahue worked for Curtis & Croston for 12 years until 1931, and was employed by Martin when he took over the business in 1933. He was employed steadily as a chauffeur or driver, and was paid \$30 a week. Harry C. Letteney, Raymond McLeod and James McNeill were irregular employees, given work as the volume of business permitted. Letteney worked 168 days in 1935 and 27 days in the first three months of 1936. His pay was \$5 a day. McLeod worked 11½ days in 1935 and 14½ days in the first three months of 1936. His pay was \$5 a day. McNeill worked 20½ days in 1935 and two days in March, 1936. He also received \$5 a day. All of these men were members of the Union when they were discharged on March 30, 1936.¹⁷

VIII. (a) In regard to the allegations in the respondents' answer that Kaplan was discharged for "insubordination and refused (*sic*) to do his work properly", George Martin testified that Kaplan had been reporting for work late for some time, that he had several minor accidents with trucks he was driving, and that he was responsible for minor damage to furniture moved. But from the testimony it is clear that none of the minor accidents to trucks were due to the fault of Kaplan, and that the damage to furniture was minor, normally to be expected in the course of moving operations, and not considered seriously by Martin as due to Kaplan's fault or calling for more than a routine reprimand. As to Kaplan's tardiness, Martin seems to have accepted the explanation that it was due, chiefly, to the illness of Kaplan's wife. Kaplan also testified that he reported late when he had come in from a long drive late the night before. Martin did not give serious consideration to what he claims to have been Kaplan's faults until after Kaplan had joined the Union. Even

¹⁷ McNeill, formerly a member of the Union, was reinstated to union membership on March 23, when other employees of the respondents became members. See finding III above.

so, Martin was willing to put Kaplan back to work several weeks after his discharge because he was "a pretty good driver".

(b) In regard to the allegations in the respondents' answer that the employees named in the complaint had applied for reemployment and that Martin had agreed they could return to work, the evidence shows that Martin had, after the strike, expressed his willingness to reinstate Kaplan, Donahue and McLeod, but under the necessary condition of loss of their union membership (see finding VI above). There is no evidence that Martin had at any time after March 30 agreed to reinstate Letteney and McNeill under any circumstances.

IV. CONCLUSIONS

IX. (a) The testimony of the witnesses on behalf of the Union and the respondents leaves much to be desired for candor and clarity.¹⁸ For the respondents, George Martin, with astonishing consistency, flatly denied or openly gave the lie to many damaging portions of the testimony of his employees. The evidence is most sharply in conflict as to what the parties said at one time or another, and as to the precise time of particular occurrences. Nevertheless, there remains a sufficient residuum of credible testimony in the record upon which to base these findings and conclusions of fact.

(b) We find that the evidence before us does not support the respondents' contention that Kaplan was discharged for "insubordination" or refusal "to do his work properly". Rather, the evidence is persuasive that he was discharged by the respondents because of his union membership. We can deduce from the evidence no other reason for his summary dismissal without warning. During the week following Kaplan's membership in the Union, Martin found occasion to reprimand Kaplan twice for faults which had theretofore not been taken seriously. A few days after he joined the Union, the truck regularly driven by Kaplan was assigned to one of the two men hired that week. Although Martin denied Kaplan's testimony of Martin's anti-union statement, containing an obvious admission that he was discharging Kaplan for union membership, when he paid him off (see finding IV (a) above), there is no testimony on behalf of the respondents as to what Martin did say to Kaplan at the time. Further, while Martin denied that he knew of Kaplan's union membership when he was discharged, and while he denied anti-union statements attributed to him during the week before Kaplan's discharge by McLeod and Letteney, he admitted that he knew that several of the respondents' employees were members of

¹⁸ In his Intermediate Report the Trial Examiner says: "There appeared to be a lack of candor on the part of nearly all the witnesses" (Finding 19.)

the Union. This knowledge, coupled with the hiring of Marrs and Castor and their assignment to the trucks regularly driven by Kaplan and Ives, both union members, convinces us that Martin had knowledge of the fact that employees of the respondents, Kaplan among them, had joined the Union. The coincidence between Kaplan's union membership, the hiring of Marrs and Castor, Kaplan's displacement from his regular truck by one of them, and his discharge is too close to permit credence of Martin's testimony that he hired these men solely because he "was getting busy" or that "it just happened that he (Castor) went on steady before Kaplan got fired". The evidence more plausibly reveals that in so hiring and assigning these men Martin was preparing himself to remind and warn the respondents' employees drastically of his anti-union attitude, originally indicated the previous fall (see finding III above). That reminder and warning came with Kaplan's discharge on March 28. Moreover, the following Monday morning when Boly Rice presented the proposed union agreement to Martin and mentioned Kaplan's discharge, Martin accepted without protest Rice's inclusion of Kaplan's discharge as part of the union's business with him, made no claim that he had discharged Kaplan for cause, and merely said he would give his reply in 48 hours.

(c) From the evidence we also conclude that Patrick Donahue, Harry C. Letteney and James McNeill, the employees of the respondents who, with Ives and Laren who later returned to work, were refused work by George Martin on Monday morning, March 30, were discharged for union membership. Martin admitted that he saw them talking with Rice a short distance from the respondents' garage as he went into the garage that morning. Rice's visit and the presentation of the proposed union agreement, and the subsequent arrival of these men for work and Martin's refusal to give them work, followed each other in rapid succession. There can be no question of Martin's knowledge, at the time the men came in to work, of the association of these employees with the Union. Martin's testimony to the effect that he refused these men work *on that day* because they were late does not bear scrutiny in the light of his own evidence that only two trucks had gone out when the men arrived for work, and that he used 15 men that morning and four or five trucks. His unusual refusal to put these five employees to work—Donahue, Ives and Laren, steadily employed, Letteney, an irregular employee but usually employed the greater part of the year, and McNeill, an irregular employee who had worked the previous Friday and Saturday and who had been told to report on Monday—under these circumstances was clearly motivated by their union membership and was obviously a discharge. These employees were fully justified in

concluding that they had been discharged, as Kaplan had been the previous Saturday, because of their union membership, and in undertaking concerted activity in picketing the respondents' place of business. Certainly when they began picketing that very day, Martin could easily have dispelled any misapprehension he may have felt they entertained as to the nature of his action in turning them away that morning. But there was no such word from Martin, either that day or on the days following.

(d) Raymond McLeod, who was away on a job for the respondents over the week-end, joined his fellow union members on the picket line after his return to the garage on Tuesday, March 31. There is nothing in the record to indicate that the respondents do not consider him in the same category as the employees discharged on Monday. The severance of his employment was due to his union membership and activity, and was based on a justifiable apprehension that to continue or return to work under the circumstances meant loss or suspension of union membership. The offer of reinstatement made through McLeod's wife was necessarily conditioned on his loss of union membership (see finding VI above).

(e) Although the respondents' answer makes no allegations of violence by union members, the respondents sought to introduce evidence of violence on the part of the Union. The record is barren, however, of evidence of violence by any of the employees seeking reinstatement. The evidence offered of alleged violence by a union official some time after the respondents had discharged Kaplan and the others under the circumstances set forth above was properly excluded by the Trial Examiner.

X. (a) The respondents' conduct in discharging Harry Kaplan, Patrick Donahue, Harry C. Letteney, James McNeill, and each of them, and in causing the severance of the employment of Raymond McLeod, as set forth above, constitutes discrimination in regard to hire and tenure of employment to discourage membership in a labor organization, in this case the Union.

(b) The respondents' conduct in discharging and causing the severance of the employment of the employees named in the preceding paragraph, because of their union membership and activity, constitutes interference, restraint, and coercion of its employees in the exercise of the rights guaranteed in Section 7 of the Act.

V. THE RESPONDENTS' CONDUCT IN RELATION TO INTERSTATE COMMERCE

XI. (a) The respondents' discharge of Kaplan and other employees as set forth above occasioned the strike on March 30 and picketing of the garage. Statistics compiled by the Bureau of Labor Statistics, United States Department of Labor, certified under the seal of the

Department and the signature of the Commissioner of Labor Statistics,¹⁹ show that in 1934, in the motor transportation industry, of a total of 67 strikes involving 67,923 workers and causing 890,724 man-days of idleness, 25 were "organization" strikes over questions of union recognition and discrimination, involved 25,703 workers, and caused 582,130 man-days of idleness. In 1935, from January to July 24 out of 47 strikes in the industry were over "organization" issues, involved 24,962 workers, and caused 113,142 man-days of idleness.

(b) The respondents' conduct as set forth above occurred in commerce, and on the basis of experience in the respondents' business and on that of others in the same and in other industries, burdens and obstructs commerce and the free flow of commerce, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

We shall order the reinstatement of the workers whose employment was severed by the respondents, with back pay. Kaplan and Donahue, who were regularly or steadily employed, are entitled to back pay in full, less whatever they may have earned since their discharges. The irregular employees are entitled to back pay in proportion to the average amount of work given by the respondents to irregular employees of their class after March 30, 1936, the date of their discharge. Thus Letteney, who was normally given a considerable amount of work (168 days in 1935) is entitled to back pay to the extent of the average work given the more steadily employed irregular workers. McLeod and McNeill are entitled to back pay to the extent of average work given by the respondents since March 30, 1936, to the more irregularly employed workers; and we shall so order.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. The Piano and Furniture Movers, Drivers, Packers and Helpers Local Union No. 82 is a labor organization within the meaning of Section 2, subdivision (5) of the Act.

2. The respondents, by discharging Harry Kaplan, Patrick Donahue, Harry C. Letteney, and James McNeill, and each of them, and by causing the severance of the employment of Raymond McLeod, because they and each of them joined and assisted a labor organiza-

¹⁹ Exhibit B-5.

tion, thus discriminating in regard to hire and tenure of employment to discourage membership in a labor organization, have engaged in and are engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

3. The respondents, by interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, have engaged in and are 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.

ORDER

On the basis of the findings and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Clark & Reid Company, Inc. and Curtis & Croston, Inc., and their officers and agents, shall:

1. Cease and desist from in any manner interfering with, restraining or coercing their employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

2. Cease and desist from in any manner discouraging membership in the Piano and Furniture Movers, Drivers, Packers and Helpers Local Union No. 82, or any other labor organization, by discrimination in regard to hire or tenure of employment or any term or condition of employment, or by threats of such discrimination.

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

(a) Offer to Harry Kaplan, Patrick Donahue, Harry C. Letteney, James McNeill and Raymond McLeod, and each of them, immediate and full reinstatement, respectively, to their former positions, without prejudice to their seniority or other rights and privileges previously enjoyed;

(b) Make whole the said Harry Kaplan and Patrick Donahue, and each of them, for any losses 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 of them, respectively, would normally have earned as wages during the period from the date of the severance of his employment to the date of such offer of reinstatement.

ment, computed at the wage rate each was paid at the time of such discharge, less any amounts, if any, which each earned during such period;

(c) Make whole the said Harry C. Letteney, James McNeill and Raymond McLeod, and each of them, for any losses of pay they have suffered by reason of the severance of their employment by payment to each of them, respectively, of a sum of money equal to that which each of them, respectively, would normally have earned from the date of the severance of his employment to the date of such offer of reinstatement, computed, for each of them, at the average amount earned by irregular employees of the respondents who were employed during such period to the same extent as each of them had normally been employed;

(d) Post notices in conspicuous places in the respondents' garage, stating (1) that they will cease and desist as aforesaid; and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.