

In the Matter of AMERICAN POTASH & CHEMICAL CORPORATION and  
BORAX & POTASH WORKERS' UNION No. 20181

Case No. C-127.—Decided July 28, 1937

*Chemical Industry—Company-Dominated Union:* domination and interference with formation and administration; sponsorship and support; discrimination in favor of; disestablished as agency for collective bargaining—*Discrimination:* discharges for union activity; discharges for attempts to remove company influence from company-dominated union; demotion—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. Bertram Edises* for the Board.

*Gibson, Dunn & Crutcher*, by *Mr. J. Stuart Neary* and *Mr. Henry B. Ely*, of Los Angeles, Cal., for the respondent.

*Mr. Howard Lichtenstein*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

Charges and amended charges having been duly filed by the Borax and Potash Workers' Union No. 20181, herein called the Union,<sup>1</sup> the National Labor Relations Board, herein called the Board, by Towne Nylander, Regional Director for the Twenty-first Region (Los Angeles, California), issued and duly served its complaint dated April 24, 1936, against the American Potash and Chemical Corporation, Trona, California, the respondent herein, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 stat. 449, herein called the Act, and that in April 1936, the respondent discharged, and has at all times since that date refused to reinstate Earl Wright, H. S. Hardie, J. C. McConahey, R. C. Whitehurst, and Carl Campbell, employees of the respondent, because they joined the Union and engaged in concerted activities with other employees of the respondent, for the purpose of collective bargaining and other mutual aid and protection.<sup>2</sup>

<sup>1</sup> The pleadings incorrectly designated the Union as Borax & Potash Workers' Union Local No. 20181.

H. S. Hardie is referred to as Henry Simpson Hardie, J. C. McConahey as J. C. McConahey, and R. C. Whitehurst as Richard C. Whitehurst in the record.

<sup>2</sup> At the conclusion of the Board's case, the Trial Examiner granted the motion made by counsel for the Board to strike the name of Carl Campbell from the complaint.

On May 1, 1936, the respondent filed its answer to the complaint denying that its operations affect interstate commerce within the meaning of the Act and denying that it had engaged in or was engaging in the alleged unfair labor practices.<sup>3</sup> In addition, the respondent filed a motion to dismiss the complaint for the reasons that the Act is unconstitutional and that the Board has no jurisdiction over the respondent's business or activities.

Pursuant to notice, a hearing was held in Randsburg, California, from May 4, through May 7, 1936, before Carey McWilliams, the Trial Examiner duly designated by the Board. On May 14, 1936, the hearing was resumed in Los Angeles, California, and closed on June 3, 1936. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties. Both at the opening and close of the hearing, the respondent renewed its motion to dismiss, decision thereon being reserved by the Trial Examiner.

On July 6, 1936, the Trial Examiner filed his Intermediate Report in which he found that the respondent had engaged in and was engaging in the unfair labor practices alleged in the complaint, but recommended that the complaint be dismissed for the reason that the acts committed by the respondent are not unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act. Thereafter, both the respondent and the Union duly filed exceptions to the Intermediate Report.

On September 19, 1936, the Union filed supplemental charges on the basis of which the Board issued and duly served its second amended and supplementary complaint, dated October 2, 1936, against the respondent, incorporating the allegations contained in its complaint dated April 24, 1936, and further alleging that the respondent, during the month of August 1936, discharged and has at all times since that date refused to reinstate H. O. Goddard, R. O. Lamson, E. M. Ball, J. B. Kennard, and C. Pratt, and demoted and has since refused to rescind the demotion of J. L. Ivers, all employees of the respondent, because they joined the Union and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection.<sup>4</sup> In addition, the second amended and supplementary complaint alleged that during the month of August 1936, the respondent also discharged and has at all times since that date refused to reinstate O. S. Kunkel, L. A. Sherriff, H. Webb, George Cline, H. B. Winslow, E. Pulcifer, and R. Wilgus, employees of the respondent

<sup>3</sup> Thereafter the respondent filed an amended answer substantially the same as its original answer.

<sup>4</sup> R. O. Lamson is referred to as Robert O. Lamson, E. M. Ball as Elbert Marshall Ball, and C. Pratt as Leroy Pratt in the record.

and officers or members of the Allied Chemical Workers' Association, herein called the A. C. W. A., for the reason that they formed and became members of a committee to protest, and did protest, to the respondent against the discharges of R. O. Lamson and H. O. Goddard, and the demotion of J. L. Ivers, and for the additional reason that they attempted to free the A. C. W. A. from the domination, interference, and control of the respondent.<sup>5</sup>

On October 9, 1936, the Union filed additional charges against the respondent, upon which the Board, by its Regional Director for the Twenty-first Region, issued and served its complaint dated October 9, 1936, against the respondent, alleging that the respondent, during the month of September 1936, discharged and has at all times since that date refused to reinstate F. F. Matlock, Otto Duval, Charles Winton, Fred Balch, and R. K. Rogers, employees of the respondent, because they joined the Union and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection;<sup>6</sup> that these acts constitute unfair labor practices within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act.

Thereafter, the respondent filed answers to the second amended and supplementary complaint, and to the complaint dated October 9, 1936, denying the allegations contained therein. In addition, it filed a motion to dismiss, based upon the same grounds as those contained in its original motion of May 1, 1936.

Pursuant to the notices contained in these latter complaints, a hearing was held in Los Angeles, California, commencing on October 15, 1936, before Benedict Wolf, the Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues raised in these latter complaints was afforded to all parties. At the close of the hearing the respondent made various motions to dismiss the complaints, such motions being based upon the constitutional invalidity of the Act, lack of jurisdiction, and the failure of proof to controvert the findings contained in the Intermediate Report of July 6, 1936. The Trial Examiner denied these motions and granted the motion of counsel for the Board to permit the previous record of

<sup>5</sup> At the conclusion of the second hearing, the Trial Examiner granted the motion of counsel for the Board to dismiss the complaint, without prejudice, with respect to the discharge of H. B. Winslow. O. S. Kunkel is referred to as Owen Scott Kunkel, L. A. Sherriff as Lawrence A. Sherriff, H. Webb as Harold Carl Webb, George Cline as George E. Cline, E. Pulcifer as Elmer Pulcifer, and R. Wilgus as Russel V. Wilgus in the record. It should be noted that the A. C. W. A. was invited to be represented prior to the commencement of any proceedings in this case, but it refused to be represented by counsel or otherwise to participate.

<sup>6</sup> At the conclusion of the second hearing, the Trial Examiner granted the motion of counsel for the Board to dismiss the complaint, without prejudice, with respect to the discharge of Charles Winton and R. K. Rogers.

F. F. Matlock is referred to as Franklin F. Matlock in the record.

testimony taken pursuant to the complaint dated April 24, 1936, to be incorporated into the record of testimony taken pursuant to the complaints dated October 2, 1936, and October 9, 1936, in so far as the previous record describes the business activities of the respondent.

By order of the Board, dated October 20, 1936, all the proceedings were consolidated and transferred to the Board for the purposes of further consideration, in accordance with Article II, Section 37 of National Labor Relations Board Rules and Regulations—Series 1, as amended.

We have reviewed all the rulings made by the Trial Examiners on motions, objections, and other matters, and find that no prejudicial errors were committed. The rulings are hereby affirmed. We have fully considered the exceptions to the Intermediate Report, filed both by the respondent and the Union, and we find no merit in the respondent's exceptions. For the reasons hereinafter set forth, we sustain the Union's exception to that part of the Intermediate Report which finds that the unfair labor practices committed by the respondent are not unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act.

Upon the entire record in the case, the Board makes the following:

#### FINDINGS OF FACT

##### I. RESPONDENT AND ITS BUSINESS

The respondent was incorporated in the State of Delaware on June 4, 1926, and is authorized to issue 1,000,000 shares of no par value stock, of which 528,390 shares were outstanding and owned by 176 stockholders in 1934. In the same year, the total assets of the corporation amounted to \$15,564,048.

The respondent, through stock ownership, controls the Trona Railway Company, a standard gauge railroad extending a distance of 30.25 miles from Trona to Searles, California, where it connects with the Southern Pacific Lines.<sup>7</sup> Its traffic consists almost entirely of the respondent's products, all of which are shipped over this railroad. In 1934, its equipment consisted of two locomotives and one passenger coach, and it utilized the services of 37 employees. The Trona Railroad is subject to regulation by the California Railway Commission, and its tariff schedules come within the jurisdiction of the Interstate Commerce Commission.

The respondent is engaged in the manufacture of potash, boric acid, borax, soda ash, and sodium sulphate from brine extracted

<sup>7</sup> In 1935, 1,500 shares, valued at \$150,000, were outstanding, of which the respondent held 1,497 shares, and W. E. Burke, the respondent's manager, O. M. Simpson, the respondent's assistant manager, and E. A. Donohoe, the respondent's property and claim agent, held one share apiece. Board's Exhibits Nos. 28-P, 29. (Unless otherwise indicated, references are to exhibits introduced at the first hearing.)

from Searles Lake. The process consists in the concentration of the lake brine, the cooling of the concentrated liquor, and the retreatment of salts eliminated during evaporation. The brine is pumped from wells drilled through the porous salt deposit covering the bed of the lake.

The respondent's plant is situated in Trona, California, on the northwest edge of Searles Lake, 185 miles from Los Angeles. Trona, an unincorporated area, is a company town, the land, houses, stores, and municipal facilities being owned by the respondent.<sup>8</sup>

Approximately 900 employes, including some 250 clerical and supervisory employes, are engaged in the operation of the respondent's plant, in the following departments: accounting, engineering and maintenance, industrial relations, production, research and development, supplies, traffic, and the Trona Railway. In addition, 25 employes are distributed among the respondent's sales offices maintained in Los Angeles, New York City, Atlanta, Baltimore, and Columbus, Ohio.

The respondent is one of the three major producers of potash in the United States, and with the Pacific Coast Borax Company is responsible for the greater portion of the world's supply of borax.<sup>9</sup> In 1935, its total sales amounted to 281,942 short tons, of which 21,890 tons, or 7.8 per cent, were sold in California, and the remaining 260,052 tons, or 92.2 per cent, were shipped to other States, possessions of the United States, and foreign countries.<sup>10</sup>

All of the ingredients of the respondent's products are obtained from Searles Lake, with the exception of sulphuric acid, oleic acid, sodium nitrate, and other gases and chemicals, which are used in conjunction with the manufacturing processes and of which but infinitesimal amounts remain in the completed products. Other purchases made by the respondent consist of fuel oil, shipping supplies, valves, pipes and fittings, and other plant equipment. In 1935,

<sup>8</sup> Board's Exhibit No 15.

<sup>9</sup> Board's Exhibits Nos. 30b (b) and 30b (f).

<sup>10</sup> It was stipulated in the record that the nature and extent of the respondent's production and sales activities have been substantially the same, proportionately, during the year 1936 to the date of the hearing. The greater percentages of the sales of individual products of the respondent were likewise made outside the State of California. Of a total sale of 22,035 tons of chemical potash, two tons were sold within California and the remainder in other States. Of a total sale of 147,884 tons of agricultural potash, 301 tons, or two-tenths of one per cent, were sold in California, 97,555 tons, or 66 per cent, in other States, Hawaii, and Puerto Rico, and 50,028 tons, or 33.8 per cent, in Canada and the Orient. Of a total sale of 67,795 tons of pyroborate products, 12,503 tons, or 18.4 per cent, were sold in California, 25,808 tons, or 38.1 per cent, in other States and Territories of the United States, and 29,484 tons, or 43.5 per cent, in Canada, Europe, the Orient, and other foreign countries. Of a total sale of 19,543 tons of soda ash, 9,002 tons, or 46.1 per cent, were sold in California, 1,861 tons, or nine and one-half per cent, in other States of the Union and Hawaii, and 8,680 tons, or 44.4 per cent, in Canada, Europe, South America, India, the Orient, and other foreign countries. Of a total sale of 24,685 tons of salt cake, 82 tons, or three-tenths of one per cent, were sold in California, 24,452 tons, or 99.1 per cent, in other States, and 151 tons, or six-tenths of one per cent, in Europe.

the respondent's total purchases amounted to \$1,302,000, of which \$159,000 represented purchases made outside the State of California.<sup>11</sup>

## II. THE UNFAIR LABOR PRACTICES

### A. *The Union and its activities*

Borax and Potash Workers' Union No. 20181, a labor organization, was organized and became affiliated with the American Federation of Labor on March 9, 1936. The respondent's practices directed toward discouraging membership in the Union and limiting its activities are clearly revealed in the short history of the Union at Trona.

In December 1935, Whitehurst and Kennard, two of the respondent's employees, later discharged, attended a meeting of the Borax Workers Union Local No. 19820, active in the plant of the Pacific Coast Borax Company at Kramer, California, 70 miles from Trona, in order to investigate the activities of that local so that they would know how to proceed in the organization of a union of the respondent's employees. In February 1936, a committee consisting of Whitehurst, Kennard, Goddard, Hardie, Pratt, Wright, McConahey, and Markert, the latter six of whom were also later discharged by the respondent, applied to the American Federation of Labor for a certificate of affiliation, and commenced a membership campaign. Calvin, a member of the Kramer local, and Hyans, an organizer and label agent for the American Federation of Labor, came to Trona in order to assist. Calvin, who sought permission from the respondent, was permitted to remain in the town on the condition that he keep out of the mill and bunkhouses. Meetings were held at Burnham, an adjoining community, since the respondent had refused to make available to the Union a meeting place in Trona.<sup>12</sup> Organization activities were conducted openly, and there is some testimony that union matters were discussed to a limited extent during working hours.

The attitude of the respondent toward the Union soon became manifest. In addition to his refusal to permit the Union to hold meetings in Trona, Burke, the respondent's manager, refused Hyans permission to place on the bulletin boards situated throughout the plant and town excerpts from the National Labor Relations Act dealing with the right of workers to self-organization. He also refused Hyans permission to inform the employees that the respondent had no objection to their joining the Union. There is some testimony that union notices, posted on bulletin boards, were torn down, and although it denied responsibility, we cannot believe that the

<sup>11</sup> See footnote 10, *supra*.

<sup>12</sup> According to the record, Burke, the respondent's manager, "just didn't want to tie up the corporation property".

respondent, if it had maintained a neutral attitude, could not have prevented these acts of vandalism from occurring in its own domain.

The respondent's cloaked hostility culminated in the discharges of March 1936. In August 1936, relying upon the Trial Examiner's recommendations in his Intermediate Report of July 6, 1936, it threw aside its veil of feigned indifference and dropped its subtle opposition to the Union, to engage in an open and wholesale purge of union members and sympathizers. Any question that the respondent actively opposed union organization and warned its employees to refrain from becoming members is resolved in the light of the discharges hereinafter discussed. Furthermore, contrast between its treatment of the Union and the A. C. W. A. removes any doubt that the respondent was determined to prevent any organization actually representing its employees' interests from functioning at its plant, and perhaps explains the fact that at no time did the number of Union members exceed 95. After August 1936, and especially after the discharges of Lamson and Goddard, and the demotion of Ivers, which caused the vigorous protest from the A. C. W. A., hereinafter discussed, union activity was driven completely under cover, and no meetings were held for fear that members who attended would be summarily discharged.

*B. The American Chemical Workers' Association and its activities*

As we stated in *Matter of Pennsylvania Greyhound Lines, Inc.*, "While the National Labor Relations Act applies only to practices occurring on or after July 5, 1935, in cases where such practices have their origin in events prior to that date, knowledge of that background of events may be vital to a proper evaluation of the present practices."<sup>13</sup>

The Allied Chemical Workers Association, an incorporated labor organization of the respondent's employees, is representative of the type of employer-sponsored union that arose under the National Industrial Recovery Act. The A. C. W. A. was first discussed in Trona in April 1934, after the adoption of the Chemical Code promulgated by the National Recovery Administration. The association was initiated by Burke, the respondent's manager, who was instrumental in forming a committee to draft the constitution after conferences with Ryker, an employee of the accounting department, Austin, a pipe-fitter foreman, and Simpson and Hood, the respondent's assistant managers. During May and June, 1934, Ryker spent considerable time during his working hours drafting the constitution. Late in June the first meeting was called by the committee in the Patio, the respondent-owned moving picture theatre, and a

<sup>13</sup> I. N. L. R. B. 1, at page 7.

committee of employees was appointed to consider the draft. Thereafter, copies of the constitution, with petitions for its adoption, were circulated throughout the plant, and early in July, employees who had signed the petitions were invited to the meeting at which the constitution was adopted.

The record unquestionably requires our characterization of the A. C. W. A. as a creature of the respondent, organized to forestall opposition to its labor policies by bestowing the illusion of independence upon its employees. The constitution of the A. C. W. A., ostensibly providing machinery for the procurement of collective benefits for members, contained the germ for the indirect and subtle domination which the respondent exercised over A. C. W. A. activities. Under the constitution, membership was limited to all non-staff employees of the respondent, thus making eligible foremen, subforemen, minor officers, and all other supervisory employees not directly connected with the office of the manager. It is not therefore surprising that such employees were elected to the more important offices of the A. C. W. A. and exerted an influence in the organization entirely out of proportion to their numbers. C. C. Browne, salvage foreman, was the first president; James Branek, a pipe-fitter boss whose subservience to the interests and policies of the respondent are hereinafter described, was a member of the conference committee, and chairman of the important salary and wages committee; Fred Leete, assistant cashier, was the first treasurer; Homer Hess, relief foreman, was a member of the executive board, and later president. Other active members included Austin and Diehl, pipe-fitter bosses; Ross, painter boss; Coleman, master mechanic; and Wicker and Royce, production foremen. Candidates for membership were required to take an oath to refrain from affiliating with any organization which might interfere with the activities of the A. C. W. A. Affiliation of the A. C. W. A. with any other organization could be effected only with the consent of two-thirds of the members. A further section providing for the presentation of grievances to departmental representatives forbade members with grievances from discussing them with fellow employees.<sup>14</sup>

Membership applications were obtainable from the head timekeeper, or from the cashier's office, and dues of 25 cents a month were deducted from the wages of members by the respondent. A. C. W. A. headquarters were maintained in the respondent-owned bunk house, and meetings were held twice a month in the respondent-owned theatre. No charges for rent, light or heat were made by the respondent for the use of any of its services or facilities.

<sup>14</sup> Branek, a pipe-fitter boss and A. C. W. A. departmental representative of from 200 to 250 employees, had occasion to present only three grievances to the respondent within the 18 months preceding the hearing.

In an atmosphere pervaded with the influence of supervisory employees, and suffused with the respondent's benevolence, genuine interest among the general employees soon subsided. During 1934, meetings were attended by as many as 200 of some 500 members. However, during 1935, the officers experienced difficulty in mustering even a quorum of 50.

On February 18, 1936, the A. C. W. A., by vote of its members, passed an amendment changing the requirement for affiliation with any outside organization from two-thirds to a majority consent of its members. On April 10, 1936, a resolution to affiliate with the American Federation of Labor was defeated by a vote of 315 to 151, after petitions opposing such affiliation were circulated among the employees, left on desks, and placed upon bulletin boards throughout the plant.

The impotence of the A. C. W. A. in its dealings with the respondent, and the inadequacy of its administrative machinery to secure any substantial benefits for its members are unmistakably revealed in the record of its activities. We pass over the "beer busts", dances, and other entertainments successfully conducted by the A. C. W. A., to consider its half-hearted and fruitless efforts to bargain collectively and solve the housing situation in Trona.

It is agreed both by the Union and the respondent that at least since the formation of the A. C. W. A., housing facilities at Trona had been inadequate to meet the demands of an increasing population. Although a housing committee was appointed by the A. C. W. A., its efforts were unavailing. Early in 1935 it attempted to secure the cooperation of the respondent, and to finance and construct additional houses. However, the respondent refused to lease land or water facilities, and the plan was dropped. Finally, early in April 1936, the A. C. W. A. triumphantly announced that the respondent had agreed to appropriate \$300,000 and itself undertake to relieve the housing shortage. Coming shortly after charges had been filed with this Board, and when the Union had reached the height of its activity to enlist members, we cannot believe that the respondent's action was in any way influenced by the A. C. W. A., or was any more than a sop to satisfy the growing discontent of its employees.

Until March 1936, no machinery existed for regular meetings between the respondent and the A. C. W. A.; no wage agreements, either written or oral, had ever been negotiated. In September 1934, the salary and wages committee held a conference with the respondent, and it was agreed that a wage study be made. In November of the same year, Martyn Porter, a system analyst in the manager's office, after studying wages and living conditions in similar communities in California, reported that a wage increase was not

warranted, and the matter was dropped. In February 1935, the A. C. W. A. requested a ten per cent raise, and in July adjustments were made for some positions.

On February 14, 1936, the A. C. W. A. sent a letter to Burke, the respondent's manager, asking for information regarding job classifications in order to prepare another request for wage increases. Burke, who we cannot believe was unaware of the union propaganda that was threatening to destroy the placidity of the A. C. W. A., responded with the suggestion that a committee of the A. C. W. A. meet regularly with the representatives of the respondent as a joint committee to consider grievances.

On February 27, 1936, the A. C. W. A., in an illuminating letter to Burke, again requested a ten per cent wage increase, and described its position in the following language:

In this case requesting readjustment in salaries and wages, the employer can and should for all time destroy completely, by responding to this request, all existing ill feeling, also the feeling that in order to get any results, outside injurious connections must be made. *This response would not only give this Association a good and solid foundation of faith, the act also would give the Association some prestige badly lacking in the past . . .*

The housing action appears very unpromising. In the wage adjustment it now rests entirely with the employer and management whether our six months hard work and sleepless nights have been spent in vain. If so, any further nerve-racking efforts to build up by honest and earnest effort, *the employers own wall of protection against outside injurious connections*, is waste of time and valuable energy. [Italics ours.]<sup>15</sup>

This letter, introduced by the respondent, speaks for itself and clearly reveals that even the A. C. W. A. was cognizant of its subservient role in the respondent's policy of dealing with its employees.

Pursuant to Burke's request, a joint committee, consisting of the Executive Board of the A. C. W. A., Porter, Allen, an assistant in the manager's office, and Burris, chief clerk in the industrial relations department, met for the first time on March 7, 1936. The absence of authority or power in the committee is best described by Porter's testimony:

As Mr. Burke explained it to me, it did not have any power of definite decision. It was to formulate recommendations to the management's office. It required the management's office approval to put the recommendations into effect, or to refer them back for further consideration.

<sup>15</sup> Respondent's Exhibit No. 8.

Members of the joint committee were given an address on the mechanics of collective bargaining by J. Stuart Neary, the respondent's attorney, known to the Union as "Slugger" Neary for his alleged strike-breaking activities in Los Angeles.<sup>16</sup> On March 8, the following day, the joint committee again convened, and wage rates in the various departments were discussed separately. By April 1, 1936, as a result of these committee conferences, a wage adjustment amounting to an eight per cent increase throughout the plant was effected.

As in the solution of the housing problem, we cannot conclude, in the light of the testimony and the events leading up to the formation of the joint committee, that the A. C. W. A. was instrumental in securing this wage increase. Since September 1934, the A. C. W. A. had attempted on various occasions to obtain a general increase in wages. With the exception of small increases granted at random, its efforts had been unsuccessful. Suddenly, with the advent of the Union, the respondent's attitude changed. It arranged for regular meetings with the A. C. W. A., and, not unmindful of rising union activity, it generously and substantially acceded to the plea of the A. C. W. A. The inference is inescapable that the respondent had taken this opportunity to build up "the employer's own wall of protection against outside injurious connections" (to quote from the letter of February 27 from the A. C. W. A.), and had used the A. C. W. A. as a convenient instrument in its antiunion campaign.

After the filing of the Intermediate Report of July 6, 1936, the respondent ceased its efforts to give the color of fair dealing to union members, and made no further attempt to continue the illusion of independence that it had impressed upon the A. C. W. A. The A. C. W. A. responded, in turn, by attempting to function as a true representative of the employees. Late in July, 1936, a proposed amendment to the constitution which would have ousted all union members from the A. C. W. A. was defeated. At the same time an amendment was passed which divided members into two classes. Those receiving salaries of over \$200 a month were designated as inactive members and deprived of the right to hold office, vote, or take part in discussions at meetings. The testimony is uncontradicted that the members of the A. C. W. A. were determined to remove the undesirable influence that the respondent's supervisory employees were exercising in the administration of their organization.

Finally, in August 1936, the respondent gave a brutal exhibition of its attitude toward the efforts of the A. C. W. A. to attain independence. On August 3 and August 6 the Executive Board protested the discharge of Lamson and Goddard and the demotion of

<sup>16</sup> Board's Exhibit No. 3 (a) (second hearing).

Ivers, and asked for a conference with the respondent after it had concluded that the respondent had discriminated against these employees because of their union activities.<sup>17</sup> On August 11, a meeting of the joint committee was held, the A. C. W. A. being represented by Webb, Kunkel, Pulcifer, Winslow, Cline, and Scott. Answering the A. C. W. A. protest, Porter stated that "the Management had decided that the action taken by the Departments concerned was final, and that the three cases were closed."<sup>18</sup> Within the next week, all of the above-named association representatives on the joint committee, with the exception of Scott, an unenthusiastic participant in the protest, were discharged by the respondent. The inference is clear that the respondent was motivated by the desire to discipline the A. C. W. A. for attempting to function independently and as a representative of the employees.

We find that prior to July 5, 1935, the respondent dominated and interfered with the formation of, and at all times thereafter dominated and interfered with, and contributed support to the A. C. W. A., a labor organization of the employees in its Trona plant.

### *C. The discharges*

In the case of Whitehurst, Wright, and McConahey, treated below, in addition to the reasons assigned for the individual discharges, the respondent contended that these employees were dismissed because they discussed Union activities during working hours; that numerous complaints had been made that these men were loafing, talking, and annoying other men in the plant. The respondent admitted that prior to the events surrounding the individual discharges, it had already determined to dismiss the three employees. Ferris, the master mechanic, testified that he and Eason, the chief engineer, in discussing Whitehurst, Wright, and McConahey shortly before the discharges, had agreed that "it would be the best thing for the organization to get rid of them."

However, the record does not bear out the contention that these employees carried on discussion during working hours to a degree which would have warranted their discharge, and it is a reasonable assumption that the respondent objected to the matters discussed, rather than to the time the men spent in talking. Although there is testimony that they talked while at work, there is no convincing evidence that this interfered with efficiency or discipline.

The respondent had never forbidden its employees to talk on the job, and the record is replete with evidence that A. C. W. A. affairs were freely discussed and even conducted during working hours. As

<sup>17</sup> The discharges and the demotion are considered hereafter.

<sup>18</sup> Board's Exhibit No. 6 (b) (second hearing).

we have noted above, petitions for the adoption of the constitution, as well as petitions opposing affiliation with the American Federation of Labor, were openly circulated throughout the plant. Applications for membership in the A. C. W. A. were obtainable both from the head timekeeper and the cashier's office.

In the light of all the testimony, we can find no merit in the respondent's contention that the conduct of these employees warranted their dismissal. They were never reprimanded or warned that they were talking too much, and the fact that the respondent waited until circumstances developed which gave some color to its action indicates that the respondent itself was not impressed with its own contention.

*Richard C. Whitehurst.* Whitehurst began to work for the respondent on May 10, 1935, as a general helper in the maintenance department at 45 cents per hour.<sup>19</sup> In August 1935, he was promoted to the position of oiler at 56 cents per hour, and later received a two-cent per hour raise. At the time of his discharge on April 6, 1936, Whitehurst's duties, under the supervision of George White, maintenance inspector, consisted in oiling, greasing, and cleaning machinery in the potash plant.

Whitehurst was active in the formation of the Union at Trona, having investigated the activities of the Kramer local in December 1935. He was a charter member of the Trona local, its treasurer and financial secretary, and actively engaged in soliciting members for the Union.

Shortly prior to his discharge, arrangements were made to transfer Whitehurst to the pyroborate plant, and Blake, the oiler in the pyroborate plant, to Whitehurst's post. During the week preceding his discharge the men alternated in the two plants. The reason assigned by the respondent for the discharge of Whitehurst was his failure to obey an order given by his superior, White, on April 3, 1936. On that day, White instructed another oiler to tell Whitehurst and Blake to clean under a machine in the potash plant. Misunderstanding the instructions, Whitehurst failed to complete the required cleaning, being occupied with another task. On April 6, White discharged Whitehurst, telling him that he wanted a man "he could depend upon."

Whitehurst, during the period of his employment, had never been disciplined or threatened with discharge for inefficiency or violation of company rules. He appealed to both Ferris, the master mechanic, and Burke, but to no avail. It is significant that a week after the discharge the machine had not been thoroughly cleaned as White testified his order had required.

<sup>19</sup> Unless otherwise indicated, the discharged employees who were paid on an hourly basis worked eight hours a day and 48 hours a week.

Whitehurst's failure to understand instructions, coming to him second-hand, was understandable. It is obvious that the duty which he failed to perform could not have been very urgent, since for a period of at least a week thereafter the instructions had not been carried out. In any event, the entire incident could not have had great significance, especially since the respondent makes no claim that Whitehurst deliberately disregarded the instructions.

These conclusions are buttressed by the respondent's testimony which clearly indicates that Whitehurst was dismissed for his union activity. The respondent contended that because of numerous complaints, Ferris had ordered the transfer of Whitehurst. However, this contention is not impressive. White testified that he did not directly receive any complaints regarding Whitehurst's conduct, although he was Whitehurst's immediate superior. He further admitted telling Whitehurst, a short time prior to his discharge, that his work was satisfactory. Upon cross-examination he stated that he would have permitted Whitehurst to remain on the job and that he had no part in the transfer. It is significant that Whitehurst was never warned that he was causing dissension among the men or otherwise engaging in conduct that would impair the efficiency of his work.

The reason noted for his discharge on the termination of employment card for the California Unemployment Compensation Commission was "unsuitable." Whitehurst refused to sign this card and we are satisfied from the evidence that he was not discharged for alleged unsuitability but because of his union activities.

*Earl Wright.* Prior to his employment by the respondent, Wright had been a pipe-fitter and pipe-fitter's helper. He was hired by the respondent in August 1933, as a general helper at 45 cents an hour. A week later he was promoted to the position of pipe-fitter's helper, and less than a year later was given the classification of pipe-fitter, first class, at 76 cents an hour.<sup>20</sup> Wright's duties as a pipe-fitter under Branek and Diehl, pipe-fitter bosses, consisted in the installation and maintenance of pipes and valves. Prior to April 1936, he had the additional duty of inspecting steam equipment, steam traps, air appliances, and air lines. The testimony amply shows that Wright was an able and efficient employee and that his services were satisfactory until his union activities came to the attention of the respondent.

More aggressive than Whitehurst, Wright, who was also a charter member of the Union, was likewise active in union affairs. He was elected secretary of the Union and arranged for the first meeting at

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<sup>20</sup> This promotion was unusual since Wright was not first required to serve as a third or second class pipe-fitter.

Burnham in February 1936. He was also instrumental in persuading Hyans, a Los Angeles organizer for the American Federation of Labor, to address the Union during March 1936.

Wright was discharged on April 17, 1936, being told by Austin, the pipe-fitter foreman, that the lack of work necessitated a reduction in the force of pipe-fitters. However, a consideration of the evidence demonstrates that this reason had no foundation in truth. Two weeks prior to Wright's dismissal, another first class pipe-fitter had been hired, and, except for Wright, the staff of pipe-fitters was not reduced. When Wright, who was sixth among the nine pipe-fitters in point of seniority at the time of his dismissal, asked Austin whether seniority meant anything, he was told "No, not in some cases."

As we have above stated, and the record clearly shows, the respondent had previously planned to discharge Wright, Whitehurst, and McConahey, whose case is considered next. The respondent's plan was further evidenced by the marked hostility which Branek, his immediate superior, revealed toward Wright. Wright testified that early in March, Branek told him that the first time he was caught without tools in his hands he would be fired. Branek admitted making this statement but denied that it was motivated by Wright's union activities. This denial, however, can be given little credence in the light of further evidence of Branek's attitude toward Wright's union connections.

Branek, who edited a column entitled "Sport Shots" in the *A. C. W. News*, the publication of the A. C. W. A., devoted almost an entire article to Wright in the issue of March 3, 1936, whom he characterized as follows:

During the past two years this man has enjoyed the luxury of a good car, saving additional money now in the post office. No hard body-destroying labor was or is asked of him or anyone else. Here we ask this man: "Who paved the road from starvation to decent living?" No, not the boss, the American Potash and Chemical Corporation.

Here again we ask him, "What prompted him to act as the chief aid in distributing the application slips brought to Trona by Mr. Calvin?" (referring to union application blanks).

Such is human nature, such are some humans.

No, this man will not get fired. All humans make mistakes, some of them regrettable later \* \* \*<sup>21</sup>

<sup>21</sup> Board's Exhibit No. 13. The article did not mention Wright by name, but Branek admitted he was writing about him. In a letter to the editor of the *News*, Wright answered the attack, stating: "In spite of the fact that I am an ingrate because I lent some aid to the cause of organizing the American Federation of Labor, my sole purpose in so doing has been to elevate the economic and social conditions of my fellow workers in Trona."

Wright refused to sign the termination of employment card for the California Unemployment Compensation Commission. Two reasons were given for his discharge thereon: "reduction in force", and "as he cannot be used around the plant due to not being able to get along with fitter boss." It is significant that Wright was not apprised of this latter reason when he was dismissed. The respondent's silence, unexplained at the hearing, leads to a reasonable inference that this excuse was an afterthought, used as a pretext to cover the fact that Wright was discharged for his union activity. Furthermore, the respondent offered little testimony to prove its assertion that its force was being reduced, but instead, attempted to prove that Wright's carelessness and inefficiency justified his discharge. The record conclusively shows, and we so find, that Wright was discharged because of his affiliation with, and his activities on behalf of the Union.

*J. C. McConahey.* McConahey was hired by the respondent as an oiler at 54 cents an hour in August 1934, and at the time of his discharge was working as a pump packer under White, earning 66 cents an hour.

McConahey was also active in union affairs. He was a charter member of the Union, a trustee, member of the executive committee, and chairman of the membership committee. In March 1936, with Goddard, who was also later discharged, he had endeavored to secure a meeting place for the Union in Trona. McConahey distributed applications for membership in the Union, and as a member of the A. C. W. A., campaigned for its affiliation with the American Federation of Labor when the resolution was first proposed in February 1936.

On April 13, 1936, while engaged in cleaning a "splash-proof" motor, McConahey turned a low velocity stream on it, causing a short circuit of the lead wires and putting the motor out of commission. An electrician who was present at the time succeeded in repairing the damage and restoring the operation of the motor within a half hour. On April 15 White discharged McConahey, assigning two reasons: that he had disregarded an order forbidding the use of water in cleaning motors, and that he had failed to "code" White immediately after the accident had occurred.<sup>22</sup> Although the respondent introduced into evidence a copy of the order, it was apparently addressed to foremen, and was not shown to have been brought to the attention of McConahey, or that he knew of its existence.<sup>23</sup> Since it was not denied that an electrician was present

<sup>22</sup> The respondent's telephone system in the plant included a "code" system for various employees. In cases of emergency, a worker or foreman would be notified by dialing his "code" number which rang throughout the plant.

<sup>23</sup> Respondent's Exhibit No. 8. Ferris, the master mechanic, admitted that he had never seen this order, although he had instructed foremen not to permit motors to be washed.

when the motor stopped and steps were immediately taken to repair the leads, we cannot accept the respondent's contention that an emergency existed which would have warranted the use of the "code" system.

Nor can we accept the contention that the accident warranted the discharge. A similar accident had occurred six weeks prior to McConahey's discharge, when, though a complete motor "shorted out" and shut down a unit in the soda products plant for several days, the employee, who had also used water in that instance, was laid off for the equivalent of four days and was not discharged. It is indisputable that McConahey was an efficient and trusted employee. White reluctantly admitted on cross-examination that McConahey had been his "right hand" man and that he took charge of the "gang" in his absence. In comparison with its treatment of the employee whose act had caused considerably more damage and had more serious consequences than McConahey's, the respondent's dismissal of McConahey can be characterized only as discriminatory.

As in the discharges of Whitehurst and Wright, the evidence is clear that the respondent had previously planned to dismiss McConahey, and the proper inference follows that the union activity of these employees was the reason for their discharge. Upon cross-examination Ferris admitted as much with respect to McConahey's discharge:

Q. When you had your conversation with Mr. White in regard to McConahey's discharge you told him that you thought that the incident of the motor was sufficient cause for the discharge, did you likewise have in mind your conversation with Mr. Eason in regard to McConahey's talking union on the job?

A. Not particularly in that instance; no. I make those decisions myself.

Q. Were your ideas based solely and exclusively on the incident connected with the motor?

A. Oh, it no doubt had some bearing on the fact that we were, we had previously made up our minds to get rid of those three men in the organization, yes \* \* \*.

We conclude that McConahey was dismissed because he was a member of the Union and because of his activities in connection therewith.

*Henry Simpson Hardie.* Hardie, a British subject, was hired by the respondent in September 1927, as a general helper at 48 cents per hour. He was soon promoted to the position of salt-trap helper at 50 cents an hour, then to the position of filter operator at 55 cents an hour, thereafter to the position of salt-trap operator, and in September 1934, to the position of relief operator at 70 cents an hour.

In October or November of the same year, Hardie was demoted to the position of heater tender at 66 cents per hour. Bridgeford, his superior, testified that Hardie had been demoted because of a rumor current in Trona that he had said he knew how to shut down operations of the plant and would not hesitate to make use of his knowledge in the event of a strike. At that time the respondent made no effort to ascertain whether this rumor had any basis of truth.

Hardie, too, had been active in union affairs. He was a charter member of the Union, had participated in the investigation of the Kramer local, and had been instrumental in obtaining the aid of Hyans in the organization of the respondent's employees.

Hardie was discharged on April 9, 1936. A short time prior to his dismissal, Hardie requested his superior, Bridgeford, to endorse an attestation of good character on his application for the renewal of his passport. In answer to this request, Bridgeford stated that he would first investigate Hardie's reputation in the plant and in Trona. Hardie did not object to such investigation, but requested that the rumor which had caused his demotion also be investigated. Bridgeford announced his intention of limiting his inquiry, and refused to investigate the rumor. Upon Hardie's insistence that his entire record be reviewed, Bridgeford discharged him because of "personal friction." The respondent did not contend that Hardie's insistence had taken the form of disrespect or impertinence toward Bridgeford, or that Bridgeford had discharged Hardie in the heat of anger. It is admitted that Hardie's discussion with him consumed the greater part of the day, and we can only infer that Bridgeford's decision to discharge Hardie had been preconceived and consciously motivated by the respondent's plan, which was being put into effect during this period, to oust union members.

On the basis of the facts, it is evident that the respondent desired to dismiss Hardie for his union activity and was not concerned with assigning a reason therefor which possessed either color or substance. Hardie had been warned, through statements made to his wife, that his union activities were objectionable to the respondent, and it is a reasonable inference that Bridgeford's position was intended to and did provoke Hardie justifiedly to continue his insistence upon a thorough investigation of his character. Hardie's long residence in Trona, the satisfactory character of his work, as indicated by numerous promotions, and the fact that the respondent had kept him in its service despite the rumor of 1934, belies Bridgeford's testimony that he knew nothing of Hardie's character, and therefore desired to conduct an investigation. Assuming the truth of Bridgeford's testimony, certainly his ignorance of Hardie's character would have made more imperative the thorough investigation which Hardie had re-

quested. The testimony of both the respondent and Hardie justifies our finding that Hardie was discharged solely because of his union activity.<sup>24</sup>

*H. O. Goddard, Robert O. Lamson, Leroy Pratt, J. L. Ivers.* Following the issuance of the Trial Examiner's Intermediate Report on July 6, 1936, the respondent, presumably satisfied that its discriminatory labor practices would no longer be subject to question by this Board, engaged in a bold and ruthless campaign to expunge all traces of union activity and all freedom of expression in its plant.<sup>25</sup> Ivers, Goddard, Lamson, and Pratt had all been officers of the Union and active in its affairs.

Goddard, who was vice president of the Union and had testified for the Board at the first hearing, was discharged by Bridgeford on August 4, 1936, for "unsatisfactory conduct." When pressed for an explanation, he had said: "Unsatisfactory conduct is enough information on our records, and I don't care to go into this thing any further." Prior to his discharge Goddard had been a calciner tender, earning 64 cents per hour.

Lamson, a swing tender, earning 60 cents per hour, was elected financial secretary of the Union after the discharge of Whitehurst. He first learned that he had been dismissed at a meeting of the A. C. W. A. on August 4, 1936. The following day, when he asked Bridgeford, he was told to consider himself notified of his discharge. Again the laconic "unsatisfactory conduct" was assigned as the reason, Bridgeford saying, "You can't make me give you a better reason."

Pratt had been employed by the respondent for ten years, and prior to his discharge was a salt-trap tender, earning 76 cents per hour. He was a charter member of the Union and on the Union's executive board. Pratt was discharged on August 15, 1936, for "unsatisfactory conduct." When he appealed to Bridgeford, he was told, "That doesn't mean that your work is unsatisfactory; it is just unsatisfactory."<sup>26</sup>

Ivers, a foreman for the respondent at 80 cents per hour, was recording secretary for the Union and active in its affairs. On August 1, 1936, as he was about to leave Trona on a 30-day vacation, he was told by his superior that his services as a foreman would no longer be required, but that upon his return, he might secure a position

<sup>24</sup> The respondent later gave the requested attestation of character to Mrs. Hardie, the employee's wife.

<sup>25</sup> During the second hearing commencing on October 15, 1936, upon these discharges and those hereinafter considered, the respondent introduced no evidence to contradict the testimony of the discharged employees, but confined its efforts to their cross-examination.

<sup>26</sup> Testimony relating to this discharge was given by Goddard, since Pratt could not be located. Since Goddard had knowledge of the facts in his capacity of a union official, we have no reason to doubt his veracity. Moreover, the respondent admitted the discharge and failed to controvert Goddard's testimony thereon

as general helper at 50 cents an hour. Ivers considered this tantamount to a discharge, left for New Mexico and did not return. On August 3, 1936, the A. C. W. A. protested his demotion to the respondent, pointing out that a less experienced employee had been assigned to his position, and that the respondent had always considered Ivers' services satisfactory. It is significant that on August 11, during the meeting of the joint committee at which the demotion was discussed, the respondent failed to give any reason for its action.<sup>27</sup>

*Harold Carl Webb, Owen Scott Kunkel, Elmer Pulcifer, George E. Cline, Lawrence A. Sheriff, Russel V. Wilgus, J. B. Kennard, Elbert Marshall Ball.* As indicated above, Webb, Kunkel, Pulcifer, and Cline, all members of the joint committee representing the A. C. W. A., protested the discharges of Lamson and Goddard and the demotion of Ivers at the committee meeting on August 11, 1936. By the end of the following week they had all been discharged.

Webb, employed by the respondent since 1933, and chairman of the executive board of the A. C. W. A., was an associate analyst at a salary of \$170 a month, and at the time of his discharge was being considered for the position of senior analyst. He was discharged, without cause, by his immediate superior, Durland, who told him that the order "came from up above".

Kunkel, employed by the respondent since January 1936, was the associate editor of the A. C. W. A. *News* and temporary secretary of the A. C. W. A., and had written the letters of protest to the respondent. He was discharged from his position as calciner tender, in which he earned 60 cents per hour, on August 17, 1936. On that day, learning that his name did not appear on the work schedule, he inquired in the industrial relations department, where he was told, "I guess you know the news." No explanation was given for his discharge.

Pulcifer, an employee since 1933, at the time of his discharge was a relief janitor, earning 60 cents per hour. He first learned of his discharge on August 15, 1936, from the cashier of the respondent's restaurant, when she refused to sell him a "scrip book" used for the purchase of meals. As in the other cases, Pulcifer was given no explanation for his discharge.

Cline, acting president of the A. C. W. A., was employed by the respondent since September 1934. He was a junior analyst, earning \$155 a month at the time of his discharge. On August 14, 1936, he was told by Durland, the assistant comptroller chemist, "I have orders to stop your pay immediately." Kidd, his immediate superior, in response to Cline's request for a reason for his discharge, said, "Well, you know as much about it as I do."

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<sup>27</sup> See discussion of joint committee meeting, *supra*.

All of the above-named men had been active in A. C. W. A. affairs, especially in its effort to remove the influence of the respondent from its administration. None had ever been reprimanded or otherwise disciplined, and the record clearly indicates that they were efficient and satisfactory employees.

Sherriff, editor of the *A. C. W. A. News*, was an operator in the pyroborate plant, receiving \$175 a month. He had first been employed as a helper in August 1933. Sherriff's activities may be classified with those of Webb, Kunkel, Pulcifer, and Cline, as directed toward building up the A. C. W. A. as an organization truly representative of the respondent's employees. As the others, he was not a member of the Union, and he had attempted to maintain a neutral editorial policy. On August 14, 1936, Johnson, the factory superintendent, said to him, "Larry I have some sad news for you. I have instructions to say that you are undesirable, and I am sorry I can't say anything more, except that you have 24 hours in which to leave."<sup>28</sup> Sherriff, seeking an explanation for his dismissal, then saw Lewis, his immediate superior, who said, "I have instructions to not discuss any reasons. You probably know them better than I do."

Wilgus, at the time of his discharge, was receiving \$155 a month as a junior analyst, having been hired as a chemist in May 1934. A member of the A. C. W. A., though not an officer, Wilgus was also desirous of purging the association of respondent domination. He was present at the meeting of the executive board, early in August, when it decided to protest the discharges of union men, and he was known to the respondent as having made "radical statements". On August 15, 1936, Durland discharged him, saying "I have orders to take you off the pay roll." The evidence is uncontroverted that Wilgus' services were satisfactory to the respondent, and the inference is inescapable that the respondent considered him undesirable solely because of his activities in connection with the A. C. W. A.

Both Kennard and Ball were members of the Union, and the last two who openly espoused the union cause in Trona. Kennard, employed as a shovel engineer at \$194 a month, was a charter member of the Union and its president since March 1936. He had been active in union affairs and had testified at the first hearing conducted by this Board. Kennard's services had been satisfactory to the respondent since November 1931, when he was first employed, and he had never been reprimanded or otherwise disciplined. On August 14, 1936, he was discharged by Runner, the shipping superintendent.

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<sup>28</sup> By company rule, an employee is required to vacate his living quarters on the respondent's property within 24 hours after his discharge.

When Kennard asked whether it was because of unsatisfactory conduct, Runner answered, "No, just unsatisfactory."

Ball, earning \$135 per month as a bookkeeping machine operator, was a member both of the Union and the A. C. W. A. He was a member of the executive council of the Union, representing the supplies department, and since June 1936, had spent considerable time in the company of Goddard and Lamson. As a member of the A. C. W. A., he was equally interested in its welfare, and circulated petitions favoring the amendment to oust supervisory employees from control, and opposing the amendment which would oust union members. On Sunday, July 18, 1936, Ball came to his office under the influence of liquor, and was unable to perform his duties.<sup>29</sup> At that time he offered to resign, but was told by his superior, Seignous, that his resignation was not necessary. On August 11 Ball reported to work a few minutes late and found that his machine had been removed. He was sent home, and on August 12, 1936, told by Wuster, Seignous' superior, that his services were no longer required; that he was undependable and was reported intoxicated on July 18. On the day of his discharge Ball saw Franklin, head of the industrial stores department, in order to obtain a satisfactory explanation for his dismissal. Franklin told him that his associates were leading him astray, and that though anyone was free to join the Union, he did not care for "Communists."<sup>30</sup> Ball's Unemployment Compensation termination card listed the reason for his dismissal as "excessive absences." Since, throughout his year's employment with the respondent, he had been absent only on one Sunday, this reason is not persuasive, and we find that Ball's dismissal resulted because of his activities both for the Union and the A. C. W. A.

The respondent's actions and discharges subsequent to July 6, 1936, unquestionably lead to but two conclusions. The respondent was determined to carry out its plan, conceived at the time of the formation of the Union, to stamp out every spark of union activity in its plant. It was equally determined to maintain the A. C. W. A. as a subservient creature to counteract the effects of its reprehensible labor practices.

*Franklin F. Matlock, Otto Duval, Fred Balch.* Not satisfied with stifling A. C. W. A. opposition and stripping the Union of its officers, the respondent next directed its efforts to destroying entirely the vestiges of union organization. Matlock, Balch, and Duval, all

<sup>29</sup> The evidence shows that Ball was accustomed to work one Sunday every month to balance the respondent's books, and that he was free to choose any Sunday during the month to suit his own convenience.

<sup>30</sup> "Q. When Mr. Franklin made that statement to you about any person in Trona being permitted to belong to any union, did you believe that at that time?

"A. I did not. No sane person could have believed it."

union members, were not active in union affairs, and from the reasons alleged for their discharges, it appears that their union affiliation was sufficient to make their presence in Trona obnoxious to the respondent.

Matlock had been employed by the respondent since 1929, and at the time of his discharge was earning 66 cents an hour as a pump packer. He had been a union member since March 1935, and although he did not wear a union button, fearing that he would be discharged, the evidence is clear that his affiliation with the Union was not unknown in Trona. On September 29, 1936, Matlock stepped outside the building in which he was working, in order to get relief from the heat. He was reprimanded by Frael, a foreman, and on the following day was discharged by White, his superior. Previous to this incident, Matlock had never been laid off, threatened with discharge, or disciplined. He testified that during his seven year period of employment, he had been accustomed to taking a five minute rest period, that his superiors were aware of this conduct, and that he had never been told to stop. The day after his discharge Matlock suggested to White that he had been dismissed because he carried a union card, but White refused to make any comment.

Several days after Matlock's discharge, Duval was promoted to Matlock's position and given a wage increase from 58 to 66 cents per hour. Duval, who had joined the Union in May 1936, like Matlock, did not wear his union button. For the period of two weeks prior to his discharge, Duval had been breaking in a new oiler, but by October 1, the date of his promotion, the oiler was carrying out his duties without assistance. On October 2, pursuant to an order from White, his superior, Duval, instead of helping the oiler, engaged in packing two pumps. On October 3 he was discharged by White because he failed to assist the new oiler. Immediately thereafter, when Duval told White's subordinate, Blake, that he had been dismissed, Blake responded by saying that he should not have joined the Union. The reason for his discharge was noted on the California Unemployment Compensation card as "unsatisfactory". Duval, employed since April 1936, had never been reprimanded or otherwise disciplined. We are not impressed with the circumstances surrounding Duval's discharge, and we can only infer that he was an innocent victim of the respondent's scheme to annihilate the Union.

Balch had been employed by the respondent since 1934 as a first class painter at 76 cents per hour. His work was satisfactory to the respondent, and in the absence of Ross, his foreman, he had been accustomed to supervise the "paint gang." On several occasions prior to his discharge, Ross had told him that he would be discharged if he spoke too much about union activity. Balch was discharged on October 1, 1936, by Anderson, Ross' superior, for turning

on the radio in the room of a house he had just completed painting. Balch testified that he had reset the furniture, that he had turned on the radio in order to determine whether it was properly connected, and that he was working when Anderson approached.

The reasons assigned for the discharges of these three employees are too tenuous and trivial to impress us. It is significant that the respondent had full opportunity to offer evidence to controvert the testimony of these men, yet it was content to remain silent. We conclude that the only offense Matlock, Balch, and Duval committed was joining the Union.

Consideration of all the evidence leads unquestionably to the conclusion that the respondent contributed support to the A. C. W. A., a labor organization of its employees; that by its conduct, and by its discharge of Kunkel, Sherriff, Webb, Cline, Pulcifer, and Wilgus, it dominated and interfered with the administration of the A. C. W. A.; that by its conduct and the discharge of its above-named employees, and the discharge of Wright, Hardie, McConahey, Whitehurst, Goddard, Lamson, Kennard, Pratt, Matlock, Duval, Ball, and Balch, and by the demotion of Ivers, the respondent dominated and interfered with the formation and administration of the Union and discriminated against its employees in regard to hire and tenure of employment to discourage membership in the Union; that by virtue of its conduct, and these discharges, it interfered with the right of its employees 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 and other mutual aid and protection.

### III. EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

As indicated under our findings with respect to its business, the respondent, a Delaware corporation, maintains its plant in the State of California, and sales offices in the States of New York, Georgia, Maryland, and Ohio. It is one of the three largest producers of potash in the United States, and one of the two largest borax producers in the world. Ninety-two and two-tenths per cent of its sales, amounting to 260,052 tons, are shipped outside California to other States, possessions of the United States, and foreign countries. As an integral part of its operations, the respondent owns and operates the Trona Railroad, a connecting link with the Southern Pacific Railroad, and subject to the tariff regulations of the Interstate Commerce Commission.

The unfair labor practices engaged in by the respondent have had the effect of causing discontent among its employees, and undoubtedly tend to lead to a labor dispute which would seriously disrupt

the respondent's production and shipping operations. Following the discharges, the employees commenced to fear for the security of their jobs, and there is some testimony that they were considering a strike. The Union, its membership depleted by discriminatory discharges, exerted its efforts to enlisting the assistance of outside labor organizations. During August and September, 1936, the Union commenced negotiations with the International Longshoremen's Association to have the respondent's products declared "hot cargo" and the Association's members refuse to handle them.<sup>31</sup>

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

#### IV. THE REMEDY

Under Section 2, subdivision (3) of the Act, an employee whose work has ceased because of any unfair labor practice retains his employee status as long as he has not obtained regular and substantially equivalent employment. Since the discriminatory discharges above enumerated constituted unfair labor practices, these discharged employees retained their employee status.

The discharged employees are entitled to reinstatement. They are also entitled to receive back pay from the date of their discharge until the respondent offers to reinstate them. In so finding, we follow our decision in *Matter of Bell Oil and Gas Company*,<sup>32</sup> in which we likewise ordered that the employees receive back pay from the date of their discharge until the offer of reinstatement, although the Intermediate Report had recommended that the complaint be dismissed. We distinguish the instant case from those in which we have not ordered that the employees receive back pay from the date that the Trial Examiner issued his Intermediate Report to the date of our Order.<sup>33</sup> In *Matter of Haffelfinger Company, Inc.* we said: "We believe, however, that in view of the Trial Examiner's recommendations, respondent could not have been expected to reinstate the discharged men after it received the Intermediate Report, and therefore it should not be required to pay back pay from that time to the

<sup>31</sup> At that time, the International Longshoremen's Association was negotiating the renewal of its own collective agreements, and action with respect to the respondent was held in abeyance.

<sup>32</sup> I N. L. R. B. 562

<sup>33</sup> In the *Matter of E. R. Haffelfinger Company, Inc. and United Wall Paper Crafts of North America, Local No. 6*, I N. L. R. B. 760; In the *Matter of Brown Shoe Company, Inc. and Boot and Shoe Workers' Union, Local No. 655*, I N. L. R. B. 803; In the *Matter of Mann Edge Tool Company and Federal Labor Union No. 18779*, I N. L. R. B. 977.

date of this decision." In that case, as in the other cases cited, the trial examiner found that the respondent had not engaged in unfair labor practices with respect to the discharges. In the instant case, however, the Trial Examiner found that the respondent had engaged in unfair labor practices with respect to the discharges of its employees named in the original complaint. He recommended that the respondent reinstate these employees, although he further recommended that the complaint be dismissed since he found the acts of the respondent were not unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7), of the Act. It would, therefore, clearly appear that the respondent by its failure to reinstate these discharged employees did not rely upon the Trial Examiner's recommendations. On the contrary, it used the Trial Examiner's finding as a basis for discharging union members and their sympathizers without even a pretense that the discharges were for any reason but to destroy completely the desire of its employees to self-organization without interference.

We have found that the respondent caused the A. C. W. A. to be organized, exerted an influence over it that amounted to domination and interference with its administration, and contributed support to it. It follows that the A. C. W. A. cannot serve the respondent's employees as their genuine representative. To release them from the subtle compulsions which have arisen and have prevailed by reason of the respondent's conduct, the A. C. W. A. should be disestablished.

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, and upon the entire record in the proceeding, the Board makes the following conclusions of law:

1. Borax and Potash Workers' Union No. 20181 is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.
2. Allied Chemical Workers' Association is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.
3. By its domination and interference with the formation and administration of the Allied Chemical Workers' Association, and by contributing support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the Act.
4. Earl Wright, Henry Simpson Hardie, J. C. McConahey, Richard C. Whitehurst, H. O. Goddard, Robert O. Lamson, Elbert Marshall Ball, J. B. Kennard, Leroy Pratt, Owen Scott Kunkel, Lawrence A. Sherriff, Harold Carl Webb, George E. Cline, Elmer Pulcifer, Russel V. Wilgus, Franklin F. Matlock, Otto Duval, and Fred Balch were, at the time of their discharge, and at all times thereafter, employees

of the respondent, within the meaning of Section 2, subdivision (3) of the Act. J. L. Ivers was at the time of his demotion, and at all times thereafter, an employee of the respondent, within the meaning of the same Section and subdivision of the Act.

5. The respondent, by discriminating in regard to the hire and tenure of employment of Earl Wright, Henry Simpson Hardie, J. C. McConahey, Richard C. Whitehurst, H. O. Goddard, Robert O. Lamson, Elbert Marshall Ball, J. B. Kennard, Leroy Pratt, Owen Scott Kunkel, Lawrence A. Sheriff, Harold Carl Webb, George E. Cline, Elmer Pulcifer, Russel V. Wilgus, Franklin F. Matlock, Otto Duval, Fred Balch, and J. L. Ivers, and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

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

7. 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

Upon the basis of the above 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 that the respondent, American Potash and Chemical Corporation, and its officers, agents, successors, and assigns, shall:

1. Cease and desist:

a. From in any manner interfering with, restraining, or coercing its 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 purpose of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

b. From discouraging membership in Borax and Potash Workers' Union No. 20181, or any other labor organization of its employees, by discharging, refusing to reinstate, or otherwise discriminating against its employees in regard to hire or tenure of employment or any term or condition of employment;

c. From in any manner dominating or interfering with the administration of the Allied Chemical Workers' Association, or any other labor organization of its employees, and from contributing support

to the Allied Chemical Workers' Association, or to any other labor organization of its employees.

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

a. Offer to Earl Wright, Henry Simpson Hardie, J. C. McConahey, Richard C. Whitehurst, H. O. Goddard, Robert O. Lamson, Elbert Marshall Ball, J. B. Kennard, Leroy Pratt, Owen Scott Kunkel, Lawrence A. Sherriff, Harold Carl Webb, George E. Cline, Elmer Pulcifer, Russel V. Wilgus, Franklin F. Matlock, Otto Duval, Fred Balch, and J. L. Ivers, immediate and full reinstatement, respectively, to their former positions, without prejudice to their seniority or other rights and privileges;

b. Make whole said Earl Wright, Henry Simpson Hardie, J. C. McConahey, Richard C. Whitehurst, H. O. Goddard, Robert O. Lamson, Elbert Marshall Ball, J. B. Kennard, Leroy Pratt, Owen Scott Kunkel, Lawrence A. Sherriff, Harold Carl Webb, George E. Cline, Elmer Pulcifer, Russel V. Wilgus, Franklin F. Matlock, Otto Duval, and Fred Balch for any losses of pay they have suffered by reason of their discharge, and J. L. Ivers for any loss of pay he has suffered by reason of his demotion, by payment, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge, and with respect to J. L. Ivers, from the date of his demotion, to the date of such offer of reinstatement, less the amount which each has earned during that period;

c. Withdraw all recognition from the Allied Chemical Workers' Association as representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and disestablish the Allied Chemical Workers' Association as such representative;

d. Post notices in conspicuous places throughout its plant wherein its employees are engaged, stating (1) that said Allied Chemical Workers' Association is so disestablished, and that the respondent will refrain from any such recognition thereof; (2) that the respondent will cease and desist in the manner aforesaid; and (3) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

e. Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.