

In the Matter of JACOB A. HUNKELE, TRADING AS TRI-STATE TOWEL SERVICE OF THE INDEPENDENT TOWEL SUPPLY COMPANY and LOCAL No. 40 UNITED LAUNDRY WORKERS UNION

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Cases Nos. C-394 and C-395.—Decided June 29, 1938

Linen Supply Service—Interference, Restraint, and Coercion: coercion; persuading employees to resign from union; change in method of operating business, resulting in reduction of number of employees, considered as—*Discrimination:* strikers: execution of closed-shop contract with other union considered as discharge—*Unit Appropriate for Collective Bargaining:* all employees, excluding supervisory employees; organization of business; history of collective bargaining relations with employer—*Representatives:* proof of choice: union membership application cards—*Collective Bargaining:* employer's duty: contemplated sale of business, effect upon; threat of strike at other plant, effect upon; negotiation in good faith: dilatory and evasive tactics; meeting with representatives but with no bona fide intent to reach an agreement; special form of remedial order: recognition as exclusive representative; negotiation—*Reinstatement Ordered:* discharged strikers, upon application, dismissing employees hired since execution of closed-shop contract; preferential list ordered: to be followed in further reinstatement—*Back Pay:* awarded to discharged strikers, from date of closed-shop contract to date of offer of reinstatement or placement on preferential list; not to include period between date of Intermediate Report and date of Decision—*Strike:* result of employer's unfair labor practice—*Contract:* closed-shop, with union not representing any of employees, held void and of no effect; employer ordered to cease giving effect to.

Mr. Jacob Blum, for the Board.

Mr. Charles Z. Heskett, of Cumberland, Md., for the respondent.

Mr. Jack M. Grayson, of Cumberland, Md., for Local Union 543, I. B. of T. C. S. & H. of America.

Mr. Bliss Daffan, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Local No. 40, United Laundry Workers Union, hereinafter called the Union, the National Labor Relations

Board, herein called the Board, by Bennet F. Schaufler, Regional Director for the Fifth Region (Baltimore, Maryland), duly issued and served its complaint dated November 9, 1937, against the Tri-State Towel Service of the Independent Towel Supply Company, Cumberland, Maryland, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Thereafter, on November 23, 1937, an additional charge was filed by the Union alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (5) of the Act. On November 23, 1937, the respondent filed its answer to the complaint in which it denied that it had engaged in or was engaging in the unfair labor practices alleged therein.

Pursuant to notice, a hearing was held in Cumberland, Maryland, on November 26, 1937, before Henry W. Schmidt, the Trial Examiner duly designated by the Board. At the hearing, by stipulation, service of notice of a copy of the additional charge was waived by the respondent, and the complaint herein orally amended so as to include allegations of a violation of Section 8 (5) of the Act; and to allege the proper name of the respondent as Jacob A. Hunkele, Trading as Tri-State Towel Service of the Independent Towel Supply Company. It was also stipulated that the complaint, as amended, would be reduced to writing and incorporated in the record at the conclusion of the hearing in the same manner and to the same effect as if the amended complaint had been filed prior to the beginning of the hearing.

At the hearing the Board and the respondent were represented by counsel, and Jack M. Grayson, recording secretary and business manager, appeared for Local Union 543, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, herein called Local Union 543, and was granted permission by the Trial Examiner to intervene on behalf of this organization. At the opening of the hearing a motion was presented by counsel for the respondent to dismiss the complaint on the grounds (1) that the character of the business in which the respondent was engaged was not commerce within the meaning of the Act; (2) that the complaint, as amended, was too indefinite to permit the respondent properly to answer it; and (3) that the record showed on its face that there was no labor controversy to be made the subject of inquiry on the part of the Board. This motion was denied by the Trial Examiner. His ruling is hereby affirmed. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence

bearing upon the issues was afforded all the parties. At the close of the hearing, counsel for the Board moved that the pleadings be conformed to the proof and counsel for the respondent renewed the motion to dismiss, presented at the beginning of the hearing. The former was granted and the latter denied by the Trial Examiner. His rulings are hereby affirmed. During the course of the hearing, the Trial Examiner made several rulings on other motions and objections to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. After the close of the hearing the attorney for the Board submitted the amended complaint and it was incorporated in the record in accordance with the above-mentioned stipulation. The two charges herein having been filed separately the Board issued an order on February 11, 1938, formally consolidating the two proceedings.

On January 31, 1938, the Trial Examiner filed an Intermediate Report finding that the respondent had engaged in "unfair labor" practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act. The respondent and the Union filed exceptions to the Intermediate Report. The respondent also filed a brief which has been carefully considered by the Board.

Pursuant to notice, a hearing was held before the Board on March 15, 1938, in Washington, for the purpose of oral argument. The respondent and the Union were represented by counsel and participated in the oral argument. For the reasons hereinafter stated, we depart in certain respects from the findings, conclusions, and recommendations of the Trial Examiner, and to that extent, sustain the exceptions to the Intermediate Report. Otherwise we find them without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Jacob A. Hunkele, Trading as Tri-State Towel Service of the Independent Towel Supply Company of Cumberland, Maryland, is one of several companies operated by Jacob A. Hunkele of Pittsburgh, Pennsylvania. Each of these companies is operated under an individual trade name in a different community. The Cumberland, Maryland, plant is operated as a separate business and is engaged in furnishing towels, soap, aprons, coats, and cabinets to restaurants, barber shops and other business enterprises in the vicinity of Cumberland, Maryland, and to some establishments located in West Virginia and Pennsylvania. Ten per cent of this business is

transacted in West Virginia and Pennsylvania and the balance in Maryland. The executive office of Jacob Hunkele for the several companies is located in Pittsburgh, Pennsylvania, where all the supplies are purchased for the companies, principally through jobbers located outside of Pennsylvania and Maryland and then delivered by the respondent's trucks to the individual companies. Prior to September 7, 1937, all the laundering for the Cumberland plant was done under contract with a laundry at Cumberland. After that date, the soiled linen was transported by the respondent's trucks to its laundry in Pittsburgh, laundered, transported back to the Cumberland plant in the same manner, and then distributed from that point. Prior to September 7, 1937, there were six employees engaged at the Cumberland plant. After that date the force was reduced to three due to a changed method of operating the business.

II. THE ORGANIZATIONS INVOLVED

Local No. 40, United Laundry Workers Union, affiliated with the Committee for Industrial Organization, is a labor organization admitting to membership all employees of the respondent engaged in its Cumberland, Maryland, business.

Local Union 543, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership all the employees of the respondent engaged in its Cumberland, Maryland, business.

III. THE UNFAIR LABOR PRACTICES

A. *The chronology of events*

Harold P. Athey, a so-called driver-salesman at the Cumberland plant of the respondent, joined the Union on May 10, 1937. At that time there were six employees engaged in the respondent's business at Cumberland. There were three driver-salesmen, one of them, Charles R. Pickering, having the designation of route foreman, one seamstress and sorter, one man who did general work around the plant, and a combined bookkeeper and stenographer. Charles R. Pickering, while not considered a supervisory employee in a strict sense, since he had no authority to hire or discharge, had general charge of the plant. It was his duty to check the other driver-salesmen in and out, to make the bank deposits, and perform routine duties incident to the general conduct of the Cumberland business. Actual management and supervision of the Cumberland business was at all times handled by the respondent's Pittsburgh office.

After Athey joined the Union, Fred Pickering, general manager of the respondent's several enterprises, who was not related to Charles Pickering, wrote to Charles Pickering and inquired concerning Athey's membership in the Union.

By July 27 all six of the employees in the Cumberland business had joined the Union. On July 28 Ernest Pueschel, business agent for the Union, wired the respondent at Pittsburgh advising him that the Union represented all the employees at the Cumberland plant, and had been designated as their bargaining representative. He requested a conference at an early date. Fred Pickering replied advising Pueschel that he would be in Cumberland within the next few weeks and would communicate with him.

Fred Pickering came to Cumberland on August 13 and met with the employees and Pueschel. A draft of a contract containing the demands of the Union was presented to Fred Pickering, who requested a few days to consider it. He stated that he was en route to Clarksburg, West Virginia, where the respondent conducted a similar enterprise to that in Cumberland, and that he would confer further relative to the demands upon his return to Cumberland on August 15.

On August 15 Fred Pickering again met with the employees and Pueschel. At this meeting he stated that he thought all the provisions of the proposed contract would be acceptable to the respondent with the exception of the increase in wages provided therein, but that the matter would have to be submitted to the respondent for his decision. He assured the employees and their representative that this would be done upon his return to Pittsburgh, and that they would be advised of the result. Shortly after Fred Pickering's return to Pittsburgh, a man by the name of Lindsey was placed in charge of the Cumberland business. Charles Pickering was retained, however, in the capacity of a driver-salesman.

No word from the respondent or Fred Pickering having been received by August 25, Pueschel wired the respondent that unless an answer to the demands was received before August 27 the employees would strike. On the night of August 27 no answer having been received, the employees voted to strike. It was decided, however, to hold the strike in abeyance pending the respondent's reaction to the action which had been taken. On the morning of August 28 Fred Pickering again came to Cumberland. He had received information regarding the strike vote and came for the purpose of ascertaining whether or not the plant was still in operation. Fred Pickering and Lindsey took Charles Pickering into a room apart from the other employees and Fred Pickering suggested to him that the fact that the employees had joined a union would not "prevent the company

from getting rid of them." After Charles Pickering replied that all of the employees were going to "stand together," they returned to the other room and Fred Pickering then addressed all the employees. He informed them that it would be impossible for the respondent to enter into a contract with the Union but that if the employees would abandon their membership in the organization they would obtain a "substantial" wage increase.

In the afternoon of the same day, Fred Pickering suggested the possibility of friction developing if the respondent entered into a contract with the Union because of the existence of prior closed-shop contracts with American Federation of Labor organizations covering the employees at his Pittsburgh plant. He then stated that it would be necessary for him to confer further with the respondent relative to the demands, and the meeting adjourned.

The next meeting occurred on September 3, in the office of the respondent's attorney, Charles Z. Heskett. Heskett, Fred Pickering, Pueschel, and Robert Gaitens, a representative of the Committee for Industrial Organization, were present. Pickering informed the representatives of the Union that negotiations for the sale of the respondent's business at Cumberland were being conducted between the respondent and George Young, proprietor of a laundry at Cumberland, who did the respondent's laundry under contract. When the subject of possible friction developing with the American Federation of Labor if the respondent entered into a contract with the Union was again broached by Pickering, Pueschel advised him that Scott F. Marshall, secretary and treasurer of the Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union 246, at Pittsburgh, herein called Local Union 246, was aware of the efforts of the Union to negotiate a contract with the respondent and had indicated a cooperative attitude in this respect. Pickering then stated that it would be unnecessary to enter into a contract with the Union if the Cumberland business was sold to Young, since Young already had contracted with the Union as the representative of the employees at his own Cumberland plant. Pickering also stated that Young had agreed to give the respondent a definite answer to the proposition by September 10. The representatives of the Union then agreed that strike action on the part of the employees would be deferred until Young acted on the proposed sale on or before September 10.

Both Pueschel and Gaitens testified that on the same day that the agreement with the respondent was made, they were advised that the proposed sale to George Young would not take place. Gaitens testified that he received this information from George Young. Young testified that some negotiations were conducted by him with the respondent regarding a purchase of the respondent's Cumberland busi-

ness and that the negotiations were finally terminated by his rejection of the proposition in the latter part of August or early in September. He was uncertain as to the date. Young testified further that he advised Gaitens that the purchase of the Cumberland business would not be made, but was uncertain as to whether this information was given to Gaitens on September 3 or thereafter.

When Pueschel received the information that the sale to Young would not be made he went to Heskett's office and questioned him regarding certain statements that Heskett had made at the conference between the parties earlier in the day to the effect that the respondent would reduce the force of employees at Cumberland in the event that the sale to George Young was not consummated. Heskett advised Pueschel that the force at Cumberland would be reduced unless Young purchased the business. Upon leaving Heskett, Pueschel went immediately to the plant and imparted to the employees the information he had received regarding the sale and the contemplating force reduction. A strike vote was taken by the employees and Hunkelè was advised by wire of the strike. The employees quit work on the morning of September 7 but did not begin picketing the plant because of an ordinance of the city of Cumberland requiring the issuance of a permit for such a purpose. This permit was obtained several days later but the employees did not actually picket, contenting themselves with driving around in the vicinity of the plant for a few days.

On September 8 Marshall, secretary and treasurer of Local 246, called Jack Grayson, Cumberland representative of Local Union 543 of the Teamsters, and advised him that he was sending down two experienced drivers from the respondent's Pittsburgh plant, members of Local Union 246, to operate the respondent's Cumberland plant.

On September 11, 4 days after the strike began, the respondent entered into a separate closed-shop contract with Local Union 543 covering the employees engaged in the Cumberland business. None of the respondent's six striking employees were members of this organization, but all were still members of the Union. On the following Monday two members of Local Union 246, sent by Marshall from Pittsburgh, arrived in Cumberland and the respondent resumed operations at Cumberland. Grayson then furnished three men to be trained by the Pittsburgh members of Local Union 246 in the duties of driver-salesmen. These three men were all members of Local Union 543. The record does not disclose how long the two Pittsburgh employees remained in Cumberland but within a short time their duties were assumed by the three new employees. When the plant resumed operation the practice of having the laundry work done by George Young's laundry in Cumberland was discontinued. Thereafter, the

soiled linen was taken by the respondent's truck to his Pittsburgh plant for laundering and then returned to Cumberland, from where it was distributed. This was still the practice at the time of the hearing.

The strike was still going on at the time of the hearing, although as we have stated, no actual picketing ever took place. With the exception of the week that the strike began, the Cumberland business has continued in operation. The six striking employees have never made application for reinstatement. Under the new method of having the laundry work done at Pittsburgh only the three employees furnished by Grayson are now engaged in the respondent's Cumberland business.

B. *The refusal to bargain*

1. The appropriate unit

The complaint alleges that the chauffeurs, helpers, seamstresses, and office employees engaged in the Cumberland, Maryland, plant of the respondent constitute an appropriate unit. This includes all the employees engaged in the respondent's Cumberland business prior to the strike, with the exception of Lindsey, who was admittedly a supervisory employee. The respondent's principal contention regarding the appropriate unit is that; since the respondent had changed the method of operating the Cumberland business so that an integral part of the operations are performed in its Pittsburgh plant, the employees at Cumberland do not constitute an appropriate unit for collective bargaining. Since the change was made after the strike began, this contention virtually operates as an admission that the employees at Cumberland constituted an appropriate unit at the time of the commission of the alleged unfair labor practices.

The record discloses that the respondent operates a service and laundry in Pittsburgh and a service enterprise in both Cumberland, Maryland, and Clarksburg, West Virginia. The business at Cumberland has always been conducted as a separate and distinct enterprise. Apart from the fact that the executive office of all the enterprises is located in Pittsburgh, the Cumberland business had nothing in common with the others. Necessary supplies for their proper operation come from Pittsburgh. In the respondent's relations with its employees, the employees of each business have been treated as separate bargaining groups. Hunkele testified that he had entered into closed-shop contracts with Local Union 246 and with two other American Federation of Labor local unions covering his employees at Pittsburgh several months prior to the Union's organization of the respondent's Cumberland employees. Neither the respondent nor the labor organizations treated the Cumberland employees as being in any manner related to the Pittsburgh employees, and no effort was made by the

American Federation of Labor unions to include them in the employee organizations at Pittsburgh, or to make them subject to the provisions of the Pittsburgh closed-shop contracts. There is no doubt from the record that Marshall, of Local Union 246, had full knowledge of the organizational efforts of the Union practically from the inception of the movement, and his conduct clearly indicates that he considered the Cumberland employees entirely independent of the employees at Pittsburgh. The respondent's attorney admitted during the course of oral argument that the employees at Clarksburg, West Virginia, were also treated by the respondent and the unions as separate groups for bargaining purposes.

The three present employees are all driver-salesmen engaged in the same work as the strikers whom they displaced and the essential part of the respondent's Cumberland business is still being conducted separate and apart from any of the respondent's other enterprises.

Moreover, the respondent recognized the propriety of the unit when it entered into a closed-shop contract on September 11 with Local Union 543. At that time, if the parties had considered the employees at Cumberland an integral part of a unit including the respondent's employees at Pittsburgh, the contract would have been unnecessary because of the fact that the employees at Pittsburgh were already covered by a contract with Local Union 246 of the same organization.

We find that all the employees engaged in the Cumberland, Maryland, business of the respondent, excluding supervisory employees, constitute a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, and that such a unit insures to the employees the full benefit of their right to self-organization and collective bargaining, and otherwise effectuates the policies of the Act.

2. Representation by the Union of a majority in the appropriate unit

As we have already indicated, all six of the respondent's employees engaged in its Cumberland business were members of the Union when the union representative, Pueschel, wired Hunkele on July 28 requesting a conference for the purpose of bargaining on behalf of these employees. No question was raised by the respondent or Fred Pickering at any time during the subsequent meetings between the parties regarding the fact that all six of the employees were bona fide members of the Union. The membership application cards of all six employees are in evidence and their authenticity was never questioned by the respondent.

We find that on July 28, 1937, and at all times thereafter, the Union was the duly designated representative of the majority of the em-

ployees in an appropriate unit, and pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in such unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

The respondent contends that he acted in absolute good faith in his dealing with the Union, but that the Union acted in bad faith and breached an agreement with him. The record, however, does not support this contention.

At the first two meetings between Fred Pickering and the employees and their representative on August 13 and 15, no bargaining took place. According to Fred Pickering he had no authority actually to negotiate concerning the terms of the agreement presented to him, but could only submit the matter to the respondent. These two meetings occurred over 2 weeks after Pueschel had wired the respondent advising that the Union represented the employees and requesting bargaining negotiations. Sufficient time had elapsed between the notice and the conferences to give the respondent ample opportunity to consider the matter, but instead of being prepared to conduct genuine negotiations, the respondent sent Fred Pickering, who had no authority to make any agreement with the Union, or at least who claimed that he had no such authority. Pickering ended the conference on August 15 by stating that he would have to confer with the respondent regarding the demands and assured the employees that this would be done upon his return to Pittsburgh.

Even then, bad faith would not have been so apparent, if it had not been for the respondent's subsequent actions. As soon as Fred Pickering returned to Pittsburgh, Lindsey was sent down to relieve Charles Pickering of his position of responsibility in the Cumberland business. No explanation was given to Charles Pickering as to why this was done, and no answer to the employees' pending demands was given. The employees then concluded that the respondent did not intend to bargain with the Union and voted to strike on August 27. The next morning Fred Pickering arrived in Cumberland and met with the employees. His conduct on that occasion leaves no doubt as to the respondent's antipathy to the Union and his intention not to carry on negotiations with that organization. Fred Pickering's conversation with Charles Pickering, apart from the other employees, and his subsequent conversation wherein he offered all the employees a "substantial" wage increase if they would abandon the Union, were obviously coercive in their nature. At the meetings on this date, the respondent advanced for the first time the possibility of friction with the American Federation of Labor local unions as a reason for not

negotiating a contract with the Union. Even at this meeting, when the employees were again defeated in their efforts to bargain, they were persuaded to withhold any strike action so that Fred Pickering could confer further with the respondent because of Pickering's lack of authority to negotiate an agreement.

The respondent is not in a position to assert bad faith on the part of the Union in connection with the agreement made on September 3 to defer strike action. During the period from July 28 until September 3, the Union had been attempting to negotiate with the respondent, but had been unsuccessful because of the latter's dilatory and evasive tactics. Hunkele admitted on the stand that until the hearing he had never seen the written demands submitted by the Union on behalf of the employees. In view of Fred Pickering's previous conduct it is understandable that the employees were skeptical of his motive in requesting them to withhold strike action until September 10, and since Hunkele had never even been apprised of their demands their skepticism was justified. Therefore, when the employees received information on the same date that the agreement to defer strike action was made that the sale to George Young would not take place, and that respondent intended to reduce the force of employees at Cumberland, they decided to strike. The Union had agreed to hold strike action in abeyance only until such a time as George Young either accepted or rejected the proposition. Since the respondent offered no evidence to refute the testimony of Gaitens and Pueschel to the effect that on the same date that the agreement was made, George Young informed them that the sale would not be consummated, which testimony was partially corroborated by Young, it is apparent that the employees' action in calling the strike did not constitute a breach of the agreement. As a matter of fact, when we consider the agreement in the light of the respondent's prior actions serious doubt is cast upon the respondent's good faith in having the Union make such an agreement. The employees were induced by Fred Pickering to refrain from striking, after they had voted to strike on August 27, because of his promise to confer further with the respondent regarding their demands. In view of the respondent's previous conduct and his admission that he had neither seen the written demands of the Union, nor given them any consideration, it is conclusively shown that the respondent did not intend to bargain with the Union.

The respondent also contends that it was impossible for him to enter into an agreement with the Union because Local Union 246 would have called a strike of his Pittsburgh employees. In the beginning of the efforts on the part of the Union to bargain this proposition evidently did not occur to the respondent because the first

time it was advanced was at the meeting between Fred Pickering and the employees on August 28. Even then there was no actual basis for this apprehension as the officials of Local Union 246 had not indicated to him what course they would pursue in the event such a contract was executed. The respondent admitted on the stand that Marshall had neither threatened to call a strike, nor indicated that he would take any sort of action in the matter, until he was informed by the respondent on September 8, the day after the Cumberland strike began, that the Cumberland employees were striking because of the respondent's refusal to enter into a contract with the Union. According to the respondent's testimony, after receiving this information which was unsolicited by Marshall, the latter then informed the respondent that he would call a strike at the Pittsburgh plant if such a contract was executed. In view of these undisputed facts it is plain that the respondent was the author of the idea that a contract with the Union would be objectionable to Local Union 246, and it is reasonable to conclude that Marshall raised such an objection only upon the respondent's solicitation after the strike began.

It is apparent from the record that the respondent had no intention to make an honest effort to arrive at an agreement with the Union. Neither the contemplated sale of the Cumberland business to George Young nor the threat of Local Union 246 to call a strike at the respondent's Pittsburgh plant, if such a threat actually existed, relieved the respondent of his obligation to bargain collectively with the Union. As a matter of fact, it is clearly indicated that the respondent's actions throughout were principally motivated by his hostility to the Union and by his desire to avoid bargaining with it.

We find that the respondent on July 28, 1937, and at all times thereafter, refused to bargain collectively with the Union as the representative of his employees engaged in his Cumberland business in respect to rates of pay, wages, hours of employment, and other conditions of employment. We further find that by offering the employees a substantial wage increase in return for their abandonment of the Union and threatening discrimination because of union membership the respondent has interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed them by Section 7 of the Act.

C. The closed-shop contract with Local Union 543

In view of the above findings the contract of September 11 with Local Union 543 is clearly invalid. The respondent admitted that none of the employees engaged in his Cumberland, Maryland, business were members of this organization at the time the contract was executed. Since at the time of the execution of the contract of Sep-

tember 11, 1937, Local Union 543 represented none of the respondent's employees engaged in his Cumberland, Maryland, business, it is void and of no effect.¹

D. *The discharges*

The Trial Examiner concluded that the respondent had violated Section 8 (3) of the Act upon the basis of the facts found in his Intermediate Report. The respondent excepted to this conclusion. The Union in its exceptions to the Trial Examiner's Intermediate Report contended that the action of the respondent in entering into the closed-shop contract of September 11, 1937, with Local Union 543 precluded the possibility of the reemployment of the striking employees and thus obviated the necessity for actual application by the strikers, and prayed for reinstatement and back pay for the strikers from the date of the closed-shop contract.

The strike commencing on September 7 and in progress on September 11 when the respondent entered into the closed-shop contract with Local Union 543 was a labor dispute caused by the respondent's unfair labor practice in refusing to bargain with the Union. Under the Act the striking employees retained their status as employees of the respondent and were still afforded the protection of the Act against the unfair labor practices denounced by it.² Moreover, since the strike was caused by the respondent's unfair labor practices the striking employees were, as we have frequently held, entitled to reinstatement to their former positions with the respondent.³ Consequently, imposition by the respondent of the illegal closed-shop contract as a discriminatory condition which would have the effect of denying the striking employees reinstatement if and when they ceased striking constitutes a violation of Section 8 (3) of the Act. Unquestionably, the respondent's execution of the closed-shop contract with Local Union 543 was such a condition because it conclusively and effectively precluded any possibility of the striking employees obtaining reinstatement to their former positions with the respondent unless they became members of Local Union 543. The record discloses that the striking employees received information as to the execution of the closed-shop contract within a short time after its execution. Since this action on the part of respondent was of itself

¹ *Matter of Lenox Shoe Company, Inc and United Shoe Workers of America*, 4 N. L. R. B. 372.

² *National Labor Relations Board vs. Mackay Radio & Telegraph Company*, U. S. Supreme Court, May 16, 1938, 58 S. Ct. 904.

³ *Black Diamond Steamship Corp. vs. National Labor Relations Board*, 94 Fed. (2nd), 875, certiorari denied May 23, 1938, 58 S. Ct. 1044; *Jeffery-DeWitt Insulator Co., Inc., vs. National Labor Relations Board*, 91 Fed. (2nd), 134, certiorari denied October 18, 1937, 302 U. S. 731, *Remington Rand, Inc vs. National Labor Relations Board*, 94 Fed. (2nd), 862, certiorari denied May 23, 1938, 58 S. Ct. 1046.

an act of discrimination which is condemned under the plain provisions of the Act, it was tantamount to a discharge of the striking employees on September 11, 1937, the date when the discriminatory condition of reinstatement was imposed by the respondent. Thereafter, any application for reinstatement by the striking employees was obviously futile unless the men complied with the discriminatory condition. The erection of this illegal barrier against reemployment of these employees relieved them of the necessity of making formal application for work. To hold otherwise would be to place a penalty upon the striking employees for not doing what they knew would have been useless.⁴

We find that the respondent by the acts set forth above discriminated in regard to the tenure of employment of Mary Dowl, Pauline Wagner, Harold Athey, Claude Largent, Charles Pickering, and Bernard Dowl, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

E. The reduction in the force of employees engaged in the respondent's Cumberland, Maryland, business

The respondent contends that the change in the method of operating the Cumberland business which resulted in the reduction in the number of employees from six to three was due entirely to economic conditions which made it no longer profitable to operate the business in the old manner. The evidence does not support this contention since sufficient facts are not disclosed in the record for the Board to determine what economies, if any, were effected by the change. The first indication which was given that the respondent was considering changing the method of operating the business was in the conversation that Puschel had with Heskett on September 3, 1937, after the Union had been endeavoring unsuccessfully for a period of over a month to carry on negotiations with the respondent. If there had been any indication prior to that time that the respondent considered it desirable or necessary to change the method of operating the business or that the respondent was acting in good faith in his dealings with the Union, it might lend credence to the respondent's contention. But the respondent's decision to make the change, coming as it did as the last of an inseparable series of events occurring after the Union had persistently endeavored to bargain collectively with the respondent, convinces us that the Cumberland business would still be operating with the original force of six employees if those em-

⁴ *Matter of Carlisle Lumber Company and Lumber & Sawmill Workers Union, Local 2511, Onalaska, Washington, and Associated Employees of Onalaska, Inc., Intervener, 2 N. L. R. B. 248, enforcement ordered 94 Fed (2nd), 138, certiorari denied May 23, 1938, 58 S. Ct. 1045.*

ployees had not become members of the Union and had not sought to negotiate a contract with the respondent in their behalf.

Accordingly, we find that the respondent's change in the method of operating his Cumberland, Maryland, business was for the purpose of avoiding his duty under the Act to bargain collectively with the Union. We also find that by his action in reducing the employees engaged in the Cumberland business from six to three the respondent interfered with, restrained, and coerced his employees in the exercise of their right of self-organization and collective bargaining through representatives of their own choosing as guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

THE REMEDY

We have found that the strike of September 7, 1937, was caused by the respondent's unfair labor practices in refusing to bargain with the Union, and further that the respondent's subsequent action in entering into the closed-shop contract with Local Union 543 constituted a discriminatory discharge of the six striking employees. We have also found that the respondent's action in reducing the force of employees from six to three was an unfair labor practice. While we will not require the respondent to resume operations with a full force of six, we will order immediate reinstatement of all six, such reinstatement to be effected in the following manner: All employees hired after the commencement of the strike shall, if necessary to provide employment for those to be offered reinstatement, be dismissed. If thereupon by reason of the reduction in force there is not sufficient employment immediately available for all the employees to be offered reinstatement, those employees for whom employment is not available shall be placed upon a preferential list and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons are hired for such work. Furthermore, we will order that all six of these employees be made whole for any losses of pay they have suffered by reason of the respondent's unlawful conduct in discharging them, by payment of

back wages up to the date of reinstatement or placement on the preferential list. However, since this is contrary to the conclusion and recommendation of the Trial Examiner in his Intermediate Report we will exclude from the computation of their back pay the period from January 31, 1938, the date of the Intermediate Report to the date of the order herein. This follows our rule that the respondent could not have been expected to reinstate the discharged employees after it received the Intermediate Report which did not contain such a conclusion and recommendation.

We have also found that the closed-shop contract of September 11, 1937, was with an organization which did not represent any of the respondent's employees engaged in his Cumberland business. For this reason the contract is void and of no effect and the respondent will be ordered not to give it effect.

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

CONCLUSIONS OF LAW

1. Local No. 40, United Laundry Workers Union, affiliated with the Committee for Industrial Organization, and Local Union 543, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. The strike of the respondent's employees engaged in his Cumberland, Maryland, business is a current labor dispute within the meaning of Section 3 (9) of the Act.

3. All of the employees engaged in the Cumberland, Maryland, business of the respondent, excluding supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. By virtue of Section 9 (a) of the Act, Local No. 40, United Laundry Workers Union, affiliated with the Committee for Industrial Organization was on July 28, 1937, and at all times thereafter, has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining.

5. The respondent, by refusing to bargain collectively with the exclusive representative of the employees in such unit on July 28, 1937, and thereafter, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

6. The respondent, by discriminating in regard to the hire and tenure of employment of Mary Dowl, Pauline Wagner, Harold Athey, Claude Largent, Charles Pickering, and Bernard Dowl, has engaged

in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

7. The respondent, by interfering with, restraining, and coercing his 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 (1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (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 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Jacob A. Hunkele, Trading as Tri-State Towel Service of the Independent Towel Supply Company, and his officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local No. 40, United Laundry Workers Union, affiliated with the Committee for Industrial Organization, as the exclusive representative of all of the employees engaged in the respondent's Cumberland, Maryland, business, excluding supervisory employees;

(b) Giving effect to the contract of September 11, 1937, with Local Union 543, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor;

(c) Discouraging membership in Local No. 40, United Laundry Workers Union, or any other labor organization of his employees by discharging or refusing to reinstate any of his employees or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment of his employees by reason of their membership in Local No. 40, United Laundry Workers Union or any other labor organization of his employees;

(d) In any other manner interfering with, restraining, or coercing his 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, or other mutual aid and protection, as guaranteed in Section 7 of the Act.

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

(a) Upon application, offer to those employees who went out on strike on September 7, 1937, and thereafter, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, in the manner set forth in the section entitled "Remedy," above; and placing those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section;

(b) Make whole the employees ordered to be offered reinstatement for any loss of pay they have suffered by reason of their discharges, by payment to each of them respectively of a sum of money equal to that which they would normally have earned as wages from September 11, 1937, the date of their discharges, to January 31, 1938, the date of the Intermediate Report of the Trial Examiner, and from the date of this order to the date of such offer of reinstatement or placement upon the preferential list required by paragraph (a) above, less the amount, if any, which each will have earned during that period;

(c) Upon request, bargain collectively with Local No. 40, United Laundry Workers Union, affiliated with the Committee for Industrial Organization, as the exclusive representative of all the employees engaged in the respondent's Cumberland, Maryland, business, excluding supervisory employees, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment;

(d) Immediately post notice to the employees in his plant at Cumberland, Maryland, and maintain such notice for a period of at least thirty (30) consecutive days, stating (1) that the respondent will cease and desist in the manner aforesaid; and (2) that the respondent will not give effect to the contract of September 11, 1937, with Local Union 543, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor;

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