

It has also been found that the Respondent has discriminated against Doris Georgene Shaw in regard to her hire and tenure of employment. It will therefore be recommended that the Respondent offer to Doris Georgene Shaw immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority and other rights and privileges, and make her whole for any loss of pay she may have suffered by reason of the discrimination against her, by payment to her of a sum of money equal to that which she would have normally earned less net earnings,⁶ which sum shall be computed on a quarterly basis during the period from the discriminatory discharge to the date of proper offer of reinstatement, in accordance with Board policy set out in *F. W. Woolworth Company* (90 NLRB 289). It will also be recommended that the Respondent make available to the Board, upon request, payroll and other records to facilitate the checking of the amount of back pay due.

Upon the basis of the above findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. International Union of Electrical, Radio and Machine Workers, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.
2. By discriminating in regard to the hire and tenure of employment of Doris Georgene Shaw, thereby discouraging membership in a labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a)(3) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a)(1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

(Recommendations omitted from publication.)

⁶ *Crossett Lumber Company*, 8 NLRB 440

PUERTO RICO FOOD PRODUCTS CORPORATION *and* UNION INDUSTRIAL
 AMALGAMADA NUM. 1. *Case No. 24-CA-438. January 24, 1955*

Decision and Order

On August 9, 1954, Trial Examiner David London issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed.¹

¹ The Respondent contends that the Trial Examiner erred in ruling that it had not presented competent proof of a settlement agreement. It argues that the complaint should be dismissed because it informally settled the case with the Board. It relies on an oral agreement which, it asserts, it reached with the Board's field examiner, and with which it complied in part.

The Respondent does not rely on any statement or act by the Board's Regional Director settling the case, and the evidence discloses none. The Respondent's representatives (its president, general manager, and attorney) testified to attending a conference with a Board field examiner in December 1953 at which they indicated that the Respondent was willing to reinstate the alleged discriminatees and post the customary notices prepared by the

The rulings are hereby affirmed. The Board had considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings,² conclusions, and recommendations of the Trial Examiner except for the following modification.³

The Trial Examiner found that the Union represented an uncoerced majority of the employees in the appropriate unit when it demanded recognition of the Employer, and that the Employer's refusal to bargain violated Section 8 (a) (5) of the Act. The Respondent contends that the Union obtained its majority by coercion. We find merit in this contention.

Board Admittedly, no settlement was reached at that meeting. All the testimony shows that the field examiner said he would take up the Respondent's proposal with Board officials. The Respondent's president further testified that he returned alone some 45 minutes later to the field examiner's office to recover his brief case, that the field examiner then told him that his superiors had agreed to the Respondent's settlement proposals, and that he asked the examiner to give this information in writing to the Respondent's attorney. The field examiner did not send any letter to the Respondent's attorney. Nor did Board officials send the Respondent the notices for posting. The Respondent, on its own initiative, sent offers of reinstatement to the alleged discriminatees.

The testimony of the Respondent's witnesses is at variance on whether the subject of back pay was discussed with the field examiner. The Respondent's president denied such discussion. The general manager testified to the contrary, saying that the Respondent made known its position that it was not obligated to offer back pay. It is clear, however, that the Respondent's president discussed the issue several days later with counsel for the General Counsel, that he told counsel for the General Counsel that he had settled the case, but the latter "mentioned that it could not be done or something like that." This discussion occurred before issuance of the complaint.

There is no evidence, and the Respondent does not contend, that the alleged settlement was in writing or that the Regional Director approved it. An oral understanding with a field examiner, not having the approval of the Regional Director, does not meet the standards for settlements set out in Section 101.7 of the Board's Statements of Procedure. Indeed, the record does not establish a settlement in any less formal sense of the word. According to the Respondent president's testimony, a confirming letter from the field examiner and the posting of Board-prepared notices were part of the understanding. Board officials sent neither the letter nor the notices to the Respondent. Although the Respondent's president asked the field examiner for the confirming letter, the Respondent apparently did not wait for the letter before offering reinstatement to the employees. No Board official directed the Respondent to take such action. And the Respondent's action could not obligate the Board to dismiss the case. On the contrary, counsel for the General Counsel, in later discussing back-pay issues in the case with the Respondent's representatives, clearly advised them that a settlement had not been effected. Moreover, the Respondent was not prejudiced in any way by its offer of reinstatement. We do not view the offer to the employees as an admission of liability. It has served only to toll the Respondent's back-pay liability. We hold that the Trial Examiner did not err in ruling that there was no settlement in the case.

² During its fiscal year ending June 30, 1953, the Respondent, a Puerto Rico corporation, shipped canned products valued at more than \$50,000 to continental United States. We find that it will effectuate the policies of the Act to assert jurisdiction herein. Member Murdock would affirm the Trial Examiner in asserting jurisdiction on plenary grounds.

³ In adopting the Trial Examiner's conclusion that the Respondent violated Section 8 (a) (3) of the Act, we find it unnecessary to rely upon the Respondent's letter of December 14, 1953, addressed to the discriminatees. Because the Respondent may have sent this letter offering reinstatement to toll its back-pay liability, we will not construe the letter adversely to the Respondent.

We also note and correct an apparent error in the Intermediate Report. The Trial Examiner incorrectly referred in footnote 12 to Juana Rodriguez, rather than Marta Castro, as employed for 2 months before the strike. This correction does not affect our concurrence in the Trial Examiner's finding that the Respondent violated Section 8 (a) (3) of the Act.

The Trial Examiner found that six employees testified “credibly and without contradiction” that Jesus Febres, who had presided at union meetings, told them that unless they joined the Union they would lose their jobs. He therefore excluded the written designations of these six employees in determining the Union’s majority status. He also excluded the designations of four other employees, who testified without contradiction that they had been similarly threatened, because the Union did not rely on them to establish its majority.

The Trial Examiner erred in treating the evidence of coercion as a factor that could be ignored by a simple mathematical exclusion. The effect of the coercion exercised by Febres, though not entirely possible to calculate, should have been more realistically measured in the light of its extensive character and the further fact that Febres was a supervisor.⁴ Here is no isolated instance of a rank-and-file employee inadvertently overstepping the bounds of legitimate union activity. Ten of the approximately sixty subordinate employees in the unit testified to Febres’ threats of economic reprisal if they failed to join the Union. And it is altogether likely that the threats were either addressed to or overheard by other employees because those coerced testified that Febres threatened “us.” Accordingly, we find that the coercion practiced by Febres tainted the Union’s entire majority. As the General Counsel has not proved that the Union represented an uncoerced majority of employees in the appropriate unit, the Respondent’s refusal to bargain with the Union was not unlawful.⁵ We shall therefore dismiss the complaint allegation that the Respondent violated Section 8 (a) (5) of the Act.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Puerto Rico Food Products Corporation, Rio Piedras, Puerto Rico, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening its employees with economic reprisals because of their union membership or activities.

(b) Promising its employees benefits to induce their withdrawal from union membership or activities.

(c) Discouraging membership in Union Industrial Amalgamada Num. 1, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees because of their union membership or activity, or in any other manner discrim-

⁴ The parties stipulated that Febres was a supervisor.

⁵ Cf. *N L R B v James Thompson & Co, Inc*, 205 F 2d 743, 746-748 (C A 2).

inating in regard to their hire, tenure, terms, or conditions of employment.

(d) In any other manner, interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Union Industrial Amalgamada Num. 1, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining and other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

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

(a) Make whole each of the employees named in the Appendix attached to this Decision and Order for any loss of pay they may have suffered by reason of the Respondent's discrimination against them, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Upon request, make available to the National Labor Relations Board, or its agents, for examination and copying, all payroll records, social-security payment records, timecards, personnel records and reports, and all other records necessary for a determination of the amount of back pay due under the terms of this Order.

(c) Post at its plants at Rio Piedras, Puerto Rico, a copy of the notice attached hereto and marked "Appendix."⁶ Copies of said notice to be furnished by the Regional Director for the Twenty-fourth Region, shall, after being signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Twenty-fourth Region, in writing, within ten (10) days from the date of this Decision and Order what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent discriminated against Maria Garcia Merced and that the Respondent unlawfully refused to bargain collectively with the Union as the exclusive bargaining representative of its employees in an appropriate unit.

⁶ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Appendix

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT threaten our employees with economic reprisals for engaging in union membership or activities.

WE WILL NOT promise our employees benefits to induce their withdrawal from union membership or activities.

WE WILL NOT discharge, or otherwise discriminate against any employee because of membership or activities in Union Industrial Amalgamada Num. 1, or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Union Industrial Amalgamada Num. 1, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining and other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

WE WILL make whole the following named employees for any loss of pay suffered as a result of the discrimination against each of them:

Virginia Baez	Carmen Santiago
Maria Garcia Monserrate	Felicita Benitez Gonzales
Antonio Colon Diaz	Lidia Mujica
Asuncion Santiago de Jesus	Carmen M. Rodriguez
Providencia Ortiz	Angelina Natal y Salgado
Maria Dolores Lozano Rivera	Marcia Suarez
Juana Rodriguez	Marta Castro
Antonia Colon Diaz	Joaquina Figueroa

PUERTO RICO FOOD PRODUCTS CORPORATION,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Intermediate Report

STATEMENT OF THE CASE

Upon charges duly filed by Union Industrial Amalgamada Num. 1, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-fourth Region, issued a complaint against Puerto Rico Food Products Corporation, herein called Respondent, alleging that the latter had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charges, complaint, and notice of hearing were duly served upon Respondent. With respect to the unfair labor practices, the complaint, as amended at the hearing, alleged, in substance that: (1) Respondent, by its officers, agents, and supervisors, since about February 1, 1953, (a) urged, persuaded, and warned its employees by threats of reprisals, or force, or promises of benefit, to refrain from assisting, becoming, or remaining members of the Union, or engaging in concerted activities for the purposes of collective bargaining or other mutual aid or protection; (b) threatened employees with loss of employment if they signed authorization for the Union, (c) threatened employees with harder work tasks if they joined or assisted the Union; and (d) offered employees wage increases if they would abandon the Union; (2) since on or about February 27, 1953, Respondent has refused to bargain collectively with the Union as the exclusive bargaining representative of the employees of Respondent in an appropriate bargaining unit; (3) on or about April 7, 1953, Respondent discharged the 17 employees named in the margin,¹ because they engaged in a strike occasioned by Respondent's refusal to bargain as aforementioned; and (4) on or about April 8 the employees aforementioned applied for reinstatement to their former or substantially equivalent positions and that Respondent has since that date refused to reinstate them because they had assisted or had become members of the Union, or had participated in the strike aforementioned. By its answer, respondent entered a general denial to the allegations of the complaint aforementioned and as "special defenses" pleaded, *inter alia*, that the Union was not in compliance with Section 9 (f), (g), and (h) of the Act, and that the employees alleged to have been discriminatorily discharged were, with the exception of Maria Garcia Merced, "discharged due to a reduction in personnel in accordance with the necessity of production, or in the alternative, . . . they were discharged for legal cause." The answer further pleaded that each of the employees aforementioned "were offered reinstatement and/or Respondent was willing to reinstate them."

Pursuant to notice, a hearing was held between April 20 and 27, 1954, inclusive, at Santurce, Puerto Rico, before the duly designated Trial Examiner at which General Counsel, Respondent, and the Union were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the conclusion of the hearing, the parties waived oral argument. Since then, briefs have been received from the General Counsel and Respondent which have been duly considered.

From my observation of the demeanor of the witnesses, and upon the entire record in the case,² I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a corporation duly organized under and existing by virtue of the laws of the Commonwealth of Puerto Rico, with its principal office and place of business located at Rio Piedras, Puerto Rico, where it is engaged in the preparation, processing, canning, and sale of food products. The parties stipulated that during the fiscal year ending June 30, 1952, Respondent imported from the United States furniture, fixtures, machinery, equipment, automobiles, and trucks valued at ap-

¹ Virginia Bacz, Carmen Santiago, Maria Garcia Monserrate, Felicitia Benitez Gonzales, Antonio Colon Diaz, Lidia Mujica, Asuncion Santiago de Jesus, Carmen M. Rodriguez, Providencia Ortiz, Angelina Natal y Salgado, Maria Dolores Lozano Rivera, Marcia Suarez, Juana Rodriguez, Maria Garcia Merced, Marta Castro, Antonia Colon Diaz, Joaquina Figueroa

² Line 14, page 59 of the Transcript of Testimony herein is amended by striking therefrom "Seventy five" and inserting in lieu thereof "sixty-five"

proximately \$32,000. It was further stipulated that during the same period Respondent purchased raw materials valued at \$118,579 of which 5 percent was purchased in continental United States and 95 percent was purchased locally; that Respondent purchased packing materials at value of \$64,758 of which 80 percent was purchased in continental United States and 20 percent in the local market. During the same period, Respondent made sales in the amount of \$257,330, of which 60 percent were sales made in the continental United States and 40 percent was sold in the local market. The parties stipulated that the sales and purchases for the fiscal year ending June 30, 1952, were substantially the same for the year ending June 30, 1953.

Upon the foregoing stipulation I find that the Board has jurisdiction herein and that Respondent is engaged in commerce as defined in Section 2 (6) of the Act. *Xavier Zequeira*, 102 NLRB 874.

II. THE LABOR ORGANIZATION INVOLVED AND ITS COMPLIANCE WITH SECTION 9 (f), (g), AND (h) OF THE ACT

On February 27, 1953, Union Amalgamada Num. 1 filed a petition with the Board (24-RC-543) seeking to be certified as bargaining representative of Respondent's maintenance and production employees. At the hearing on that petition held on March 16, 1953, that Union moved to amend the petition to show its correct name as Union Industrial Amalgamada #1, Independiente. By its Decision and Direction of Election in that proceeding issued on June 15, 1953,³ the Board granted that motion because it was "satisfied that Union Amalgamada #1 and Union Industrial Amalgamada #1, Independiente, are one and the same labor organization."⁴ On the entire record I find that Union Industrial Amalgamada Num. 1, the Union herein, is a labor organization within the meaning of Section 2 (5) of the Act.

As aforementioned, Respondent pleaded as a special defense that the Union was not in compliance with Section 9 (f), (g), and (h) of the Act. The fact of such compliance, however, is a matter for administrative determination and is not litigable by the parties. *N. L. R. B. v. Sharples Chemicals, Inc.*, 209 F. 2d 645 (C. A. 6). Moreover, I have administratively satisfied myself that the Union was in compliance with the sections of the Act under consideration at all times material herein.

III. THE UNFAIR LABOR PRACTICES

A. *Sequence of events*

Early in February 1953,⁵ the Union began an organizational campaign among Respondent's employees. On February 16, 36 of such employees signed cards authorizing the Union to act as their representative for the purpose of collective bargaining with Respondent concerning wages, hours of work, and other conditions of employment. On February 27 Francisco Munoz Dieppa, general secretary of the Union, filed the petition in 24-RC-543 aforementioned. On March 23, the Union wrote a letter to Respondent, received by the latter on March 24, demanding that the Company, within 5 days, recognize the Union as bargaining representative of the production and maintenance employees and commence negotiation of the collective-bargaining agreement. Enclosed with that letter was a proposed form of agreement.

Receiving no reply thereto, Dieppa called Respondent's office on the morning of March 28 and asked to talk to Prudencio Unanue, hereafter referred to as Prudencio, "who was said to be the president of the Company."⁶ Dieppa was advised by Luis Quinones, manager of the plant, that Prudencio had not yet arrived. Dieppa informed Quinones that the time limit imposed by his letter had expired and that he wanted to get in touch with Prudencio in order to "harmoniously solve the problem in order not to stop the work." Quinones gave Dieppa Prudencio's home telephone

³ Not reported in printed volume of Board Decisions and Orders.

⁴ On June 30, 1953, the Union, having in the meantime filed the instant unfair labor practice charges, requested permission of the Board to withdraw its petition for certification in 24-RC-543 which motion was granted by the Board on July 15, 1953.

⁵ Unless otherwise specified all reference to dates herein are to the year 1953.

⁶ In fact, Prudencio was not the president of Respondent. That position was occupied by his son Ulpiano Unanue, hereinafter referred to as Ulpiano, who, however, was not "on the island" from July 1952 until June 1953. During at least a part of that period, Ulpiano was in New York where another corporation, of which he was treasurer and Prudencio the president, was engaged in business.

number and Dieppa called him there. Dieppa advised Prudencio of "the seriousness of the situation" and the latter made an appointment to meet Dieppa at the plant a half hour later.

At the appointed time, in the presence of Quinones, Dieppa informed Prudencio that the Union had not received any answer to its correspondence. Prudencio asked what it was the Union wanted and Dieppa replied: "Recognition of the Union and the negotiation of a collective agreement." When Prudencio protested that the proposed agreement was "very strong" and could not be discussed, Dieppa stated that the tendered contract was only a proposal and that Respondent could make such counterproposal as it deemed appropriate. Prudencio answered, "that he was willing to grant an increase in the wages of the workers, and even agree on vacations, but without a union, that he didn't want unions, and that there was no need for a union in his plant, and that he was not willing to discuss anything with the Union . . . that if the workers went out on strike he had a very much larger factory in New York, and that he would transfer the one in Rio Piedras up there also."

Dieppa reported the results of the conference to workers waiting outside the plant. Some of them procured picket signs from the union office and began picketing the plant at about 11 a. m. All but 8 to 10 of the approximately 40 employees employed on that Saturday left their jobs and joined the pickets in front of the plant. Thereafter, picketing was carried on by 8 to 10 employees until April 6 when, through the efforts of the Insular Conciliation Service, the strikers abandoned the strike and offered to return to work the following day. All of the alleged discriminatees herein who presented themselves for employment at the usual time on the following morning, April 7, were put to work at one table, peeling papayas. At about 4 p. m., Mrs. Quinones, who, her husband testified was a supervisor, approached the table at which these employees were working and, pointing to several pieces of papaya in her hand, reprimanded the group for the manner in which they were peeled and cleaned. At the same time she told the group that if they "had any dignity [they] would not have come back to work" at all, and instructed Foreman Felipe Benitez to tell the entire group to punch out. The latter complied with the direction and, pointing to a list posted near the time clock, said: "If your name is not there, you can't come back to work."⁷ Nine of the alleged discriminatees testified that their names were not on the list. The remainder were not questioned with reference thereto. Respondent's answer, however, specifically pleads that all the alleged discriminatees, except Maria Garcia Merced, in fact were discharged.

On December 14, Respondent mailed a letter to all the alleged discriminatees, except Joaquina Figueroa whose address was not available, reading in pertinent part as follows:

We hereby notify you that your job with this firm, Puerto Rico Food Products Corporation, is opened for you as it has been during all the time. Report to work any day after you receive this letter. Your job will be available up to ten days after the date of this letter.

B. *Interference, restraint, and coercion*

On or about March 15, Quinones, at his home, asked Felicita Benitez Gonzales "to unite with the other workers" and abandon the Union in return for which he would increase their wages 10 cents an hour. Several days before the strike, Supervisor Ramos asked the same employee "to abandon this union business . . . and that if [they] continued with this Union [they] would lose [their] jobs." Substantially the same threat was made by Ramos and Quinones to Maria Garcia Monserrate. About the same time, Supervisors Romas and Benitez told Asuncion Santiago de Jesus to leave the Union or she and the other girls "would be out of a job." After the strike, when she applied to Romas for work without success, he reminded her that he had previously warned her that unless she left the Union she would lose her job.

During the strike, Quinones called Antonia Colon Diaz to his office and questioned her about the complaints of the strikers. In the course of the conversation he asked her to get a group of the girls to come to his office or home and to talk with him about their complaints but "without anyone who is connected with the Union." At about the same time, he told Angelina Natal y Salgado that if the girls abandoned the Union he would increase their pay.

By the solicitations to abandon the Union, the promises of benefit and threats of reprisal aforementioned, conditioned as they were upon the withdrawal of union membership or activity, Respondent violated Section 8 (a) (1) of the Act.

⁷ Respondent had never before resorted to such a posting practice.

C. The refusal to bargain

In accordance with the decision and direction of election of the Board in 24-RC-543 heretofore referred to, and the stipulation of the parties in the instant proceeding, I find that all production and maintenance employees at Respondent's Rio Piedras, Puerto Rico, plant, including the regular chauffeur, but excluding office clerical employees, casual truckdrivers, executive, administrative, and professional employees, guards, watchmen, the 4 supervisors and 2 assistants to the manager, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

To prove a violation of the statutory duty to bargain it must be established first that the Charging Union represented an uncoerced majority of the employees in the appropriate unit at the time the request to bargain is made. Here, Respondent, by its answer, denied that the Union achieved such status, and at the hearing, and in its brief, asserted specifically that some of the authorizations relied on by the General Counsel were obtained through threats and coercion and are, therefore, not available to the General Counsel in establishing the necessary majority.

It has previously been found that the Union made a demand to be recognized by, and to bargain with, Respondent by its letter of March 23 and at the conference held on March 28. Accordingly, it is as of these dates that the Union's alleged majority in the appropriate unit must be tested.

At the hearing, Respondent produced its payroll records for the periods commencing March 6, 1953, and ending June 25, 1953. Included on all those payrolls, however, were 7 persons who were either supervisors or otherwise excluded from the unit: Quinones, the plant manager; his secretary; Mrs. Quinones, as forelady; and 4 other foremen. During the week ending March 26, the week during which the 2 demands to bargain were made, 63 persons appeared on Respondent's payroll. Deducting therefrom the 7 employees who were not in the unit, it is found that during that week there were 56 employees in the unit.

On or about February 16, 36 members of the unit executed written designations authorizing the Union to represent them as collective-bargaining agent with respect to wages, hours of work, and other conditions of employment. At the hearing, Respondent attacked these designations on the ground that the signatures thereto were induced by coercion and threats of reprisals by representatives of the Union. In support of that contention, Respondent produced the testimony of six employees on whose designations the General Counsel relied to establish the Union's majority.⁸ All six of these employees testified, in substance, credibly and without contradiction, that Jesus Febres, who had presided at union meetings in its headquarters, told them that unless they joined the Union they would lose their jobs. By reason thereof, I have excluded the designations of these six employees in my computation of the number of employees who had designated the Union as their bargaining representative.⁹ Accordingly, I find that at the times the Union demanded recognition, and made its request to bargain, an uncoerced majority consisting of 30 of 56 employees in the appropriate unit had designated that organization as their bargaining representative.

Notwithstanding the finding just announced, Respondent contends in its brief that it cannot be found guilty of a refusal to bargain because the General Counsel failed to prove that Respondent had knowledge of the Union's majority status. The record negates such a conclusion. The Union's letter of March 23 informed Respondent that it represented all of the Company's production and maintenance workers. And, when the demand to bargain was made on the morning of the strike and Dieppa informed Quinones and Prudencio that the Union represented all but 4 or 5 of Respondent's employees, that statement was not challenged, nor was it suggested, or even intimated, by the Respondent at that time that its refusal to bargain was occasioned by a doubt of the Union's majority status.

Equally without merit is the contention that Respondent cannot be found guilty of the charge under consideration because the Union having filed a representation

⁸ Ecolastica Garay, Maria G. Merced, Emilia Garcia, Ines M De Fuentes, Francisca Marciano, Aleja Cuadrado Concepcion. Though the last of these employees testified as just indicated, while her designation was signed as Aleja Cuadrado, I find them to be one and the same person.

⁹ Four other employees who had signed union authorization cards also testified in behalf of Respondent that they had been similarly threatened. These four designations, however, were not among the 36 heretofore found to have been executed on February 16 and upon which the General Counsel relies to establish the Union's majority status. They, therefore, play no part in the computation.

petition for certification, Respondent was entitled to await the outcome of a Board election to determine whether or not a majority of the employees had in fact designated the Union as their bargaining representative. Such a contention was specifically rejected by the Court of Appeals for the First Circuit in *N. L. R. B. v. Star Beef Company*, 193 F. 2d 8, a case similar in many other respects to the instant proceeding, where the Court said:

The right of employees to bargain collectively through an exclusive bargaining representative is not conditioned upon an antecedent certification by the Board where, as here, the majority status of the union is clearly established otherwise, and the employer has no bona fide doubt of such majority status, but seeks to delay bargaining negotiations while resorting to various coercive tactics designed to dissipate the union majority support. *National Labor Relations Board v. Reed & Prince Mfg., Co.*, *supra* [118 F. 2d 874], *National Labor Relations Board v. National Seal Corp.*, 127 F. 2d 776, *National Labor Relations Board v. Franks Bros. Co.*, 137 F. 2d 989, *aff'd* 321 U. S. 702, *National Labor Relations Board v. Harris-Woodson Co.*, 162 F. 2d 97.

The findings made in the preceding paragraphs, coupled with Respondent's unequivocal refusal to bargain with the Union on and after March 28, compel the conclusion that Respondent thereby violated Section 8 (a) (5) of the Act.

D. *The discriminatory discharges and refusals to reinstate*

As previously pointed out, the discharge on April 7 of the 17 employees named in footnote 1, *supra*, other than Marcia Garcia Merced, was admitted by Respondent's answer. The findings heretofore entered, especially those pertaining to the threats of loss of employment unless the employees abandoned their union affiliation and activities, established a *prima facie* case of discrimination, and made it incumbent upon Respondent to go forward with the evidence in support of the allegation in its answer that the discharges were imposed because of economic necessity, or "in the alternative, . . . for legal cause."

The evidence, however, is conclusive that when the employees were discharged, no mention was made that they were being *laid off* for economic reasons, a status now sought to be ascribed to the terminations. On April 7, the employees, were *in fact* fired and told they couldn't "come back to work." In any event, whether they were "laid off," a term implying they may be recalled, or whether they were fired, the reasons ascribed for either type of termination are not sustained by the evidence.

Considering first the defense that the employees were discharged "for cause," this can have reference only to the alleged improper peeling and cleaning of 2 or 3 papayas referred to in the statement of Mrs. Quinones to the employees immediately before their discharge. Mrs. Quinones did not testify. No attempt was made to particularize, or to identify which one or more of the 17 employees under consideration had improperly peeled or cleaned the papayas of which Mrs. Quinones complained. Indeed, no credible, probative evidence was offered that any of the alleged discriminatees who had been peeling and cleaning papayas that entire day at one table were responsible for the alleged neglect of duty rather than a member of another group engaged in similar work at another table. Nor was there evidence that any of these employees, who had been working for Respondent for periods ranging up to 4 years, and engaged in similar work, were ever disciplined or warned for improper performance, or neglect of duty. Neither is it likely that if these employees were discharged for cause that Respondent would have written them, as it did on December 14, that their jobs were available to them, "as it has been during *all the time*" [Emphasis supplied.] On the entire record I do not accept Respondent's defense that it discharged these employees on April 7 because they had performed their work improperly.

Turning now to the "alternative" defense, Respondent argues in its brief that the evidence it produced at the hearing establishes that "the employer laid off *some* of [these] employees due to the fact that there was not enough work for all [of] Respondent's employees who were working before the strike [and that there was a] lack of manufacturing activity. . . ." [Emphasis supplied.] Respondent's payroll records, however, do not sustain that defense.

Forty-two employees were employed by Respondent on Saturday, March 28, the day the strike began. From Monday, March 30, and continuing through the remainder of that calendar week, 14 employees appeared on its payroll. Sixteen employees worked on April 6, the day the strike was abandoned. On the following day, Tuesday, April 7, when the strikers returned to work, there was a total com-

plement of 46 employees. However, the payroll for the entire week ending Thursday, April 9,¹⁰ discloses that 53 employees were engaged during that period. By reason thereof, and because Respondent admittedly did not give employment to the alleged discriminatees during the remainder of that payroll week, except Maria Garcia Merced,¹¹ I can only conclude that it hired 7 employees that week after the discharge of the alleged discriminatees on Tuesday.

Even if it be assumed that because the height of the papaya season had passed, and that terminations were required for economic reasons as Respondent belatedly contends, I am convinced and find that the selections were made discriminatorily.

Eleven of the twelve alleged discriminatees testified, without contradiction, that they had been employed by Respondent for periods ranging from 9 months to 4 years.¹² During those periods, practically all of them were engaged in "all kinds of work" involved in the processing of all the various products handled by Respondent. It was stipulated that the remaining five alleged discriminatees, if called as witnesses, would testify, *inter alia*, that "they were employed in similar work as the other witnesses."

Notwithstanding the experience of these workers, and the fact that none of them were ever criticized for the manner in which they performed their work they were not retained on April 8. Instead, Respondent, on that or the following day, added seven employees who had not appeared on the payroll earlier that week. And in May, when, according to Quinones, Respondent "certainly needed more pasteles wrappers every day," six apprentices were hired for that purpose. Though Quinones testified that this work "could be performed only by [these apprentices] and not by the women who had been laid off," he admitted that, though hired as apprentices, "2 or 3 days would be enough to develop their ability." Nor can I be unmindful of the inconsistency of Respondent's position as to the capabilities of the alleged discriminatees to perform the available work after April 8 in the light of its announcement in December to the entire group that their positions were then open for them, "as it has been during *all the time*."

On the entire record I find that on April 7, 1953, Respondent discharged the employees under consideration, except Maria Garcia Merced, and denied them further employment because of their union membership or activity, and that by doing so it violated Section 8 (a) (1) and (3) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

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

V. THE REMEDY

Having found that Respondent has engaged in the unfair labor practices set forth above, I recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Respondent having, on or about December 14, offered employment to the discriminatees, the remedial order necessary to remedy its discrimination will be limited to a requirement that it make them whole for any loss of pay suffered as a result of that discrimination. Accordingly, it will be recommended that Respondent pay to each of the discriminatees named in footnote 1, *supra*, except Maria Garcia Merced, a sum of money equal to that which each would normally have earned, absent the discrimination, from April 8, 1953, to December 15, 1953, less her net earnings, if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter. The quarterly periods described herein shall begin with the first day of January, April, July, and October. It is recommended further that Respondent make avail-

¹⁰ Respondent's payroll week ran from Friday to Thursday, inclusive

¹¹ The record establishes that this employee was given steady employment after the strike. It will, therefore, be recommended that the allegations of the complaint pertaining to her discharge be dismissed

¹² Juana Rodriguez had been employed for 2 months prior to the strike as a maintenance worker to keep the premises clean, not as a production worker. On the day after the strike, however, she was placed at the same table with the other strikers peeling papayas and was discharged *together with them*

able to the Board, upon request, payroll and other records, in order to facilitate the checking of the amount of back pay due.¹³

Because of Respondent's unlawful conduct and its underlying purpose and tendency, I find that the unfair labor practices found are persuasively related to other unfair labor practices proscribed and that danger of their commission in the future is to be anticipated from the course of the Respondent's conduct in the past. The preventative purpose of the Act will be thwarted unless the order is coextensive with the threat. In order, therefore, to make effective the interdependent guarantee of Section 7, to prevent a recurrence of unfair labor practices, and thereby to minimize industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, I will recommend that Respondent cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. Union Industrial Amalgamada Num. 1 is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees at Respondent's Rio Piedras, Puerto Rico, plant, including the regular chauffeurs, but excluding office clerical employees, casual truckdrivers, executive, administrative, and professional employees, guards, watchmen, the 4 supervisors and 2 assistants to the manager, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. At all times since February 16, 1953, the Union above mentioned has been, and now is, the exclusive representative of all the employees in the aforesaid unit for the purpose of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

5. By discriminating in regard to the hire and tenure of employment of its employees, thereby discouraging membership in the Union aforementioned, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the Act.

6. By failing and refusing on and after March 24, 1953, to bargain collectively with the Union aforementioned as the exclusive representative of the employees in the aforesaid unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and (1) of the Act.

7. The aforementioned unfair labor practices are unfair labor practices affecting commerce within the meaning of section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

¹³ *F. W. Woolworth Company*, 90 NLRB 289.

GEO. BYERS SONS, INC. *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO). *Case No. 9-CA-759. January 25, 1955*

Decision and Order

On May 20, 1954, Trial Examiner Thomas S. Wilson issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and