Scobell Chemical Company, Inc. and Teamsters, Chauffeurs and Helpers Local Union No. 118, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Teamsters, Chauffeurs and Helpers Local No. 118, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Scobell Chemical Company, Inc. Cases Nos 3-CA-1030 and 3-CC-68 October 1, 1958

DECISION AND ORDER

On May 22, 1958, Trial Examiner W Gerard Ryan issued his Intermediate Report in these cases, finding that the Respondent Company had engaged in certain unfair labor practices in violation of Section 8 (a) (1) of the Act and that the Respondent Union had engaged in certain unfair labor practices in violation of Section 8 (b) (4) (A) and (B) of the Act and recommending that the Respondents cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. He further found that the Respondent Company had not engaged in certain unfair labor practices in violation of Section 8 (a) (3) and (a) (5) of the Act and that the Respondent Union had not engaged in certain other violations of Section 8 (b) (4) (A) and (B) of the Act as alleged in the complaints. Thereafter, the General Counsel filed exceptions to the Trial Examiner’s failure to find violations of Section 8 (a) (5) and other violations of Section 8 (b) (4) (A) and (B), 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. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the addition and modifications stated below. We have modified the order accordingly.

1 The Trial Examiner’s refusal to find that the Respondent Company had violated Section 8 (a) (5) is based solely on his finding that “at the one and only time that the Union made its request to bargain, March 29, 1957, the Union did not represent an uncoerced majority of the 10 employees in the appropriate unit.” In determining the number of employees in the unit, the Trial Examiner excluded Joshua and David Whitaker because they had been “laid off for economic reasons without definite promise of recall.” The General Counsel’s exceptions to the failure to find additional violations of Section 8 (b) (4) (A) and (B) do not affect the remedy herein, we find it unnecessary to consider them.

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Counsel contends that Joshua and David Whitaker were laid-off employees with a reasonable expectation of reemployment who should have been included in the unit and in the determination of the Union's representative status.

The Company's answer to the complaint stated that Joshua and David Whitaker had been "temporarily laid off solely for economic reasons." The Company's Vice President George Scobell, whose testimony the Trial Examiner credited, testified that the Whitakers had been laid "off until the weather was better" and that he would recall them. This testimony was corroborated by the testimony of Office Manager J. Arthur McGee and employee David White, both credited by the Trial Examiner. The Respondent did recall both Joshua and David Whitaker within less than 2 weeks after their layoff. Under these circumstances, we find that on March 29, 1957, Joshua and David Whitaker had a reasonable expectancy of further employment with the employer in the then foreseeable future. Therefore, they should have been included in the computation of the number in the unit on that date, and their designation cards should have been considered in determining the Union's representative status at the time of its request for recognition.

Accordingly, we find that the Union represented an uncoerced majority of 7 out of 12 employees in the unit at the time of its request for bargaining. Therefore when, on March 29, 1957, the Union requested recognition, it was the statutory bargaining representative of the Respondent Company's employees, and the Company's outright refusal, at that time, to recognize and bargain with the Union, without giving any reason, constituted a violation of Section 8 (a) (5) and 8 (a) (1) of the Act.

2. The Trial Examiner found that the strike which commenced March 30, 1957, was for the purpose of securing recognition and the reinstatement of George Spallato and Joshua and David Whitaker. Having found that the Respondent Company had not violated Section 8 (a) (3) by discharging George Spallato and laying off Joshua and David Whitaker and had not violated Section 8 (a) (5) of the Act for reasons rejected above, the Trial Examiner found that the strike was an economic one which was not converted into an unfair

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2 The General Counsel properly states that the Board's rule for determining employee status giving voting eligibility to laid-off employees depends upon whether at the time of the election the employees have a reasonable expectancy of further employment with the employer in the foreseeable future, not upon whether they have a "definite promise of recall." Norris-Thermador Corporation, 118 NLRB 1341, 1343

3 As signed applications for membership in a union which also expressly designate that organization as the applicants' representative for collective bargaining are sufficient designations of the Union as such representative, we deem the testimony as to whether and at what time the Whitakers may have been formally admitted to union membership irrelevant. Geigy Company, Inc., 99 NLRB 822, 823; Stafford Operating Company, 96 NLRB 1217, 1243.
labor practice strike by subsequent violations of Section 8 (a) (1). Having found to the contrary that the Respondent Company's refusal on March 29, 1957, to recognize the Union violated Section 8 (a) (5), we conclude that the strike was from its inception an unfair labor practice strike. Accordingly, as unfair labor practice strikers, the strikers are entitled to reinstatement, replacing, if necessary, any employee hired on or after the date of the commencement of the strike.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

I. Scobell Chemical Company, Inc., its officers, agents, successors, and assigns, shall:

A. Cease and desist from:

(1) Refusing to bargain collectively with Teamsters, Chauffeurs and Helpers Local Union No. 118, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of its employees in the appropriate unit of drivers and warehousemen concerning rates of pay, wages, hours of employment, and other conditions of employment.

(2) Interrogating employees concerning their union membership and activities in a manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the Act.

(3) Threatening to discharge employees who join the Union or who do not abandon the strike and return to work.

(4) Assaulting and attempting to assault union representatives and employees engaged in lawful and peaceful picketing.

(5) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Teamsters, Chauffeurs and Helpers Local Union No. 118, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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 or other material 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.

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

(1) Bargain collectively, upon request, with the Union as the exclusive bargaining representative of all employees in the aforesaid
appropriate unit, concerning rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(2) Upon application, offer immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, to all those employees who were on strike on March 30, 1957, or thereafter, dismissing, if necessary, any person hired on or after that date, and make such applicants whole for any loss of pay suffered by reason of the Respondent’s refusal, if any, to reinstate them beginning five (5) days after their application to the date of the Respondent’s offer of reinstatement.*

(3) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful to determine the amount of back pay due and their right to reinstatement under the terms herein.

(4) Post at its Rochester plant in Rochester, New York, copies of the notice attached hereto marked “Appendix A.” Copies of such notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by an authorized representative of the Company, be posted by the Company immediately upon receipt thereof, and be maintained by it for a period of 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 Company to insure that said notices are not altered, defaced, or covered by any other material.

(5) Notify the Regional Director for the Third Region in writing, within ten (10) days from the date of this Order what steps the Company has taken to comply herewith.

II. Teamsters, Chauffeurs and Helpers Local Union No. 118, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, representatives, and agents, shall:

A. Cease and desist from engaging in, or inducing or encouraging the employees of any employer other than Scobell Chemical Company, Inc., to engage in, a strike or concerted refusal in the course of their employment to handle, transport, work on products or freight of Scobell Chemical Company, Inc., and/or to perform any services for their respective employers, where an object thereof is (a) to force or

* All back-pay computations shall be made in accordance with the principles enunciated in F. W. Woolworth Co., 90 NLRB 289.

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.”
require any employer or person to cease doing business with Scobell Chemical Company, Inc., or (b) to force or require Scobell Chemical Company, Inc., to recognize or bargain with the aforesaid labor organization as the collective-bargaining representative of its employees, unless and until certified as such representative in accordance with the provisions of Section 9 of the Act.

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

(1) Post at its business office, in Rochester, New York, copies of the notice attached marked "Appendix B." Copies of said notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by a representative of the Union, be posted by said Union immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by said Union to insure that the notices are not altered, defaced, or covered by any other material.

(2) Notify the Regional Director for the Third Region in writing, within ten (10) days from the date of this Order what steps it has taken to comply herewith.

It is further ordered that the complaint with respect to the allegations that the Company violated Section 8 (a) (3) of the Act be, and it hereby is, dismissed.

Chairman Leedom took no part in the consideration of the above Decision and Order.

In the event this Order is enforced, it should be amended as provided in footnote 5, supra.

APPENDIX A

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 Labor Management Relations Act, we hereby notify our employees that:

We will, upon application, offer immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, to all those employees who went on strike on March 30, 1957, or thereafter, dismissing, if necessary, any person hired on or after that date, and will make them whole for any loss of pay they may have suffered as a result of any refusal to reinstate them upon such application.

We will, upon request, bargain collectively with Teamsters, Chauffeurs & Helpers Local Union No. 118, International
Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive bargaining representative of all employees in the aforesaid appropriate unit concerning rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

We will not interrogate our employees concerning their union membership and activities in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act; nor threaten to discharge employees who join the Union or who do not abandon the strike and return to work; nor assault or attempt to assault union representatives and employees engaged in lawful and peaceful picketing.

We will not in any like or related 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 Teamsters, Chauffeurs and Helpers Local Union No. 118, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purpose of collective bargaining or 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.

All our employees are free to become or remain members of this union, or any other labor organization.

Scobell Chemical Company, Inc.,
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.

APPENDIX B

Notice to All Members of Teamsters, Chauffeurs and Helpers Local No. 118, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

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, we hereby notify you that:
We will not engage in, or induce or encourage the employees of any employer other than Scobell Chemical Company, Inc., to engage in a strike or in a concerted refusal in the course of their employment to handle, transport or work on products or freight and/or to perform any services, where an object thereof is (1) to force or require any employer or person to cease doing business with Scobell Chemical Company, Inc., or (2) to force or require Scobell Chemical Company, Inc., to recognize or bargain with the undersigned labor organization as the representative of their employees, unless and until certified as such representative in accordance with the provisions of Section 9 of the National Labor Relations Act.

TEAMSTERS, CHAUFFEURS AND HELPERS
LOCAL NO. 118, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF
AMERICA,

Labor Organization.

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 AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge filed April 4, 1957, by Teamsters, Chauffeurs and Helpers Local Union No. 118, herein called the Union, against Scobell Chemical Company, Inc., herein called the Company, the General Counsel of the Board issued a complaint in Case No. 3-CA-1030. That complaint, as amended at the hearing, alleged the commission of unfair labor practices by the Company in violation of Section 8 (a) (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, as amended, herein called the Act. The Company in its answer and amended answer denied the commission of any unfair labor practices.

Upon charges filed on May 28, 1957, by Scobell Chemical Company, Inc., against the Union, the General Counsel issued a complaint in Case No. 3-CC-68, alleging the commission of unfair labor practices by the Union in violation of Section 8 (b) (4) (A) and (B) and Section 2 (6) and (7) of the Act.

On June 21, 1957, the Regional Director for the Third Region (Buffalo, New York) issued an order consolidating these two cases and setting a date and place where the hearing was to be held. Copies of the charges, complaints, order of consolidation, and the notice of hearing were duly served upon the parties. At the hearing, the complaint in Case No. 3-CC-68 was amended in that paragraph VII

1 The corporate name as corrected in the record.
2 The amendment consisted of an additional subparagraph (f) to paragraph XII of the complaint as follows:

That on or about May 24, 1957, and again on June 5, 1957, through George Scobell, vice-president, assaulting employees and Union representatives who were engaged in peaceful picketing off the Respondent’s premises and putting them in fear of bodily harm and actually causing bodily harm or batteries by the wilful, improper use and manipulation of his automobile.
SCOBELL CHEMICAL COMPANY, INC. 1137

should refer to paragraph V instead of referring to paragraph VI. The Union's answer and amended answer in substance denied the commission of any unfair labor practices.

Pursuant to notice, a consolidated hearing was held in Rochester, New York, from July 30, 1957, to August 2, 1957, inclusive, before W. Gerard Ryan, the duly designated Trial Examiner. On October 29, 1957, I granted an unopposed motion by the General Counsel to reopen the record and to amend the complaint in Case No. 3-CC-68 by adding a new paragraph numbered VII-A and further amending paragraphs VIII, IX, X, and XI. The Union in its amended answer to the amended complaint denied the commission of any unfair labor practices. The hearing was resumed and concluded on December 3, 1957. All the parties were represented by counsel, were afforded full opportunity to participate in the hearing, to introduce relevant evidence bearing upon the issues, to argue orally and to submit briefs. Motions by the parties at the close of the hearing to conform the pleadings to the proof in immaterial matters were unopposed and were granted. All the parties have filed briefs.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is and at all times material herein has been a New York corporation and has maintained its principal office and place of business at Rochester, New York, where it is now and has been continuously engaged in the manufacture, sale, and distribution of chemicals and related products. The Company maintains a sales office in Syracuse, New York. In the course and conduct of its business operations, during the calendar year 1956, a representative period, the Company purchased raw materials, supplies and equipment valued in excess of $750,000, approximately 25 percent of which was purchased from sources located outside the State of New York and shipped directly to its Rochester plant. During the said period, the Company sold and shipped chemicals and related products to a value of approximately $7,500 to customers located outside the State of New York and during said period Eastman Kodak Co., Bausch and Lomb Optical Co., Taylor Instrument Companies, Ritter Company, Inc., Stromberg-Carlson Co., Commercial Controls Corporation, and New Process Gear Corporation did each purchase products from the Company to a value of over $50,000, and each of said companies during said period made sales to their respective customers located outside the State of New York to a value of more than $50,000. The foregoing allegations in the complaint in Case No. 3-CA-1030 are admitted by the answer of the Company. In Case No. 3-CC-68 the complaint alleged and the Union's answer

Paragraph VII-A alleged:

Respondent has, at various times from April 1957 through August 1957, and thereafter, orally ordered, directed, instructed, requested and appealed to employees of various motor carriers who do business with Scobell, including Boulter Carting Co., Inc., Endres Delivery, Inc., Mushroom Transportation, Inc., and Penn Yan Express, Inc (herein called Boulter, Endres, Mushroom and Penn Yan, respectively), to refuse to handle, transport or work on Scobell's products or freight and as a result employees of said carriers have refused to handle, transport or work on Scobell's products or freight. By its acts and conduct described in this paragraph, Respondent has engaged in and induced and encouraged employees of Boulter, Endres, Mushroom and Penn Yan to engage in strikes or concerted refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities or to perform services.

Paragraph VIII, as amended, alleged: (Amendments are identified by italics)

Objects of Respondent's conduct set forth in paragraphs VII and VII-A above are: (1) to force or require Yawman, Photo, Roehlen, Boulter, Endres, Mushroom, Penn Yan, and other employers and persons to cease doing business with Scobell; and (2) to force or require Scobell to recognize or bargain with Respondent as the collective bargaining representative of Scobell's employees although Respondent has not been certified as the representative of such employees in accordance with the provisions of Section 9 of the Act.

The amendments to paragraphs IX, X, and XI consist of including therein the words "and VII-A" wherever paragraph VII is referred to.
admitted that the Company is a New York corporation engaged at Rochester, New York, in the wholesale distribution of chemicals and related products. The complaint therein further alleged that during the year 1956, the Company sold chemicals valued in excess of $100,000 to various companies, including without limitation Yawman & Erbe Mfg. Co., Photo Color Process Corporation, and Roehlen Engraving Works, Inc., each of which companies annually ship products valued at in excess of $50,000 to points and places outside the State of New York. The Union's answer denied any information sufficient to form a belief as to those allegations; but at the hearing the Union stipulated that the Company, Scobell Chemical Company, Inc., is engaged in interstate commerce under the Act, and specifically that the Company is engaged in selling products in excess of the amount required by the National Labor Relations Board for the purpose of providing jurisdiction of the Board. I find that the Company is, and, at all times herein material, has been engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters, Chauffeurs and Helpers Local Union No. 118, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The supervisory personnel of the Company at all times material herein were: James Scobell, president; George Scobell, vice president; J. Arthur McGee, office and credit manager; and Roy Eddy, foreman.

In discussing the unfair labor practices, I shall first report on the 8 (a) (3) allegations; then on the 8 (a) (5) allegations, and finally on the 8 (a) (1) allegations. It is necessary to treat them in this order because it is necessary to know whether George Spallato was discharged and Joshua Whitaker and David Whitaker were laid off in violation of the Act, in order to arrive at the size of the unit stipulated and found to be appropriate. Since, as hereinafter found, none of the 8 (a) (1) violations were committed until after Spallato and the Whitaker brothers were terminated, those allegations will be considered last.

A. The 8 (a) (3) allegations

The complaint alleged that on or about March 29, 1957, the Company discharged George Spallato and laid off Joshua Whitaker and David Whitaker and thereafter failed and refused to reinstate them for the reason that they joined or assisted the Union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, thereby discriminating in regard to their hire or tenure or terms or conditions of employment and thereby discouraging membership in the Union and thereby engaging in unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the Act. The answer of the Company denied the foregoing allegations and pleaded as a defense that George Spallato was notified in January 1957, that he was to be discharged for misconduct and that he might have a period of grace in order to find new employment and that he was discharged for no other reason. The Company further pleaded as a defense that Joshua Whitaker and David Whitaker were temporarily laid off solely for economic reasons; that Joshua Whitaker was recalled on April 2, 1957, and actually returned to work on April 16 and that David Whitaker was recalled orally on April 2, and then by letter on April 22 to which letter he did not respond.

The Discharge of George Spallato

On or about January 31, J. Arthur McGee, the office and credit manager of the Company, noticed while he was making up the payroll for the period ending January 30, that the timecard of employee Heeder who worked in the warehouse had been punched in at 7:03 on the morning of January 30. McGee then recalled that he had seen that employee on January 30 coming in between 8:30 and 9 o'clock in the morning. McGee then conferred with the warehouse foreman, Roy Eddy, as to when Heeder had come to work on January 30. Acting on the possibility

*George Scobell is the father of James Scobell.

*All dates hereinafter mentioned refer to 1957, unless otherwise mentioned.

*As shown infra, David Whitaker returned to his job at the end of June or the first part of July.
that someone else had punched Heeder's timecard for him, McGee investigated back
to the early part of November and by the process of similarity and elimination of
other timecards, concluded that George Spallato, a truckdriver, was involved.
Spallato and Heeder were called to the office. At first, neither would say anything
but later Heeder admitted that it had been going on for a couple of months. When
told that Heeder had admitted it, Spallato then admitted that he had punched in
Heeder's timecard in the morning because Heeder had asked him to do so. Spallato
testified that he had admitted at the above conference that he had punched Heeder's
timecard but only on the occasions when Heeder was present at the time clock
with him. Spallato testified that after that explanation he was not discharged but
was told by George Scobell to return to work. When Heeder and Spallato admitted
that Spallato had been punching Heeder's timecard, the conference ended. No
disciplinary action was taken during the conference but after the meeting had
concluded, Roy Eddy privately suggested to Heeder that he resign and Heeder
accepted the suggestion. George Scobell testified that after the others had left the
conference, he privately informed Spallato in a personal conversation that Spallato
was through but, because of certain reasons personal to Spallato which appear in the
record, Spallato could have time in which to look for other employment. The
foregoing findings are based on the credited testimony of J. Arthur McGee and
George Scobell.

Spallato did not notify the Company that he had obtained other employment.
On or about March 22, he met Anthony Cuseo for the first time and obtained union
application cards, designating the Union as representative for collective bargaining.
Spallato solicited employees to sign the cards. His solicitations were carried on
away from the plant and between March 22 and March 28 he had obtained signatures
to nine cards. Employee Howard Burgess, a truckdriver employed by the Company
on a temporary day-to-day basis, signed a card on March 27 but voluntarily quit his
employment on March 28. On the evening of March 28, at approximately 11
o'clock, Burgess telephoned to James Scobell, president of the Company, and had a
conversation with James Scobell. With respect to what was said in that conversa-
tion, Burgess, on direct examination testified:

Q. Will you tell what you recall of that conversation?
A. I told him that three guys were instigating a strike.
Q. Instigating a strike?
A. Yes, sir.
Q. Did you make any specific identification as to any of these three
individuals?
A. I named one Slim and I named two colored guys in the back room, the
only thing I know, one named Slim, one named Josh, the other David.?
Q. Did you mention any names over the phone to Mr. Scobell?
A. I just told him the three guys that was in it and he asked me who they
were and I told him, "There is Slim, Josh, and David."
Q. Slim, Josh, and David?
A. The two colored guys in the back room. That is the only ones that took
my place driving the truck, and the other one.
Q. Did Spallato's name come up during the course of the conversation?
A. Well, it was Spallato. I am talking about Sunny George. I was mixed
up in the name. I don't know these guys names.
Q. Do you recall now how you identified these people, I mean on the tele-
phone conversation, do you recall how you identified or named these people in
this telephone conversation?
A. Yes, I did, I told him, the little guy that drives the little pick-up for him.
He said, "Who is it, Sunny?" I said, "Yes, he was the other one." He said,
"Who else?" I said, "The two colored guys in the back room, Josh and David,
that is all I know about. That is what I found out today."
Q. What did the party at the other end of the line say?
A. Just thanked me very much and that is all there was to it.

On cross-examination Burgess testified:

Q. And you called to tell him what?
A. I tell you to bring it to a peak, just to help the man out.
Q. Which man?
A. Help Jim or anybody, help the men out. At least 22 weeks on strike, if
you could bring it to a halt, it would be better, wouldn't it?

Later, in his testimony, Burgess referred to Willis Peglow (another truckdriver)
who was known to him only as "Slim."
Q. Sure.
A. That is the way I look at it.

Q. There wasn't any strike then, was there?
A. No, there was not.

Q. How did you figure you were helping him (James Scobell)?
A. I figured if he could figure it out himself it could be avoided instead of coming into something big.

Q. Would you tell me what the conversation was? Do you recall the conversation you had with Jim Scobell?
A. I am going to be honest with you. I don't remember. I don't pay that much attention to time. I just told Jim Scobell what it was. About the conversation, I don't remember every word of it. [Emphasis supplied.]

TRIAL EXAMINER RYAN: Tell us what you remember telling him.
A. The only thing I remember telling him is there were three guys anticipating in a strike. [Emphasis supplied.]

Q. Do you recall what Jim Scobell said to you, if anything?
A. No, sir, I don't. The only thing I do remember is he said, “Thanks a lot,” and that is all.

James Scobell, the president of the Company, testified with respect to the telephone conversation with Howard Burgess that Burgess telephoned to him late at night on March 28. He continued to testify:

Q. Well, will you relate the conversation you had with him as best you can?
A. Yes, I will.
Q. Would you speak up?
A. Yes, the telephone call, he called and I went to the phone, and he said he was Howard Burgess calling, and I wondered why, because he had left in the afternoon of the 28th, and I said “Yes?” And he said “I would like to tell you that there is two or three fellows out there were talking up a labor movement.” I said “They are?” “Yes.” And I didn't think much of it because—

TRIAL EXAMINER RYAN: Tell us what you said and he said.
A. Well, this is all what he said, and I think then it hung up.
Q. That was the extent of your conversation?
A. That is right.

Upon further questioning, James Scobell continued:

Q. When Mr. Burgess spoke to you on the telephone on Thursday night, did he mention any names to you?
A. No, sir, he did not.
Q. What was the extent of his identification or any proof, if any?
A. Well, he said there was a driver and two fellows out back, but he didn't give their names or anything else.
Q. Did he describe their color?
A. I don't believe he did.

On cross-examination, with respect to the telephone conversation, James Scobell testified:

Q. Mr. Scobell, referring first to the telephone call that you received, as you stated, on direct examination, the telephone call you received from Howard Burgess on the night or late evening of March 28, I believe you testified that he said to you over the phone that two or three fellows or employees were starting a labor movement?
A. That is right, sir.
Q. Did he say anything to the effect that these employees were going to strike?
A. He did not mention anything besides that.
Q. He identified any of them by name?
A. No, sir.
Q. By occupation or classification?
A. He said there were two fellows out back, two or three fellows out back, a driver—he said first two or three fellows are forming a labor movement, he said, one is a driver and the others are out back.
Q. And after that, did he repeat—the first time you said there was a driver and two or three?
A. That was—I misspoke myself.
Q. Oh, I see. He didn’t refer to any of these individuals as colored boys in the back?
A. No, not to me, he didn’t. We have too many, anyhow, it wouldn’t have made any difference.

On the morning of March 29, between 6:30 and 7 o’clock, George Scobell arrived at the plant. He testified that he gave Spallato his pay envelope and told him he could not wait any longer for him to find a job. Spallato testified that about 10 minutes before 7 o’clock, George Scobell hailed him and said “Mr. Spallato, I must bid you goodbye.” Spallato’s testimony continued:

I said, “You bid me goodbye?” I said, “For what in the morning.” I says “you fire people?” He said, “Well, I should have given you more time” and this and that, but I said, “What is the reason? You must give me some reason.” Well, he says, “You got another day’s pay coming, we will send it to you”: so I went back in the room where the fellows used to hang around until 8:00 o’clock, it is next to the toilet there. I said to the fellows, “Who else is gone?” They said, “Dave Whitaker and Josh Whitaker.” I said, “So I am the third.” I says, “Okay. I will go right back again.” I go back I said, “Mr. Scobell, I would like to know right now as to why you are letting me go. You can’t let me go on account of my work. I was your best driver. I could peddle 20 to 40 stops. You and Jim Scobell brag I was such a good man. What did you let me go for?” He said, “You got a day’s pay coming. We will send it to you.” I said, “I know why, because we are going to have a Union come in here.” He said, “You are what?” And I said, “Yes, I am right. So I went out. . . .”

George Scobell testified that on the morning of March 29 he told Spallato he could not wait any longer for him to get a job; that Spallato took his envelope, walked around, came back and told him he was “loco”; that Spallato said nothing about the Teamsters Union at that time nor about getting a local into the place; that he did not understand what Spallato meant until he saw him later in the morning outside the plant as a picket.

George Scobell testified that he had no knowledge of the telephone conversation between Burgess and James Scobell until an hour or more after he had discharged Spallato and laid off Joshua and David Whitaker. James Scobell testified that he informed George Scobell on March 29 of the telephone call from Burgess after he had arrived at the plant subsequent to the discharge and layoffs.

For the reasons which follow, I discredit Spallato’s testimony. Several times during his testimony, Spallato referred to what other employees had for meals on different dates several months previous to the hearing; including his own statement that following his termination on March 29 he went to a restaurant for breakfast and had bacon and eggs, hard bun, and coffee. Such observations, if true, would indicate a remarkable memory for detail. Also at times during the hearing Spallato volunteered that he was telling the truth; that no one could make him lie; and observed that “you can’t lie when you tell the truth.”

Within a matter of a few minutes from the time when he said he could not lie when he told the truth, Spallato testified that he did not recall the New York State Training School at Randall’s Island and denied that he had been convicted of petty larceny in 1924 and committed to Randall’s Island, as shown by a court clerk’s certificate referring to a named George Spallato. By his failure of memory and further denial, Spallato at that state of the record had raised a question of identity between himself and the George Spallato named in the certificate. At that point in the hearing a few minutes recess was taken. When the hearing resumed, Mr. Scully, counsel for the Union, stated on the record, before the cross-examination of Spallato continued, that he had talked with Spallato and explained to him what it was about and then Spallato admitted to Mr. Scully that he was the person referred to in the clerk’s certificate.

Thus by his own demeanor and false testimony which, to paraphrase Spallato’s own words, demonstrated that “he could not tell the truth when he was lying,” Spallato impaired and impeached his own credibility as a witness. I therefore discredit his testimony in all matters where it is not corroborated by evidence which I credit.

Because of the foregoing, I discredit Spallato’s testimony concerning the conversation in January between him and George Scobell; and upon the credited testi-
mony of George Scobell I find that Spallato was told by George Scobell in the latter part of January or early February that Spallato was through but was given time to find another job. There is no question involving discriminatory motive at that time because Spallato did not begin his activities for the Union until March 22.

The question now presented and to be resolved is whether Spallato's activities on behalf of the Union between the dates of March 22 and 29 motivated in any degree the termination of his employment on the morning of March 29.

The fact that the Company's plant is small does not permit a finding that George Scobell had knowledge of the union activities of its employees, absent supporting evidence that such activities were carried out in such a manner, or at times that in the normal course of events, the Company must have noticed them. The evidence shows that all of Spallato's solicitations of signatures for the cards were made away from the plant, at meal times. Spallato further avoided asking other employees to sign the cards whom he did not consider would be good union members.

Nor does the affidavit successfully used by the General Counsel to impeach the credibility of Roy Eddy supply any proof that the Company had knowledge of the union activities of its employees. The affidavit sets forth that by 7:30 or 7:45 a. m. on March 29 (within an hour from the discharge and layoffs) it was common knowledge that Spallato was trying to organize a union. Then follow two sentences which Eddy denied that he had made which to me is an incredible denial in view of the fact that he read the affidavit in its entirety and initialed corrections thereon:

I overheard Spallato talking to other employees where we eat about organization. Did not mention name of the union.

Not only did Eddy deny that he made the above statement to the Board field examiner, but he testified that he never heard Spallato talking about union organization. I find that Eddy did make the above statement in the affidavit. On the basis of that finding, the next question that arises is what probative value does it have in trying to arrive at a conclusion that the Company was or was not aware of the organizing efforts carried on by Spallato. Eddy's statement is made in a context relating to matters occurring after Spallato's discharge. If that statement could be related to a period of time before the discharge it would have some bearing on whether the Company had a discriminatory motive upon which it acted in discharging Spallato and laying off the Whitaker brothers. The General Counsel in his brief states that it is extremely implausible that Eddy could have done any overhearing between 7 and 7:30 a. m. on March 29. I do not consider it so implausible. Spallato had been discharged a few minutes before. There is a place in the plant where employees eat lunch. Eddy's statement that he overheard Spallato talking about organization with employees does not necessarily mean that the employees were eating lunch at that time; it could or may refer to that portion of the plant only to describe the area where Spallato was talking at the time in question. To me it would be only guess work to say that Spallato was talking about organization with the employees either before or after the time he was discharged. I find Eddy's statement therefore of no probative value on the question whether the Company had knowledge of union or concerted activities prior to the discharge of Spallato.

Upon the credited testimony of George Scobell, and upon the entire record, I find that the employment of George Spallato was terminated on March 29 by George Scobell who had decided he would not wait longer for Spallato to find other employment. I further find that George Scobell had no knowledge or information that Spallato or any other employee was engaged in union or concerted activities prior to Spallato's termination on March 29. His discharge by George Scobell on March 29 was not based on or motivated by reasons violative of the Act. The complaint insofar as it alleged that the Company violated Section 8 (a) (3) of the Act in terminating the employment of George Spallato should be dismissed.

The Layoffs of Joshua Whitaker and David Whitaker

It is true that on March 29, when Joshua and David Whitaker were laid off by George Scobell, they were, as contended by General Counsel in his brief, laid off without a definite promise of recall to either of them. On April 9, by registered mail, the Company solicited David Whitaker to return to work. He did not accept the offer at that time because he was working elsewhere, but did return to work for the Company at the end of June or the first part of July. On or about April 2, Joshua Whitaker was asked by the Company to return to work. Joshua Whitaker refused the offer but later, about the middle of April, returned to work.
Joshua Whitaker was hired in August 1956, and worked until he was laid off on March 29, 1957. He was originally hired for the job of repairing carboys 9 which usually was done outdoors and not during the winter months. During his employment Joshua Whitaker in addition to his job of repairing carboys also worked in the warehouse and at times did some truck driving. David Whitaker was hired on March 26 and laid off on March 29. Sometime in mid-March, J. Arthur McGee asked Roy Eddy if he could use any additional employees. Eddy replied that he could probably use somebody out in the yard to clean up the yard. Roy Eddy testified that David Whitaker was supposed to talk over his hiring with James Scobell and J. Arthur McGee and if it was "okay," Whitaker was supposed to report on Monday morning to go to work. When David Whitaker appeared on March 26 and Eddy had not heard from either James Scobell or McGee he put him to work.

George Scobell testified that at the end of February and during March, as the second half of the Company's fiscal year approached, he decided that the payroll was top heavy and decided to cut down expenses by reducing the payrolls.10 George Scobell and J. Arthur McGee discussed the payroll at about 3:30 p.m., on March 28. It is clear that from the record that George Scobell did not discuss any particular layoffs he had in mind with McGee or anyone else. The record shows that whatever decisions he arrived at as to who was to be laid off and when the layoffs were to be made were made and carried out by George Scobell alone. There is no doubt from this record that the layoffs of David and Joshua Whitaker were as much a surprise to James Scobell, J. Arthur McGee and Roy Eddy as they were unexpected by Joshua and David Whitaker.

On March 29, George Scobell arrived at the plant before 7 o'clock in the morning. David Whitaker testified that George Scobell asked him who he was and when David Whitaker stated his name that George Scobell told him he had been laid off. David Whitaker did not ask him why he was laid off but told George Scobell he had pay coming for Thursday to which George Scobell replied that he would get a week's pay next week. George Scobell testified that he did not ask David Whitaker who he was; that he took it for granted he was Joshua's brother; that he gave him his money and told him he would have to lay him off until better weather and that he would pay them for another week in lieu of notice.

Joshua Whitaker testified that at 20 minutes before 7 o'clock on March 29, George Scobell called him and David Whitaker and said "I will send you a check for a week's pay in the mail." Joshua Whitaker asked why and George Scobell replied "We are cutting down on the help and that is all I can tell you." Joshua Whitaker continued to testify that before leaving the plant he asked Roy Eddy if he knew why he was laid off and Eddy answered no, that he knew nothing. Later that same morning, Joshua Whitaker returned to the plant for his pay and asked J. Arthur McGee why he was laid off but McGee said he knew nothing about it; that after talking with McGee he asked Roy Eddy if he knew why he was laid off; that Eddy asked if he had signed a card; that Eddy again said he did not know anything but said if some of you had told me about the Union I could have saved the job for you. That same morning, Joshua Whitaker testified that he talked to James Scobell; that James Scobell said he did not know why he was laid off—that it was up to "Dad" (George Scobell) and that what Dad says goes. Sometime during the week following, Joshua Whitaker went to the plant after receiving word from employee David White that McGee wanted to see him; that McGee asked him to return to work and he refused to return, and asked McGee if he would find out why he was laid off. McGee said George Scobell could explain better so he took Joshua Whitaker to the office of George Scobell where McGee said that Joshua Whitaker wanted to know why he was laid off. Joshua Whitaker testified that George Scobell asked if he had not told him, and Whitaker replied that he had not; that he had said he was cutting down on the help and then George Scobell went on to explain about semi-annual financial spending or something.

The crucial question here is whether the Company was motivated in selecting Joshua and David Whitaker for indefinite layoffs by reasons violative of the Act. As set forth above with regard to the discharge of Spallato, the fact that the Company's plant is small does not permit a finding that George Scobell had knowledge of the union activities of its employees, where, as here, there is absent supporting evidence that such activities were carried on in such a manner, or at times that in

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9 Carboys are the wooden crates which are permanently secured around the large bottles in which liquid chemicals are transported.
10 The first half of the fiscal year ended on March 31.
the normal course of events, the Company must have noticed them. The telephone
call from Burgess on the night of March 28 to James Scobell, already discussed
earlier in this report, carried no weight in view of the fact that George Scobell had
no knowledge of such a call, until after the layoff of Joshua and David Whitaker.
On the basis of the credited testimony of George Scobell, James Scobell, and J.
Arthur McGee and upon the entire record, I find that Joshua and David Whitaker
were temporarily laid off on March 29 without definite promise of recall by George
Scobell because he believed it was necessary to reduce the payroll. I further find
that George Scobell, prior to their layoffs, had no knowledge that they had signed
cards for the Union or that they had engaged in any concerted activity. An em-
ployer may discharge or lay off employees for any reason, or for no reason, so long
as such action is not motivated by discriminatory motives violative of the Act. In
the absence of any knowledge on the part of George Scobell that Joshua and David
Whitaker had signed cards for the Union or had engaged in concerted activity, I find
that the General Counsel has failed to prove with the required preponderance of evi-
dence that their layoffs were motivated by reasons violative of the Act. Accordingly
the complaint to the extent that it alleged that Joshua and David Whitaker were laid
off in violation of the Act should be dismissed.

B. The alleged refusal to bargain

The complaint alleged and the answer denied that on March 29, 1957, and at
various times thereafter, the Union requested the Company to bargain collectively
in respect to rates of pay, wages, hours of employment, or other conditions of em-
ployment with the Union as the exclusive representative of all employees of the
Company in the unit as described. The answer admitted that the Company refuses
and continues to refuse to bargain collectively with the Union as the exclusive repre-
sentative of all employees in the unit as described.

The complaint alleged, the Company stipulated, and I find that all truckdrivers
and warehousemen employed by the Company at its Rochester plant, exclusive of
office clerical employees, salesmen, guards, professional employees, and supervisors
as defined in the Act, constitute a unit appropriate for the purposes of collective bar-
gaining within the meaning of Section 9 (b) of the Act.

The parties stipulated that for the payroll week ending Wednesday, March 27,
and up to and including March 29 (with the reservation that the status of George
Spallato, Joshua Whitaker, and David Whitaker on March 29 be determined from
the record) the unit comprised the following 12 employees: William Setter, Gerald
N. McMullen, Kenneth Osborn, George Phifer, David White, Arnold Clark, Lloyd
McMurtrie, Willis Peglow, Harold Stephenson, David Whitaker, Joshua Whitaker,
and George Spallato. It was further stipulated that the status of John E. Williams,
a truckdriver, be determined from the record as to whether or not he should be
counted as a member of the unit. Williams on March 29 was still temporarily dis-
abled as a result of an industrial accident while working for the Company, and was
drawing compensation payments under the Workmen's Compensation Law.11 I ac-
cordingly find that John E. Williams should be included within the unit, thus bringing
the total number of employees in the unit to 13. When George Spallato was dis-
charged for cause and Joshua Whitaker and David Whitaker were laid off for eco-
nomic reasons without definite promise of recall, the number of employees in the
unit was reduced to 10 employees on the morning of March 29. After the separation
of George Spallato, Joshua Whitaker, and David Whitaker, Anthony Cuseo, on be-
half of the Union, telephoned to George Scobell on March 29 and stated that the
Union represented a majority of the employees in the unit and requested a meeting
to bargain on a contract. The Company refused to meet with the Union. At no
other time did the Union request bargaining negotiations.

The question to be determined is whether the Union represented an uncoerced
majority of the employees in the unit on March 29 when it requested the Company
to meet and bargain for a contract. The Union had five cards signed by employees
(excluding the cards from George Spallato and Joshua and David Whitaker) whose
validity is not questioned.12 The sixth card, necessary to give the Union a majority,
was signed by David White. George Spallato testified that David White signed his

11 While he was temporarily disabled, the Company hired Howard Burgess on a day-to-
day basis as a truckdriver. Burgess signed a card on March 27 which has not been
considered in determining whether or not the Union had a majority because Burgess
voluntarily quit his job on March 28.

12 Those five cards are from Harold Stephenson, Willis Peglow, Lloyd McMurrrie,
George Phifer, and Arnold Clark.
card in Sterling's Diner on March 28, 1957, while White was eating breakfast; that White there signed the card and returned it to Spallato with the remark, "This should have been done long ago." David White testified that while he was at breakfast at Sterling's restaurant on Thursday morning, Spallato came in and asked him how he would like $2.08 per hour; that when White inquired how that could be, Spallato explained to him there would be a union coming in Monday morning because "it will go through this week" and if he did not cooperate, White would be left without a job. White's card is dated March 28, 1957. White did not deny that the card was signed by him on March 28 but testified that he did not remember when he signed it; that possibly it was March 28 and possibly some other time. In view of the fact that the card is dated March 28 and was one of the cards turned over to Anthony Cuseo by Spallato and in Cuseo's possession on March 29 when the Union, through Cuseo, requested a meeting to bargain with the Company, I find that White did sign it in Sterling's Diner on the morning of March 28, 1957. I further find on the testimony of White which I credit that Spallato stated to him that White would be without a job if he did not cooperate when the Union came in Monday morning because "it would go through this week." That statement by Spallato implied an immediate exclusion of White on Monday morning next, "when the Union came in"; and as such was coercive and unlawful. See, N. L. R. B. v. James Thompson & Co., 208 F. 2d (C. A. 2) 743 at 746, 747, where the court stated:

Although we held during the Wagner Act that it was not necessarily unfair for a union solicitor to tell an employee that he would lose his job if he did not join [cases cited], we distinguished between a case where the statement was no more than a declaration of what would happen if the union won and secured a closed shop, and a statement that implied an immediate exclusion, if the majority decided for a union. [Case cited.] Now that a closed shop is unlawful, we do not see how it can be other than unlawful to secure votes by saying that, if the union wins, the employee will lose his job, for he can always keep it by later joining the union. Indeed, we do not understand that the Board differs as to this.

I have therefore excluded the designation by White in computing the number of employees who designated the Union as their bargaining representative. Accordingly, I find that at the one and only time that the Union made its request to bargain, March 29, 1957, the Union did not represent an uncoerced majority of the 10 employees in the appropriate unit.13 I further find therefore that the Company did not violate the Act when it refused to bargain with the Union as alleged in the complaint. The complaint insofar as it alleged that the Company violated Section 8 (a) (5) of the Act should be dismissed.

C. Interference, restraint, and coercion

After the refusal of the Company to recognize the Union on March 29, some of the employees went on strike on Saturday, March 30. The strike was called by the Union to achieve recognition of the Union by the Company and for reinstatement of George Spallato and Joshua and David Whitaker. The strike has continued and was still in effect at the conclusion of the hearing herein on December 3, 1957. Since it has been found that the Company did not violate Section 8 (a) (3) of the Act in discharging George Spallato and laying off Joshua and David Whitaker, and did not violate Section 8 (a) (5) of the Act in refusing to recognize and bargain with the Union, the strike which followed and continued was not an unfair labor practice strike.

The complaint alleged and the answer denied that the Company, in violation of Section 8 (a) (1) of the Act, interfered with, restrained, and coerced its employees through (1) Roy Eddy, its supervisor, on or about March 29 interrogating employees concerning their union membership, views and activities, and interrogating employees concerning the union membership, views and activities of other employees, and threatening employees with discharge because they engaged in union activity; and (2) J. Arthur McGee, the office and credit manager, on or about March 31 interrogating employees concerning their own membership, views and activities; threatening employees with economic reprisals if they did not abandon the strike, and on or about April 18, instigating, preparing, and sponsoring a petition for certification and causing its employees to file said petition in Case No. 3-RC-1863 for the purpose of having its employees repudiate the Union.

13 The remaining four employees in the unit were John E. Williams, who did not sign his card until March 30; William Setter, Kenneth Osborn, and Gerald N. McMullen, who did not sign cards.
On March 29, about 8:30 in the morning (which was about an hour and a half after the discharge of Spallato and the layoffs of Joshua and David Whittaker) employee Harold Stephenson was loading his truck with the assistance of Roy Eddy. Eddy asked Stephenson if there were any more signed up for the Union. Stephenson replied that he imagined there were. Eddy answered that if they were not back to work on Monday every man; that if the “Old Man” knew it he would fire every man that was signed up. Stephenson replied that if that happened he might as well close the place. The foregoing findings are based on the credited testimony of Harold Stephenson. I do not credit Eddy’s denials.

On March 29, about 3:30 in the afternoon, employee Arnold Clark returned to the plant after making his truck deliveries. Roy Eddy asked him if Clark had signed a union card. When at first Clark did not answer, Eddy pressed for a reply by saying “Did you or didn’t you?” Clark then replied that he had signed a card. Eddy asked him where he had obtained the card and Clark told him that “Sunny” (George Spallato) had given it to him. The foregoing findings are based on the credited testimony of Arnold Clark. I do not credit Eddy’s denials.

On March 29, about 12:30 in the afternoon, while Willis Peglow was in the coffee room at the plant, Roy Eddy asked him if he had signed a union card and Peglow replied that he had not. Eddy told him that everyone “that is signing union cards will be fired.” Later on the same day, about 1:30 in the afternoon, Peglow went to Eddy and told him he had told him a falsehood when he said he had not signed a union card and then told Eddy that he had signed a card. Eddy replied, “Well, I don’t know how long you will be here.” Peglow answered by saying, “I don’t care, Roy, how long I am here.” Eddy then asked Peglow why he had signed a card and Peglow answered that it was the best thing that ever happened here. Eddy stated, “If they don’t get a union in here it will be worse than ever because they will have a whip over you all the while.” Peglow replied that he did not think it would be any worse than it is right now. The foregoing findings are based on the credited testimony of Willis Peglow. I do not credit Eddy’s denials.

On Sunday, March 31, Arnold Clark testified that J. Arthur McGee, the office and credit manager, telephoned to him and asked if he had quit his job because James Scobell had told him that he had turned in his key. Clark testified that he told McGee he had not quit but was out on strike. Eddy asked Clark if he had signed a union card and Clark told him that everyone “that is signing union cards will be fired.” When at first Clark did not answer, Eddy pressed for a reply by saying “Did you or didn’t you?” Clark then replied that he had signed a card. Eddy told him that he would consider that he had quit and his insurance would be canceled. J. Arthur McGee testified that he telephoned to Clark on Sunday because James Scobell had told him that Clark had turned in his key to the overhead door and wanted to know if Clark had quit because of an insurance policy which included additional insurance coverage for Clark’s dependents for which additional coverage Clark paid through payroll deductions (insurance on Clark himself was paid for entirely by the Company). McGee denied that he asked Clark if he had joined the Union. McGee testified that he informed Clark that the fellows could do as they wished but if they were not back to work on Monday morning the Company would probably presume they had quit. Thus, by McGee’s statement to Clark, the substance of which was that if they were not back to work on Monday, they would be considered as having quit their employment and their insurance would be canceled, the Company engaged in unlawful threat of reprisal if they did not abandon the economic strike and return to work, in violation of Section 8 (a) (1) of the Act. Kerrigan Iron Works, Inc., 108 NLRB 933. Here, as in Kerrigan, the Company reinstated Joshua and David Whittaker who applied for work subsequent to Monday, April 1, without any discrimination, and the record here, as in Kerrigan, does not disclose any evidence that there were others who were denied reinstatement by the Company after April 1. Thus, as in Kerrigan, it is my opinion that the Company did not in fact impair the protected status of the striking employees by McGee’s statement to Arnold on March 31, nor do I believe that McGee’s statement prolonged the strike or converted it from an economic strike to an unfair labor practice strike. As the Board stated in Harcourt and Co., Inc., 98 NLRB 892, 909:

It is well established that an employer’s unfair labor practices during an economic strike do not per se convert it into an unfair labor practice strike, absent proof of causal relationship between the unfair labor practices and the prolongation of the strike.

At the hearing herein the General Counsel introduced no evidence from which it could be inferred that the purpose of the strike (reinstatement of Spallato and

14 Cf Associated Wholesale Grocery of Dallas, Inc, 119 NLRB 41.
Joshua and David Whitaker, and recognition of the Union) had in any way changed because of the unfair labor practices in question. I believe that the Board's decision in the Kerrigan case, supra, applies here, and accordingly I find that McGee's admitted statement to Clark was a threat of discharge and therefore violative of Section 8 (a) (1) of the Act, and was not an actual discharge of the economic strikers who did not report to work on April 1 and did not prolong nor convert it into an unfair labor practice strike.

The General Counsel introduced uncontradicted evidence that the Company solicited Joshua and David Whitaker to return to work during the strike. Since the strike was an economic strike and the Company's solicitations were not accompanied by threats nor promises of benefits, there was no violation of the Act. Tri County Employers Association, 103 NLRB 653. Since the Company was not under any obligation to bargain with the Union it was free to enter into individual contracts with its employees. Oliver Machinery Corporation, 102 NLRB 822.

The complaint further alleged that, in violation of Section 8 (a) (1) of the Act, the Company, through J. Arthur McGee, its office and credit manager, instigated, prepared, and sponsored a petition for certification and caused its employees to file such petition in Case No. 3-RC-1863 for the purpose of having its employees repudiate the Union.

On or about April 18, McGee assembled the employees on company time and property and explained to them a National Labor Relations Board petition Form 502. He requested and obtained employees' signatures on this petition. A second petition was also prepared by McGee because the first petition was returned by the Board as defective. After the second petition was returned by the Board, McGee then prepared a third petition and a transmittal letter and obtained the signature of employee McMullen thereto, by going out to the hospital where McMullen was confined because of a work-connected injury. The third petition was filed by a group of six employees as an "RC" petition. The petitioners were advised by the Board of the compliance requirements of Section 9 (f), (g), and (h) of the Act. Employee William Setter by letter made it clear that the petitioners were not a labor organization but wished an election to settle whether they were to have a union or not. I find that the activities of the Company went beyond instructing their employees on their rights with respect to the process of labor organization affiliation and activities by providing company time and property for those activities and by actively securing at least one signature (McMullen's) to the petition. By such conduct, the Company violated Section 8 (a) (1) of the Act.

The complaint by amendment further alleged, and the amended answer denied, that the Company interfered with, restrained, and coerced its employees on or about May 24 and again on June 5, through George Scobell, vice president, assaulting employees and union representatives who were engaged in peaceful picketing off the Company's premises and putting them in fear of bodily harm and actually causing bodily harm or batteries by the willful, improper use and manipulation of his automobile.

The Company offered no evidence to contradict the evidence submitted by the General Counsel in support of the above allegation but rests upon the position that proof of the acts alleged which would be sufficient to warrant upholding the allegation as an unfair labor practice would necessarily constitute sufficient proof for purposes of upholding the crime that was charged on the basis of the same incidents, and the grand jury having dismissed that complaint and having returned a "No Bill" after hearing all the testimony and evidence available makes further discussion of the activity alleged in the amended complaint unnecessary.

I now turn to the consideration of the General Counsel's testimony. It is clear that George Scobell did frighten the employees, including the union representative, by putting them in fear of bodily harm, by the manipulation of his automobile on or about May 24 and on June 5. Anthony Cuseo, the union representative, testified that on May 24, shortly after 8 o'clock in the morning, while he was on the picket line at the entrance to the company property and talking to employee Arnold Clark who was also there as a picket, George Scobell was driving an automobile and when it was 10 or 15 feet away from Clark and Cuseo, the car swerved towards them and they jumped out of the way; the car then swerved left and proceeded 50 feet in a straight line to park. Cuseo further testified that Spallato and employee Peglow were on the opposite side of the road and "they kind of laughed about it."

Willis Peglow testified that on June 5 while he was on the picket line, George Scobell was driving an automobile down the driveway and when he got about 5 or 6 feet away, at a speed of 35 miles per hour, Scobell came directly at him and the car
caught Peglow's right leg and twisted him, spun him and threw him off towards a tree. Peglow testified that the tree was 5 or 6 feet away from the point where he was standing. Peglow testified that he went to the hospital "because I could not get hold of no doctor that night." He testified that he was given medicine to deaden the pain. Peglow testified on cross-examination that it was June 12 that he went to the hospital and that the injury was to his right knee. Peglow testified in Police Court and the Grand Jury. Employee John E. Williams testified that on June 5 he was alone on the picket line talking to a driver of a truck who had some bottles to deliver to the Scobell Company from another company in Rochester. Williams had stopped that driver to tell him the Scobell employees were on strike when George Scobell approached in an automobile from the plant. While Williams was standing talking to the driver of the truck, Scobell's automobile approached from the rear and came in contact with his left leg and pinned Williams against the truck so that the truck-driver moved his truck to release him. Nothing was said by Williams to Scobell nor by Scobell to Williams. Williams testified that he was not hurt and that Scobell's automobile came to a stop when it touched him.

In view of the fact that the General Counsel has introduced uncontradicted testimony that on 3 separate occasions, George Scobell operated his automobile once in such a way as to frighten pickets on May 24 and on 2 other occasions in such a way that his automobile came in bodily contact with other pickets, I find that the Company through George Scobell's operation of an automobile on the dates specified interfered with, restrained and coerced its employees in violation of Section 8(a)(1) of the Act. The fact that the Grand Jury returned a No Bill for one or all of these incidents is not controlling. The proof required to establish interference, restraint or coercion violative of Section 8(a)(1) of the Act is not necessarily the equivalent of the proof which a Grand Jury may require before it hands up an indictment.

I find that the foregoing violations of Section 8(a)(1) of the Act did not prolong the strike nor convert it from an economic strike to an unfair labor practice strike. The General Counsel has introduced no evidence from which it could be inferred that there is any causal relationship between the unfair labor practices and the prolongation of the strike. The purpose of the strike was to have Spallato, Joshua and David Whitaker reinstated and for recognition of the Union as bargaining agent. I find it difficult to believe that the strike for such purposes was prolonged or converted to an unfair labor practice strike by the aforesaid 8(a)(1) violations in view of the fact that the strike was for reinstatement of Spallato and the two Whitaker brothers and for recognition of the Union. The strike in my opinion began and has continued (at the time of the hearing it was still in progress) for such reinstatement and for recognition uninfluenced in any way by the 8(a)(1) violations which occurred during the strike.

Case No. 3-CC-68

Violations of Section 8(b)(4)(A) and (B)

The complaint alleged that since on or about May 17 the Union has followed Scobell's truck to the premises of various Scobell customers, including without limitation Yawman, Photo, and Roehlen and has picketed the premises of said customers with a picket sign upon which appeared the following:

Teamsters
Local 118
Picketing
Here
against
Scobell
Chemical Co
Truck Only
AFL-CIO

and that in connection with said picketing the Union's pickets requested employees of Scobell's customers not to accept, receive, or handle Scobell's products, and that by such picketing and by other means, including orders, directions, instructions, and

15 See, Hartcourt and Co., Inc., quoted supra.
16 The lettering on the sign was in black, except that the words "Picketing Here" and "Truck Only" were in red.
appeals, the Union has engaged in, and induced and encouraged employees of Yawman, Photo, Roehlen, and of other employers to engage in strikes or concerted refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform services. The complaint further alleged that the objects of the Union's conduct as above set forth was (1) to force or require Yawman, Photo, Roehlen, and other employers and persons to cease doing business with Scobell; and (2) to force or require Scobell to recognize or bargain with the Union as the collective-bargaining representative of Scobell's employees although the Union has not been certified as the representative of such employees in accordance with the provisions of Section 9 of the Act. The complaint further alleged that by the acts described above carried out for the object (1) above, and by each of said acts, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act, and by the acts described above, carried out for the object (2) above, and by each of said acts, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (4) (B) of the Act.

It was stipulated that Scobell Chemical Company, Inc. (the primary employer) is a New York corporation and at all times material herein has been engaged in Rochester, New York, in the wholesale distribution of chemicals and related products and is engaged in interstate commerce and sold therein products in excess of the amount required by the Board for the purpose of establishing jurisdiction; that Chauffeurs, Teamsters and Helpers Local No. 118, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act; that since on or about March 29, the Union has demanded that Scobell recognize and bargain with it as the representative of Scobell's warehouse and truckdriver employees, and in connection therewith the Union has been on strike against Scobell and has picketed its premises at Rochester, New York, at which Scobell's employees report daily for the performance of services for Scobell, and that at no time material herein has the Union been certified as the representative of Scobell's employees under the provisions of Section 9 of the Act.

It was further stipulated that if witnesses were called by the General Counsel they would testify that the Union had followed the Scobell trucks to the premises of various Scobell customers, including without limitation Yawman & Erbe, Photo, and Roehlen. The Union however does not admit that the premises of said customers were picketed, although the Union does admit that the Union did picket a truck (belonging to Scobell) that was in the vicinity of the above plants with a picket sign as described above. The Union further conceded that if called by the General Counsel, witnesses would testify that employees within the meaning of the Act of both Yawman and Photo companies saw the pickets and saw the signs, and that further if employees of Photo were called they would testify they actually saw and read the sign. The Union further conceded that it picketed the front, in front of the Scobell truck, in and about the premises of the secondary employers, but did not picket the place as that was not its intention; that its intention was only to picket the truck but not the premises. The Union conceded that pickets followed the Scobell truck to the premises of Yawman, Photo, and Roehlen and the pickets with the above-described signs on them were standing at the entrance waiting for the truck to come out. A question is thereby raised as whether those acts can be interpreted as the Union picketing the premises of secondary employers or only picketing the Scobell truck.

It was further stipulated that there is no evidence to establish that the pickets stood near the premises after the Scobell truck had left. It was further stipulated that at all times herein Anthony Cuseo was business representative of the Union and an agent for the Union; and that Ernest Moyer was president of Local 118.

The Union has collective-bargaining agreements with all the secondary employers named herein which contains the following protection of rights clause in article IX:

It shall not be a violation of this Contract and it shall not be cause for discharge if any employee or employees refuse to go through the picket line of a Union or refuse to handle unfair goods. Nor shall the exercise of any rights permitted by law be a violation of this Contract. The Union and its members, individually and collectively, reserve the right to refuse to handle goods from or to any firm or truck which is engaged or involved in any controversy with this or any other Union; and reserve the right to refuse or accept freight from
or to make pickups from or deliveries to establishments where picket lines, strikes, walk-outs or lock-outs exist.

The term "unfair goods" as used in this Article includes but is not limited to, any goods or equipment transported, interchanged, handled, or used by any carrier, whether party to this Agreement or not, at any of whose terminals or at any of whose places of business there is controversy between such carrier or its employees on the one hand, and a labor union on the other hand; and such goods or equipment shall continue to be "unfair" while being transported, handled or used by interchanging or succeeding carriers, whether parties to this Agreement or not, until such controversy is settled.

The collective-bargaining agreements with the secondary employers referred to herein provided:

Article III—Stewards

The Employer recognizes the right of the Union to designate a job steward and alternate to handle such Union business as may from time to time be delegated to them by the Union. Job stewards and alternates have no authority to take strike action or any other action interrupting the Employer's business in violation of this Agreement, or any action in violation of law, except as authorized by official action of the Union. The Employer recognizes this limitation upon the authority of job stewards and their alternates. The Employer, in so recognizing such limitation shall have the authority to render proper discipline, including discharge without recourse, to such job steward or his alternate. In the event the job steward or his alternate has taken unauthorized strike action, slow down or work stoppage in violation of this Agreement, but before discharging a steward the Employer in every instance shall take the matter up with the Officers of the Union. Job steward shall be an employee of the Employer.

Following the refusal of the Company to recognize the Union on March 29, the Union called a strike against the Company and established a picket line on March 30. The picketing of the Company continued thereafter and as already stated above was still in effect on December 3. During the strike the employees of the Company who did not join the strike have crossed the picket line daily in going to and from work and in performing their work.

The Union contends that the Board has not jurisdiction to entertain this complaint in view of the fact that the General Counsel has introduced no evidence concerning the amounts of interstate business, if any, the secondary employers referred to in the complaint, have transacted. This contention is without merit in view of the fact that since the primary employer, Scobell Chemical Company, Inc., is within the jurisdictional amounts established by the Board, the Board has jurisdiction of the subject matter involving the secondary employers. The Board has taken jurisdiction where the primary employer alone meets the jurisdictional standards. Sand Door & Plywood, 113 NLRB 1210 at 1212 enfd. sub nomine IN. L. R. B. v. Local 1976, 241 F. 2d 147 (C. A. 9), certiorari granted 78 S. Ct. 13. I accordingly find that the Board has jurisdiction therein.

On May 22, a Scobell truck with a driver and a helper on it arrived at the premises of Photo Color Process Company, and while Clavin R. Gliem, Roy Hoyt, and George Bebe who were employees of Photo were unloading the Scobell truck, they noticed two pickets on the street, 20 feet from and outside the Photo gate walking up and down across and in front of the Photo driveway. The pickets wore signs lettered as described above. Gliem testified he heard one of the pickets say something as to why they did not get chemicals from somewhere else and inquired if they were going to unload the truck for the scabs. Gliem testified he was not interested in what the sign said that the pickets were wearing and he did not read it. The truck was unloaded and when it left, the pickets entered their car and followed the truck. Wilbur C. Hoyt, employed by Photo as a nickelodeon plater, was standing in the yard and he asked the pickets if they ever worked 17 and they replied by asking if he was going to let that scab unload the truck.

The record shows that at all times material herein, the pickets had an adequate place in which to picket the primary employer, Scobell, and were enabled to pub-

17 Hoyt explained he was just "clowning around" with them by that remark.
licize their dispute to the employees who continued to work and to the public. The Board has held that where, as here, in furtherance of its recognition strike against a primary employer, the Union has followed trucks of the primary employer to sites of neutral employers and picketed those sites, the picketing was per se violative of Section 8 (b) (4) (A) and (B) because the primary employer had a fixed place of business in the area which could be and in fact was picketed so as to expose all the employees of the primary employer for a substantial part of their working day to any message sought to be conveyed by the picketing. (International Brotherhood of Teamsters, etc. Local No. 659 (Ready Mixed Concrete Company), 117 NLRB 1266.) On the basis of the entire record, I accordingly find that by such picketing of the Scobell truck at the premises of the neutral employers of Yawman, Photo, Roehlen, and other neutral employers the Union violated Section 8 (b) (4) (A) and (B) of the Act.

Further Allegations in the Amended Complaint

In April 1957, Henry Wertman, the terminal manager of Penn Yan Express Company, was told by someone who came into his office not to give freight to a Scobell truckdriver. Wertman testified he thereupon telephoned to the union office but does not remember whether he talked with Ernest Moyer or someone else; that he asked whether he should give Scobell its freight and was told not to, and that he did not give the Scobell driver the freight. I find no violation of Section 8 (b) (4) (A) and (B) of the Act in such a situation, as there is no evidence that the Union dealt with the employees of Penn Yan Express Company. Other testimony that the employees of Penn Yan were asked not to give the Scobell driver the freight is nothing more than uncorroborated hearsay which I reject.

On or about August 23, Raymond Werner, a truckdriver for Boulter Carting Co., Inc., and also a barn steward for the Union, was told by Ernest Moyer that there was a trailer in the yard that had a hot cargo for Scobell and not to touch it. Werner followed Moyer's instructions. While inducement of a single employee to stop work does not constitute illegal inducement the Board has held that a directive by the Union's business agent to a union steward on the job, regarding nonunion material was unlawful, because inducement directed at a union steward can reasonably be expected to be likewise transmitted to fellow employees. On the same day, Werner called Peter Le Breth, a truckdriver for Boulter, over to Ernest Moyer who asked Le Breth what company owned the trailer in the yard and which company was hauling it. Moyer asked that the freight in the trailer not be delivered. Le Breth testified that Moyer did not explain where the freight was going; asked only that it not be delivered. I find that by Moyer's statements to employees Werner and Le Breth, the Union violated Section 8 (b) (4) (A) and (B) of the Act. Such conduct had as its object forcing Boulter to cease doing business with Scobell in order thereby to force or require Scobell to recognize or bargain with the Union although the Union was not certified as the collective-bargaining representative of Scobell's employees in accordance with the provisions of Section 9 of the Act.

On or about August 29, William T. Boulter, president of Boulter Carting Company, which handles freight for various local companies in and out of Rochester, New York, had a conversation with Ernest Moyer on the Boulter loading dock in which Moyer told him he had a shipment of empty drums on a trailer owned by Buffalo Delivery consigned to Scobell which was not to be moved. During the conversation, Moyer said "You would not want a strike here, would you?" After discussion with Moyer, Boulter agreed the drums would not be delivered to Scobell. Later in the day about 4 p.m., Boulter informed Werner the barn steward that he had promised Moyer that the shipment would be returned to Buffalo.

21 The Union called no witnesses at the hearing
20 Local 1006, United Brotherhood of Carpenters & Joiners of America, AFL-CIO et al (Booher Lumber Co., Inc.), 117 NLRB 1739.
22 Boulter also testified that employees Peter Le Breth, Ray Werner, and Earl Burrows were on the dock at the time of the conversation with Moyer but the record does not show whether they were in a position to hear the conversation. In view of the fact that Boulter testified that he informed Werner, the barn steward, later at 4 p.m. of his promise to Moyer not to deliver the freight to Scobell that would indicate that the three employees were not included in nor overheard the conversation.
find no violation of Section 8 (b) (4) (A) and (B) of the Act in connection with Moyer's negotiations with Boulter on August 29 since it did not involve employees of Boulter on that date.

In April 1957, Ernest Moyer telephoned to Robert Alianell, terminal manager of Endres Delivery, and told him that Scobell's freight was hot cargo which was not to be delivered or Scobell allowed to pick it up. Alianell said "okay and that was it." Alianell then held the Scobell freight on the dock and it appears from all the testimony that Scobell freight was not handled thereafter by Endres Delivery employees by direction of their employer pursuant to the Union's request to the employer not to handle it. This is supported by the testimony of Darling that Robert Alianell had instructed him (a barn steward for the Union) not to handle Scobell freight. The complaint therefore with respect to Endres Delivery should be dismissed since there was no union-induced refusal by employees to handle Scobell freight.

On or about August 21, Anthony Cuseo brought Joseph Arilotta, who was a driver for Endres Delivery from Endres Dock into the office of Robert J. Alianell, the terminal manager (Cuseo was also accompanied by George Spallato) and Cuseo asked what had happened to Scobell's goods that were on the dock. Alianell informed Cuseo that he did not know anything about the goods. Cuseo then told him, "I am promising you, I am not threatening you, I personally will walk the picket line. We will strike this place. Eight or nine other carriers are cooperating. Why don't you?" Alianell again replied that he knew nothing about Scobell's goods.

On or about August 25, Cuseo went to Alianell's office and again brought with him driver Arilotta and asked about 4 or 5 du Pont drums on the dock that were going to Scobell. Alianell had already marked the freight bills to return the drums to Buffalo to comply with the Union's request not to handle Scobell goods, whereupon Cuseo left the office.

I find no violation of Section 8 (b) (4) (A) and (B) with respect to the foregoing incidents of August 21 and August 25. The fact that they occurred in the presence of one employee (Arilotta) is insufficient to establish a violation of the Act; and further, Endres Delivery employees were not handling Scobell goods, as a result of Alianell having instructed Endres Delivery employees not to deliver any Scobell freight.

During the second week in September, Ernest Moyer, at a union meeting, told Wilber Darling who was a union barn steward employed as a truckdriver for Endres Delivery, that he was not to pick up or deliver Scobell freight; that it was hot cargo. Darling thereafter explained to Endres' employees who were at work that they were not to handle the freight as it was hot cargo. I find no violation of the Act in view of the fact that Robert Alianell, terminal manager for Endres Delivery, had already instructed him not to deliver any Scobell freight before that and Darling was following instructions from his employer.

In the spring of 1957, Aldo Polidori who was a truckdriver for Mushroom Transportation, Inc., and also a barn steward for the Union, telephoned to Anthony Cuseo after one of the drivers for Mushroom had returned with undelivered goods for Scobell because of the picket line. Cuseo told Polidori there was a strike at Scobell's and to keep all Scobell freight on the dock and to inform his employer not to deliver Scobell freight because there was a picket line at Scobell's and their freight was "unfair goods." Polidori reported that to the Mushroom Company dispatcher. Polidori thereafter talked to the employees in a group when they asked him what was the procedure with regard to Scobell and he told them Scobell goods were "unfair goods" and he did not think under the contract that Mushroom could force the men to give Scobell the freight. I find no violation of the Act by Cuseo directing Polidori to inform his employer not to handle Scobell freight even though Polidori was a steward for the Union. I further find no violation of the Act when the employees questioned Polidori and he told them Scobell goods were "unfair goods" and offered his opinion that he did not think the employer could force the employees, under the contract, to give Scobell the freight.

My findings where made above that the Union violated Section 8 (b) (4) (A) and (B) are based on the conclusion that union inducement of employees not to handle or work on goods that would otherwise be proscribed as a secondary boycott by Section 8 (b) (4) (A) of the Act is not rendered lawful because the employers and the Union herein have agreed by contract that the employees shall not be required to handle goods considered to be "unfair" goods. General Drivers, Chauffeurs, Warehousemen and Helpers Union, Local No. 886, AFL-CIO, 115
SCOBELL CHEMICAL COMPANY, INC. 1153

NLRB 800; Sand Door and Plywood Co., 113 NLRB 1210. Both cases have now been argued before the Supreme Court and we are awaiting the court's decisions. Although there are decisions supporting the Union's position in this matter, the Board has ruled that the Trial Examiner's duty is to apply established Board precedent which the Board or the Supreme Court has not reversed. Novak Logging Company, 119 NLRB 1573 and cases cited.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Company set forth in section III, above, occurring in connection with the operations of the Company 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 thereof.

V. THE REMEDY

Having found that the Company has engaged in unfair labor practices violative of Section 8 (a) (1) of the Act, I shall recommend that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Union has engaged in activities violative of Section 8 (b) (4) (A) and (B) of the Act, I shall recommend that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Scobell Chemical Company, Inc., is engaged in commerce within the meaning of the Act.
2. Teamsters, Chauffeurs and Helpers Local Union No. 118, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, is a labor organization within the meaning of Section 2 (5) of the Act.
3. All truckdrivers and warehousemen employed by the Company at its Rochester plant, exclusive of office clerical employees, salesmen, guards, professional employees, and 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.
4. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
5. By inducing and encouraging employees of employers, including Photo Color Process Company, Yawman & Erbe Mfg. Co., Roehlen Engraving Works, Inc., and Boulter Carting Co., Inc., to engage in a concerted refusal in the course of their employment to handle, transport, or work on products or freight of Scobell Chemical Company, Inc., and/or to perform services for their respective employers, with the object of (a) forcing and requiring such employers to cease doing business with Scobell Chemical Company, Inc., and (b) forcing and requiring Scobell Chemical Company, Inc., to recognize and bargain with the Union as the collective-bargaining representative of their employees, although the Union has not been certified as such representative in accordance with the provisions of Section 9 of the Act, the Union has engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) and (B) of the Act.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.
7. The Company has not violated Section 8 (a) (3) and (1) of the Act as alleged in the complaint with respect to George Spallato, Joshua Whitaker, and David Whitaker.
8. The Company has not violated Section 8 (a) (5) and (1) of the Act as alleged in the complaint.

[Recommendations omitted from publication.]

22 Originally, the Board held that the "hot-cargo" clause was a defense (Henry V. Rabouin, d/b/a Conway's Express, 87 NLRB 972, 981-983, affirmed 195 F 2d 906, 912 (C. A. 2); Pittsburgh Plate Glass Company, 105 NLRB 740) and it has been upheld by the District of Columbia and the Second Circuits (General Drivers, etc., Local No. 886 v. N. L. R. B., 247 F. 2d 817 (C A. 2), reversed 357 U. S. 345 (June 23, 1958). Milk Drivers Local Union No. 588 v. N. L. R. B., 245 F. 2d 817 (C A. 2, reversed and remanded 357 U. S. 245 (June 23, 1958).]