

the opinion that it will effectuate the policies of the Act to issue a remedial order, and I will so recommend hereinafter.

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

#### CONCLUSIONS OF LAW

1. Highway Truckdrivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, is a labor organization within the meaning of Section 2(5) of the Act.

2. By inducing or encouraging employees of Weber to engage in concerted refusals in the course of their employment to perform work or services for their employer, with an object thereof being to force or require Weber to cease doing business with Virginia-Carolina, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(A) of the Act.

3. By threatening employees of Virginia-Carolina, thereby restraining and coercing them in the exercise of rights guaranteed by Section 7 of the Act Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. The aforesaid unfair labor practices having occurred in connection with the operations of Virginia-Carolina, as set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and substantially affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in activities which violate Section 8(b)(1)(A) and (4)(A) of the Act, I shall recommend that it cease and desist therefrom and that it take certain affirmative action, which I find necessary to remedy and remove the effect of the unfair labor practices and to effectuate the policies of the Act.

[Recommendations omitted from publication.]

#### **Pacific Maritime Association and A. T. Satchell**

**International Longshoremen's and Warehousemen's Union, Local 10, Independent; and International Longshoremen's and Warehousemen's Union, Independent and A. T. Satchell. Cases Nos. 20-CA-1320 and 20-CB-548. April 2, 1959**

#### DECISION AND ORDER

On September 30, 1958, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent Pacific Maritime Association and the Respondent International Longshoremen's and Warehousemen's Union, Local 10, Independent, had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the International Longshoremen's and Warehousemen's Union, Independent, had not engaged in any unfair labor practice alleged in the complaint and, in effect, recommended dismissal of the complaint with respect to such party. Thereafter, the Respond-

ents PMA and Local 10 and the General Counsel filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel [Chairman Leedom and Members Bean and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made 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 briefs, and the entire record in these cases and hereby adopts the Trial Examiner's findings and conclusions with the exceptions, additions, and modifications hereinafter indicated.

We agree with the Trial Examiner that the Respondent Local 10, through its stewards, violated Section 8(b)(2) and (1)(A) of the Act by causing the Respondent PMA discriminatorily to deny Satchell employment on August 24 and October 19, 1957, because he had brought suit against Local 10 to regain membership.<sup>1</sup> We also agree with the Trial Examiner that the Respondent PMA discriminated against Satchell in violation of Section 8(a)(3) and (1) of the Act when the gang bosses, its agents, acceded to the stewards' demands.

The Trial Examiner, however, exonerated the Respondent International of any liability for the discrimination caused by the Respondent Local. The General Counsel excepts to these findings. We find merit in these exceptions. The record shows that the basic longshore agreement governing the hiring of longshoremen in the port of San Francisco was executed by the Respondent International on behalf of itself and its affiliated longshore locals. Among other things, this agreement provides for the operation of hiring halls. The evidence discloses that, in administering the hiring hall in the area involved in this case and otherwise enforcing the terms of the contract there, the International, has delegated its functions to the Respondent Local 10. It is thus clear that, for all practical purposes, the International and Local 10 have engaged in a joint enterprise in matters affecting the employment of longshoremen. In these circumstances, we find that the International is responsible for the discriminatory treatment Local 10 and its agent (i.e., the stewards) accorded Satchell. We therefore find that the International, along

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<sup>1</sup>The Trial Examiner further found, and we agree, that the Respondent Local 10 was also responsible for the conduct of its steward who, with two longshoremen, prevented Satchell from working on a date near July 27, 1957, and that Local 10 thereby violated Section 8(b)(1)(A). As no exception has been filed to the Trial Examiner's failure to find that the conduct amounted to causing or attempting to cause PMA to discriminate against Satchell within the meaning of Section 8(b)(2), we adopt the Section 8(b)(1)(A) finding without comment.

with Local 10, violated Section 8(b)(2) and (1)(A) in causing PMA to discriminate against Satchell on August 24 and October 19, 1957.<sup>2</sup>

We further find, contrary to the Trial Examiner, that the Respondent International and Local 10, as well as the Respondent PMA, are responsible for the discrimination practiced by the gang bosses for the following reasons:

Under the longshore agreement mentioned above, a Joint Labor Relations Committee was established to supervise the operation of the hiring hall, to control the registration list and to investigate and adjudicate grievances. This Committee consists of three representatives designated by the Union and three by PMA. Rule 25 of the Working Rules of the Port of San Francisco, which implement the contract, provides that:

Gang bosses shall be selected and removed by the Labor Relations Committee. The Union may make recommendations for additions to the gang boss list. The gang boss is in complete authority and will be held responsible for the function of his gang. The gang boss shall have the right to discharge from his gang any man for incompetence, insubordination, or failure to perform the work as required in conformance with the provisions of this agreement.

It is clear from the foregoing that under the hiring-hall arrangement, gang bosses are vested with broad authority to determine the composition and tenure of employment of personnel referred to their respective gangs. As the International and the Local participated with the PMA in clothing the gang bosses with such authority, we find that they are all equally responsible for the gang bosses' discriminatory denial of employment to Satchell on August 24 and October 19. For this additional reason, we find that the International and Local 10 violated Section 8(b)(2) and (1)(A) of the Act.<sup>3</sup>

#### THE REMEDY

To remedy the foregoing unfair labor practices, we shall adopt the Trial Examiner's recommendations with the modifications indicated in our Order. In addition, we shall direct this Order to the International which, in accordance with Board policy, shall be jointly and

<sup>2</sup> Cf. *International Longshoremen's & Warehousemen's Union and International Longshoremen's & Warehousemen's Union, Local 10 (Stafford and Sorce)*, 94 NLRB 1091, enfd. 210 F. 2d 581 (C.A. 9).

<sup>3</sup> *International Longshoremen's and Warehousemen's Union, Local 10, ILWU (True Knowledge)*, 102 NLRB 907. Contrary to the Trial Examiner, we find that the cited case is not distinguishable from the present one. The Board's reference in the cited case to the preferential employment contract was plainly not the determinative factor in holding the union liable for the gang boss' discrimination.

severally liable with Local 10 and PMA for reimbursing Satchell for the loss of pay he suffered by reason of the discrimination.<sup>4</sup>

### ORDER

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

A. International Longshoremen's and Warehousemen's Union, Local 10, Independent, and International Longshoremen's and Warehousemen's Union, Independent, their officers, representatives, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Causing or attempting to cause Pacific Maritime Association, or its members, through union stewards or otherwise, to discriminate against A. T. Satchell or any other prospective employee for the reason that Satchell or such other prospective employee had filed suit against Local 10 in an attempt to regain membership in Local 10.

(b) In any like or related manner causing or attempting to cause Pacific Maritime Association or its members to discriminate against A. T. Satchell or any other prospective employee in violation of Section 8(a)(3) of the Act.

(c) Engaging in any conduct designed to prevent A. T. Satchell or any other prospective employee of Pacific Maritime Association or its members from securing employment in reprisal for bringing legal action against Local 10, or in any like or related manner restraining or coercing employees in the exercise of their right to engage in, or to refrain from engaging in, any and all of the concerted activities guaranteed to them by Section 7 of the Act, 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 by Section 8(a)(3) of the Act.

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

(a) Jointly and severally with the Pacific Maritime Association make whole A. T. Satchell for any loss of pay he may have suffered by reason of the discriminatory denial of employment by Pacific Maritime Association on August 24 and October 19, 1957, less his net earnings on these dates.

(b) Notify, in writing, A. T. Satchell, the Pacific Maritime Association and all gang bosses and stewards working out of the hiring

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<sup>4</sup> Contrary to the Respondent PMA's position, we find that it will effectuate the policies of the Act, to order the Respondents jointly and severally to reimburse Satchell for loss of pay suffered by him as a result of the discrimination. *Acme Mattress Co., Inc.*, 91 NLRB 1010, enf'd. 192 F.2d 524 (C.A. 7).

hall that they have no objection to the employment of A. T. Satchell in longshore work to which he may be dispatched.

(c) Post in its offices, hiring hall, and meeting hall in San Francisco, California, copies of the notice attached hereto marked "Appendix A."<sup>5</sup> Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by representatives of the Respondent International and Local 10, be posted by them immediately upon receipt thereof and be maintained by them for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to members, stewards, and other persons using the hiring hall are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in (c) above, as soon as they are forwarded by the Regional Director, copies of the notice attached hereto marked "Appendix B."

(e) Mail to the Regional Director for the Twentieth Region signed copies of the notice attached hereto marked "Appendix A" for posting by the Respondent Pacific Maritime Association at its offices and places of business in San Francisco, California, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being duly signed by representatives of the Respondent Unions, be forthwith returned to the Regional Director for such posting.

(f) Notify, in writing, the Regional Director for the Twentieth Region within 10 days from the date of this Order as to what steps they have taken to comply herewith.

B. Pacific Maritime Association, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing employment to A. T. Satchell or any other prospective employee regularly dispatched for longshore work under a hiring arrangement because of any objection interposed by any steward or other representative of the Respondent Unions deriving from any attempt by Satchell or such other employee to obtain or regain membership in Local 10.

(b) In any like or related manner, interfering with, restraining, or coercing A. T. Satchell, or any other prospective employee, in the exercise of their right to engage in, or to refrain from engaging

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<sup>5</sup> 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."

in, any and all of the concerted activities guaranteed to them by Section 7 of the Act, 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 by Section 8(a)(3) of the Act.

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

(a) Jointly and severally with Respondents International and Local 10 make whole A. T. Satchell for any loss of pay he may have suffered by reason of the discrimination against him on August 24 and October 19, 1957, less his net earnings on these dates.

(b) Notify, in writing, A. T. Satchell, the Respondent Unions, and all gang bosses working out of the hiring hall that the Pacific Maritime Association will not discriminate against A. T. Satchell or any other prospective employee regularly dispatched for long-shore work under a hiring-hall arrangement because of any action taken by A. T. Satchell or such other employee to obtain or regain membership in Local 10.

(c) Preserve and make available to the Board, or its agents, upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records, and reports and all other records necessary to analyze the amount of back pay due under the terms of this Order.

(d) Post at its offices and places of business in and around San Francisco, California, copies of the notice attached hereto marked "Appendix B."<sup>6</sup> Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by a representative of Pacific Maritime Association, be posted by it immediately on receipt thereof and be maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees, gang bosses, and other representatives are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(e) Post at the same places and under the same conditions as set forth in (d), above, as soon as forwarded by the Regional Director, copies of the notice attached hereto marked "Appendix A."

(f) Mail to the Regional Director for the Twentieth Region signed copies of the notice attached hereto marked "Appendix B" for posting by the Respondent Unions at their hiring hall in San Francisco, California, in places where notices to stewards and members

<sup>6</sup> See footnote 5.

are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being duly signed by a representative for the Pacific Maritime Association, be forthwith returned to the Regional Director for such posting.

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

### APPENDIX A

NOTICE TO ALL MEMBERS OF LOCAL 10, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, INDEPENDENT, ALL DOCK AND GANG STEWARDS AND OTHER REPRESENTATIVES OF LOCAL 10 AND THE INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, INDEPENDENT, ALL EMPLOYEES OF PACIFIC MARITIME ASSOCIATION, AND TO A. T. SACHELL

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

WE WILL NOT cause or attempt to cause Pacific Maritime Association or its members, through union stewards or otherwise, to discriminate against A. T. Satchell or any other prospective employee for the reason that Satchell or such other employee has filed suit against Local 10 in an attempt to regain membership in Local 10.

WE WILL NOT in any like or related manner cause or attempt to cause Pacific Maritime Association or its members to discriminate against A. T. Satchell or any other prospective employee in violation of Section 8(a)(3) of the Act.

WE WILL NOT engage in any conduct designed to prevent A. T. Satchell or any prospective employee of Pacific Maritime Association or its members from securing employment in reprisal for bringing legal action against Local 10 or in any like or related manner restrain or coerce employees in the exercise of their right to engage in, or to refrain from engaging in, any and all of the concerted activities guaranteed them by Section 7 of the Act, 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 by Section 8(a)(3) of the Act.

WE WILL jointly and severally with Pacific Maritime Association make whole A. T. Satchell for any loss of pay he may

have suffered by reason of the discriminatory denial of employment by Pacific Maritime Association on August 24 and October 19, 1957.

INTERNATIONAL LONGSHOREMEN'S AND  
WAREHOUSEMEN'S UNION, LOCAL 10,  
INDEPENDENT,

*Labor Organization.*

Dated----- By-----  
(Representative) (Title)

INTERNATIONAL LONGSHOREMEN'S AND WARE-  
HOUSEMEN'S UNION, INDEPENDENT,

*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.

APPENDIX B

NOTICE TO ALL EMPLOYEES, GANG BOSSES, AND OTHER REPRESENTATIVES OF PACIFIC MARITIME ASSOCIATION AND TO A. T. SATCHELL

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

WE WILL NOT refuse employment to A. T. Satchell or any other prospective employee regularly dispatched for longshore work under a hiring-hall arrangement because of any objection interposed by any steward or other representative of International Longshoremen's and Warehousemen's Union, Local 10, Independent or International Longshoremen's and Warehousemen's Union, Independent, deriving from any attempt by Satchell or such other employee to obtain or regain membership in Local 10.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce A. T. Satchell, or any other prospective employee, in the exercise of their right to engage in, or to refrain from engaging in, any and all of the concerted activities guaranteed to them by Section 7 of the Act, 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 by Section 8(a)(3) of the Act.

WE WILL jointly and severally with the aforementioned Unions make whole A. T. Satchell for any loss of pay he may have

suffered by reason of the discrimination against him on August 24 and October 19, 1957, less his net earnings of these dates.

All our employees are free to become or remain, or refrain from becoming or remaining, members of any labor organization, except to the extent that this right may be affected by an agreement conforming to the applicable provisions of Section 8(a)(3) of the National Labor Relations Act.

PACIFIC MARITIME ASSOCIATION,  
*Employer.*

Dated----- By-----  
(Representative) (Title)

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

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon charges filed by A. T. Satchell, an individual, the General Counsel issued his consolidated complaint dated December 18, 1957, alleging that International Longshoremen's and Warehousemen's Union, Local No. 10, Independent, herein Local 10, and International Longshoremen's and Warehousemen's Union, Independent, herein the International, had engaged in and were engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, 61 Stat. 136, herein the Act. The consolidated complaint further alleges that Pacific Maritime Association, herein PMA, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act. The unfair labor practices complained of are alleged here to have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, tending to lead to labor disputes burdening and obstructing commerce.

In respect to unfair labor practices, the complaint alleges in substance that on three occasions in 1957, Satchell was not permitted to work for PMA because he had filed a suit in a California court against Local 10 and the International.

Local 10, the International, and PMA each filed separate answers denying the commission of unfair labor practices.

Pursuant to notice a hearing was held before the duly designated Trial Examiner in San Francisco, California, on January 22, 23, and 24, and September 4, 1958. All parties were represented by counsel and were afforded opportunity to examine and cross-examine witnesses and to introduce evidence pertinent to the issues. Briefs have been received from counsel for Local 10 and the International and from counsel for PMA.

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 RESPONDENTS

PMA, a California corporation, is collective-bargaining agent for a large number of companies operating oceangoing vessels engaged in interstate and foreign commerce. The annual gross income of member companies of PMA exceeds \$10,000,000.

Local 10 and its parent, the International, are labor organizations within the meaning of Section 2(5) of the Act. The International at all times of interest here has been party to a collective-bargaining agreement with PMA covering wages, hours, terms, and conditions of employment of employees engaged in longshore work in and near San Francisco. The agreement provides for the operation of a hiring hall through which such employees or applicants for employment are referred to PMA members for work. Local 10 is a beneficiary under the contract but is not shown to be a party to it.

## II. THE UNFAIR LABOR PRACTICES

The events and occurrences which the complaint alleges to constitute unfair labor practices on the part of Local 10, the International, and PMA are set forth in the testimony of A. T. Satchell which follows: In 1957, by arrangement with another affiliate of the International, Local 2, Satchell was occasionally dispatched to longshore work when Local 10 was unable to supply men. On July 27, 1957, he received a dispatch slip from Local 2, sending him to Encinal Terminal, Alameda, for work. After some delay, while an attempt was made to have another longshoreman join Satchell, a worker named Meisner went with Satchell to the Encinal Terminal. There they separated, Satchell looking for the gang to which he had been dispatched. Before he reached the gang he encountered an individual, whose name he could not supply, wearing a button on which the word "Steward" appeared. Satchell testified that he had seen this individual on a number of occasions and knew him to be a steward. Speaking to two other longshoremen present on the dock, the steward said, "This fellow is suing the Union. He can't work here. There's another one here too." At about that time Meisner appeared and one of the longshoremen attempted to strike him. Meisner and Satchell left hurriedly.

On August 24, less than a month later, Satchell, following the direction of a dispatch slip from Local 2, went to a PMA gang boss at pier 30 in San Francisco. The gang boss directed Satchell to a work place in the hold of a vessel. In a few minutes the gang boss called Satchell back to the deck and said that they would talk of Local 10's gang and dock stewards. The dock steward turned out to be the same one who had told Satchell on July 27 that he could not work at the Encinal Terminal. The dock steward reminded Satchell that he had prevented him from working before and told him that he could not work on the waterfront. The gang boss remarked that he did not want to get involved in any difficulty and that Satchell had a proper dispatch slip. Satchell and the gang boss then went down to the office of Local 10 where, after an apparent attempt to find someone in authority, the gang boss said that he could find no one; that they would go back to the vessel to see if the men in the gang and the steward would agree to let Satchell work. At the vessel the gang boss told the gang steward that he would let Satchell work if the men in the gang would agree to it. The gang steward left and returned in a few minutes to say that the gang would not agree to work with Satchell. The gang boss then told Satchell that he could not hire him and Satchell left.

On October 19, 2 months later, Satchell was dispatched from Local 2 to the Oakland Army base. Finding the gang to which he had been sent he had the misfortune to encounter the gang steward, Willie Stewart. Stewart commented, "You're the one suing the Union, aren't you?" and then called up to the gang boss, C. A. Harris, who was on the vessel, saying, "You can't work this guy. He is suing the Union." Harris asked Satchell if this was so and Satchell admitted that it was. Harris then said that Satchell could not work. Satchell told both Harris and Stewart that he was going to bring them before the National Labor Relations Board, and left. Leaving the dock, he came upon a dock steward, known to him as Doughbelly. Later testimony developed that this man is John Mattox who was in 1957 a steward for Local 10. Satchell commented to Mattox about his difficulties. Mattox said, "Listen. You fellows are suing the Union. The Stewards Council has ordered us to knock everyone of you off every time you come to work." Mattox continued, saying, "I know how you boys have been pushed around. I hope you win the suit."

Satchell appeared to me to be a witness making a sincere and honest attempt to relate to the best of his recollection precisely what had occurred on these three occasions. Little developed to cast any doubt upon his testimony. Evidence introduced by counsel for PMA establishes to my satisfaction that on July 27 no vessels were at the Encinal Terminal at the time that Satchell said he attempted to go to work there. But Satchell in his direct testimony indicated that he was unsure of the precise date. Other aspects of Satchell's testimony concerning happenings on this date are characterized by counsel for PMA as "a fantastic, unbelievable, murder-mystery type of story." I receive a different impression. The circumstantial detail concerning meeting a gang boss at the hall of Local 10 and the subsequent search for another longshoreman to accompany Satchell to Encinal does not add anything to the substance of his testimony<sup>1</sup> but provides opportunities to demonstrate that he willfully falsified in that connection had he

<sup>1</sup> For this reason it is not set forth in this Report.

done so. No attempt was made to show that Satchell's account was in this respect untrue or inaccurate.

In testifying concerning the August 24 happenings, Satchell said that he did not recall the name of the gang boss to whom he spoke but believed him to be the one regularly in charge of the gang. When it was pointed out to Satchell on cross-examination that the dispatch slip given to him on that date indicated that the gang boss was named Simon, Satchell testified that the man to whom he reported said that his name was Simon. Simon<sup>2</sup> testified that he was not at work on August 24, and I accept his testimony. I find that the gang boss to whom Satchell reported on that occasion was not Simon but a relief man. This testimonial development does not, however, persuade me that Satchell testified in any way falsely concerning this occasion. The relief gang boss was handling a gang regularly supervised by Simon. It is entirely possible and perhaps even probable that he found it unnecessary to explain to Satchell that he was acting in relief and that his name was not Simon. Obviously the name of the relief gang boss is to be found in the records of PMA or of Local 10. If the incidents described by Satchell on August 24 did not take place, the relief man could have testified to that effect. He was not called as a witness.

The only attack made on Satchell's testimony concerning the October 19 events, other than a general assertion that he has demonstrated himself to be an unreliable witness, is to be found in the testimony of John Mattox. It is clear enough that Mattox is the "Doughbelly" referred to in Satchell's testimony. Mattox denied that he ever saw Satchell working on the waterfront and of course Satchell did not testify that he had been seen by Mattox in that situation. Mattox also denied that on October 19 or on any such occasion he talked with Satchell about suing the Union. Mattox finally denied that he knew anything about any suit against Local 10 to which Satchell was a party or that the exclusion of such litigants from employment as longshoremen had ever been discussed in the Stewards Council. The conflict in testimony is a flat one and each witness has a personal interest in the acceptance of his version. Satchell is of course desirous of having the complaint sustained and being made whole for his loss of earnings on the night of October 19. But the complaint is fully supported as to this incident, I find, without the testimony concerning Mattox. It is notable that neither the gang boss, Harris, nor the gang steward, Stewart, were called as witnesses. Mattox's interest in the matter seems to be that he would not care to be quoted as encouraging action against his Union or admitting that the Stewards Council may have taken formal action contrary to the requirements of the Act. The principal importance of this bit of testimony is its effect upon the general credit to be extended to Satchell's version of the three main incidents. Based primarily upon my observation of the two men during the time that they testified, I conclude that Satchell is to be believed. I therefore discredit the denial entered by Mattox.

The General Counsel attacks neither the hiring-hall arrangement under which Satchell was dispatched nor any provision of the contract between PMA and the International. There is no evidence that Satchell was not dispatched in regular turn. Except for the three incidents complained of, he has been and is working with considerable regularity as a longshoreman. I do not consider the evidence to establish that there is any sort of policy on the part of the International or Local 10 to deny employment to Satchell. Nor am I convinced that the Stewards Council of Local 10 has resolved in any formal fashion to keep Satchell from such employment even though I have found that Mattox said such action was taken. But it is clear and I find that on some date near July 27, 1957, and on August 24 and on October 19 stewards of Local 10 effectively prevented Satchell from working and that they did so because of the fact that he had brought suit against their Union in an attempt to regain his membership. It is the duty of stewards as spelled out in the constitution and bylaws of Local 10 to see that none but members or permit men are working. In determining who shall be permitted to work as longshoremen the stewards are performing a function imposed upon them by Local 10. If they misuse this power or authority and refuse to let a worker remain on a job for an unlawful reason, Local 10 must answer for that delinquency. I find that in preventing Satchell from working on the three occasions mentioned the stewards were acting for, and in behalf of, Local 10 and that their actions were the actions of Local 10.

Exercising power deriving from their status as stewards for Local 10 on the three occasions mentioned, they sought to teach Satchell a lesson; to demonstrate

<sup>2</sup> Named Simonovich but known generally on the waterfront as Simon.

to him by depriving him of employment that it is a perilous act to sue their Union. But "The policy of the Act is to insulate employees' jobs from their organizational rights. Thus [Sections] 8(a)(3) and 8(b)(2) were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members, or abstain, from joining any union without imperiling their livelihood."<sup>3</sup> So it was here. Satchell had a right to be undisturbed by Local 10 in his effort to obtain work on the waterfront and at the same time to pursue his cause in the civil courts to obtain reinstatement as a member. I find therefore that by preventing Satchell from gaining employment on or about July 27, August 24, and October 19, Local 10 restrained and coerced him in the exercise of rights guaranteed in Section 7 of the Act and that Local 10 thereby violated Section 8(b)(1)(A) of the Act.

At Encinal Terminal on some date near July 27 Satchell was forced to forego a work opportunity because of a threat of violence. On that occasion he saw no gang boss or other person who it might be said was an agent of PMA. There is no evidence that on this occasion Local 10 through its stewards caused or attempted to cause PMA to discriminate against Satchell in violation of Section 8(a)(3) of the Act.<sup>4</sup> On August 24 and October 19, however, the situation is different. On the first of these two occasions Satchell actually went to his work place at the direction of the gang boss and was finally refused opportunity to work that night because of the objections of the dock steward and the gang steward.<sup>5</sup> On October 19 the gang boss readily assented to the warning from the gang steward that Satchell was one of those suing the Union and therefore could not be employed. On both of these latter occasions stewards representing Local 10 clearly and unmistakably caused the gang bosses to discriminate against Satchell in violation of Section 8(a)(3) of the Act. I find therefore that by this conduct on August 24 and October 19 Local 10 violated Section 8(b)(2) of the Act.

Because of an absence of proof that PMA discriminated against Satchell on or about July 27 I find that no such discrimination took place on that date. However I find that the actions of the gang bosses on August 24 and October 19 in refusing to permit Satchell to work because of the objections of the stewards of Local 10 constituted a violation of Section 8(a)(3) of the Act and that the gang bosses because of the authority vested in them are and were on those occasions the agents of PMA. Even if it be the fact, as counsel for PMA contends, that gang bosses are included in the bargaining unit and that they receive only a slightly higher wage than the men they supervise, it is nonetheless true that they are clothed with authority to discharge and are the representative of PMA in running the gangs. I find that by refusing employment to Satchell on August 24 and October 19 PMA through the gang bosses discouraged employees from taking action disapproved by Local 10 and thus encouraged them to do whatever might be necessary to remain in the good graces of Local 10. This I find constitutes a discrimination forbidden by the Act. PMA thereby violated Section 8(a)(3) of the Act.

By such discrimination I find PMA interfered with, restrained, and coerced Satchell in the exercise of rights guaranteed in Section 7 of the Act and thereby violated Section 8(a)(1) of the Act.

Because the contract between the International and PMA is not in any way alleged to be unlawful, because I find no evidence that the International in any way participated in the accomplishment of discrimination against Satchell, and in the absence of evidence that Local 10 stewards are agents of the International no violation on the part of the International is found. If I understand the position of the representative of the General Counsel in this matter correctly, it is that gang bosses are the agents of the International as well as of PMA. He asserts

<sup>3</sup> *Radio Officers' Union, etc. v. N.L.R.B.*, 347 U.S. 17, 40.

<sup>4</sup> I distinguish the circumstances surrounding this incident from those existing in a case where an applicant for employment is discriminatorily refused referral from a hiring hall operated jointly by an employer and a union. In the latter situation the act of discrimination is performed by an employee of the union but in the exercise of a power in part deriving from the employer.

<sup>5</sup> Here the gang boss seems to have been faced with a hard choice. He was told that if Satchell worked the others in the gang would not. If the gang did not work the gang boss might well lose his pay for that night. Certainly this provides a reason for turning Satchell away but it does not exculpate PMA. Such a strike to accomplish an unlawful objective would find no protection under the Act. A threat of such action would have been only an implementation of an attempt to cause discrimination, albeit an effective one.

that support for this position is to be found in the Board's decision in the *True Knowledge* case.<sup>6</sup> There the Board held that a union was responsible for the conduct of a gang boss because it participated with employers under a hiring-hall agreement in clothing gang bosses with power to hire and that discrimination on the part of gang bosses was "a reasonably anticipated result, especially when viewed in the light of the then current contract which accorded preferential employment to members of the Union." The current contract between PMA and the International is not alleged or shown to contemplate such preferential treatment. It is true that the Joint Labor Relations Committee is composed of three representatives of Local 10 or the International and three representatives of PMA. Gang bosses are appointed by the action of these six and the union representatives may recommend who is to be added to the gang boss list. Obviously no three members of this committee can appoint anyone and it seems inherently unlikely that the employer members of the committee would go along passively with gang boss appointments where "a reasonably anticipated result" would be an involvement in unfair labor practices. Whatever evidence persuaded the Board in the *True Knowledge* case that the method of selection of gang bosses made discrimination likely does not in my opinion exist in this record. A further element which seems to have influenced the Board decision in the case referred to—preferential employment of union members—does not exist here. I conclude that neither Local 10 nor the International are responsible as principals for the conduct of the gang bosses.

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

The activities of Local 10 and PMA, set forth in section II, above, occurring in connection with the operations of PMA members described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### IV. THE REMEDY

Having found that Local 10 and PMA have engaged in certain unfair labor practices, it will be recommended that each cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As to Local 10, it will be recommended that it cease and desist from causing or attempting to cause PMA to deny employment to A. T. Satchell or any other prospective employee regularly dispatched under a lawful hiring-hall arrangement because Satchell or such other employee has filed suit to regain membership in Local 10.

As to PMA, it will be recommended that it cease and desist from refusing employment to A. T. Satchell or any other employee regularly dispatched under a lawful hiring-hall arrangement because of any demand, request, or threat of any representative of Local 10 occasioned by the filing of a suit by Satchell or such other employee to regain membership in Local 10.

It will also be recommended that Local 10 and PMA jointly and severally make A. T. Satchell whole for any loss of pay suffered by reason of the refusal of employment to him on August 24 and October 19, 1957. No recommendation for reimbursement will be made in connection with the July 27 incident.<sup>7</sup>

It will be recommended that the complaint as to the International be dismissed.

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

### CONCLUSIONS OF LAW

1. Pacific Maritime Association and its members are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Longshoremen's and Warehousemen's Union, Local No. 10, Independent, is a labor organization within the meaning of Section 2(5) of the Act.

3. By causing PMA to discriminate against A. T. Satchell in violation of Section 8(a)(3) of the Act, Local 10 has engaged in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

<sup>6</sup> *International Longshoremen's and Warehousemen's Union, Local 10, ILWU*, 102 NLRB 907, 910.

<sup>7</sup> See *Colonial Hardwood Flooring Company, Inc.*, 84 NLRB 563, 565, 566.

4. By such causation and by preventing Satchell from reporting for work on or about July 27, 1957, Local 10 has restrained and coerced Satchell in the exercise of rights guaranteed in Section 7 of the Act and has thereby engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

5. By refusing employment to A. T. Satchell on August 27 and October 19, 1957, PMA has discriminated against Satchell in violation of Section 8(a)(3) of the Act.

6. By such discrimination PMA has interfered with, restrained, and coerced Satchell in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices violative of Section 8(a)(1) of the Act.

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

8. The evidence does not establish a violation of the Act on the part of the International.

[Recommendations omitted from publication.]

**United Hatters, Cap & Millinery Workers International Union, AFL-CIO, its agents and Phillip Ross, Regional Director of the Union and E. J. Lipschutz, Samuel Rosenberg, Nathan Lipschutz, Sidney Lipschutz and Frank Lipschutz, doing business as Louisville Cap Company. Case No. 9-CB-398. April 2, 1959**

### DECISION AND ORDER

On December 12, 1958, Trial Examiner John C. Fisher issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondents and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board<sup>1</sup> 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 briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications and additions noted below.

1. The complaint alleged, and the Trial Examiner found, that the object of the Respondent Union's picketing, customer appeals, and boycott campaign was to compel the Louisville Cap Company to recognize it as the exclusive bargaining representative of its employees although a majority of the employees had not designated the Union to represent them. We agree and therefore conclude, as did the Trial Examiner, that the exertion of economic pressure upon Louisville Cap Company's business in furtherance of the Union's

<sup>1</sup> Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Fanning].