

In the Matter of SANTA CRUZ FRUIT PACKING COMPANY, A CORPORATION and WEIGHERS, WAREHOUSEMEN AND CEREAL WORKERS, LOCAL 38-44, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

*Case No. C-51.—Decided April 2, 1936*

*Canning and Packing Industry—Interference, Restraint or Coercion:* expressed opposition to labor organization, threats of retaliatory action; denial of right of employees to be represented by non-employee representatives—*Strike:* sympathetic—*Discrimination:* lockout; contracting work out—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. Bertram Edises* for the Board.

*Mr. Paul St. Sure* and *Mr. E. A. Moore*, of Oakland, Cal., for respondent.

*Mr. Sam Kazel*, of San Francisco, Cal., for the Union.

*Hilda Droshnicop*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On September 27, 1935, Weighers, Warehousemen and Cereal Workers Local 38-44, hereinafter referred to as the union, filed with the Regional Director for the Twentieth Region a charge that the Santa Cruz Fruit Packing Company, of Oakland, California, hereinafter called respondent, had engaged and was engaging in unfair labor practices forbidden by the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On November 2, 1935, the Board issued its complaint against respondent. The complaint was signed by the Regional Director for the Twentieth Region and alleged that respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the Act. In respect to the unfair labor practices the complaint alleged in substance:

(1) Respondent, on or about August 7, 1935, discharged and thereafter refused to reinstate: Ernie Reich, George Costa, Iva Roche E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo,

Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, Jack Baker, warehouse workers employed by the respondent at its Oakland plant, because they had joined and assisted the union.

"(2) Respondent urged, persuaded and warned its warehouse employees at the Oakland plant to refrain from becoming or remaining members of the union, threatened them with discharge if they became or remained members thereof, and otherwise restrained and coerced them from assisting it.

The complaint and accompanying notice of hearing were served on respondent in accordance with Article V of the National Labor Relations Board Rules and Regulations—Series 1. On November 8, 1935, respondent filed its answer to the complaint denying the allegations of violation, denying that the acts alleged in the Board's complaint, or any other acts in the course and conduct of its business, occur or occurred in interstate and/or foreign commerce or constitute a continuous flow of interstate and/or foreign commerce, and denying that any of the acts alleged in the complaint, or any other acts of respondent, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and of Section 2, subdivisions (6) and (7) of the Act. Respondent's answer alleged that the men named in the complaint failed and refused to work their regular shifts on or about August 7, 1935, and that other men were engaged to take their places in order that the business of respondent might continue without interruption. Respondent also alleged that it had offered to re-employ all the men named in the complaint except those who had committed various acts of intimidation and violence since the inception of the dispute.

On November 14, 1935, the Board issued its amended complaint alleging that respondent is engaged in foreign as well as interstate commerce. It was stipulated at the hearing that respondent's answer would apply to the complaint as so amended.

Pursuant to notice, a hearing was conducted by Roger John Traynor, the duly designated Trial Examiner, on December 23 and December 24, 1935, January 2, January 3 and January 6, 1936, at Oakland, California. Respondent, appearing by Paul St. Sure and E. A. Moore, the Board, appearing by its Regional Attorney, Bertram Edises, and the union, appearing by Sam Kagel, participated in the hearing. Full opportunity to be heard, cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties.

Before the introduction of testimony respondent objected to the jurisdiction of the Board on constitutional grounds, and moved to dismiss on the further ground that the facts stated in the complaint were insufficient to furnish the basis of an action under the Act. The motion to dismiss was denied without prejudice. Counsel then stipulated that respondent's objections to the constitutionality of the Act and the sufficiency of the complaint should be deemed to extend to the entire proceeding and all evidence introduced therein. Following the Board's presentation of its case respondent offered no testimony, but moved to dismiss on the grounds of its original motion, and on the additional grounds that the evidence failed to support the allegations of the complaint, that it was insufficient to support any findings in the premises, and that the evidence affirmatively established that respondent is not engaged in interstate or foreign commerce. The Trial Examiner denied this motion. Respondent and the Board waived oral argument at the close of the hearing, but briefs were filed by respondent and the Board.

Upon the record thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Trial Examiner, on January 30, 1935, filed an intermediate report, finding in substance that respondent is engaged in interstate and foreign commerce; that respondent had committed unfair labor practices in violation of Section 8, subdivisions (1) and (3) of the Act in interfering with its employees' membership in the union, by discharging them for union activities and by refusing to reinstate all the warehousemen named in the complaint; and that such unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act. The Trial Examiner recommended that respondent cease and desist from interfering with the union activities of its employees and that it immediately reinstate all the men named in the complaint with all privileges previously enjoyed and with back pay.

We find that the evidence supports the Trial Examiner's rulings, findings and conclusions. Nothing in respondent's exceptions to the intermediate report, which are discussed below, requires any material alteration of such findings and conclusions.

Upon the record in this case, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Board makes the following:

## FINDINGS OF FACT

I. THE SANTA CRUZ FRUIT PACKING COMPANY AND ITS RELATION TO  
STOKELY BROS.A. *The Santa Cruz Fruit Packing Company*

The Santa Cruz Fruit Packing Company is a California corporation which is among the four or five largest fruit and vegetable canning concerns in the state. It operates two canneries, one at Oakland, California and one at Seabright, near Santa Cruz, California.

Respondent is engaged at the Oakland plant, where the present dispute arose, in canning, packing, warehousing and shipping fruits, vegetables and agricultural commodities, the bulk of which are grown in California. Tomatoes, and tomato products, peaches, apricots, spinach, pears, asparagus, and pork and beans, are, in the order named, the principal products canned and sold by respondents.

During 1935 the total pack of respondent amounted to approximately 1,699,270 cases of canned fruits and vegetables. This figure includes approximately 105,814 cases carried over from 1934. Of the 9.02% of the total pack shipped to foreign countries, 7.02% was sold under C. I. F. sales contracts (Canners' League Form) and 2% was sold under F. O. B. San Francisco Bay Points sales contracts (Canners' League Form). Approximately 473,620 cases of canned goods were sent to the States of New York, Illinois, Kansas, Missouri, Minnesota, Michigan, Ohio, Iowa, Massachusetts, Pennsylvania, and to other points in the United States outside the State of California, under F. O. B. San Francisco Bay Points sales contracts (Canners' League Form). Goods thus transported to states outside California comprised about 27.87% of the total pack. 11.78% of the pack remained unsold in December, 1935. Respondent thus shipped approximately 36.89% of its total pack, outside of California in 1935. Peaches, pears, apricots, spinach and asparagus are the chief products so shipped.

The three methods of transportation used by respondent are water, rail and truck. Export shipments, the preponderant portion of which are sent to the British Isles, go by water. The water route is also the chief method of carriage to points within the United States outside the State of California. Approximately 20 per cent of respondent's products going to other states is shipped by rail. An undetermined amount of respondent's products is shipped by truck directly to the point of destination.

There is a constant stream of loading and shipping of products out of respondent's plant throughout the entire year. Approximately three to four thousand cases are loaded daily into the various vehicles

of conveyance. All such loading is a substantial and regular part of the work of the warehousemen here involved. Where the shipments are by rail or overland trucks, the men load directly into the principal carriers. Where the shipments are by boat, the work of respondent's warehousemen consists of loading the products onto the trucks which transport the goods to the docks. The men here involved thus actually start all the products of respondent upon the course of transportation to their ultimate destination.

All of the aforesaid constitutes a continuous flow of trade, traffic and commerce among the several States and with foreign countries. The warehousemen here involved are engaged in operations in the course and conduct of such commerce and are an integral part of such commerce.

#### B. *Stokely Bros.*

Stokely Bros. is an Indiana corporation owning a warehouse across the street from respondent's plant and is respondent's principal customer. Stokely's warehouse labor is managed and supervised by Huddleson, the general manager of respondent, Williams, respondent's assistant general manager and Remington, respondent's superintendent. These officers are paid by respondent; Morris, the foreman at Stokely, and Frates, the assistant foreman, are alone paid by Stokely Bros. All the warehousemen at the Stokely warehouse are paid by Santa Cruz with its own checks.

## II. THE UNFAIR LABOR PRACTICES

### A. *The lockout*

Employment at respondent's plant during the "peak" season (which is June through September) ranges from 1200 to 1500 persons, of whom approximately thirty are warehousemen. Employment in the cannery proper is largely seasonal in nature, but certain employees, including the warehousemen, are retained in employment throughout the year. The warehousemen receive from 35 to 40 cents an hour, and in the busy season sometimes work 14 to 17 hours a day.

Weighers, Warehousemen and Cereal Workers Local 38-44, International Longshoremen's Association, is a labor organization affiliated with the American Federation of Labor and existing for the purpose of negotiating with employers with respect to wages, rates of pay, hours of employment, and conditions of work. Organization of the Oakland plant started in July 1935 through the initiative of "Bob" Anger, a warehouseman at respondent's plant and a former union man. Anger had approached the union and been told that the Santa Cruz men would be taken in if a sufficient number made appli-

cation. By the end of July all of the permanent warehousemen of respondent except the foremen and straw bosses had made formal application for membership. Organization work was not done during working hours and the fact of union affiliation was not made known to respondent until Monday, August 5th, when the men began to wear their union buttons.

Late in the day on that Monday, Huddleson, the general manager of respondent, did the unprecedented thing of calling all the warehousemen together for a meeting. He there announced that he had heard that the men had joined a union; that he understood the union rate to be 62½ cents an hour; that he could not permit a union in his plant because of competitive conditions; and that if they wanted higher wages they should have approached him without joining a union. He added that no one from the outside would tell him how to run his business; that he could have the work contracted out for less than he was then paying, and that the men could either go with the union or with him. He gave them "a couple of days to think it over". One of the warehousemen, in testifying to the inference drawn by the men from this speech, said that they gathered that "they could either throw away their union buttons or get fired".

The presence in the plant of Gomez, a labor contractor who had been seen inspecting the Santa Cruz and Stokely warehouses during the same day, indicates that Huddleson had already begun preparations to carry out his threat. On the following day Morris, foreman at the Stokely warehouse, pointed Gomez out to one of the warehousemen and said, "that is the guy that is going to take over the contract".

Woods, the business agent of the union, who was notified by the men of Huddleson's ultimatum interviewed Huddleson on Tuesday, August 6. By that time Huddleson had received a draft copy of the standard contract which the union had negotiated with other large California canning firms for warehousing work, embodying suggested terms of employment. The letter accompanying the tentative draft stated, "We desire that you give this proposal serious consideration and we are prepared to meet with you within the next few days for the purpose of discussing and arriving at a solution of an agreement." In his conversation with Woods, Huddleson recapitulated his position in substantially the same unequivocal terms saying that he "didn't want anything to do with a union or any of its officials . . . ;" that "you couldn't have union activities around the place—it would cost too much money . . . ; . . . Canneries were no place for a union—the hours wouldn't permit it and the wages wouldn't permit it . . . , . . . if they wanted to organize they could go somewheres else . . ." Upon his reiteration of the threat that he would turn the warehouse over to a contractor if the union came in, Woods re-

quested the name of the contractor so that he could deal with him, but Huddleson declined to furnish the information and refused to state the reason.

The union meeting at which the men were to be initiated was to be held at eight o'clock Wednesday night, August 7th. At eight-thirty Wednesday morning Anger requested Torensen, the Santa Cruz foreman, for permission for the day shift men to leave their work at four-thirty in order to attend the meeting. This ample period was necessary because most of the men lived a considerable distance from the plant and the union hall, and wished to go home to prepare for their initiation. Torensen thanked Anger for notifying him, saying, "that would give him a chance to arrange his work". At about noon Anger made the same request in respect to the night shift men and received the same answer. Hughes, who was working near Anger at the time, testified that he overheard these conversations; Pepitone, another worker, also confirmed Anger's account; Rose and Resburg, day warehousemen, agreed that they saw Anger speaking to Torensen and were shortly thereafter told by Anger that Torensen had raised no objection to their leaving at four-thirty that evening. Early in the day after his encounter with Anger, Torensen asked Pio, Doyle and Sonnebeck (night men employed on the pork and bean line) if they were going to the meeting, and when they replied that they were, said that he would arrange to have them replaced in the meantime. He specifically stated that they were to return to work that night at the conclusion of the meeting.

During the afternoon a rumor spread through the plant that any of the men who went to the meeting would be discharged. In response to Anger's inquiry Torensen denied having made any such statement. Hughes confirms Anger's account of this exchange with the testimony that Torensen said that "Huddleson had told him to issue no order to the effect that anyone going to the meeting would be discharged". In spite of Torensen's denial, however, further evidence of the fact that respondent had already formulated the design to lock the men out if they persisted in their union activities is found in the statement of Morris to one of the warehousemen, who replied in the negative to an inquiry as to whether he had a union button. Morris remarked, "Well, you are playing safe that way." He then added, "if you want to go on stacking cans you'll have to ask Gomez".

At four-thirty, when the men went to turn in their time cards, Torensen could not be found. They nevertheless departed, after leaving their cards on his desk. Although this was unusual, there is evidence that the men had left under these conditions before.

That evening when Reich, the assistant foreman in charge of the night shift, arrived at the plant at about five-twenty, Gomez was

already in the office and six or seven men from his crew were in the warehouse.<sup>1</sup> On discovering that Reich too was going to the meeting, Torensen observed, "The old man gave us orders not to let anybody go to work who is going to that meeting."<sup>2</sup> However, Costa and Algrava, two other night shift men who were at the plant at about the same time, were merely told by Torensen that there was to be no night shift that day. When Algrava replied, "Good I want to go the the meeting anyway", Torensen made no comment. The testimony of Woods, business agent of the union, that the men at the meeting considered themselves absent from work with respondent's permission is borne out by the fact that the pork and bean gang returned to work that same night pursuant to Torensen's instructions, while the day crew reported at the usual hour the following morning.

The orderly procedure pursued by respondent's warehousemen in availing themselves of their legal right to organize contrasts vividly with the deliberately provocative tactics of respondent. In spite of the fact that the men had been instructed by Torensen to go to work immediately after the union initiation was concluded, respondent threw a cordon of guards armed with sawed-off shot-guns around the plant to confront its warehousemen on their return. When the pork and bean crew appeared at the warehouse about ten-thirty Wednesday night, they were met by guards with significantly exposed guns and the threat, "We are going to have trouble around there. You had better go home." In reply to their protest that he had told them to return after the union initiation, Torensen said, "I can't help it; that is orders." On Thursday morning the day crew found the gates of the plant locked and the premises similarly guarded. One of the men who found his way in, was asked whether he had a "button", and when he responded that he had, was ejected by a Gomez guard. All of the warehousemen who had joined the union were thus locked out.

Respondent's contention that the men left the plant without permission, thus forcing Huddleson to take on a new force to complete the work, finds no support in the record. The testimony of the Santa Cruz men that Torensen gave them leave to go at four-thirty on Wednesday stands uncontradicted. Nothing appears in the record to offset the abundant evidence of Torensen's authority. The transparency of respondent's claim in this connection is sharply exposed by the fact that Orville Gardner, who on Tuesday had personally

<sup>1</sup> Thirteen of Gomez's men punched in by six o'clock Wednesday night.

<sup>2</sup> Although Reich then went to the meeting he did not repeat Torensen's statement to the men. There is no evidence that Reich was instructed to inform them that their leave had been rescinded, and his silence is plausibly explained by the fact that, since Gomez was already in the warehouse a warning would have been of no avail.

received Torenson's permission to take leave on Wednesday night merely because work was slack, was excluded from the plant with the others on Thursday. Respondent's contention lacks even the color of plausibility when applied to the men at the Stokely warehouse since they had completed their assignments at four-thirty. Respondent's contention advanced somewhat diffidently that the men struck, hardly merits consideration, so replete is the record with evidence that the men took all reasonable precautions to safeguard their jobs.

Respondent has interposed no claim that the men were generally inefficient; Huddleson, on the contrary, repeatedly asserted in his speech on Monday and in the course of the various negotiations following the lockout that their work was entirely satisfactory and offered to take them back if they abandoned their union activities. In addition, the men's temporary absence while at the meeting on Wednesday night involved no disturbance in the operations at the plant. The day warehousemen had cleared the floor of cans for the day's run during the morning. Only one man was needed to trundle cans from the cannery to the warehouse and can stackers were available to take the place of the small night crew on the pork and bean line.

#### *B. The Union's attempts to secure reinstatement of the men*

Immediately after the lockout occurred, the union made at least four systematic attempts to have the men reinstated under conditions similar to those which existed before the dispute began. Huddleson's and Gomez's reactions to the union's overtures indicate conclusively that the tactics of respondent were prompted originally by a determination to break the union and that Huddleson's offers of reinstatement were limited by the same design.

On Thursday morning, August 8th, after all of the men had been locked out, Woods attempted to see Huddleson. Huddleson could not be found, but Woods was told by Gomez that the union was the reason for the lockout of the men. Gomez unqualifiedly rejected Woods' suggestion that he employ the men himself. Several days later Anger and Woods again approached Huddleson but were categorically informed that he would never have anything to do with the union. At a subsequent conference between Woods, Huddleson and Jackson (of the Oakland Teamster's Union) Huddleson again revealed his anti-union bias by declining to reinstate the men on the ground that if he took them back the union might again make attempts to negotiate with him. Huddleson's refusal to reinstate the men at a later meeting with Woods, Jackson and Bridges (president of local 38-79 I. L. A.) was also explicitly based upon the fact that

the union might reopen the question of wages and working conditions after the men had returned to work.

Respondent's "offers of reinstatement" were consistently vitiated by vagueness and arbitrariness as well as the imposition of conditions requiring complete capitulation by the union. Thus, Huddleson at one point asserted that he would re-employ all but six of the men who were out but when pressed for a more specific commitment as to the time of reinstatement, countered with the statements, "when I have an opportunity to do so" and "when it is convenient to do so". The six men whom his "offer" did not cover were, he maintained, disqualified for reinstatement by their "disorderly conduct" after the lockout. The union's offer to arbitrate their cases was categorically rejected.<sup>3</sup> In a letter to Mr. Real and Mr. Spooner (of the Central Labor Council of Alameda County) written August 31, 1935, Huddleson again offered to reinstate all but six of the men, with the same limitation: "we will reinstate the balance of these men . . . with the understanding that the organizers . . . will stay away from them and leave them alone . . ."

*C. Status of the men at the Stokely warehouse as employees of respondent*

Paragraph 3 of respondent's answer admits by implication the allegation in paragraph 3 of the Board's complaint that all of the warehousemen here involved are employees of respondent. In its brief, filed after the conclusion of the hearing, respondent for the first time raised the objection that "a few . . . of the complainants . . . were employees of Stokely Bros. . . . whose warehouse employees were paid by respondent's check and respondent was reimbursed therefor each week by Stokely Bros." The particular warehousemen adverted to are not named in respondent's brief or in any evidence put in by respondent.

It is clear from the record that respondent habitually, and sometimes daily, detailed its warehousemen to Stokely when work at respondent's plant was slack, and that when Santa Cruz required additional hands the process was reversed. Thus, practically all of the men involved in the present inquiry had at some time worked at Stokely; Reich testified that the arrangement of the transfers was part of his ordinary duties as assistant foreman at respondent's plant. Gerald Olivera, Walter R. Bedford, John Valin, Fred Venturi and F. Ellis had worked principally at Stokely; we therefore infer that respondent's objection alludes to them.

<sup>3</sup> While the answer alleges the violence of several of the men, respondent does not name them and no evidence appears in the record through which they can be identified. It is therefore unnecessary to discuss the bearing of violence committed by employees during the dispute upon the question of reinstatement.

Testimony introduced at the hearing establishes beyond dispute the fact that the five warehousemen in question were employees of respondent, and were so regarded by its chief officers and agents, although the preponderant portion of their activities were in the Stokely plant. Thus, Williams, assistant general manager of respondent, when questioned as to the number of respondent's employees, included these five warehousemen in his reply. The warehousemen at both the Santa Cruz and Stokely plants always received identical Santa Cruz checks. Williams admitted that Remington, the general superintendent of respondent, was in charge of employment at both the Stokely and Santa Cruz warehouses; that Morris, the foreman at Stokely who did the hiring and discharging, was under Remington's direct supervision; and that for all practical purposes the warehouse labor of both plants was run as a unit. This description of the unified management of the labor in both warehouses is unmistakably borne out by Huddleson's behavior in reference to the warehousemen at Stokely. On August 5th, the day on which Huddleson called the men together for his speech, Morris instructed the men to go over to Santa Cruz to hear him. Huddleson's declarations that he would not pay 62½ cents an hour and his threats that the men would be discharged if they persisted in their union activities were directed to the Stokely as well as to the Santa Cruz warehousemen. The Stokely warehousemen were locked out under the same circumstances as the Santa Cruz, as Morris had predicted, and though Gomez's contract with Huddleson nominally covered only the Santa Cruz plant, Gomez in fact took over Stokely as well as Santa Cruz after the lockout. Again, in all the negotiations for reinstatement, Huddleson failed to distinguish between the work at the Stokely and Santa Cruz warehouses, but offered to take back both the Stokely and Santa Cruz men indiscriminately. In his letter to Mr. Real and Mr. Spooner, the assumption that respondent's agent controls the labor at both warehouses and considers himself to be in a position to reinstate these men as well as those at Santa Cruz is also clearly apparent.

In view of respondent's habitual control and payment of these warehousemen we find that respondent is an independent contractor of warehouse labor for Stokely and that the five men here in question are employees of respondent.

#### *D. Concluding findings of fact on the unfair labor practices*

By discharging from employment on August 7, 1935, and by thereafter refusing to reinstate Ernie Reich, George Costa, Iva Roche, E. G. Rosburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred

Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torensen, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, and by each of said discharges, respondent discriminated in regard to tenure of employment and has thereby discouraged membership in the labor organization known as the Weighers, Warehousemen and Cereal Workers Local 38-44.

By such discrimination in regard to hire and tenure of employment and terms and conditions of employment, respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

It was found above that the men here involved actually start all the products of respondent upon the course of transportation to their ultimate destination. Interruption of the performance of their functions involves necessarily an interruption of the steady and continuous flow of commerce from respondent's plant. This inference is fully borne out by the history of the present labor difficulty. When respondent's warehousemen found themselves locked out on the morning of August 8, 1935, they immediately formed a picket line, which was maintained until September 27, 1935, with such effectiveness that eventually the movement of trucks from warehouse to wharves ceased entirely. The teamsters refused to haul Santa Cruz merchandise; the warehousemen at the dock warehouses who ordinarily unload the canned foods from the cars prior to their reloading into the ships, since they were members of the same union as the Santa Cruz warehousemen, also declined to handle Santa Cruz cargo. As members of the sister union, I. L. A. 38-79, the stevedores who move the goods from dock to ship also refused to move Santa Cruz cargo both at the East Bay and San Francisco docks during the entire period that the picket line was maintained. Other unions whose members refused to move "hot" Santa Cruz cargo were those members of the Sailors who comprised the crews of steam schooners and whose duties include the handling of cargo.

Interference with the activities of employees in forming or joining labor organizations results in strikes and other forms of industrial unrest which in the canning industry have habitually had the effect of impeding the movement of canned products into interstate and foreign commerce. Thus official statistics of the United States Department of Labor on labor disputes in the canning and preserving industries indicate that of the fifteen strikes and lockouts in the in-

dustry in 1934 and the first half of 1935, eight were the outcome of activities. Seven thousand four hundred and eighty four workers were involved in these stoppages, 2,581 of them in disputes concerning such union issues. Sixty seven thousand five hundred and ninety seven man-days of potential productive activity were lost to the industry, of which a total of 58,109 was owing to disputes in connection with organization matters.

The aforesaid acts of respondent have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### IV. THE CONTRACT WITH GOMEZ

In accordance with its threat, respondent entered into an agreement with Gomez covering all the warehouse work at the Santa Cruz plant. The contract is dated August 1, 1935 and is nominally for a one year period, with an option of renewal in the contractor. This contract raises some question as to the nature of the appropriate order in this case. The evidence permits no doubt that respondent's motive in contracting out its warehouse work was prompted solely by a determination to eliminate the union from its plant at any cost. The decision in this case does not in the least imply the validity under the Act of such a contract entered into with such a motive. Circumstances peculiar to the instant case make it unnecessary, however, to decide the extent of the remedy which the Board may afford victims of unfair labor practices in this type of situation. The record here before the Board contains irrefutable evidence that respondent did not consider itself precluded by its contract with Gomez from reinstating the men within the period covered by the agreement. At his meeting with Bridges, Woods and Jackson, Huddleson stated, "I am not in a position to put the other men back in the warehouse, because I am not going to tell this man that has a contract with us to go and let his men go, and take the others back in their places . . . I will take them back as I can work them in and as I see fit." It is apparent, in view of the latter statement, that Huddleson could reinstate the men if he wished to do so. It may plausibly be inferred that Huddleson's offer, if it was to be meaningful under the circumstances, contemplated action before the expiration of the contractual one or two year period. This implication becomes more compelling in view of the fact that Huddleson's refusal (later in the conversation) to arbitrate his differences with the union with reference to reinstatement of the men was due to his failure to receive assurance that the union would desist from attempts to alter labor conditions in his warehouse after the men returned to work, rather than to his obligations to Gomez. Huddleson's letter of August 31, 1935 to Mr. Real and Mr. Spooner of the Central Labor Council of Alameda County establishes conclusively

the fact that respondent, regardless of its contractual relation to Gomez, considers itself able to reinstate the men here involved. The relevant portions of the letter read as follows:

"As explained to you, there are 38 men out at the present time and I understand that practically all of them would like to return to this plant under the same conditions under which they were working before they left.

"This is to advise that, outside of 7 men whose conduct is such that we do not wish to have them in the organization, we will reinstate the balance of these men at the rate of 10 men a week until we have them back at work in this organization with the understanding that the organizers, who caused them to make a demand on us for approximately 22½¢ an hour more than is given by other people in this industry, stay away from them and leave them alone. In other words, when they come back here, they are to come back under exactly the same conditions that they were working under before they left."

We find that respondent in spite of its alleged contract with Gomez is in a position to reinstate the warehousemen involved in this case.

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding the Board finds and concludes as a matter of law:

(1) The Weighers, Warehousemen and Cereal Workers Local 38-44 is a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

(2) Respondent, by discriminating in regard to the tenure of employment of Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon, (Gardner), Frank Freitas, Larry Doyle, Jack Baker, and each of them, has engaged and is engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of the Act.

(3) Such unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act.

## ORDER

On the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that respondent, Santa Cruz Fruit Packing Company, and its officers and agents, shall:

1. Cease and desist:

(a) From discouraging membership in Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or in any other labor organization of its employees, by discharging or threatening to discharge any of its employees for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association, or any other labor organization of its employees; and

(c) From in any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) Offer to Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said Ernie Reich, George Costa, Iva Roche, E. G. Resburg, Clifford Algrava, George M. Rose, Robert Anger, Frank Phillips, Lester Scott, Pasqual Arieta, Connie Martin, Alfred Pio, Frank Granad (Granada), Rufus Hughes, Nick De Carlo, Kenneth Torenson, Manuel Blanco, Joe Pepitone, John Reckling, August

Sannebeck, Walter R. Bedford, Fred Venturi, Joe Carmo, John Valin, F. Ellis, G. Olivera, L. H. Ledtke, Orville Gordon (Gardner), Frank Freitas, Larry Doyle, and Jack Baker, for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of his discharge, less the amount earned subsequent to his discharge;

(c) Post immediately notices to its employees in conspicuous places in its various offices, stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.