

In the Matter of IDAHO-MARYLAND MINES CORPORATION and INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS OF AMERICA, LOCAL 283

Case No. C-260.—Decided January 10, 1938

Mining Industry—Interference, Restraint, or Coercion: expressed opposition to outside labor organization; threats of retaliatory action; attempts to keep outside union organizers out of district by public officials and members of civic organization; engendering fear of loss of employment for union membership and activity; urging, persuading, and warning employees to join or remain members of favored labor organization by paying required dues therein, and threatening them with discharge for non-compliance, permitting organizers and dues-collectors of favored labor organization to carry on activities on company time and property, and permitting deduction of initiation fees from employees' pay checks in several instances; shut-down of one shaft of mine to discourage and cripple outside union membership and activity—*Discrimination:* discharges of and failure to reemploy active union members—*Restatement Ordered—Back Pay:* awarded from date of discharge to date of respondent's offer of reinstatement.

Mr. Bertram Edises, for the Board.

Mr. Edgar T. Zook, of San Francisco, Calif., for the respondent.

Mr. Anthony Wayne Smith, of Washington, D. C., for the I. U. M.

Mr. J. Mark Jacobson, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and supplementary charges duly filed by International Union of Mine, Mill and Smelter Workers of America, Local No. 283, herein called the I. U. M., the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region (San Francisco, California), issued its complaint dated June 1, 1937, against Idaho-Maryland Mines Corporation, Grass Valley, California, herein called the respondent. The complaint, notice of hearing thereon, and notices of postponement of hearing thereon were duly served upon the respondent and the I. U. M.

At the hearing the complaint was amended by the inclusion of some and the omission of other names, by corrections in names, and by

minor changes in the form of allegations. The respondent's answer was accordingly amended also at the hearing. The complaint as amended alleged that the respondent's gold mining operations have a close, intimate, and substantial relation to interstate and foreign commerce; that on or about April 15, 1937, the respondent discharged and locked out 72 production employees at its Old Brunswick shaft; that on or about April 17 and May 14, 1937, the respondent discharged Hugh Williams and W. H. Marshall, Sr., respectively; that the respondent discharged and refused to reemploy these employees because of their membership and activities in the I. U. M.; that the respondent warned and intimidated its employees against becoming or remaining members of the I. U. M. and threatened them with discharge if they did so; that the respondent persuaded and coerced its employees to join the Mine Workers Protective League, herein called the M. W. P. L.; that the respondent dominated, interfered with the administration of, and contributed support to the M. W. P. L.; and that the foregoing activities of the respondent constituted unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

The respondent's answer attacked the jurisdiction of the Board, alleging that the respondent mines gold and silver which it sells and delivers exclusively to the United States Mint at San Francisco, California, and to the American Smelting and Refining Company at Selby, California, which in turn sells and delivers the respondent's refined ore to the San Francisco mint; that it purchases its supplies and equipment within the State of California; and that its business has no substantial relation to interstate or foreign commerce. Concerning the allegations of unfair labor practices, the respondent alleged that the Old Brunswick shaft was closed and the employees at that mine were laid off as part of a reorganization of its activities and for practical business reasons wholly disconnected with the membership of its employees in the I. U. M., and denied any threats or intimidation of its employees against their becoming or remaining members of the I. U. M. The answer sets forth names of employees listed in the complaint who had been reemployed by the respondent, employees who had been offered reemployment by the respondent, and employees who had voluntarily left the employ of the respondent. The respondent alleged that the great majority of the other employees listed in the complaint had not applied to the respondent for reemployment, that some of them are eligible for reemployment when they make application therefor, and that the respondent deems others ineligible for reemployment for reasons wholly disconnected with any labor affiliations or activities. The respondent denied any domination of or financial support to the M. W. P. L. or that it coerced its employees to join the M. W. P. L. The respondent al-

leged that the M. W. P. L. is an independent labor organization whose membership is composed of employees of all of the various mines in the Grass Valley district and that the respondent has dealt with it at arm's length on matters pertaining to the wages, hours, and working conditions of its employees. The respondent admitted that it discharged Hugh Williams and W. H. Marshall, Sr., but alleged that the former was discharged because of his violation of company rules, and the latter because of information secured as to his past history which rendered him an undesirable employee. .

Pursuant to notice, a hearing was held in Grass Valley, California, on June 21, 22, 23, 24, 25, 28, 29, and 30, 1937, before Patrick H. McNally, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence-bearing upon the issues was afforded all parties. At the opening of the hearing, counsel for the respondent objected to the jurisdiction of the Board on the ground that the respondent was not engaged in interstate commerce, that its operations are purely intrastate, and that none of its activities affect or have any relation to interstate commerce. At the close of the hearing, counsel for the respondent moved to dismiss the proceedings for lack of jurisdiction on the same grounds. The Trial Examiner denied the motion. Certain documents were submitted by stipulation following the hearing and were admitted by the Trial Examiner.

Subsequently the Trial Examiner filed an Intermediate Report finding that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act. Exceptions to the Intermediate Report were thereafter filed by the respondent.

Pursuant to notice, a hearing was held before the Board on October 25, 1937, in Washington, for the purpose of oral argument. The respondent and the I. U. M. appeared; they were represented by counsel and participated in the oral argument.

The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the admission and exclusion of evidence and finds that no prejudicial errors were committed. Those rulings are hereby affirmed. The Board has also reviewed the exceptions to the Intermediate Report, and except in one instance, as indicated below, finds them without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is a Nevada corporation having its main office at San Francisco, California, and its mining property at Grass Valley,

California. Its authorized capital stock is \$3,000,000 and its issued capital stock between \$1,750,000 and \$1,800,000.

The respondent owns in fee the Idaho-Maryland and the Brunswick mines which adjoin each other. Each of these mines has two shafts. The Idaho-Maryland main shaft is the most westerly; next comes the Idaho-Maryland No. 2 shaft about 3,500 feet distant; then at a distance of approximately one mile is the Old Brunswick shaft; and about 1,000 feet away is the New Brunswick shaft. The Idaho-Maryland mine has been producing gold continuously for the past 11 years; and the Brunswick mine for the past three years.

In addition to its own mines, the respondent has a lease or option on a gold mine at Forbestown in Butte County, California, and operates the Grass Valley Bullion Mines Company at Grass Valley, California, under an agreement.

The respondent's production of gold is of the lode mining type. The production operations are carried on through shafts and, at various levels, mining operations are conducted from the shafts by means of "drifts" or tunnels along the veins. In addition to its extraction operations, the respondent engages in development operations, or mining in quest of new gold producing ore.

The underground employees of the respondent include the following: the miners, who machine-drill holes in the rock, insert powder therein, and blast the ore loose from the rock; the timbermen, who brace the passageways or openings of the mine in place with timber to prevent the rock from caving or falling in; the muckers, who transfer the loose ore into chutes and cars, from which it is transported by the car men on narrow gauge railroads to the shaft; the skip tenders, who transfer the ore at the shaft to large containers or skips in which it is drawn to the surface for milling operations; and the pumpmen, who keep water out of the mine. The underground supervisory employees include the superintendent, foreman, shift bosses, and jigger bosses. The latter go through the mine and collect high grade ore from the miners. An underground worker usually starts working as a mucker and through experience works up to the job of miner or timberman. In addition to the above employees, who are paid on an hourly or daily basis, the respondent occasionally employs contract workers, who receive a regular daily wage and a bonus calculated on a footage basis, and "leasers", who mine special sections of the respondent's property in return for a percentage of the gold they produce and a portion of their operating expenses. The record indicates that the contract workers and "leasers" are employees of the respondent, rather than independent contractors; and the respondent did not object to the classification of these workers as its employees.

When the ore is drawn to the surface of the mine, it goes to the head frame, a wooden structure over the mouth of the shaft, whence it is

dumped into a pocket. From there it passes through a crusher to bins, from which it goes into the stamp or ball mills. As a result of the milling operations the ore is transformed into bricks containing gold 800 to 850 fine, silver 150 to 200 fine, and some non-commercial quantities of copper and lead. The respondent does no smelting or refining. From the time the rock is blasted until the ore is crushed and processed and the bricks shipped to the buyer the respondent's operations are practically continuous.

The record does not indicate the extent to which the respondent shipped its product in interstate and foreign commerce prior to the Gold Reserve Act of 1934. However, counsel for the respondent admitted that during the summer of 1933 it shipped unrefined ore in the form of amalgam to London, England, because at that time the London market price for gold was higher than the American price. Since then, because the United States Government has raised the price of gold and has drastically restricted sales of gold to others than itself, the respondent has shipped the major portion of its product by its own airplanes to San Francisco, California, and thence by automobile to the United States Mint in that city. It also sells a small portion of its product to the American Smelting and Refining Company at Selby, California, for refining, and is paid the legal rate fixed by the United States Government, less the refining charges. The American Smelting and Refining Company, in turn, sells the refined gold to the San Francisco mint.

During the year 1936 the respondent produced and sold to the United States Mint at San Francisco in conformity with federal regulations 95,756 fine ounces of gold, receiving in payment the sum of \$3,351,470.18, and 29,238 fine ounces of silver, receiving in payment the sum of \$22,680.54. During that same year the total production of gold in the United States amounted to \$150,959,270 and the total production of gold in the State of California to \$36,502,025. From January 1, 1937, through April 30, 1937, the respondent produced and sold to the San Francisco mint 34,998 fine ounces of gold, receiving in payment \$1,224,930, and approximately 10,919 fine ounces of silver, receiving in payment approximately \$8,407.

Upon receipt by the mint, the respondent's bars are assayed and paid for at the current price of \$35 per ounce of gold and approximately \$77 per ounce for silver, less certain mint charges. For about 30 days the respondent's product is kept segregated by the mint and is thereafter refined, the gold and silver are separated, and each transformed into bars. In this process the respondent's product is commingled with that of various other producers and its identity is destroyed. Under the present policy of the United States Treasury Department all bars of refined domestic gold, as they accumulate at

the San Francisco mint are from time to time shipped to the mint at Denver, Colorado. In addition, unrefined gold and silver bars are also shipped in substantial quantities to the Denver mint.

The respondent's officials testified that it purchases practically all of its supplies and equipment from sellers within the State of California. However, an analysis of its purchases clearly indicates that substantial amounts thereof originate outside the State of California. During the year 1936 the respondent made the following purchases of equipment and supplies all of which were manufactured outside the State of California:

Pipes and pipe fittings.....	\$23, 221. 72
Rails.....	13, 382. 98
Rail fittings.....	1, 011. 37
Drill steel.....	7, 915. 98
Drill bits.....	26, 833. 82
Drill machines.....	15, 382 10
Drill machine parts.....	22, 266. 99
Total.....	\$110, 014. 96

The respondent consumes large amounts of lumber for underground timbering; its officials did not know the origin of its purchases, but one item amounting to \$17,883.53 was traced to the Pacific Northwest area.

Effect on Commerce

The evidence specifically discloses the following as the effects on interstate and foreign commerce of the cessation or curtailment of production by the respondent, such as might attend a labor dispute between the Company and its employees:

1. *Interstate shipment of supplies and equipment.*—The record indicates that the respondent annually purchases supplies and equipment, produced in and transported from points outside the State of California, to an amount in the neighborhood of \$125,000. The gold mines in the Grass Valley-Nevada City district purchase, exclusive of electricity and fuel, supplies and equipment to an amount in excess of \$1,000,000 a year; and the mines throughout the State of California, to an amount in excess of \$5,800,000 a year. The major portion of these supplies, as in the case of the respondent, are shipped from points outside the State of California, and the record indicates that the other gold mines in the Grass Valley-Nevada City district and in other parts of California are operated in substantially the same manner as that of the respondent.

2. *Interstate shipment of respondent's product.*—Prior to the Gold Reserve Act of 1934 the respondent shipped its gold ore in interstate and foreign commerce, and even under the emergency gold

regulations of 1933 it sent a substantial amount of gold amalgam to England. At the present time, as indicated above, most of the gold mined by the respondent is sent in the first instance to the mint at San Francisco. The record clearly indicates, however, that the San Francisco mint is merely a stopping-off point. Upon refining the respondent's gold and in some instances even prior thereto, the San Francisco mint ships the gold in interstate commerce to the mint at Denver, Colorado.

3. *Effect of gold production on interstate and foreign commerce.*—An examination of the economic data introduced into the record of this proceeding conclusively indicates that gold is an important basis of the nation's bank credit system which, in turn, is the keystone of our commerce. The cessation of production of gold by the respondent and other mining companies similarly situated, unless compensating factors appeared, would produce significant reverberations in the credit and monetary system, which shortly would affect the flow of commodities in interstate and foreign commerce. The 1936 annual report of the Bank for International Settlements contains the following comment on the relationship of gold production to commerce:

In practice it may be difficult to follow the effects of the newly-mined gold as it moves from the producers to the various monetary centres, but the tendency that such gold has to increase the demand for commodities cannot be doubted.¹

The importance of gold as a major influence in the national flow of commerce was strikingly revealed in the March 1933, collapse of the country's currency and banking system. The hoarding of gold and the draining from the banks of gold reserves precipitated the crisis; and the resulting closing of the banks paralyzed commerce. In fact, Congress decided that gold is so vital to the nation's economic system that it established rigid control over the accumulation of the already existing gold supply and over the disposition of newly-mined gold.

In foreign commerce gold, by holding an important place in the balancing of international accounts, clearly affects the flow of goods to and from the United States. The United States Treasury Department exercises rigid control over gold for the very reason that that commodity affects commerce; and it endeavors to utilize our large gold supply in a manner to prevent extreme fluctuations in foreign exchange rates and thus to promote a steady flow of commerce.

¹ Board's Exhibit No 33.

The evidence adduced in this proceeding demonstrates that the respondent is engaged in producing the very lifeblood of commerce, and that the cessation of its operations and those of other gold mining companies similarly situated, as a result of industrial strife, would have dire consequences on the flow of commerce among the several states and with foreign countries.

II. THE UNFAIR LABOR PRACTICES

A. *The I. U. M. and its activities*

International Union of Mine, Mill and Smelter Workers of America, Twin Cities Local No. 283, herein called the I. U. M., is a labor organization. The International was organized in 1893; subsequently it became part of the American Federation of Labor, and it is now affiliated with the Committee for Industrial Organization. It admits to membership all persons in a "non-executive" capacity working in mines, mills, and smelters.

In the latter part of January or early part of February 1937, some of the miners in the Grass Valley-Nevada City area became convinced that a new labor organization was necessary to improve their working conditions and raise their standards. They accordingly requested the I. U. M. to send organizers into the district to assist in the formation of a local union. During February 1937, active organization efforts were made among the employees of the various mining companies in the area without, however, any attempt at publicity. On March 1, 1937, the International chartered the Twin Cities Local No. 283; and on that day the new local held a meeting at the Oddfellows Hall in Nevada City open to anyone who might be interested.

Henceforth the fact that the I. U. M. was organizing the miners of the district became the subject of very widespread discussion in Grass Valley and Nevada City. Of the 13,000 persons residing in those two communities, approximately 2,500 are employed in gold mining and 8,000 to 10,000 are dependent upon that industry for their livelihood.

During the first half of March 1937, the I. U. M. signed up approximately 350 members. It was especially successful in organizing the employees at the Old Brunswick shaft. Of the 85 underground workers at that shaft, 72 joined the I. U. M.; and seven of the fifteen local union officers were employees at that mine. A few days prior to the shut-down of the Old Brunswick shaft on April 15, the men discussed a proposal that the I. U. M. make a demand upon the respondent that it recognize that union as the bargaining representative for the Old Brunswick employees.

Soon, however, the I. U. M. met vigorous opposition in its organization efforts. On March 5, the Nevada County Citizens' Committee of Five Thousand was organized for the expressed purpose of keeping out of the district I. U. M. organizers. Invitations to the March 5th meeting were passed out by word of mouth; and Loyale Freeman, president of the local Chamber of Commerce, became the leader of the Committee. Just before Freeman addressed the March 5th meeting he conferred on the speakers' platform with an official of the respondent. The speakers at the meeting openly stated that they were opposed to the "importation into a peaceful county of outside, radical disturbers" and pledged support to the M. W. P. L. as the sole labor organization in the county. On the next morning the Committee inserted in the Morning Union, a Grass Valley and Nevada City newspaper, an advertisement covering nearly a full page, which declared that local labor leaders were fully capable of making demands for better pay or working conditions and that "until these negotiations are completed, it seems a poor time for outside agencies to inflame a community." This advertisement carried an implied threat against the I. U. M. leaders, declaring that "It not only is a poor time, but it might also be said that Nevada County is a decidedly poor place for agitators. History since the days of '49 tells how agitators have fared here." And on March 11, the Morning Union carried an announcement that the Committee had perfected plans for the establishment of an "Emergency Patrol". This patrol was to consist of a large force of volunteer peace officers organized along military lines, trained and armed, and sworn in as deputy sheriffs.

The March 6, 1937, edition of the Morning Union, in addition to reporting the organization and meeting of the Committee, announced that the local mine operators had entered into a bargaining agreement with the M. W. P. L.

After these developments the I. U. M. experienced increasing difficulties in its organization efforts. The I. U. M. had hired the same hall for a meeting on March 7, that it had used on March 1; but before the meeting the owner refused to allow it to use the hall. It was unable to secure a hall for its meetings, despite the efforts of its officers to secure every hall in the vicinity. The proprietors invariably turned them down, some stating that their halls were previously engaged and others frankly stating that because of pressure put upon them by the local businessmen they were unable to rent their halls to the I. U. M.

After the shut-down of the Old Brunswick shaft on April 15, attendance at the meetings of the I. U. M. dropped off noticeably. The members felt that the Old Brunswick employees had been laid off because of their union activities and they were afraid to participate openly in I. U. M. affairs. Some members paid their dues

secretly; public mass meetings were discontinued; the wearing of union buttons ceased; the membership campaign had to be carried on secretly; and the signing of new members dropped off sharply.

In the latter part of April, the I. U. M. sent a letter to the respondent listing the former Old Brunswick shaft employees and requesting that they be given priority for new jobs. Although the respondent received this letter, it entirely ignored the I. U. M. and failed to reply or otherwise communicate with its officers.

B. Respondent's relations to M. W. P. L.

The Mine Workers Protective League, herein called the M. W. P. L., was organized in the Grass Valley-Nevada City area during a strike in 1919 and was active during strikes in 1921 and 1924. All employees of the mine operators in the district below the rank of superintendent are eligible for membership.

Supervisory employees appear to play a prominent role in the activities of the M. W. P. L. The present president is employed at the North Star mine in a capacity in which he has power to hire and discharge other workers. The record indicates that after the I. U. M. became active in the area a foreman of one of the mining companies introduced a resolution at a meeting of the M. W. P. L. providing for the expulsion of members who join other unions.

Since 1930, when the respondent violated an oral agreement with the M. W. P. L., without serious objection by the latter, the relationship between the respondent and M. W. P. L. has been extremely cordial.

After the I. U. M. organizational efforts commenced, several of the respondent's employees connected with the management—especially, Cliff Plant, the respondent's storekeeper, Ed Wall, a shift boss, and Wills, a watchman—distributed M. W. P. L. membership cards to the respondent's employees during working hours and urged them to sign up with the M. W. P. L. In many instances, the employees were warned by the supervisory employees of the respondent that, if they did not join the M. W. P. L., they would lose their jobs. When employees complained that they did not have the necessary \$3 initiation fee, the respondent's supervisory employees told them that the fee would be deducted from their pay checks; and in several instances this was actually done. In addition to thus soliciting members for the M. W. P. L., the respondent compelled its employees to retain membership in that organization and to pay the required dues. One witness testified that he had become delinquent in his dues to the M. W. P. L., that the M. W. P. L. officers warned him that if he did not pay up they would report him to his boss, and that a short time thereafter the respondent's foreman or boss

under whom this employee worked informed him that he had better get his card "squared up." The record contains many instances of persuasion, coercion, and intimidation by the respondent's supervisory employees against its employees to compel them to join and remain members of the M. W. P. L.

The respondent contributed support to M. W. P. L. by compelling its employees to join that organization, by acting voluntarily as a check-off agent for the League's initiation fees, and by dunning its employees who fell behind in their M. W. P. L. dues, the respondent directed a steady flow of funds from the pockets of its employees to the coffers of the M. W. P. L. The record is clear that the employees did not desire to join the M. W. P. L., that they contributed to its support only upon the insistence of the respondent's supervisory employees, and that the primary cause of this flow of funds to the M. W. P. L. was the coercion and intimidation of the respondent and its agents. In addition, the respondent contributed unspecified amounts of cash to the M. W. P. L. widows' and orphans' fund and prizes for the M. W. P. L.'s outings.

During the oral argument before the Board, the respondent's counsel admitted that the respondent's supervisory employees had been "overzealous" in fostering the M. W. P. L. among its employees; and he agreed that, if the Board should be held to have jurisdiction in this proceeding, the respondent would in the future discontinue solicitation of membership in and financial support to the M. W. P. L.

So closely did the respondent and the M. W. P. L. work together that during March 1937, after the I. U. M. had actively entered the Grass Valley-Nevada City area and after the respondent had compelled its employees to join the M. W. P. L., the respondent along with other local mining companies approached the officers of the M. W. P. L. and arranged a written collective bargaining agreement with the M. W. P. L., effective April 1, 1937, wherein the respondent recognized the M. W. P. L. as the bargaining agent for its members.

We find that the respondent has dominated and interfered with the administration of the M. W. P. L. and contributed support to it; and that by compelling its employees to join the M. W. P. L. and by other acts recited above, it has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. The shut-down of the Old Brunswick shaft and the refusal to reinstate

The record is clear that the respondent knew of the activities of the I. U. M. and of the predominant position of that labor organization among the underground employees of the Old Brunswick shaft.

The men at the Old Brunswick shaft openly attended union meetings and wore union buttons, in many instances upon their working clothes. In the latter part of March, Weed, who was then a foreman at the Old Brunswick shaft, and Superintendent Cowley talked for about two hours with Jack Williams, then president of the I. U. M. local, about the union. They had two further discussions with Williams at great length during the next few days and secured considerable information concerning the union's composition and plans. Williams told Jigger Boss Fitch the names of the officers of the I. U. M. Foreman Denton asked Williams questions about the union and what it hoped or intended to accomplish. Shortly before the shut-down, Morgan, vice-president of the local union, heard a conversation on the 800 foot level of the Old Brunswick shaft between Foreman Weed and a shift boss; Morgan testified that Weed was trying to ascertain how many union men there were in the mine and that when he was told that there were only two or three non-union men Weed said, "It wouldn't be so bad to replace a few men, but it is pretty hard to replace a whole crew."

In view of these facts and in the light of subsequent events, it is difficult to reach any other conclusion but that the shut-down of the Old Brunswick shaft on April 15 was aimed primarily at smashing the I. U. M. In fact, the discharges of that date actually did cripple the Union, as has already been indicated.

On the afternoon of April 15, as the day shift of the underground workers came out of the Old Brunswick shaft and the night shift was reporting to work, the men were handed time slips carrying the statement that the shaft was being closed. In answer to inquiries of the men, Superintendent Cowley stated that he did not know why the shaft was being shut down; in fact, at the hearing he himself testified that he had not learned of the closing order until about forty-five minutes beforehand.

Following the shut-down most of the employees of the Old Brunswick shaft attempted to secure new employment with the respondent. Sixteen of the men testified that they had personally applied for reemployment and that they had seen about 40 or 50 other Old Brunswick employees at the respondent's employment office similarly attempting to secure work. The respondent stipulated at the hearing that 37 men, other than those who testified, had also applied for reemployment prior to June 1, 1937.

Within a month after the shut-down of the Old Brunswick shaft, the respondent expanded its activities in the New Brunswick shaft and during May 1937, hired over 100 underground workers, of whom 18 were former employees of the Old Brunswick shaft. Among these Old Brunswick employees who were rehired, twelve were members of the I. U. M., but none of these were prominent in the Union's

activities. Not a single I. U. M. officer or active member was hired by the respondent for its expanded New Brunswick shaft work.

Prior to the shut-down of the Old Brunswick shaft, the Old Brunswick and New Brunswick shafts had constituted interlocking operations. At the 900-foot level the two shafts were connected with each other. The ore bodies from the Old Brunswick shafts extended to the New Brunswick shaft; and about half of the Old Brunswick ore was taken out through the New Brunswick shaft. The Old Brunswick ore was dumped into the same pockets or bins as that from the New Brunswick shafts, and from these went through the milling process with its identity lost. The record thus clearly indicates the operations of the Old Brunswick shaft were closely related to those of the New Brunswick shaft. Accordingly, it is significant that the respondent shortly after closing the Old Brunswick shaft expanded operations at the New Brunswick shaft and did not reemploy its Old Brunswick employees.

At no time did the respondent or its agents tell its employees why they had been discharged or why they were not being reemployed. When the Old Brunswick employees went to the respondent's employment office, they were in many instances shunted from one official to another and were told by each that someone else was determining the respondent's employment policy. When Joseph E. Larghero applied for work to Wolflin, the respondent's personnel manager, the latter looked into a "little book" and then said that he could not tell Larghero why he was not being reemployed. Similarly, when Albert A. Garesio, the financial secretary of the I. U. M. applied for reemployment, Wolflin checked his "little book" and said that Garesio's chances for a job were very slim. When Garesio talked to Top Superintendent Berman, the latter told him that he may have talked too much. Tony Vithneik was told by Mooers of the respondent's employment office that he had orders not to hire Old Brunswick employees for a month or two. Frank H. Padgett was told by Wolflin, "I don't like your look"; although Wolflin asked him if he would take a job on the ranch at a substantial reduction in wages, he failed to explain what type of complexion or features were essential prerequisites for underground work. Some of the men were told "to think hard" and they would know why they had been discharged.

Neither before the shut-down nor at the time they applied for reinstatement were any of the Old Brunswick employees told that their work had been unsatisfactory. On the contrary, several of the workers had been complimented by their superiors on the high quality of their work.

At the hearing the respondent advanced two reasons for the shut-down of the Old Brunswick shaft: (1) that it was uneconomical to

continue operations there; and (2) that "high-grading," or stealing of ore with a high gold content, was taking place at that shaft. An analysis of the evidence convinces us that neither explanation reveals the true reason for the shut-down of the Old Brunswick shaft, the discharge of its underground employees, and the respondent's subsequent refusal to reemploy most of those employees.

During 1937, prior to the shut-down, the respondent had undertaken extensive improvements in the Old Brunswick shaft. Thus the respondent had sunk the main shaft about 60 feet deeper; had installed new rails from the top to the bottom of the shaft; had replaced the old skips of one and a quarter ton capacity with new skips of two and one-half ton capacity; had installed larger trolley motors, new hoisting cables, and an additional rock crusher at the head frame. It does not appear convincing that after these extensive improvements the respondent should suddenly decide that further operations at the Old Brunswick shaft were economically impracticable.

The evidence is clear that the respondent did not consult either its superintendent or its mining geologist on the important question whether the Old Brunswick shaft could be operated profitably. This procedure is not that which would normally be expected, especially inasmuch as the 1937 improvements at the shaft had been recommended by Superintendent Cowley on the basis of a favorable report by the respondent's geologist.

In support of its explanation that the Old Brunswick shaft operations were no longer profitable, the respondent's general manager, Crase, testified that during January or February 1937, the development work at that shaft had ceased yielding new ore. This testimony, however, is hardly consistent with the respondent's intense activity then and thereafter in increasing the shaft's equipment. Business organizations do not engage in and continue costly improvements after their officials have already determined that further operations could be continued only at a loss. In fact, this contradiction between the respondent's statements that the Old Brunswick shaft had become virtually exhausted and its actual improvements at that shaft discredits entirely the respondent's statement that the Old Brunswick shaft could be operated only at a loss.

Moreover, the alleged failure of the Old Brunswick development activities does not conform with other evidence presented by the respondent's own witnesses. Superintendent Cowley testified that—in addition to the loose ore in the Old Brunswick shaft, of which between 1,700 and 1,800 tons had actually been removed after the shut-down—there is an ore reserve of about 56,000 tons and that of this reserve 44,000 tons can be mined at a profit, prior to milling costs, of about \$1.50 per ton. Rollin Farmin, the respondent's mining

geologist went further; he testified that the Old Brunswick shaft has an ore reserve of 100,000 tons which some day should be mined and that to extract this ore and to carry on the concomitant development excavations would require from 800 to 2,800 days' work.

In support of its contention that the Old Brunswick shaft could not be operated profitably, General Manager Crase testified that in 1936 the recovered value from Old Brunswick ore was \$5.99 per ton; that the recovered value for January and February 1937, was only \$5.72 per ton; that the cost to mine the ore was \$5.40; and that the narrow margin of profit would have been entirely wiped out by the wage increases given to the respondent's employees on April 1, 1937. At first glance, this testimony appears convincing. However, Crase failed to state, as the respondent's counsel admitted at the oral argument before the Board, that that wage increase was a substitute for the profit-sharing plan which the respondent had previously employed; nor did he show that under the new wage increase the respondent's annual pay roll would be any greater than under the abandoned profit-sharing plan.

Finally, whatever weight to which the respondent's evidence may otherwise carry is destroyed by General Manager Crase's indication that he himself did not place any great reliance on this explanation for the shut-down and by his emphasis, when pressed, upon the prevalence of "high-grading" as the real reason why he himself had ordered the shut-down. Crase stated that he had advanced the explanation of the respondent's inability to operate the Old Brunswick shaft profitably in order to protect the employees of that unit from any suspicion of "high-grading". This shifting of ground together with Crase's callous indifference to the well-being of the admittedly many honest Old Brunswick employees who were thrown out of jobs and later denied reinstatement, leads us to believe that both the unprofitable operation and the "high-grading" explanations for the shut-down were made to disguise the true reason for the respondent's action—that is, a desire to smash the I. U. M. by discharging all and refusing to reemploy its active members.

The respondent produced as a witness the ore buyer inspector for the State of California, among whose duties it is to investigate "high-grading". This witness presented merely a general background of "high-grading", which undoubtedly is a concomitant of gold mining; but he utterly failed to connect his testimony with any recent "high-grading" at the Old Brunswick shaft so as to explain the closing of that unionized unit rather than any of the respondent's other shafts. He testified that the "high-grading" problem was acute throughout all the mines and the district, and estimated from the reports of his subordinates that between \$400,000 and \$500,000 of high-grade ore is stolen annually from the Grass Valley-Nevada City district, but he

made no effort to estimate how much of that ore came from the Old Brunswick shaft. He stated that in the past two years sixteen persons had been arrested and four convicted in the Federal Court in San Francisco, California, for illegal gold ore buying, but he did not contend that any Old Brunswick employees were in any manner associated with those illegal operations. He further testified that during the two years prior to August 1936, he had reported to the respondent, but had not prosecuted, about ten Old Brunswick employees for "high-grading". However, on cross-examination his memory as to those instances proved weak; he could not remember the number of such reports and he could recall distinctly only one instance of Old Brunswick "high-grading", and that about June 1936.

The respondent introduced no evidence that prior to the shut-down there had been any increase in the amount of "high-grading" at the Old Brunswick shaft. Rather in its efforts to justify the shut-down, the respondent's general manager and head watchman both related a "high-grading" incident at the Old Brunswick shaft on March 26, 1937. On that date Crase telephoned the head watchman that he had received a tip that some "high-grading" was being attempted and the latter rushed to the Old Brunswick shaft. Shortly after he arrived, a car containing a man and a woman parked between the shaft collar and the "dry" (hereinafter described); the man told the watchman that he wanted a certain underground worker whose brother allegedly had been injured; the employee went into the "dry" to change into his street clothes before talking to the occupants of the car; and the watchman discovered high-grade ore under the worker's socks.

We do not believe that this unsuccessful attempt at "high-grading" can be honestly urged by the respondent as the reason for the closing of the shaft three weeks later and the discharge of all the Old Brunswick employees.

The record is clear that better precautions against "high-grading" existed at the Old Brunswick shaft than at other of the respondent's units. From the moment the underground employees came out of the collar of the Old Brunswick shaft until they left the "dry" and departed from the premises, the respondent's watchmen kept them under constant observation. The "dry" or change room is the place where the underground workers change from their digging to their street clothes. Whereas at the Idaho-Maryland shaft there was a single "dry"—that is, the underground employees used only one room for changing their clothes—the Old Brunswick had a double "dry". There the miners coming off shift entered one room, removed all their digging clothes, walked out nude into the shower room, "not even being allowed to carry a towel or wash-rag," and then went to a second room where they donned their street clothes. If at any time a miner at work wanted anything from his street clothes, he had to se-

cure permission to enter the "dry" from the watchman, who accompanied and carefully watched him. And in addition to the double "dry" system, the watchman searched the clothes of miners working in especially rich sections of the shaft.

Crase claimed that because the Old Brunswick "dry" was situated on a hill the watchmen experienced difficulty in checking the "high-grading"; the miners, he testified, had on their way to the "dry" thrown "high-grade" down the hillside or into the drain tunnel, and later returned to the premises to recover the ore. On cross-examination, however, Crase was vague and indefinite about such instances; he had no recollection as to the date when someone had broken into the drain tunnel, except that it had been sometime in 1936.

Crase conceded that "high-grading" was a traditional problem at the gold mines in the district. He admitted that the situation at the Old Brunswick shaft had not become appreciably worse at the time of the shut-down.

Viewing the April 15 shut-down of the Old Brunswick shaft in conjunction with the respondent's employment practices during the following month, we cannot escape the conclusion that the discharges of and the failure to reemploy the Old Brunswick workers were due to the union membership and activities of those employees.

The record indicates that none of the employees discharged by the respondent have secured other regular or substantially equivalent employment since the date of their discharge. Inasmuch as their employment was terminated by an unfair labor practice, they at all times thereafter retained their status as employees of the respondent within the meaning of Section 2 (3) of the Act.

At the hearing the respondent moved to dismiss the proceeding as to George Sullivan on the ground that neither he, then twenty years of age, nor his father, an employee of another local mining company, had any desire to have the proceedings prosecuted on his behalf. Neither George Sullivan nor his father made any request to the Board, its Regional Director, or its Regional Attorney to have his name dropped from the complaint and at the hearing, he testified that, if the Board should order the respondent to reinstate him to his former position, he would accept the job. Accordingly, the Trial Examiner was correct in denying the respondent's motion; and we find that George Sullivan has retained his status as an employee of the respondent.

We find that the respondent shut down the Old Brunswick shaft on April 15, 1937, and locked out its employees primarily, if not exclusively, for the purpose of crushing the I. U. M. and that the respondent thus interfered with, restrained and coerced its employees in the exercise of the right 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 purposes of collective bargaining and other mutual aid and protection as guaranteed in Section 7 of the Act.

D. Discharge of W. H. Marshall, Sr.

On or about May 14, 1937, the respondent discharged W. H. Marshall, Sr. Marshall had been engaged in mining for 26 years and had been an employee of the respondent at the Idaho-Maryland mine since May 6, 1935. He had never been reprimanded by the respondent for unsatisfactory work or infractions of the rules. Marshall was a member and trustee of the I. U. M. and served on a negotiating committee. His shift boss knew of these activities. Although Marshall interviewed the respondent's officials, they refused to tell him why he had been discharged. The respondent offered no explanation at the hearing.

We find that W. H. Marshall, Sr., was discharged for the reason that he had joined and assisted the I. U. M. He has secured no other regular or substantially equivalent employment since his discharge. Inasmuch as his employment was terminated by an unfair labor practice, he at all times thereafter retained his status as an employee of the respondent within the meaning of Section 2 (3) of the Act.

E. Discharge of Hugh Williams

On April 20, 1937, the respondent discharged Hugh Williams, an employee at the Idaho-Maryland mines, for the alleged reason that he had been absent from work on April 16 and 17, 1937, without reporting in advance that he was intending to take those days off. Under the respondent's rules, a worker is required to report in advance a lay-off of more than one day; and the foremen are given discretion to discharge a worker violating that rule.

On April 13, 1937, Williams and an employee, Jack Hewer, laid off together; and when they returned to work Foreman Thomas Hart reprimanded them for not reporting. Williams and Hewer claimed that they had reported; and thereupon Hart warned them that "after this they had to report when they laid off." On April 16, 1937, Williams and Hewer laid off in order to file a charge on behalf of the I. U. M. with the Board at the San Francisco regional office. Williams testified that the night before he had telephoned from the Grass Valley telephone office to the hoisting engineer at the Idaho-Maryland shaft and requested him to ask the watchman to report him off work to Fred Pinch. Williams did not know the name of the man to whom he talked, and relied on that round-about method of making his required report. Foreman Hart, on the other hand, testified that he did not on either April 16 or 17, directly or indirectly,

receive any report from Williams that he would not be at work. Hart stated that Williams did not return to work until April 19 and that he immediately discharged Williams for violating the respondent's rule about laying-off without reporting. Hart testified that Hower, who with Williams had gone to San Francisco to file the charge in this proceeding, had telephoned on the morning of April 16—to whom, Hart did not specify—that he would not be at work; and that when Hower returned to work nothing was said to him and he was not discharged.

The evidence fails to sustain the allegation that the respondent discharged Hugh Williams because of his union membership or activities. The allegations of the complaint with respect to Hugh Williams, will, therefore, be dismissed.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Upon the whole record, we find that the activities of the respondent set forth in Section II above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, commerce, and transportation among the several States and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

It is clear that the respondent compelled many of its employees, contrary to their desires, to join the M. W. P. L. and that the respondent has contributed support to the M. W. P. L. In order to remedy its unlawful conduct therein, the respondent must cease requiring, urging, coercing, or intimidating its employees to join the M. W. P. L.; must cease contributing support to the M. W. P. L.; must withdraw all recognition from the M. W. P. L. as an organization representative of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work; and must give no effect to its agreement recognizing the M. W. P. L. as the bargaining agent for its members.

As we have found that, with the exception of Hugh Williams, all the employees enumerated in paragraph four of the amended complaint were discharged because of the respondent's unfair labor practices, we shall order the respondent to offer to reinstate them and we shall award them back pay for the period from the dates of their discharges to the dates of the respondent's offers of reinstatement, less any amounts earned by them in the meantime.

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

CONCLUSIONS OF LAW

1. International Union of Mine, Mill, and Smelter Workers of America, Local 283, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. Mine Workers Protective League is a labor organization within the meaning of Section 2 (5) of the Act.

3. W. H. Marshall, Sr., and those employees of the Old Brunswick shaft who were discharged on April 15, 1937, were at the time of their discharges, and at all times thereafter have been, employees of the respondent within the meaning of Section 2 (3) of the Act.

4. The respondent, by discriminating in regard to the hire and tenure of employment of W. H. Marshall, Sr., and the employees of the Old Brunswick shaft who were discharged on April 15, 1937, and each of them, and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

5. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The respondent, by dominating and interfering with the administration of the Mine Workers Protective League and by contributing support to said organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) 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 respondent, by discharging and refusing to reinstate Hugh Williams, has not discriminated in regard to hire and tenure of employment and thereby discouraged membership in a labor organization, within the meaning of Section 8 (3) of the Act.

ORDER

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Idaho-Maryland Mines Corporation, Grass Valley, California, and its officers, agents, successors, and assigns shall:

1. Cease and desist from in any 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 Act.

2. Cease and desist from in any manner dominating or interfering with the administration of Mine Workers Protective League or with the formation or administration of any other labor organization of its employees and from contributing financial or other support to Mine Workers Protective League or any other labor organization of its employees.

3. Cease and desist from discouraging membership in International Union of Mine, Mill and Smelter Workers of America, Local No. 283, or any other labor organization of its employees by discrimination in regard to hire or tenure of employment or any term or condition of employment.

4. Cease and desist from giving effect to its agreement with the Mine Workers Protective League recognizing it as the representative of its members.

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

a. Offer to the discharged employees who have not been reinstated, listed in Appendix "A", immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

b. Make whole the discharged employees, listed in Appendix "B", for any losses of pay they have suffered by reason of the respondent's discriminatory acts, by payment to each of them of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less any amount earned by him during that period; the normal earnings of contract workers or "leasers", for the purposes of computation under this paragraph, shall be arrived at by averaging the total amount paid to each such employee by the respondent for the sixty (60) days preceding his discharge, or as many of said days as each such employee may have been employed by the respondent;

c. Withdraw all recognition from Mine Workers Protective League as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

d. Post immediately notices to its employees in conspicuous places throughout its mines and plants stating: (1) that the respondent will cease and desist as provided in paragraphs 1, 2, 3, and 4 of this

Order; (2) that the respondent withdraws and will refrain from all recognition of Mine Workers Protective League as a representative of its employees and completely disestablishes it as such representative; (3) that the agreement signed with Mine Workers Protective League recognizing it as the bargaining agent for its members is void and of no effect; (4) that to secure or retain employment a person need not become a member of Mine Workers Protective League; (5) that the respondent will not discharge or in any manner discriminate against any employee or applicant for employment because of his membership in International Union of Mine, Mill and Smelter Workers of America, Local No. 283 or any other labor organization of its employees, or because of his assisting such organization or engaging in union activity; (6) that the respondent has instructed its foremen and other supervisory officials to remain neutral as between labor organizations and that any violations of this instruction should be reported to it;

e. Maintain such notices for a period of at least thirty (30) consecutive days from the date of posting;

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

The allegations in the amended complaint that the respondent has engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act, by discharging and refusing to reinstate Hugh Williams are hereby dismissed.

APPENDIX "A"

Arceneaux, Robert	Frint, J. R.
Ashbaugh, R. P.	Garesio, A. A.
Atkinson, Frank	Garesio, Joseph
Berg, R. S.	Gosvenor, Floyd
Brandic, A. J.	Gradezek, John E.
Brown, L. L.	Green, Willis
Brown, W. A.	Henry, W. W.
Buckman, Roy	Hoffman, E. E.
Burns, J. E.	Horan, Pete
Byrner, George	Huntsman, Jack A.
Carter, Roy A.	Irvine, Carl
Church, Roy	Jensen, Walter
Cozad, Harlen J.	Johnson, Leonard
Cozad, Tom	Labrum, Dallas
East, Wm. E.	Larghero, Joe
Elmer, Frank	Lawler, J. L.
Fabek, Nick	Marshall, W. H., Sr.

Mattingly, C. L.
 Mattingly, George
 Mell, Hubert
 Miller, Charles
 Morgan, Ralph
 Mulch, Herchell
 Murphy, Joseph D.
 Norris, C. E.
 O'Farrell, Jack
 Orzalli, F. J.
 Padgett, F. H.
 Page, A. J.
 Page, David A.
 Parker, James E.

Price, Joe E.
 Prine, Frank F.
 Richmond, E. H.
 Smith, James P.
 Sproule, E. G.
 Straczinski, A. J.
 Sullivan, George R.
 Supanich, Paul
 Undhjen, W. F.
 Vithneik, Tony
 Vukovich, Roy
 Wellington, John
 Williams, Jack

APPENDIX "B"

Anderson, E. F.
 Arceneaux, Robert
 Ashbaugh, R. P.
 Atkinson, Frank
 Berg, R. S.
 Brandic, A. J.
 Brown, L. L.
 Brown, W. A.
 Buckman, Roy
 Burns, J. E.
 Byrner, George
 Carter, Roy A.
 Church, Roy
 Colvin, Thomas
 Cozad, Harlen J.
 Cozad, Tom
 DeLong, Luther
 East, Wm. E.
 Elmer, Frank
 Fabek, Nick
 Frint, J. R.
 Garesio, A. A.
 Garesio, Joseph
 Gosvenor, Floyd
 Gradezek, John E.
 Green, Willis
 Greer, H. B.

Henry, W. W.
 Hoffman, E. E.
 Horan, Pete
 Huntsman, Jack A.
 Irvine, Carl
 Jackson, C. L.
 Jensen, Walter
 Johnson, Leonard
 Labrum, Dallas
 Larghero, Joe
 Lawler, J. L.
 Lumpkin, John M.
 Marshall, W. H., Sr.
 Mattingly, C. L.
 Mattingly, George
 Mell, Hubert
 Miller, Charles
 Morgan, Ralph
 Moule, Ben A.
 Moule, William
 Mulch, Herchell
 Murphy, Joseph D.
 Norris, C. E.
 O'Farrell, Jack
 Orzalli, F. J.
 Padgett, F. H.
 Page, A. J.

Page, David A.	Sullivan, George R.
Parker, James E.	Supanich, Paul
Popevich, L. M.	Undhjen, W. F.
Price, Joe E.	Vithneik, Tony
Prine, Frank F.	Vukovich, Roy
Radich, Jack	Waechter, Joseph
Richmond, E. H.	Wellington, John
Smith, James P.	Williams, Jack
Sproule, E. G.	Yunk, Ed J.
Straczinski, A. J.	