

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c) and 2(6) and (7) of the Act.

4. In accord with the stipulation of the parties, we find that the following employees of the Employer at its Prince Georges County, Maryland, operation constitute a unit appropriate for collective-bargaining purposes: All drivers, helpers, and warehousemen, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Rocky Mountain Natural Gas Company, Inc. and Jacque Welch, Milo Henry Dick. *Cases Nos. 27-CA-1195-1 and 27-CA-1195-2. February 11, 1963*

DECISION AND ORDER

On September 17, 1962, Trial Examiner William J. Brown issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. He also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended dismissal of such allegations. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief, and the Respondent filed a brief in support of the Intermediate Report.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in these cases, and, as it finds merit in some of the General Counsel's exceptions, hereby adopts the findings of the Trial Examiner only to the extent consistent herewith.

1. The Trial Examiner found, and we agree, that the Respondent violated Section 8(a)(1) of the Act by Manager Showalter's threats to employees of layoff or other economic reprisal if they engaged in union activities.¹

¹ No exceptions were filed to these findings of violations of Section 8(a)(1) of the Act. 140 NLRB No. 113.

On November 24, 1961, Showalter also questioned employee Dick as to why a scheduled union meeting was being held at a particular building rather than at the plant. The Trial Examiner found that this inquiry was not violative of the Act as it was innocently motivated and had no coercive effect. During the same conversation, however, Showalter threatened Dick that if the men continued in their organizational efforts, they would be laid off and the work would be contracted out. The Trial Examiner found this threat violative of Section 8(a)(1). We find that Showalter's interrogation of Dick, in the context of this threat and of the Respondent's other violations of the Act, was likewise violative of Section 8(a)(1) of the Act.²

2. It is undisputed that in early October 1961, Service Manager Boyd interrogated employee Lewis about the Union, and told Lewis that he had heard that the men were organizing, and he hated to see them do so because he did not want the men to get into trouble with their Employer on account of the Union; that he did not think the Respondent could pay union wages; that if it wanted union men it could get them in Grand Junction; and that he thought the Respondent would contract the work out before it would do so.

The Trial Examiner found no violation of the Act in this conversation on the ground that there was no allegation in the complaint covering it. The complaint, however, does contain such an allegation, although there is a variation in the date on which it occurred. Moreover, the Respondent was apprised of the issue and had full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence, thereon, which it did. We find, therefore, that by Boyd's interrogation and threats, the Respondent further violated Section 8(a)(1) of the Act.³

The Trial Examiner also found that Boyd's interrogation of employee Welch on December 1, 1961, as to the names of the officers of the Union, was not violative of Section 8(a)(1) on the ground that it was not coercive under the Board's *Blue Flash* rule.⁴ In view of the context of the various other violations by the Respondent, however, we find this interrogation also violative of Section 8(a)(1) of the Act.⁵

3. On or about January 10, 1962, just after the discharge of Dick and Welch, discussed below, Newton, the Respondent's president, called a meeting of all the employees at the Delta operation. The Respondent admits that Newton informed the employees that he had received a proposed union contract from Dick, that the Respondent was not financially able to meet such proposals, but that, if the employees remained "loyal," the Respondent could erase the deficit and

² *Griggs Equipment, Inc.*, 125 NLRB 1252, enfd 307 F. 2d 275 (C.A. 5).

³ *New England Web, Inc., et al*, 135 NLRB 1019.

⁴ *Blue Flash Express, Inc.*, 109 NLRB 591

⁵ *Plastic Molding Company, Inc*, 110 NLRB 2137

see that its employees were the best paid in the area. It is undisputed that during the course of this meeting, Newton also read to the employees a newly established written policy covering holiday pay, vacation pay, and sick leave. The Trial Examiner made no finding with respect to Newton's speech because it was not specifically alleged as an unfair labor practice in the complaint. However, as this matter was litigated at the hearing, and as it is clear from the record that Newton's references to company loyalty, and the institution of a written policy covering holiday pay, vacation pay, and sick leave, constituted promises and grants of benefits designed to discourage union activity among its employees, we find that the Respondent thereby violated Section 8(a) (1) of the Act.⁶

4. On February 5, 1962, Vice President Reed called employees Lewis and Chappel into the office, and engaged in a discussion with them concerning dissolving the Union. It is undisputed that he offered to pay the balance of the Union's debts from his own pocket, and that he assisted Lewis and Chappel in preparing a notice to the employees that there would be a meeting at 5 that evening in the warehouse to discuss dissolution of the Union. This notice was posted on company property with the Respondent's permission. That afternoon, Showalter called employee Blees, the Union's vice president, into the office. The Respondent admits that Showalter and Reed questioned Blees about the Union and expressed concern that the Union's demands would be too great, that Showalter suggested that he would rather handle grievances without a union, and that when Reed asked Blees if the men would dissolve the Union, Blees stated that if the men wanted to do so he would go along with it, but there were certain technicalities involved. Thereupon, Reed admittedly stated that if the Union was in debt to an attorney or for any other bills, he would pay such bills out of his own pocket. At the meeting that evening, it is undisputed that Reed repeated this offer.

The Trial Examiner found, in effect, that this conduct was not a violation of the Act because it did not occur precisely as alleged in the complaint. We find, however, that this conduct is encompassed within the allegations of the complaint, and, moreover, that it was fully litigated at the hearing. Therefore, we find that, by inducing certain employees to abandon the Union, by assisting them in the preparations for the dissolution of the Union, by offering them payment of the Union's debts if the Union were abandoned, and by making this same offer at the meeting that evening at which the employees agreed to the dissolution of the Union, the Respondent violated Section 8(a) (1) of the Act.⁷

⁶ See *Union Furniture Company, Inc.*, 118 NLRB 1149

⁷ *S H Kress & Co.*, 137 NLRB 1244, *Overnite Transportation Company*, 129 NLRB 1026, enfd. 308 F. 2d 279 (C.A. 4).

5. The Trial Examiner found that the Respondent discharged Welch and Dick in December 1961 because of an economic reduction in force. The General Counsel maintains that the Respondent failed to establish any economic justification for a reduction in personnel, and that, in any event, the selection of Welch and Dick for termination was discriminatory.

As the Trial Examiner found, and the Respondent admits, both Welch and Dick were highly superior employees, with greater seniority than some of the gasfitters who were retained. Dick had trained a number of helpers to become licensed fitters. Welch had been promoted in August 1961 to the position of service manager at the Respondent's Glenwood Springs operation, which position he relinquished for personal reasons. Upon his return to Delta, he was acting supervisor during October and November in place of Boyd.

It is also clear, as the Trial Examiner found, that Welch and Dick were two of the most active union adherents, and that the Respondent was aware of this. On December 6, 1961, at a meeting of all the Delta employees, Showalter asked who was president of the Union. After Dick identified himself as president, Showalter stated, as pointed out above, that he did not believe the Respondent would stand for any organization, and that, if the men persisted in their union activity, there would be layoffs and work would be contracted out.

Welch was interrogated at various times by Showalter, Boyd, and Supervisor Ray concerning his attitude toward the Union. In addition, as set forth above, there were repeated threats of layoffs if the employees persisted in their union adherence, made by officials of the Respondent, particularly Showalter, whom the Trial Examiner found to be the "day-to-day head of the company in that Region." However, in concluding that the Respondent was not discriminatorily motivated in the discharge of Welch and Dick, the Trial Examiner found that he could place no "controlling significance" on Showalter's threats since Showalter did not take a "controlling part" in the determination of the employees to be laid off nor the selection of those to be retained. This finding is not adopted, however, as the record establishes that Showalter was one of the Respondent's officials who decided upon the number of employees to be retained, and that he approved the selection of Welch and Dick for discharge. In addition, contrary to the Trial Examiner, we cannot accept the Respondent's contention that it first selected those gasfitters who were to be retained or transferred, and that Welch and Dick happened to be the only two who remained for discharge after this process of elimination. We are convinced, upon the entire record, that the Respondent would not permit two of its most highly qualified and experienced employees to be terminated in such a haphazard manner if it were not seeking to terminate the most active union adherents, as it had threatened to do.

We note, moreover, that the record shows that there was a need for gasfitters at the time Welch and Dick were discharged. Thus, on December 16, 1961, just prior to Welch's discharge, Supervisor Ray offered Welch a transfer to a more responsible position at Collbran, and on February 5, 1962, after his discharge, Vice President Reed offered him gasfitter's work on a contract basis. Additionally, the record shows that on the same day that Welch and Dick were discharged, Supervisor Ray offered a gasfitter's job to gasfitter helper Ashby, who was promoted to gasfitter soon after the discharge of Welch and Dick. Accordingly, even assuming that economic justification for some layoffs existed,⁸ we find, under all the circumstances, that the Respondent selected Welch and Dick for discharge because of their leadership in union activities, in violation of Section 8(a)(3) and (1) of the Act.

THE REMEDY

Having found that the Respondent has engaged in and is engaging in certain unfair labor practices, we shall order that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act. As we have found that the Respondent discriminatorily discharged Jacque Welch and Milo Henry Dick, we shall order it to offer each of them immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and to reimburse him for any loss of pay he may have suffered by payment to him of a sum of money equal to the amount he would have earned as wages from the date of the discrimination to the date of the offer of reinstatement, less his net earnings during said period.⁹ The backpay due will be computed on a quarterly basis with interest at the rate of 6 percent per annum in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289, and in *Isis Plumbing & Heating Co.*, 138 NLRB 716.¹⁰

Upon the basis of the foregoing and the entire record in these cases, the Trial Examiner's conclusion of law number "5." is deleted and we hereby renumber the Trial Examiner's conclusion of law number "4." as number "5." and make the following additional conclusion of law:

4. By discriminating in regard to the hire and tenure of employment of Jacque Welch and Milo Henry Dick, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

⁸ *Whitelight Products Division of White Metal Rolling and Stamping Corp.*, 137 NLRB 678.

⁹ In accordance with policy recently adopted by the Board, there shall be no tolling of backpay for the period between the issuance of the Intermediate Report and the Order herein *A P W. Products Co., Inc.*, 137 NLRB 25

¹⁰ Member Leedom, for the reasons set forth in his dissenting opinion in the *Isis* case, would not direct the payment of interest on the backpay award

ORDER

Upon the entire record in these cases, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Rocky Mountain Natural Gas Company, Inc., Delta, Colorado, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union activities in a manner violative of Section 8(a)(1) of the Act, offering benefits to induce its employees to refrain from union activities, and threatening its employees with layoffs or other economic reprisals in retaliation for activities on behalf of Rocky Mountain Gas Workers Union, or any other labor organization.

(b) Discouraging membership in the above-named or any other labor organization of its employees by discriminatorily discharging, refusing to reinstate, or in any other manner discriminating against them in regard to their hire or tenure of employment, or any term or condition of employment, except to the extent permitted by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Offer to Jacque Welch and Milo Henry Dick immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make each of them whole for any loss of pay suffered as a result of the discrimination against him as provided in the section above entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payments records, timecards, personnel records and reports, and all other records necessary to determine the amount of backpay due and the rights of employment under the terms of this Order.

(c) Post at its offices and installations throughout its western division, copies of the attached notice marked "Appendix."¹¹ Copies of said notice, to be furnished by the Regional Director for the Twenty-seventh Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

¹¹ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT interrogate our employees concerning their union activities in a manner violative of Section 8(a)(1) of the Act, offer benefits to induce our employees to refrain from union activities, or threaten our employees with layoffs or other economic reprisals in retaliation for activities on behalf of Rocky Mountain Gas Workers Union, or any other labor organization.

WE WILL NOT discourage membership in the above-named or any other labor organization of our employees by discriminatorily discharging, refusing to reinstate, or in any other manner discriminating against them in regard to their hire or tenure of employment, or any term or condition of employment, except to the extent permitted by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may

be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer to Jacque Welch and Milo Henry Dick immediate and full reinstatement to their former or substantially equivalent positions without prejudice to seniority or other rights and privileges, and make each of them whole for any loss of pay suffered as a result of the discrimination against him.

All of our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization, except as that right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as amended.

ROCKY MOUNTAIN NATURAL GAS COMPANY, INC.,
Employer.

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

NOTE.—We will notify either of the above-named employees presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

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

Employees may communicate directly with the Board's Regional Office, 609 Railway Exchange Building, 17th and Champa Streets, Denver, Colorado, Telephone No. Keystone 4-4151, Extension 513, if they have any question concerning this notice or compliance with its provisions.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding, under Section 10(b) of the National Labor Relations Act, as amended, hereinafter called the Act, commenced with the filing of charges by Jacque Welch and Milo Henry Dick on March 21, 1962. Thereafter the complaint was issued on May 9, 1962, by the Regional Director for the Twenty-seventh Region. It alleged, in addition to jurisdictional matters, the commission of unfair labor practices on the part of the above-indicated Respondent by various acts of interference with employees' statutory rights under Section 7 of the Act on the part of Respondent's supervisors, Showalter, Boyd, and Reed; these are alleged as unfair labor practices within the scope of Section 8(a)(1) of the Act.¹ The complaint further alleges that the above-indicated Charging Parties were discharged because of activities on behalf of Rocky Mountain Gas Workers Union, this being an unfair labor practice within the scope of Section 8(a)(3) of the Act.

¹ At the outset of the hearing the Trial Examiner denied General Counsel's motion to amend the complaint by adding an allegation of threats by District Manager Bramlett. It appeared that in the circumstances, particularly in view of Bramlett's departure from Respondent's employment, the addition would not serve the ends of justice

Respondent's answer puts in issue the jurisdiction of the Board and the status of the Union as a labor organization. Respondent also denies the commission of the unfair labor practices alleged and affirmatively, admitting the discharge of Welch and Dick on or about December 27, 1961, and its refusal to reinstate them, asserts that they were discharged with seven other employees pursuant to an economically motivated reduction in force.

The hearing on the issues herein was held from July 17 to 19, 1962, at Delta, Colorado, before Trial Examiner William J. Brown. All parties² participated herein and were afforded full opportunity to present evidence and argument on the issues; at the close of the taking of evidence the Respondent and the General Counsel argued on the record in support of their positions on the issues. Following the close of the hearing the Respondent and the General Counsel filed briefs on August 31, 1962, which have been fully considered by me.

Upon the record herein,³ and upon the basis of my observation of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The Respondent Employer, Rocky Mountain Natural Gas Company, Inc., is a gas public utility engaged in the collection and distribution of natural gas within the State of Colorado and the distribution of liquefied petroleum gas in certain communities on the western slope of Colorado. Respondent's annual gross revenues exceed \$250,000. Respondent's answer concedes that in certain annual periods it has made interstate purchases exceeding \$50,000 and the parties have stipulated that for the year 1961, Respondent received directly from points outside the State of Colorado shipments of gas and other products valued in excess of \$50,000. On the pleadings and the evidence herein, I find that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that assertion of the Board's jurisdiction is warranted.

II. THE LABOR ORGANIZATION INVOLVED

The alleged acts of interference with the statutory rights of employees and the alleged discriminatory discharges are, according to the General Counsel, related to employees' membership in and activities on behalf of the Rocky Mountain Gas Workers Union. The constitution and bylaws of that organization are in evidence; also in evidence is a proposed collective-bargaining agreement submitted on behalf of that organization to the Company. The testimony herein and the foregoing documents clearly establish that the Rocky Mountain Gas Workers Union was⁴ an organization in which employees participated and which existed for the purpose of dealing with the Company concerning grievances, wages, and conditions of work generally. The fact that it was unaffiliated with any national or international labor organization and was in fact limited to the employees of the single employer herein involved does not preclude its having the status of a labor organization under the Act. See *E. I. du Pont de Nemours & Company*, 63 NLRB 1387; *Inyo Lumber Company of California*, 129 NLRB 79; see also 1 U.S.C.A. § 1. I find that the Union was, at the material times, a labor organization within the scope of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background and summary of events

Rocky Mountain Natural Gas Company, Inc., organized in 1953, was initially engaged in the distribution of natural gas in a limited area on the eastern slope of Colorado. Its present principal executive officer, William A. Newton, became associated with the Company in 1958. In 1959 it acquired gas contracts on wells in the Delta area and franchises for the distribution of natural gas in certain areas on the western slope. At or about this time it also acquired the assets of Domestic Propane Company which had been engaged in the sale and distribution of liquefied petroleum gas in and about the section of the western slope to which Rocky Mountain Natural Gas Company later extended its natural gas pipelines and distribution facilities. Henry C. Showalter had been a coowner and ultimately president

² The Charging Parties participated to the extent of independent cross-examination of Sieverson, a key witness for Respondent.

³ The reference in the transcript at page 51, lines 12 and 13, to "investment in the Company," should and is hereby corrected to read "investment income"

⁴ The Union became inactive and presumably dissolved early in 1962

of Domestic Propane until he sold its assets to Rocky Mountain Natural Gas Company. Subsequently Domestic Propane was dissolved as a corporate entity and presently operates as a division of Rocky Mountain Natural Gas Company.

Showalter, with headquarters in Delta, is western division manager for the Rocky Mountain Natural Gas Company with responsibility for natural gas and liquefied petroleum gas throughout the Company's western slope operations. These western slope operations extend from Aspen on the east to Dove Creek on the west with intervening locations at Glenwood Springs, Delta, Montrose, and Norwood. Under Showalter is Jack Ray, manager of Domestic Propane Division, and Jerome Sieverson, district manager of Delta district. Under Sieverson is Dean Boyd, service manager of Delta district. Boyd was the immediate supervisor of the Charging Parties, Dick and Welch.

Sometime shortly before the events occurred which led up to the institution of the present case, the Company undertook major extensions of its natural gas pipelines. This required substantial additions to working capital and the Company issued a large quantity of equity securities and also undertook debt financing through a bond issue. This increase in the Company's capitalization and indebtedness was reflected in an increase in its assets from somewhat more than \$300,000 in 1958 to substantially in excess of \$6 million at the time of the hearing. During 1960 and until the late spring of 1961, as the pipeline was extended to new areas on the western slope, the number of meter installations followed the curve normally expected in the gas utility business where meter installations, which is the measure of conversions from coal, fuel oil, or propane to natural gas, increase or decrease according to a fairly predictable scale affected by the duration of entry into the new market area and the season. On the basis of its analysis of future prospects for meter installations, management commenced in June 1961, or shortly thereafter, the formulation of a plan to reduce installation work forces in the area about Delta. This led to a reduction in force among the installation fitters in the course of which Dick and Welch, Charging Parties herein, were selected for layoff.

In the meantime, commencing about June 1961, interest had developed among the employees in the Delta area looking toward the formation of a labor organization. There was some approach made by representatives of a national labor organization in Grand Junction, but at a meeting held at Dick's house about September 29, 1961, and attended by some 22 employees from the Delta and Montrose areas, the employees favored an independent organization and their organizational plans thereafter developed along the lines of the Union. Subsequent meetings developed the fuller organization of the Union and at a meeting held about November 2 at Dick's house a number of employees from the Delta area signed the constitution and bylaws as charter members. Subsequently Milo Dick became president and Jacque Welch, treasurer.⁵

B. *Interference, restraint, and coercion*

The complaint alleges and the answer of Respondent denies the commission of unfair labor practices in the nature of interference, restraint, and coercion with respect to employees' rights during the late fall of 1961 and early winter of 1962. These unfair labor practices are alleged to have been committed through the agency of Showalter, Boyd, and Reed.⁶ The issues in this regard are discussed below.

1. Henry C. Showalter

Showalter, as recounted above, is western division manager of the Company and as such is the operating head of the Company in the area with which we are here concerned. He heard talk about employee activities looking toward self-organization at least as early as the first week of October 1961. The evidence indicates that by November 24 he had knowledge that the employees were forming an independent organization though he might not at that time have known its precise name. In any event, he knew that Dick was in the forefront of the self-organization move.

It is alleged that Showalter on or about November 24 threatened an employee of the Delta operation with economic reprisals against him and all others engaged in union or other concerted activity. It is also alleged that Showalter on or about

⁵ Dick and Welch emerged at an early date as leaders in the organizational efforts and Dick furnished his home as a meeting place and became interim chairman and later president. Welch appears to have been a highly articulate spokesman and ultimately treasurer of the Union.

⁶ General Counsel's brief refers to offers of benefits by President Newton as an inducement to abandon the Union. They were not alleged as unfair labor practices in the complaint.

December 6 threatened employees of the Delta operation with economic reprisals for engaging in union or other concerted activity. Showalter is also alleged to have interrogated an employee employed at Delta about a forthcoming union meeting on or about November 24, 1961.

a. *Interrogation*

The allegation of an unfair labor practice in the nature of interrogation on the part of Showalter concerns the contents of a conversation held on that date between Showalter and Dick in the Delta office. Prior to November 24, 1961, there had been at least three meetings of the employees at Dick's home and just before the November 24 meeting, notice of it with an indication of a change of meeting place to the REA Building was sent out by Dick to all employees of the western division.

Insofar as the alleged interrogation is concerned there is virtually no dispute as to the facts in this area. The interrogation is alleged to have taken place late in the afternoon of November 24 when Showalter, learning from some unexplained source that there was to be a meeting of the men that night at the REA Building, left word for Dick to come into his office when Dick returned at the conclusion of his tour of duty. Dick testified that Showalter asked him why the meeting was being held at the REA offices instead of at the plant and was told that since election of officers was scheduled the meeting should more properly be held away from Dick's home and they had engaged the REA office for that purpose. According to Dick, Showalter wanted to know if he could attend the meeting and was told that the meeting would be an open one until such time as it came to the vote when he would have to leave. According to Dick, he told Showalter that the reason the Union was being formed was because the employees could not get to management to discuss grievances, to which Showalter, according to Dick, made the remark that no person or union was going to tell him how to run the business. Showalter, for his part, explained that the reason he made inquiry of Dick as to the reason for the meeting of the employees at the REA Building was that he had previously had information as to the meetings held at Dick's house and he, basically, wanted to inquire as to whether there were any complaints or disturbances that he could assist in handling. Showalter did not attend the meeting.

It is clear from an analysis of the testimony of the witnesses to this conversation that Dick's interrogation by the General Counsel was designed to elicit simply the fact that Showalter asked the question as to why the union meeting was being held at the REA Building, whereas Showalter's interrogation by counsel for the Respondent was designed to explain the reasons why any interrogation was undertaken. The evidence is clear that there was interrogation by Showalter of Dick concerning the forthcoming union meeting. I credit Dick's testimony that Showalter asked him why the union meeting (and Showalter conceded that he knew it was to be a union meeting) was being held at the REA offices. It seems clear from Dick's account of this conversation that there was no coercion in fact, for he clearly appears to have accepted Dick's inquiry as an inoffensive one and responded to it by saying that the meeting was open and Showalter could attend until it came time for elections. Dick took the occasion to explain to Showalter the reasons why the employees were engaged in self-organization. Appraising this interrogation in the light of circumstances surrounding it, including the clear indications that it was innocently motivated and had no coercive effect in fact, it would not seem to be an unfair labor practice. *Blue Flash Express Inc.*, 109 NLRB 591.

b. *Individual threat*

The complaint alleges and the answer denies that on or about November 24, 1961, Showalter threatened an employee of the Delta operations with economic reprisals against him and all other employees engaged in union or other concerted activity. This item of the case also concerns the conversation between Dick and Showalter early in the evening of November 24, the threat, according to the General Counsel's theory, following the interrogation referred to above.

According to Dick's testimony, after the inquiry as to the reason for the meeting's taking place at the REA Building and Dick's volunteering the information recounted above as to the reason for the employees' interest in organization, Showalter stated that no person or union would tell him how to run the business. When Dick replied that that was not the objective of the organizational efforts, Showalter said that if the men persisted, the fitters would be laid off and the work would be contracted out. On cross-examination Dick conceded that Showalter did not tell him that the employees could not organize into a union. Dick denied that Showalter made the statement as a mere prediction as to the probable consequences of too strenuous demand by the Union.

Showalter's denial of Dick's testimony is somewhat less than categorical. He is clear in his recollection that, in agreement with Dick's account, he did state that he would not tolerate employees telling him how to run his business either directly or through an organization. He does think it unlikely that he made the particular statement attributed to him because the word "persisted" is not within his vocabulary. At most, Showalter could only say that he did not recall making the statement attributed to him by Dick. I credit Dick's account of the facts as to the conversation in this regard. Accordingly I find that Showalter did in fact threaten Dick that if the men continued in their organizational efforts they would be laid off and the work would be contracted out. This is plainly an unfair labor practice. *J. S. Abercrombie Company*, 83 NLRB 524, enfd. 180 F. 2d 578 (C.A. 5).

c. *Group threat*

The complaint alleges that on or about December 6, 1961, Showalter threatened employees of Respondent's Delta operations with economic reprisals if they engaged in union or other concerted activities. Sometime prior to December 6, 1961, the Company had determined upon the necessity of reducing labor costs in the Delta pipe-fitting operation and had communicated that determination to Showalter. Showalter called a meeting of all Delta employees in the warehouse on December 6. He had the twofold purpose of acquainting employees with the discouraging financial outlook of the Company and commenting on his impressions of some dissension among the employees. Showalter asked the assembled group of employees who was president of the Union and when Dick identified himself as its president, Showalter complained that he had heard the men were going over his head and taking the proposal for an agreement directly to Denver. According to Dick, Showalter then said that he did not believe the Company would stand for any organization and would more than likely contract the work out. On cross-examination Dick conceded that he was some distance from Showalter and was not listening too good and that all that Showalter actually said was "something about that the Company wouldn't go along with it and if it kept persisting there would be work contracted out."

Shirley Lewis attended the December 6 meeting and attributed to Showalter the statement that he had heard the men were forming a union and he did not personally think the Company would accept it but would contract the work out. George Chap-pell attended the December 6 meeting and testified that Showalter opened it by saying he had heard that a union was being formed and in his opinion the Company would be unable to stand the cost of union organization and that if the men continued organization the Company would be forced to curtail operations of the fitters and helpers and contract their work out.

Welch attended the meeting of December 6 and corroborated Dick's testimony as to Showalter's words.

For the Respondent Showalter testified that he called the meeting because he wanted to present to the employees information he had received concerning the financial status of the Company, and also to caution the employees that some dissension apparently was interfering with the efficiency of the crews. He explained at that time that in the Roaring Fork Valley conversion jobs where the Company had been short of employees, they had contracted the work out to gasfitters, that the contracting out had progressed satisfactorily, and that unless efficiency increased among their own district offices, he was sure that the Company could engage in additional contracting out with the resultant layoff of some men. Showalter conceded that although he did not intend directly to relate the Union to these statements, he could well have said that whatever caused the lack of productivity, whether it was due to dissension on account of union organization or anything else, the Company could not stand for any greater financial load.

Gerald Wethington corroborated Showalter's account that a brief rundown of the financial status of the Company and the discouraging prospects was given on the occasion of the December 6 meeting and also corroborated Showalter in his account that his statement was to the effect that if the Company did not improve its financial picture, it might have to contract installation work outside. Wethington's recollection of the conversation on that occasion is plainly indistinct however, because he testified that he never heard the word "union" mentioned by Showalter and did not recall Showalter's asking the identity of the president of the Union, contrary to Showalter's admission that he did on that occasion ask that question.

Allen Ashby recalled that the December 6 meeting started with Showalter's reference to rumors about the union organization and the statement that he was of the opinion that the Company could not stand any large increases in pay, explaining the financial condition of the Company and that there could be no increases until the Company was in better financial position. He did not recall any reference to con-

tracting out. Earl Miller's account of Showalter's speech was that Showalter more or less casually said that if the employees kept on with the Union, he personally felt the Company was not in a financial position to pay higher wages and that they might have to contract installation work out.

The evidence is not crystal clear. This is naturally to be expected where several witnesses are called to attest the words of a speaker uttered more than 7 months previously. It is clear, however, that Showalter mentioned the Union and mentioned contracting out. I think the inherent probabilities are that Showalter said that if the union dissension continued, there would be contracting out and layoffs. I also find Welch, whose demeanor impressed me favorably, credible. I therefore find the allegations of the complaint sustained by the preponderance of the testimony in this area. Clearly such an utterance by the day-to-day head of the Company in that region was an unfair labor practice. *J. S. Abercrombie Company, supra.*⁷

2. Dean Boyd

The complaint alleges that Respondent's service manager, Dean Boyd, on or about November 25, 1961, interrogated a Delta employee concerning results of a union meeting. The issues in this regard center around the contents of a conversation between Boyd and Welch.⁸ The conversation occurred about December 1, 1961, shortly after Boyd returned from a period in Glenwood Springs, during which period Welch had been acting in charge of the Delta office. On that occasion, according to Welch, after some preliminary conversations about routine business operations, Boyd brought up the subject of the Union and when Welch said that it had been organized, Boyd asked who the officers were and Welch told him. It appears from the cross-examination of Welch that he regarded this inquiry as more or less casual and a natural subject to be brought up between the two of them. Boyd's recollection of the conversation was indistinct, although he conceded the possibility that he might, entirely as a casual matter, have inquired as to the identity of the officers but he did not pointblank ask the question as a matter of pressing concern to him. This conversation appears on the evidence herein to be entirely casual in nature. In the circumstances it is quite plain that there was neither coercion in fact nor an inherent capacity to coerce Welch or others by an inquiry uttered on this occasion. Appraising it under the *Blue Flash* rule, it does not amount to unlawful interference, restraint, or coercion.

3. Vice President Reed

Respondent is alleged in paragraphs V(e) and (f) of the complaint to have engaged in interference, restraint, and coercion through Vice President Reed's action on or about February 15, 1962, in urging individual employees to refrain from union activities and by threatening employees in a general meeting with economic reprisals if they continued adherence to the Union, while promising economic benefits if they abandoned the Union.

a. Restraint of individual employees

The alleged unfair practice in the nature of urging individual employees to refrain from union activities centers around the events occurring in Respondent's Delta warehouse on February 5, 1962. The evidence indicates that there was an argument among union members Morris, Chappell, and Lewis in the warehouse that morning. Morris voiced a desire to withdraw from the Union and this provoked opposition from Chappell and Lewis. On that occasion, Reed called Chappell and Lewis into Boyd's office and reprimanded them for arguing and bickering on company premises and time. Chappell's recollection of Reed's statements on that occasion was that Reed said he could not stand for arguing and bickering on company premises on company time, and that if it continued, the parties would have to be replaced. Lewis recalled that Reed added that if a majority of the men wanted a union, that would be acceptable, but he did not think they had the majority and he did not want arguing back and forth on company time. The cross-examination of Lewis brought out that the argument in the warehouse that morning was in fact rather

⁷ Respondent's brief relies principally on *Bilton Insulation, Inc.*, 129 NLRB 1296, which I believe is clearly distinguishable mainly because of the assurances given in that case and the clearly predictive tenor of the remarks there.

⁸ General Counsel's brief charges a violation of Section 8(a)(1) in Boyd's interrogation of Shirley Lewis in October 1961. There is, however, no such allegation in the complaint.

loud and approached the point of physical contention. By the time Reed entered the warehouse after the argument, Morris had gone. Reed, for his part, conceded that he did not actually hear the argument in the warehouse but it came to his attention, and that he called Chappell and Lewis in. His account of the conversation is not substantially different from theirs.

It appears that in the course of this conversation Chappell and Lewis informed Reed that any dissension difficulties would probably be soon dispelled because to all appearances the men were losing interest in the Union and would probably dissolve it. Reed at that time offered the use of company facilities for a meeting and notice thereof for use of employees in determining whether or not a majority desired to continue with or dissolve the Union. His offer occurred however after the employees had indicated the probable dissolution of the Union. While Reed may have acted with questionable alacrity in his offer of facilities to assist the speedy demise of the Union, it does not appear that he engaged in the unfair labor practice alleged in the complaint.

The evidence relating to the nature of Reed's remarks on the morning of February 5, 1962, quite plainly do not sustain the allegations that on that occasion Reed urged individual employees to refrain from union activity.

b. *Group threats and promises*

Respecting Reed's alleged threats and promises referred to in paragraph V(f) of the complaint, the question is as to the contents of a speech made by Vice President Reed to all employees of the Delta operations assembled in the warehouse on the evening of February 5, 1962. The meeting of employees had been called for that evening pursuant to the understanding reached among Reed, Chappell, and Lewis on the occasion of their talk in the morning of the same day. Following the morning meeting, a notice was posted calling employees' attention to the meeting to be held on that evening. About the same time a petition looking to the dissolution of the Union was circulated among employees. Witnesses called by the General Counsel to testify to the contents of Reed's remarks on the occasion of the evening meeting were Lewis, Chappell, and Dewey Blees.

Lewis' account was that the meeting was presided over by Reed and that Reed repeated his opposition to bickering, and added the statement that if a majority wanted a union, the Company would accept it, but if they did not, the Company would rather the matter be dropped. He recalled that it was shortly after these opening remarks by Reed that the employees considered the matter of signing the dissolution document and while they debated and affixed their signatures, Reed and Showalter absented themselves, returning sometime later when a majority of men had signed the instrument of dissolution. He further stated that when Reed and Showalter returned to the room, Reed inquired as to whether the men needed any help in paying off outstanding debts of the Union, and stated that if they did, he would be glad to help them out.

Chappell recalled that the instrument of dissolution was signed by the employees, and thereafter the business of the Union's indebtedness was brought up and Reed offered to pay any balance owing, which offer was rejected by Chappell. In his cross-examination Chappell could not recall whether Reed's offer to pay any balance of union indebtedness occurred before or after the supervisors left the room to allow the employees to debate the matter.

Blees testified that on the afternoon of February 5, he was called into Showalter's office to talk with Showalter and Reed. There ensued a conversation as to the difficulties that the organizational efforts on behalf of the Union were making with company operations. Reed asked him about dissolving the Union, according to Blees. Blees said that it looked like the men were giving it up anyway and at that time he mentioned to Reed that there were certain technical difficulties in connection with dissolution, including the matter of liquidating the indebtedness that had been incurred. Respecting the meeting held in the evening of that day, Blees testified that Reed again offered to pay any outstanding debts of the Union but his recollection appears to be that this offer occurred after the dissolution paper had been circulated and signed.

Reed's recollection of the events of the evening meeting on February 5 was that at the time for the opening, he, recalling that Dewey Blees had been a frequent spokesman of employees in the past, asked Blees whether he wanted the supervisors to leave. Blees then asked him to say something so Reed spoke, according to his testimony, about the need for harmony among the working crews, coupled with the assurance that it made no difference to the Company whether they wanted to be union or nonunion so long as harmony resulted. His recollection was that it was

shortly after that that he and the other supervisors left the room and on their return were told that all former union members had now indicated no interest in the Union. Reed's recollection is that after the supervisors returned to the meeting some individuals asked for financial assistance for the Union or its members in meeting its debts, and Reed told them that if any individual needed help he would personally give them assistance. Showalter's account of the events of the evening meeting substantially corroborated Reed.

A fair view of the evidence, both that adduced by the General Counsel and that by the Respondent, does not preponderate in favor of a finding that on the occasion of the evening meeting, Reed either threatened reprisals or promised benefits. Rather, the evidence preponderates in favor of the view that Reed, after the union dissolution had been determined upon, offered to assist individual members to meet their commitments for union expenses. The General Counsel's contention that Reed offered to pay any of the old union debts from his own pocket in order to cause the employees to abandon their interest on behalf of the Union is not sustained by the weight of the evidence.

C. *The alleged discriminatory discharges*

The principal issue in the present case concerns the reason for the discharge of Welch and Dick. Respondent's answer concedes their discharge on or about the date alleged in the complaint and admits its refusal to reinstate them. By way of affirmative defense, Respondent asserts that the discharges were effected for economic reasons in a reduction in personnel.

The General Counsel's case in support of the allegations of discriminatory motivation in the discharges of Welch and Dick rests on the claim that these two were entitled both by seniority and qualifications to be retained in preference to other employees in any reduction in force; furthermore, in his brief, General Counsel submits that the Respondent had a burden of justifying its action in undertaking any reduction in force in December 1961.

Reference has been made above to management's decision formulated in December 1961 to institute a reduction in forces among the conversion crews working out of Delta. The general outlook of the Delta operations from the management viewpoint was outlined by Respondent's secretary-treasurer, Shockley. He testified that the Delta operations were found in mid-1961 to constitute a financial drain on the overall system to an excessive degree. As a consequence, Shockley and the Company's controller visited Delta early in September 1961, following a request from Showalter for \$35,000 to meet payroll and other bills. I credit Shockley's testimony that at that time and as a result of his and the controller's examination of the operational records at Delta, it was determined to be necessary, from a management point of view, to make changes in the conversion crews' operations. At that time there was no determination made as to any individual pipefitter's delinquencies but it was determined that excessive overtime was being charged and the standard workday was not being fully devoted to chargeable work. In addition, they discovered that employees were working out of Delta headquarters on assignments in Aspen and Glenwood Springs at a per diem cost to the Company.

About this time, as mentioned above, it would be natural that the volume of conversion work in the Delta area would be subsiding both because of the oncoming winter decline in conversions and because of the length of time that had expired since the introduction of natural gas into the Uncompahgre Valley. On the other hand, natural gas was being extended into the Roaring Fork Valley with the consequence that there would be a greater need for conversion men in Glenwood Springs and Aspen. The Company's president, Newton, and vice president, Reed, both of whom impressed me as credible, also testified to the economic considerations underlying the determination to reduce the conversion crews in number at Delta.

The General Counsel in his brief contends that there had been no prior layoff of gasfitters at the Delta site since 1959, and that the burden shifted to Respondent of justifying a reduction in force in 1961. In this regard General Counsel has cited *Croskill Curtain Company and Durham Drapery Company*, 130 NLRB 1465, 1468.⁹ I must reject the General Counsel's contention in this regard. Even accepting the

⁹ In modifying the Board's Order the court, 297 F. 2d 294 (C.A. 4), pointed out that departure from past practice may be a suspicious circumstance but must be considered only in the light of the entire record which in that case, as in the instant case, includes the factor that other known union leaders were not discharged. See also *Falstaff Brewing Corporation*, 128 NLRB 294, footnote 2.

concept of a transfer of the burden of going forward with evidence, the record as a whole abundantly indicates that the management decision to reduce forces at Delta in December 1961 not only had a plausible basis but is clearly shown by a preponderance of all the testimony to have been economically motivated. In this regard I appraise the testimony of Newton, Reed, and Shockley as establishing the economic necessity of a reduction in force and as substantially unimpaired by cross-examination.

The key issue remaining is as to the reason for management's selection of Dick and Welch as the two conversion gasfitters to be released from the Delta crew. Management officials had, on the record herein, clear knowledge of the leading role played by Dick in the Union. I credit Dick's testimony that Showalter was informed by Dick himself that he was president of the group and also the uncontradicted testimony that Dick, together with Dewey Blee, on December 12, presented the Union's proposed collective-bargaining agreement to Showalter on behalf of the Union. Also I reject the contention in Respondent's brief that there was absolutely no evidence of employer knowledge of Welch's union activity. In this regard I credit the testimony of Welch that in the course of a conversation with Dean Boyd on December 1, 1961, Welch informed Boyd of the names of the officers which would include Welch himself as treasurer. Boyd, testifying as a witness for the Respondent, did not deny Welch's account of the naming of the union officers, though he did deny taking any action on the basis of the information. I find that at the time of the selection of Welch and Dick for layoff, the Respondent had knowledge of their union activity.

The record is clear that both Dick and Welch were fully qualified gasfitters and in fact had been superior employees from a technical point of view. Dick trained a number of helpers to become licensed fitters and in general the record reveals that he was a fully qualified and dependable employee. With respect to the competence of Welch, the record indicates that he was possibly even superior to Dick. In August 1961, he was promoted to the important position of service manager at the Glenwood Springs operation of the Company, an office which he relinquished only because of the illness of his wife. Upon his return to Delta, he acted for 2 months, October and November 1961, as acting supervisor in place of Dean Boyd. In addition to his selection for supervisory assignments, he also conducted a training school for gasfitters on behalf of Respondent. The record is clear that both Welch and Dick were thoroughly qualified from a technical point of view,¹⁰ and had substantial length of service with the Company and seniority over some of the gasfitters who were not laid off in December 1961.

As indicated above, however, the decision had been made bona fide to reduce forces. Pursuant to this decision by top management, local management at the several installations were informed of the total number of gasfitters they would be allowed to retain following the reduction in force. The allocation for Delta, presented to Showalter, Boyd, and Sieverson by Newton and Reed, was two fitters, two helpers, and one serviceman. The actual selection of the pipefitters to be retained was made by Sieverson with the assistance of Boyd. Sieverson testified that he arrived at the decision to terminate Welch and Dick by the process of elimination. The Delta payroll in December 1961 had eight pipefitters. Three of these, Clay, Zink, and Case, had been requested by and were accordingly assigned to other areas. One of the pipefitters on the Delta payroll, Morris, was selected to fill the job of serviceman on the basis, according to Sieverson, of his versatility and public relations aptitude. Of the four remaining pipefitters, Lewis¹¹ had 15 years' service with the Company and was sufficiently versatile to handle the multiplicity of assignments that would be expected with a reduction in force. Chappell had 5 years' service and was sufficiently adapted to the Company's operations to fit into a variety of assignments.

By the selection of the six above indicated, Welch and Dick were, by the process of elimination, left to be terminated. Sieverson also testified that there were negative reasons which entered into his thinking on this occasion. With respect to Welch, he testified that with respect to two consumers, Davis and Father Kane, there had been instances of inability to handle the public relations aspects of the Company's operations satisfactorily; he also felt Welch was not fully loyal to the Company and its products, and had indicated a desire to stay with the Company only long enough

¹⁰ Each testified credibly that at the time of their notice of layoff they were told the Company had nothing against their work. Also Welch's competence is shown by the conclusive evidence that in February 1962, Vice President Reed considered contracting work out to him.

¹¹ Lewis and Chappell were union members and secretary and vice president, respectively.

to finance his wife's way through beauty school.¹² With respect to Dick, there had been a report of a clash between Dick and the Norwood manager, and also there had been a disagreement between himself and Dick on a technical matter.

Viewed in its totality, the evidence does not preponderate in favor of a finding that Welch and Dick were discharged because of their activities on behalf of the Union.¹³ I shall, accordingly, recommend dismissal of the allegations under Section 8(a)(3) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, 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, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

In view of my finding that Respondent has engaged in certain unfair labor practices I shall recommend that it be required to cease and desist therefrom and take certain affirmative action necessary and appropriate to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By the acts of Division Manager Henry C. Showalter in threatening employees with economic reprisals if they engage in activities on behalf of the Union, Respondent has engaged in conduct that interfered with, restrained, and coerced employees in the exercise of their rights under Section 7 of the Act, thereby engaging in unfair labor practices as defined in Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
5. Respondent has not engaged in unfair labor practices defined in Section 8(a)(3) of the Act.

[Recommendations omitted from publication.]

¹² The evidence herein confirms the impression, conveyed by his bearing at the hearing, of Welch as a person of superior talents and with a zeal to excel and advance but probably not a docile "organization man."

¹³ The General Counsel relies in part on the conduct of Jack Ray in offering a responsible assignment to Welch at Collbran on December 15 and in stating to employee Ashby on December 27 that fitters were needed at Delta. I cannot assign any substantial significance to this evidence in view of the clear indications that Ray's authority does not extend to conversion crews. There is no showing that Ray participated in conferences leading up to the layoffs. Nor can I place any controlling significance on Showalter's threats which I have found above to be interference under Section 8(a)(1) since the record indicates that Showalter did not take a controlling part in determination of the number to be laid off nor the selection of those to be retained.

Champa Linen Service Company and Laundry, Linen and Dry Cleaning Drivers, Local Union No. 905, and Dry Cleaning and Laundry Workers, Local Union No. 304. Case No. 27-CA-1243. February 11, 1963

DECISION AND ORDER

On November 15, 1962, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and