

join or support International Brotherhood of Pulp, Sulphite & Paper Mill Workers of America, AFL-CIO, or any other labor organization.

WE WILL offer Melba Mancil immediate and full reinstatement to her former, or a substantially equivalent, position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay she may have suffered by reason of our discrimination against her.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their right to self-organization; to form, join or assist any labor organization; to bargain collectively through representatives of their own choosing; to engage in concerted activity for the purpose of collective bargaining or other mutual aid or protection; or to refrain from any or all such activities.

All our employees are free to become, remain, or refrain from becoming, or remaining, members of any labor organization.

SOUTHERN MAID PAPER COMPANY,  
*Employer.*

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

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, T 6024 Federal Building (Loyola), 701 Loyola Avenue, New Orleans 12, Louisiana, Telephone No. 529-2411, if they have any question concerning this notice or compliance with its provisions.

**Precision Fittings, Inc. and Wilbur Voght, Charging Party and Local 307, International Union, Allied Industrial Workers of America, AFL-CIO and International Union, Allied Industrial Workers of America, AFL-CIO, Parties of Interest. Case No. 25-CA-1543. April 1, 1963**

### DECISION AND ORDER

On August 2, 1962, Trial Examiner A. Norman Somers 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. Thereafter, the Respondent, the General Counsel, and the Parties of Interest filed exceptions to the Intermediate Report with supporting briefs.

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 entire record in this case, including the Intermediate Report, the exceptions, and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the additions and modifications noted.

1. We agree with and adopt the Trial Examiner's finding that the Respondent's discharge of Wilbur Voght for his decertification activity

assisted Local 307, International Union, Allied Industrial Workers of America, AFL-CIO, herein called Local 307, in violation of Section 8(a)(2) of the Act. In addition, we find that, by such conduct, the Respondent also assisted International Union, Allied Industrial Workers of America, AFL-CIO, herein called the International.<sup>1</sup> However, in finding that the Respondent violated Section 8(a)(2) of the Act, we do not adopt the Trial Examiner's statement that "conscious and willing" acceptance by a union of the assistance afforded is an essential element of an 8(a)(2) violation.<sup>2</sup>

2. The complaint alleged that the Respondent violated Section 8(a)(3) and 8(a)(4) of the Act by discharging employee Voght. The Trial Examiner found that the Respondent violated Section 8(a)(3) by discharging Voght, but did not pass on the 8(a)(4) allegation. As the record clearly shows that Voght was discharged for his decertification activities, including the filing of certain decertification petitions with the Board; we find, as alleged in the complaint, that Voght's discharge also violated Section 8(a)(4) of the Act.<sup>3</sup>

#### THE REMEDY

We adopt the recommended remedy of the Trial Examiner, adding an allowance for interest on the backpay obligations of the Respondent to discriminatee Voght in accordance with the policy recently adopted by the Board. Such interest shall be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716.<sup>4</sup>

#### ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner with the following amendments which apply to the notice, as well:

(1) Paragraph 1(c) thereof shall be deleted and the paragraph below shall be substituted therefor:

<sup>1</sup> Although the Trial Examiner found that Voght's discharge assisted Local 307, he did not find that it also assisted the International. As it is clear that Angle was on the International's payroll and therefore was representing the interests of the International as well as the Local, it follows that the International was similarly assisted by Voght's discharge. Accordingly, we find that both Local 307 and the International have been assisted in violation of Section 8(a)(2).

<sup>2</sup> Nevertheless, we agree with the Trial Examiner's finding that Angle, representing both Local 307 and the International, was well aware of, and willingly accepted, Respondent's assistance, namely, Voght's discharge.

<sup>3</sup> The Board has broadly interpreted the language of Section 8(a)(4). For example, the Board has interpreted the word "testimony" in Section 8(a)(4) to protect employees against reprisal for testifying before the Board regardless of the nature of the proceeding, or of whether an employee who appeared at a hearing to testify actually testified. *Dal-Tex Optical Company, Inc.*, 131 NLRB 715, 730, enf'd. 310 F. 2d 58 (C.A. 5), and cases cited therein in footnote 10 of the Intermediate Report. We here find that a discharge for the filing of a decertification petition also violates Section 8(a)(4).

<sup>4</sup> For the reasons set forth in their dissent in *Isis*, Members Rodgers and Leedom would not grant interest on backpay, and do not approve such an award here.

(c) Assisting or supporting International Union Allied Industrial Workers of America, AFL-CIO, and its Local 307 by reprisals against any employee for activity in opposition to such Unions, or in any other manner.

(2) The following phrase shall be added at the end of paragraph 2(a): "but adding interest thereon at the rate of 6 percent per annum, to be computed in the manner set forth above."

(3) The paragraph concerning assisting or supporting Local 307 by reprisal shall be deleted from the Appendix and the following paragraph substituted therefor:

WE WILL NOT assist or support International Union, Allied Industrial Workers of America, AFL-CIO, and its Local 307 by reprisal against any employee for activity in opposition to such Union, or in any other manner.

(4) The following note shall be inserted immediately below the signature line at the bottom of the notice:

NOTE.—We will notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

(5) The sentence below the signature line in the notice beginning with the words, "This notice must remain posted . . ." shall be changed to read: "This notice must remain posted for 60 consecutive days from the date of posting . . ." instead of stating "60 days from the date hereof."

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

### STATEMENT OF THE CASE

This case was heard before Trial Examiner A. Norman Somers in Huntington, Indiana, on June 19, 1962, on complaint of the General Counsel,<sup>1</sup> and the answers of Respondent and of Local 307 and its International (who were brought in as "Parties of Interest"). The issue was whether Respondent discharged Voght because of his leadership in decertification proceedings against Local 307, thereby, as claimed, discriminating against him in violation of Section 8(a)(3) and (4), assisting the Parties of Interest in violation of Section 8(a)(2), and (derivatively) interfering with the Section 7 rights of the employees in violation of Section 8(a)(1), of the Act. Also involved is whether the discharge, which underlies all the violations here alleged, is foreclosed from our consideration on the merits by an award made in an arbitration proceeding.<sup>2</sup>

Oral argument was waived, and the parties filed briefs, which have been duly considered. Upon the entire record (as corrected on notice to the parties), and my observation of the witnesses, I hereby make the following:

<sup>1</sup> Issued May 18, 1962, on the following charges filed by Wilbur Voght: original charge, March 15; first amended charge, April 25; and second amended charge April 27, 1962.

<sup>2</sup> Additionally claimed as a bar is a "release" by Voght under a settlement between him and Respondent, executed while the charges were pending.

FINDINGS OF FACT<sup>3</sup>

## I THE DISCHARGE OF WILBUR VOGHT

*A. The evidence considered in the light of the disclosures made by Vice President Colberg subsequent to the arbitration proceeding*

The pivotal issue in this case is whether, under the circumstances here disclosed, the award of an arbitrator is a bar to our consideration of the merits under the Board's policy in respect to honoring arbitration awards. The reason is that though the ultimate issue of fact, as tried and determined by the arbitrator, is the same as the one presented to us, the testimony of a former official of the Company, as given before us but not the arbitrator, vests the case with an altogether different posture.

As heard before the arbitrator, the case was one in which direct evidence of motivation was lacking and the ultimate issue turned upon inference. Voght was discharged on the heels of extensive activity looking toward the decertification of Local 307 as the bargaining representative of Respondent's production and maintenance employees. The grounds for the discharge given before the arbitrator were Voght's falsification of his employment application and failure to report for overtime work on the Saturday preceding his discharge. The evidence there adduced in support of Voght's claim that the true cause of his discharge was his decertification activity was entirely circumstantial, the reliance being upon its timing in relation to such activity and, in roughest essence, an asserted disparateness in the treatment, as between him and other employees, for the offenses relied on. The arbitrator did not think there was such disparateness, and concluded that Voght was discharged for the reasons assigned by the Company. As for the claim that the discharge was motivated by Voght's activities in opposition to Local 307, the arbitrator stated:

All that can be adduced from the evidence offered is that Mr. Voght did engage in such activities.

On the other hand, before us a former official of the Company testified to a role played in the discharge by him and a fellow official, which, if credited, leaves no genuine question as to the true motivation. Alfred A. Colberg, former vice president and controller of the Company, testified that he and Jack Kaufman, Respondent's vice president of operations and in charge of labor relations, upon discovery of Voght's leadership in the decertification movement, arranged in advance to have him discharged for that reason on a colorable pretext of the kind later successfully urged before the arbitrator. As amplified by Colberg's testimony, the pertinent evidence before us is as follows:

Voght went to work for Respondent in July 1961 (which, unless otherwise noted, is the year in which all events in the factual recital occurred). Voght was one of a number of employees hired that month for foundry work, which Respondent had newly added to its operations. These persons were included in the preexisting unit of production and maintenance workers, for whom Local 307 was the certified representative and had a subsisting contract with Respondent, expiring 1965.

Beginning shortly after his employment, Voght took steps looking to dislodge Local 307 as the employees' bargaining representative. In August, he signed up employees for International Moulders and Foundry Workers Union of North America, AFL-CIO. In September, after a representation petition filed with the Board on behalf of that union was withdrawn, Voght procured signatures to a petition to decertify Local 307, which he filed with the Board's Regional Office on September 18. When advised by the Regional Office that the petition lacked certain data, he withdrew it, and circulated among the employees and obtained over 90 signatures to a second decertification petition, which he filed on October 5 (and also to a "deauthorization," petition, which he held in abeyance and ultimately never filed). At the suggestion of the Regional Office, he withdrew the second petition on or about October 24, and the Company received notification of that fact by letter on October 26.

The next day, Voght was discharged by John Mark, the foundry foreman. At the hearing before the arbitrator, it was made to appear that the decision to discharge

<sup>3</sup> There is no issue concerning the status of the Parties of Interest as labor organizations and Respondent's being engaged in a business affecting commerce. Respondent is an Indiana corporation and a wholly owned subsidiary of Essex Wire Corporation. It manufactures fittings at its plant in Andrews, Indiana, where it annually ships products out of the State in excess of \$50,000.

Voght had been made by Mark. Before us, former Vice President Colberg testified he had ordered Mark to do so after consultation with Vice President Kaufman. He recited the following events preceding these instructions to Mark:

Mark had informed Colberg that the signatures to the petitions were being obtained by Voght. After this, in October, Colberg had "several discussions" with Kaufman concerning Voght's activity. In one of them, Kaufman, after speaking on the telephone to the industrial relations manager of Respondent's parent corporation, informed Colberg that that official had suggested that they "arrange for Wilbur Voght to get into a fight at the local tavern and arrange to have the marshal on hand so that he could be arrested for disturbing the peace," and "we were to use this as a means of discharging Wilbur Voght." This suggestion was vetoed in favor of Colberg's suggestion, that "we look into the application of Wilbur Voght to determine if there was anything that had been omitted or falsified on the application as written at the time of hiring Wilbur Voght," and if there was, that this be used as the basis for discharging him.

Sometime after this, Max Schoeff, who had been hired as personnel director on October 1, reported that Voght had omitted mentioning in his application with Respondent a prior employment. The significance of this was that Voght, as Schoeff's investigation revealed, had quit that former job after sustaining a 3-day layoff for coming to work under the influence of liquor.

Kaufman thereupon suggested that Voght be discharged the morning of Friday, October 27, before the anticipated arrival of Harold Angle, regional representative of Local 307's International, to discuss certain grievances. Kaufman, as Colberg testified, explained that he had already spoken about the matter to Angle, and that the timing of the action had been mutually agreed upon between him and Angle because this would make it possible to bypass the conventional steps in the grievance which Voght would expectedly file, and to dispose of it at once by entering into an arbitration agreement. Thereupon, Colberg had Voght's final paychecks prepared, and turned them over to Foreman Mark, with instructions to discharge Voght the following morning.

On the morning of Friday, October 27, Foreman Mark handed Voght his pay through the end of the afternoon, and told him to leave at once. Voght pressed for the reason, and Mark told him it was for having falsified his employment application and having failed to report for overtime work the preceding Saturday. Voght then left the building and took himself to a tavern. There a shop steward came and told him he was wanted by Representative Angle at once. He returned to the plant, where he was met by Angle and the employee committee. Angle greeted Voght by stating that "the Company has [gone] just a little too far this time" and "we are going to put a stop to this immediately."<sup>4</sup> The group asked Voght whether he wanted his job back, and, when he said he did, a grievance was written up for him, which he signed. They then proceeded to the company office, where they met Colberg and Personnel Director Schoeff.<sup>5</sup>

With no preliminary discussion or prior inquiry from management as to how or why the discharge came about, Angle demanded that Voght be immediately reinstated with full seniority rights and backpay. Colberg refused. Voght asked why he had been discharged, and Colberg made no reply. According to Committee Chairman Larkey, Voght or she asked whether it was not Voght's decertification activity, and Colberg said he would not discuss it. Angle suggested arbitration, and Colberg gave him a list of five acceptable arbitrators, which Kaufman had previously supplied to Colberg. The list narrowed down to two. Colberg suggested one name, Angle the other, and Colberg assented to Angle's choice. The arbitration agreement was then drawn up and signed by Colberg and Local 307. Three days later Colberg wrote Voght in care of Local 307, answering the question to which he had refused to reply at the grievance meeting. He stated as the reasons for the discharge those which Foreman Mark had given Voght—the omission in his employment application and his failure to work the preceding Saturday.<sup>6</sup>

<sup>4</sup> Angle, who did not testify, never explained what led him to make this statement or how he could have known of Voght's discharge before either Voght or the committee told him about it. In actual fact it was he, as Committee Chairman Barbara Larkey testified, who broke the news to her, saying he "had overheard a conversation that Voght had been discharged."

<sup>5</sup> The occurrences there were recited with substantial accord, by Colberg, Voght, Committee Chairman Larkey, and another female committee member.

<sup>6</sup> Colberg's letter is reproduced in the arbitrator's award, which is in evidence here. Also in evidence are the arbitrator's notes, which he testified were substantially complete, because he knows shorthand. (There was no official reporter.) Discussion here assumes

The matter was heard by the arbitrator on November 29, as a dispute between Respondent and Local 307. As stated previously (*supra*, footnote 6), we have in evidence both his award and his notes taken in lieu of a transcript. Both sides were represented by counsel. Also as previously stated, the case in its posture before the arbitrator was one in which there was no direct evidence of the motivation and the issue turned purely on the inference to be drawn from circumstances. The integrity of the arbitrator's award on the evidence before him is not impugned, and neither is the forthrightness by specially retained counsel of the presentation of Voght's side on the facts then available. Colberg and Kaufman did not testify. Also, except for the signing of the arbitration agreement with Colberg and his sending of the letter of October 30, the names of Colberg and Kaufman did not as much as come up in connection with any aspect of the discharge. So far as was made to appear, the initiative in that regard was supposed to have been taken by Foreman Mark. He and Personnel Director Schoeff were Respondent's sole witnesses, and Respondent's counsel in his cross-examinations of two committeewomen, suggested that the "prime reason" for the discharge was the omission in the application.<sup>7</sup> The award, rendered on December 6, indicates that the arbitrator was persuaded that the reasons advanced by Respondent were the genuine reasons; he did not deem their *prima facie* validity to have been impugned by persuasive showing of disparateness of treatment for the offenses claimed, and with this out of the picture, there was no proof that the decertification activity motivated Respondent's action other than, as he put it, that "Mr. Voght did engage in such activities."

Colberg's testimony, however, makes this an altogether different case, for, if believed, there was no dispute in fact to be resolved by opposing inferences: Kaufman and he prearranged the discharge because of Voght's decertification activity, and, after exploring ways of covering up this intention, finally chose upon reasons best suited to that purpose, which were then successfully advanced to the arbitrator. In these circumstances, I had rather expected to hear from Kaufman concerning whether he had the conversations with Colberg, to which the latter testified. But though he took the stand, he never denied it. His entire testimony was limited to his version of a statement attributed to him by a committeewoman that he would discharge any person circulating decertification petitions (explaining that he had qualified this to apply to company time and premises), and, rather astonishingly, the remainder of his testimony was limited to the following:

Q. Did this Mr. Colberg who testified work under you?

A. No he did not.

Q. Did you make any deal with anybody to conduct a phony arbitration proceeding regarding the Voght discharge?

A. No.

In view of the manifest significance of Colberg's testimony, these statements loom as negative pregnant of massive proportions. The sense of Colberg's recital is that his discussions with Kaufman were not in the latter's capacity as a superior, but as an associate, whose function as labor relations head would make him the person normally to be consulted for advice and concurrence concerning the kind of project under discussion between them. Yet even if Colberg's testimony that he too had a hand in labor relations could conceivably lend itself to interpreting his testimony as suggesting that he was subordinate to Kaufman, Kaufman's denial of that status is hardly responsive to whether the conversations to which Colberg testified in fact took place between them. Equally unresponsive thereto is the second item. Forgetting the escape hatches in the multi-interpretive phraseology used, the matter of whether Kaufman had a "deal" with any outsiders for a "phony arbitration" hardly tells us whether Kaufman and Colberg had the discussion between them to which Colberg testified.

Nor can I see that the force of Kaufman's failure to deny that these conversations occurred is overcome by the factors claimed by Respondent and the Parties of Interest as rendering Colberg's testimony "inherently incredible." The only impeaching circumstance in the record is that Colberg, about 2 weeks before the arbitration hearing, quit Respondent in anticipation of being dropped for reasons unrelated to this case

the accuracy of the arbitrator's recital of the evidence in his notes and award. That evidence is deemed incorporated in this record for its bearing also on the merits—not in reappraisal of the inferences drawn on the evidence before him, which is not here undertaken, but in aid of understanding the significance of Colberg's revelations on both aspects of the matter before us—the true merits and the claimed finality of the award under Board doctrine.

<sup>7</sup> Arbitrator's notes pp. 8, 9.

(over a question of whether he had effected certain economies). Yet there was nothing in his manner or in the record to suggest any lingering animus—certainly not of the kind which, despite his present employment at a comparable position with another manufacturing concern of some standing in industry, would impel him to give false testimony against his former employer on a matter unrelated, so far as the record shows, to any interest of himself or his present employer. Nor do I quite see the significance which Respondent and the Parties of Interest urge for the fact that the industrial relations manager of the parent corporation, whom Kaufman, in the discussions in question, cited as the source of the initial suggestion to arrange a tavern brawl as the means of eliminating Voght, is an attorney. It is claimed that because of this, that official could not have made such a suggestion to Kaufman. Whether, as the argument rather implies, lawyers are an honored exception to Madison's adage that "if men were angels no government would be necessary" (or lawsuits either) hits too near home for us to want to be committed upon unless we have to. Happily, we need not grasp this nettle, since Colberg's testimony dealt not with what that official told Kaufman, but what Kaufman said to Colberg as the opening gambit in the exchange of ideas on how to get rid of Voght, and what they said to each other in exploring that subject further. I fail to see how these matters, separately or in combination, support the suggestion that Colberg's testimony "carries its own death wound."<sup>8</sup> As it happens, Colberg's testimony, in manner and content, struck me as altogether credible. Yet even if otherwise, at best to Respondent, that would be a matter to be weighed in resolving a conflict in testimony. Such weight as it might in such case have had is rather dissipated in the face of the failure of the person implicated to put his own sworn version of what took place between them on the line against that given by Colberg. Colberg's testimony is credited in its entirety.<sup>9</sup>

*B. The role of the arbitrator's award on whether effect may be here be given to the merits, as now disclosed*

It is urged upon us that the merits as we now know them are barred from our consideration by the award of the arbitrator.

On that subject our takeoff point is a reminder of the obvious: that, unlike a court, which is normally bound by an arbitration award unless reasons for not doing so are affirmatively demonstrated, the Board, under the exclusive jurisdiction vested in it in respect to unfair labor practices, which is "not . . . affected by any other means of adjustment" (Act, Section 10(a)), is not bound by an arbitration award; and though, for reasons of policy it will sometimes honor one, the determination of whether to do so always rests within the sound discretion vested in it "to determine in each case whether the public interest desires it to act [in prevention of unfair labor practices]." *N.L.R.B. v. Newark Morning Ledger Co.*, 120 F. 2d 262 (C.A. 3), cert. denied 314 U.S. 693.

The touchstone is the effectuation of the policies of the Act. Such a determination involves bringing competing interests into harmony. Basic and first in order of priority is the proper exercise of the power which accounts for the agency's creation—"to prevent and redress unfair labor practices."<sup>10</sup> To insure the adequate accomplishment of that objective, Congress has given the Board not only the exclusive power to decide unfair labor practice issues, but, because of the profound public interest in the subject, annually appropriates to the agency funds for proper investigation of charges, for adequate legal representation of the General Counsel as representative of the public interest, for trials before hearing examiners appointed under prescribed statutory standards (sec. 11 of the Administrative Procedure Act), and for legal assistance to the Board at the decisional stage. Where an unfair labor practice proceeding is heard and determined under private auspices, these governmental

<sup>8</sup> *N.L.R.B. v. Robbins Tire & Rubber Company, Inc.*, 161 F. 2d 798, 800 (C.A. 5).

<sup>9</sup> Where the record is not specific as to when the facts testified to by Colberg were first ascertained, the fair inference is that it was sometime after a conversation between Voght and Foreman Mark. This last occurred in the middle of March, approximately when Voght filed the original charge before us (*supra*, footnote 1). Voght's recital of the talk was received not as probative of the contents of Mark's statements, but as denoting the time and occasion when his suspicions concerning the arbitration proceeding were aroused. Mark, who had just been discharged, told Voght he "can't come right out and tell you what the real reasons were but I can assure you it was not for not working on Saturday or falsifying your application." In the same conversation, Mark attributed his inability to "come out in the open" to the fact that the Company had a demand note of his, in the sum of over \$4,000, which he would not be able to meet, if the note were called.

<sup>10</sup> S. Rept. 573, 74th Cong., 1st sess., p. 15; *Republic Steel Corporation v. N.L.R.B.*, 311 U.S. 7.

facilities are not provided, and so to the extent that the Board accepts an arbitration award in lieu of rendering its own decision, it *pro tanto* foregoes the contributions toward enlightenment which these facilities are intended to make, and also the contribution of its own "judgment and knowledge" in these matters, the exercise of which is a "purpose" in its having been "created." *N.L.R.B. v. Seven Up Bottling Company of Miami, Inc.*, 344 U.S. 344, 348. However, the Board foregoes them not out of caprice but as the price paid for advancement of another important interest—the promotion of stability of labor relations through encouragement of collective-bargaining agreements, including provisions for the voluntary settlements of labor disputes.

The two interests, however, are kept in reasonable balance. The Board is on guard to see that the sacrifice of the initial and basic interest is no greater than must inevitably flow from the nature of the private auspices used. Where the particular case shows the sacrifice of the one interest to be so great as to be an excessive price for the other, or where the circumstances accounting for a litigant's success in the arbitration proceeding, and, indeed, for its procurement of the arbitration agreement itself, make dubious the service even to the interest deferred to, then the reason for the policy is destroyed, and the justification for yielding its exclusive function to a private instrumentality falls. The Board then reasserts its exclusive power to determine the merits. That is what is implicit in the Board's pronouncement of the qualifications attached to honoring arbitration awards. In the *Spielberg* case,<sup>11</sup> by which the doctrine is identified, the Board stated:

In summary, the proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act. In these circumstances we believe that the desirable objective of encouraging the voluntary settlement of labor disputes will best be served by our recognition of the arbitrators' award

The surface appearance of compliance with the standards above stated is punctured by Colberg's revelations. They serve first to undermine the volitional element in the agreement to the arbitration, for Voght manifestly would not have agreed to it nor would Angle have had the face to suggest it had Colberg disclosed the one basic fact which would have taken the true reason for the discharge out of the realm of rational dispute. And they impugn the fairness and regularity of the proceeding, since the Respondent withheld from the arbitrator the one fact, known peculiarly to itself, which would have shown that what appeared to be a disputed issue was not such at all: the prearrangement between these two officials was the complete answer concerning the true cause, without regard to the circumstantial factors, to which the evidence before the arbitrator was confined, and on which alone he based his decision.

It is difficult to see how the Board can be asked to lend its imprimatur to an award so procured. The circumstances nullify the justification for the Board's yielding its statutory powers to a private instrumentality, quite apart from whether Representative Angle, as Kaufman stated to Colberg, had been acting in alliance with Kaufman—an imputation which Angle's most extraordinary performance the morning of the discharge hardly served to dispel. The justification falls regardless also of whether, even assuming the Union's own integrity, the Respondent's unilateral concealment of a key fact within its peculiar knowledge constitutes a basis for upsetting of an award by a court. As it happens, an award procured under the circumstances here disclosed, even assuming the Union's own integrity, is ground for upsetting it by a court. This is so under the following rule, as enunciated in texts and under case lore:

The general rule is that an award may be impeached for fraud, improper conduct, or unfair means employed by the successful party in procuring it. . . . *Thus fraudulent concealment of matters from the arbitrator is ground for avoiding the awards.*<sup>12</sup> [Emphasis supplied]

Illustrative of the above are: *Teal v. Bilby*, 123 U.S. 572, holding that where an arbitrator had been appointed to pass on the condition of cattle and their real condition could not be ascertained by examination, a party knowing of their diseased

<sup>11</sup> *Spielberg Manufacturing Company*, 112 NLRB 1080, 1082.

<sup>12</sup> 3 American Jurisprudence 962, Arbitration and Award, sec 140 To same effect: 3 Pomeroy's Equity Jurisprudence (1941), § 919(c) ("Proper grounds for avoiding an [arbitration] award include fraudulent concealment of material matters"); also 6 CJS 247 (Arbitration and Award, § 104(b); and Anno. 8 ALR 1082, citing cases under the general proposition that "equity will relieve against an award by fraud or *unfair means*" [Emphasis supplied]

condition and concealing it could not claim the benefit of a ruling by the arbitrator on that issue in his favor; *Johnson v. Wells*, 72 Fla. 290, 73 So. 188, holding an arbitrator's award to be subject to impeachment when based on false entries in partnership books by one of the litigants, which were unknown to the other litigant, who, though a copartner, had not had access to the books; *Wynne v. Greenleaf Johnson Lumber Co.*, 179 N.C. 320; 102 S.E. 403; 8 A.L.R. 1081 (1920), where the court, in vacating an award in a proceeding in which the successful litigant had gotten a material witness drunk for the purpose of preventing him from testifying, laid down the general rule that:

An agreement to submit a controversy to arbitration by necessary implication carries with it the condition that neither party will attempt by any unfair or fraudulent means to affect the award which is to be made.

A like principle is incorporated in the arbitration statutes of the various states and also the Federal one.<sup>13</sup> The typical provision is that an award is subject to impeachment if obtained by "fraud, corruption or other undue means."<sup>14</sup> And it is also applicable in labor arbitration awards.<sup>15</sup>

As stated, the Board, in adopting its voluntary policy in honoring arbitration awards, has not thereby constricted itself to the body of doctrine by which courts are governed in upsetting such awards. But the fact that the circumstances disclosed are deemed by courts to be an affirmative basis for not giving finality to awards by which they are bound in the first instance, is an *a fortiori* guide to whether the Board should give finality to an award by which it is not bound and which it recognizes only in deference to a competing public interest, which, as stated, would be dubiously served by an award procured in the manner here revealed.

It would seem rather enough that a fact within the peculiar knowledge of the Company, and not then ascertainable by Voght even in the exercise of due diligence has now come to light, which is conclusive of the issue. And this is so even if we were to disregard the additional fact that from the outset there was the kind of diversity of interest between Voght and the Union in respect to the very activity accounting for his discharge, which would dull the impulse to diligent inquiry by it on his behalf—thereby further differentiating this case from *Spielberg* and cases applying it (such as *I. Oscherwitz and Sons*, 130 NLRB 1078, and *Denver-Chicago Trucking Company Inc.*, 132 NLRB 1416) where, in contrast with the built-in cleavage here, there was complete unity of interest between the union and the individuals there involved.<sup>16</sup>

In the circumstances here presented, the Board would reopen a case after rendition of its own decision for reconsideration of the merits, and so would courts under principles applicable to newly discovered evidence. On that score, some courts will lift the bars against reopening for newly discovered evidence which is even "cumulative," provided it "is sufficient to render clear that which was before a doubtful case, or if it is of a conclusive or decisive character, or of so controlling a character that it would probably change the verdict."<sup>17</sup> No problem is presented, however, where the evidence, instead of being cumulative, of a "distinct probative fact" apart from any adduced at the trial. The difference between the two classes of evidence has been aptly expressed as follows:

[Cumulative evidence] speaks to facts in relation to which there was evidence on the trial, or in other words, it is additional evidence of the same kind, and to the same point as that given on the first trial. But it is not cumulative if it

<sup>13</sup> U.S. Arbitration Act, 61 Stat. 669; U.S.C.A., sec. 10.

<sup>14</sup> See Kellor (executive vice-president of the Am'n. Arbit. Assn.), *Arbitration in Action* (1941), annex 1, Summary of the Statutes Governing Arbitration, pp. 217, *et seq.*

<sup>15</sup> Trotta, *Arbitration and the Law* (1961), 110-111; Kramer, *Arbitration Under the Taft-Hartley Act*, 11th Annual NYU Conference on Labor (1958), 262; Updegraff and McCoy, *Arbitration of Labor Disputes* (CCH 1946), p. 126; Zack, *Arbitration of Labor Disputes* (1947), 11.

<sup>16</sup> For the significance of that factor in respect to the weight to be given arbitration awards, see Samoff and Summers, *The Effect of Collective Bargaining Provisions on NLRB Action*, CCH Lab, Law Jour. (October 1957), p. 677, *et al.*, and cases cited in footnotes 23, 25, and 45. Cf. Smythe, *Individual and Group Interests in Collective Labor Relations*, 13 Lab. Law Jour. (June 1962), 439, 445.

<sup>17</sup> *Torain v. Terrell*, 93 S.W. 10, 12; 122 Ky. 745. Accord: *Burford v. Benton*, 44 Okla. 283, 144 p. 319, and cases collected in *Weber v. Weber*, 74 Okla. 244, 179, pp. 31, 34-35; *Andersen v. State*, 43 Conn. 514, 21 American Rep. 669; *Wiegand v. Lincoln Tractor*, 123 Nebr. 766, 244 N.W. 298.

relates to distinct and independent facts of a different character tending to establish the same ground of claim or defense.<sup>18</sup>

Where as here, the *fact* is "new" and is also "conclusive" of the whole issue, it is difficult to see how we can tenably avoid taking cognizance of it.

Respondent suggests that Voght's recourse is within the framework of the arbitration proceeding—either to the arbitrator or to a court. Were the subject matter other than one over which the Board has exclusive jurisdiction in the first instance, that would be Voght's only recourse as a matter of sheer necessity. However, once the award is shown to have been achieved under circumstances not fulfilling the purpose for which the Board sometimes defers its exclusive jurisdiction, then there is no valid basis for relegating the aggrieved person to processes outside the Board. This would be so even if Voght still had available to him the services of Local 307. But for reasons which carry no opprobrium to it, Local 307 is now a party adverse in interest to Voght, and whatever might be said of what went on before, it is now formally committed to a position in support of the award. It cannot reasonably be expected to—nor can it tenably—go to the arbitrator or to a court to take a reverse position to the one advanced here.

For all of these reasons, it is concluded that the circumstances of this case take it outside the Board's policy in respect to recognition of arbitration awards, and that the policies of the Act require taking cognizance of the merits as now revealed to us.

### C. Conclusions concerning violations established

The decisiveness on the ultimate issue of what took place between Vice Presidents Kaufman and Colberg is not affected by the fact that were that element out of that case, there would be color of plausibility to the reasons assigned by Respondent to justify the discharge. Respondent suggests that since such reasons would constitute "just cause" for a discharge in a case concerned with that issue—as, for example in an arbitration proceeding involving the application of a contract provision forbidding the discharge of any employee for "unjust cause"—they constituted by that token "just cause" within the meaning of Section 10(c), which provides against reinstatement or backpay for any employee, who has been "suspended or discharged for just cause." The argument misconceives the meaning and scope of that provision, and overlooks the significance of the entire expression—"for just cause." This means actually for such a cause and not merely ostensibly so. As Respondent interprets the term, any "good" reason constitutes "just cause" regardless of whether it motivated the discharge.

It is true that in the ordinary determination of what the real reason was, weight is given to the nature of the offense which the Employer advances as having motivated its action. This achieves special importance where direct evidence of motivation is lacking and the ultimate issue turns on inference, for in such a case one must rely heavily on the probabilities. "The nature of the cause assigned is . . . an evidentiary factor bearing on the probability of whether it is the real cause." *Mike Persia Chevrolet Corporation of Houston*, 134 NLRB 1402 (p. 1411 (Stevenson's case)). However, that washes out when we are explicitly and credibly told from the very source of the action itself what the true reason was, and we are told by the same source that the surface validity of the assigned reasons is what accounted for their selection as the means of covering up the true reason.

It is found that Voght was discharged not for the reasons assigned by Respondent in this proceeding and in the proceeding before the arbitrator but because of his activity in opposition to Local 307 as previously described. These consisted of Voght's original activity directly on behalf of the Moulders Union, followed by his gathering signatures to and filing with the Board the petitions for decertification of Local 307. Since that activity is a right protected by Section 7, Respondent, by discharging Voght therefor, interfered with, restrained, and coerced Voght in the exercise of his rights under Section 7, in violation of Section 8(a)(1) of the Act.

Voght's activity was directed not merely to the dislodgment of Local 307, but to its ultimate replacement by the Moulders Union. Respondent's discrimination against Voght thus "discouraged" membership in the Moulders Union and "encouraged" it in Local 307, within the meaning of Section 8(a)(3) of the Act.

<sup>18</sup> *Weber v. Weber*, 74 Okla. 244, 179 p. 31, quoting from *Layman v. Minn. St. R. Co.*, 66 Minn. 452, 69 N.W. 329. See general discussion in 39 American Jurisprudence 177 (New Trial § 171); 49 C.J.S. 493 (Judgments § 273); and the annotation in 158 ALR 1253, 1258.

The action being calculated to encourage membership in Local 307 and to discourage it in the other, it also constituted assistance to Local 307. This is so without regard to whether Respondent acted out of love of Local 307 or out of an aversion to unsettling an existing relationship, or because in the kind of initiative demonstrated by Voght, it saw the potential of a militant leadership too rich for its blood. Also, the fact of such assistance is not affected by whether Local 307 sought out or solicited it from Respondent. Nevertheless, if Local 307 had rejected the assistance, I might have hesitated to make an express finding of a violation of Section 8(a)(2) because of the stigma attaching to a union's being found to have been unlawfully "assisted" by an employer. If all we had to go by was the conduct of the employee committee, I would deem this evidence insufficient to justify the conclusion that Local 307 accepted the assistance inherent in Respondent's conduct. However, Angle's performance puts the matter in a different light. The only matter that shields Local 307 from an explicit finding that Angle acted in collusion with Respondent (i.e. up to the point where the arbitration agreement was signed) is the paradox presented by the formal rule of evidence, which limits to Respondent alone the binding effect of Kaufman's statement to Colberg that he had prearranged with Angle both the cause of the discharge and also its timing. Kaufman's statement to Colberg exposes the deceptive purpose of Respondent, but the limitation in the binding character of Kaufman's statement prevents a finding against Local 307 that it consciously made itself a party to Kaufman's deceptive scheme. However, that consideration is not conclusive on whether Angle, independently of collusion as such, accepted the assistance to Local 307 which inhered in Respondent's action toward Voght. The actions of Angle from the time of the discharge to the entry into the arbitration agreement could hardly have fitted more neatly into the plan as unfolded by Kaufman to Colberg. What it tended to achieve was not a "phoney" arbitration proceeding in the sense of an insincere presentation of the case before the arbitrator by the attorney selected to represent Voght, who was himself ignorant of the basic fact withheld by Respondent, but a premature hardening of the situation calculated to prevent uncovering the true facts. Angle's entire performance from the time of the discharge had a singular cast. He never explained how he could have known of the discharge so soon after it happened and before even the committee knew about it. His later actions were equally strange. It is difficult to understand a union agent's seeking out an employee in order to induce him to file a grievance on a matter concerning which neither he nor the committee had as yet had any complaint, and, still more, for the purpose of inducing the employee to protest a discharge for activity hostile to the union, which is the agent's meal ticket. It is true that all employees have a common interest in being protected against reprisal for engaging in concerted activity regardless of what union it is for or against, and on that score, I am persuaded of the sincerity of the employee committee. Yet it was not they but Angle who greeted Voght with the denunciation of the Company's action as having gone "too far." Such favor from the agent of the Union which was the very target of Voght's activity has a "doth protest too much" ring. I can visualize one in Angle's position telling Voght that although his conduct had been directed against Local 307, the basic principle was such that it would be willing nevertheless to pursue a grievance for him. But one would hardly have expected such a show of denunciatory fervor on behalf of an opponent as distinguished from a loyal adherent of Local 307.

Yet if Angle had sincerely sought to undo the wrong he was making a show of denouncing, nothing could have been more calculated to thwart such a purpose than his actions thereafter. Arbitration is not the first step in such a situation, but the last after efforts to achieve a rescission of the action through negotiation have failed. The preliminary steps are not idle formalities. They serve the purpose of providing the particulars on the basis of which to formulate a position, and to negotiate for a revocation of the action complained of. Had the first step in the grievance procedure of consulting with Foreman Mark been pursued, there would have been elicited from him to the committee a statement of reasons, which it could have checked for their accuracy and for the manner in which the offenses relied on were handled in the past. Yet with no preliminary inquiry from the discharging foreman and with no information on which to formulate a position, Angle opened the discussion with Colberg by demanding his reinstatement, giving no reason, and thereby virtually asking for the rejection which followed. And when Colberg refused to give any reason for the discharge, instead of suggesting that matters be kept in abeyance until a reason was given which could be inquired into as a basis of negotiating the grievance, Angle at once suggested arbitration, which was at once accepted. This froze the situation in a manner calculated to foreclose the Union from such avenues of information as would normally have been open to it as an aid in negotiating the grievance, and if that failed, in effectively presenting the issue to the arbitrator. It is difficult to believe that Angle, with his kind of experience and sophistication, overlooked that angle in his perform-

ance on October 27. I conclude that he was the conscious and willing recipient of the assistance thus derived by Local 307 from Respondent's action toward Voght. I therefore find and conclude that Respondent, by its action, assisted Local 307 in violation of Section 8(a)(2).<sup>19</sup>

The General Counsel also claims a violation of Section 8(a)(4). That provision makes it an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act." What Voght filed was not a charge but a decertification petition, and he had not given any testimony. A finding of an 8(a)(4) violation would thus have to rest on the proposition that the word "charges" is here used not in the literal sense but as a generic expression referring to documents filed with the Board for the purpose of invoking its processes. This interpretation is, indeed, a tenable one. It may be presumed that just as Congress, by the use of the expression "he," did not intend to limit the protection of 8(a)(4) to a particular sex, it did not by the use of the word "charges" intend any distinction based on the particular type of proceeding in which the Board's processes were sought to be invoked. Supporting this view is the fact that the protection extended to employees against reprisal for testifying before the Board makes no distinction concerning the nature of the proceeding in which the testimony was given. It has been held, in fact, that despite the literal language of the subsection, its protections extend not only to an employee who "has . . . given testimony" but also to one who has appeared at a hearing in order to testify, but was not in fact put on the witness stand. See *Dal-Tex Optical Co., Inc.*, 131 NLRB 715, 730 and cases cited therein in footnote 10. However, since such activity, by virtue of its inherently concerted character, is protected by Section 7, reprisal therefor is generally reached under the broad prohibition of Section 8(a)(1). There would therefore seem to be no compelling need to pass upon whether 8(a)(4) has also been violated. Were we squarely faced with this issue, I would conclude that the term "charges" as used in 8(a)(4) extends to all documents filed with the Board for the purpose of invoking its jurisdiction, and therefore, that in filing the decertification petitions, Voght came within its coverage.

## II. THE REMEDY

The finding of discrimination against Voght calls for the usual cease and desist requirement—here of a broad character because of the manner in which it was effectuated and its character in any event as going to the "very heart of the Act" (*N.L.R.B. v. Entwistle, Mfg. Co.*, 120 F. 2d 532, 536 (C.A. 4))—and the standard offer of full reinstatement in accordance with the principle of *Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827, and for backpay reimbursement under the make-whole formula of *F. W. Woolworth Company*, 90 NLRB 289. Respondent claims as a bar to a remedy for Voght his execution, for a money consideration, of a "release" to Respondent of all claims against it. This, however, was a private settlement not affecting the "public rights" involved or binding on the Board, which is responsible for their vindication. *Nathanson Trustee in Bankruptcy of MacKenzie Coach Lines v. N.L.R.B.* 344 U.S. 25. The document does not show that the Board approved the settlement, nor is it claimed that it was submitted to the Regional Director of the Board for that purpose. Respondent relies on representations made by Voght to it that he had been assured by a field examiner of the Regional Office that it would be acceptable. Voght denies this, but even if it were the other way, I hardly see that it dispensed with the requirement for submission of the same by Respondent—who was represented in the matter by its counsel—to the Regional Director for approval. Of course, whatever sums have been paid by Respondent to Voght are to be applied toward the backpay liability.

A more difficult question is the remedy called for by the finding of unlawful assistance to Local 307. Where such a finding is made, the employer is usually required to withdraw recognition from the assisted union until it is newly certified. However, the requirement is not mechanically invoked and may be dispensed with under certain circumstances. In *Lykes Bros. Inc. of Georgia*, 128 NLRB 606, the Board drew a distinction between a situation where "the unlawful assistance served to strengthen the incumbent union's representative status at a time where the employees affected could appropriately seek and were seeking to change their representatives," and one where it "occurred shortly after the execution of a presumptively lawful contract and

<sup>19</sup> The General Counsel seeks a like finding in respect to the International which is the other Party of Interest. The incumbent union at Respondent's plant, and the one with which Respondent has the contract, is the local. The International would understandably be sympathetic with the local, but I find its interest too remote to be embraced within the finding of assistance. And although Angle's capacity to act for Local 307 derives from his position with the International, he was at all times acting specifically for the local.

at a time when, because of that contract, the employees could not appropriately seek to change their representatives and there is no evidence of any background conduct before the execution of the contract which would be said to have strengthened the [incumbent's] representative status." Concerning the latter situation, the Board stated (p. 611):

Under all the circumstances, therefore, we do not believe that an order requiring the parties to suspend their bargaining relationships pending an election is necessary to effectuate the policies of the Act.

The rationale of the *Lykes* case seems to control the situation here and hence to dispense with the requirement for withdrawal of recognition *this* time. The remedy will therefore be limited to a prohibition against Respondent's unlawfully assisting or supporting Local 307 in the future. Similar considerations govern whether the *Moulders Union* should be specifically named in the cease and desist provisions and in the notice. To do so might tend to create a misimpression among the employees concerning the present appropriateness of a redetermination of the employees' bargaining representative, and suggest that there is a current rivalry between the two unions. Hence there will only be a general provision against "discouraging" membership in any labor organization without naming the *Moulders Union*, but a specific one against "encouragement" thereof in Local 307.<sup>20</sup>

Upon the foregoing findings and conclusions, and the entire record, and pursuant to Section 10(c) of the Act, the Trial Examiner hereby issues the following:

#### RECOMMENDED ORDER

Precision Fittings, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employee because of activity in support of any labor organization, or in opposition to Local 307, International Union, Allied Industrial Workers of America, AFL-CIO, or any other labor organization, or for soliciting or obtaining signatures to or filing with National Labor Relations Board any petition for decertification of the above or any other labor organization.

(b) Discharging or otherwise discriminating against any employee for the purpose of discouraging membership in any labor organization, or encouraging membership in Local 307, or any other labor organization.

(c) Assisting or supporting Local 307 by reprisals against any employee for activity in opposition to it, or in any other manner.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization to join or assist or to support or oppose any labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action, which it is found will effectuate the policies of the Act:

(a) Offer Wilbur Voght immediate and full reinstatement to his former position, or to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered as a result of his discharge, in the manner set forth above in the section entitled "The Remedy."

(b) Upon request make available to the Board and its agents for examination and copying all payroll records and other data helpful in analyzing backpay due and the right of reinstatement under the preceding provision.

(c) Post at its various establishments in Andrews, Indiana, copies of the attached notice marked "Appendix."<sup>21</sup> Copies of said notice, to be furnished by the Regional

<sup>20</sup> Since the conclusions of law are articulated in portion C of part I of this report, we will dispense with their formal statement here, except to add that in view of the nature of Respondent's operations (*supra*, footnote 3), the violations of Section 8(a)(1)(2) and (3) here found are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

<sup>21</sup> In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "A Decision and Order."

Director for the Twenty-fifth Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to 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-fifth Region in writing within 20 days from the receipt of this Intermediate Report and Recommended Order what steps it has taken to comply herewith.<sup>22</sup>

<sup>22</sup> In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of the Order what steps the Respondent has taken to comply herewith."

## APPENDIX

### NOTICE TO ALL EMPLOYEES

Pursuant to a Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT discharge or otherwise discriminate against any employee because of activity in support of any labor organization, or in opposition to Local 307, International Union, Allied Industrial Workers of America, AFL-CIO, or any other labor organization, or for soliciting or obtaining signatures to or filing with the National Labor Relations Board any petition for decertification of the above or any other labor organization.

WE WILL NOT discharge or otherwise discriminate against any employee in order to discourage membership in any labor organization, or encourage membership in Local 307, or any other labor organization.

WE WILL NOT assist or support Local 307 by reprisal against any employee for activity in opposition to it, or in any other manner.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right of self-organization, to join or assist or to support or oppose any 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 such activity.

WE WILL offer Wilbur Voght immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and we will make him whole for any loss of pay suffered as a result of his discharge.

PRECISION FITTINGS, INC.,  
Employer.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 W. Market Street, Indianapolis, Indiana, Telephone No. Melrose 3-8921, if they have any question concerning this notice or compliance with its provisions.

**International Brotherhood of Electrical Workers, AFL-CIO,  
Local 22 and Federal Electric Corporation. Case No. 17-CD-47.  
April 1, 1963**

## DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the Act, following charges filed by Federal Electric Corporation, herein called FEC, 141 NLRB No. 91.