

Coca-Cola Bottling Company—Indianapolis, Indiana—Incorporated and Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Coca-Cola Employees Association of Indianapolis. *Case No. 25-CA-1649. June 10, 1963*

DECISION AND ORDER

On March 28, 1963, Trial Examiner George J. Bott 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 filed exceptions to the Intermediate Report and a supporting brief.¹

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

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report and the entire record in this case, including the exceptions and brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.²

¹ Respondent's request for oral argument is hereby denied as the record and the Respondent's brief, in our opinion, adequately set forth the issues and the positions of the parties.

² For the reasons set forth in the dissent in *Isis Plumbing & Heating Co.*, 138 NLRB 716, Member Leedom would not grant interest on backpay.

The Appendix attached to the Intermediate Report is hereby amended by adding the following 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

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Upon a charge and amended charges filed by the above-named Union on September 24 and 27 and October 15, 1962, respectively, against Coca-Cola Bottling Company—Indianapolis, Indiana—Incorporated, herein sometimes referred to as the Respondent or Company, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing dated November 30, 1962, alleging that Respondent had engaged in unfair labor practices in violation of Section 8(a)(1), (2), and (3) of the National Labor Relations Act, herein called the Act. Respondent and the Party of Interest filed answers, and a hearing was held before Trial Examiner George J. Bott on January 21, 22, and 24, 1963, at Indianapolis, Indiana. All parties

were represented at the hearing. Subsequent to the hearing the General Counsel, Respondent, and Party of Interest filed briefs which I have considered.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent is, and has been at all times material herein, an Indiana corporation with a place of business in Indianapolis, Indiana, where it is engaged in the business of bottling and distributing soft drinks. During the 12-month period prior to the issuance of the complaint, which period is representative of all times material herein, Respondent, in the course and conduct of its business operations, purchased, transferred, and delivered to its Indianapolis, Indiana, plant materials valued in excess of \$100,000, of which materials valued in excess of \$50,000, were transported to said plant directly from States of the United States other than the State of Indiana.

Respondent concedes and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Teamsters or Union, and Coca-Cola Employees Association of Indianapolis, herein called the Association, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The setting and the issues*

It appears that Respondent's employees have not been represented in the past by an outside labor organization although there is a suggestion in the record that earlier attempts to organize have been made. Sometime just prior to July 1962, however, Retail Wholesale and Department Store Union, AFL-CIO, started to organize employees of Respondent in its plant and production department, referred to for convenience at the hearing and here, as the "inside unit." On July 23, 1962, the Retail Union filed a petition for an election with the Board.

Sometime prior to August 1962, the Teamsters attempted to organize the Respondent's drivers and others, hereafter called the outside unit, and on August 14, 1962, filed a petition for an election among employees in that unit.

It also appears that the Brewery and Soft Drink Workers, AFL-CIO, had been active in both units in the summer of 1962 and made some showing of representation in each.

Subsequently, at hearings on the respective petitions filed by the Retail Store Union and the Teamsters, it was agreed by the parties that separate elections for the inside and outside units would be held at Respondent's plant on September 17, 1962.

The Association, which has been in existence at Respondent's plant in one form or another since the early thirties, but which, after some apparent labor relations activity in the late forties, had become relatively dormant thereafter, was reactivated sometime in August 1962 during the outside unions' organizing efforts, and was afforded a place on the ballots by agreement of all parties in the consent agreements executed on August 20 and 24, 1962.

The elections took place on September 17, 1962, and the Retail Union, AFL-CIO, won the inside unit election overwhelmingly and has since been certified by the Board. The Teamsters did not appear on the ballot in inside unit vote but vied with the Association and the Brewery and Soft Drink Workers in the outside unit election. None of the choices received a majority of the ballots cast, however, and a runoff election was held on October 8, 1962, with the Association and the Teamsters on the ballot. The Association received a majority of the votes cast, but objections to the election were filed by the Teamsters, and the Association has not been certified. In addition to its objections, the Teamsters, on October 15, 1962, filed an amended charge against Respondent raising the issue of domination and support of the Association by Respondent in violation of Section 8(a)(2) of the Act.

Respondent takes the position that the Association was not a labor organization within the meaning of the Act for many years prior to its reactivation in mid-August 1962, and that, therefore, any question of domination or support of it by Respondent is immaterial and irrelevant. In addition, Respondent argues that there is no evidence of domination, support, or interference with the Association by Respondent after mid-August 1962, and that the consent-election agreement of August 24, 1962, precludes an inquiry into alleged Section 8(a)(2) violations prior thereto, absent

a showing of continued violations. The Association agrees generally with Respondent's position and also contends that there was clear line of cleavage between the "old" Association and the "new" when the Association was allegedly reorganized in August 1962. The General Counsel takes issue with all these contentions.

In addition to the question of domination, there is an allegation of the discriminatory discharge of one employee, and allegations of improper interrogation, promises, and threats. Respondent contends the individual quit, and denies any acts of general interference with employee rights under the Act.

B. The alleged domination of the Association in violation of Section 8(a)(2) of the Act

1. The Association prior to August 1962

The exact origin and early activities of the Association are lost in antiquity. It appears to have started sometime in 1933 or 1934, and although originally it seems to have been little more than a social vehicle there is some evidence that even then its representatives discussed wage increases with the Company. Glen Barnes, who has no official title but who the record shows is next in authority to James S. Yuncker, president of Respondent, testified that "The Employees wanted to have an organization to get together for various occasions, picnics, and we would have someone out of each group to represent them for wage increases and so forth and so on." In any case, a clear change in Association direction and purpose occurred in 1947, for according to Barnes, in that year an outside union was attempting to organize the employees, and the Association adopted a constitution and bylaws, and shortly thereafter executed a labor agreement with the Company.

The 1947 constitution of the Association, which had not been superseded by any other governing law as of the time of the hearing, provides in its preamble that its purpose is ". . . creating and establishing such association as the exclusive bargaining agent of such employees in the negotiation and execution of labor contracts from time to time . . . regarding wages, hours, conditions of employment . . ."

The collective-bargaining agreement entered into between the Association and the Company in 1948 grants exclusive representation to the Association and covers wages, hours, and working conditions. The contract was for a term of 1 year, but provided that it should continue from year-to-year unless either party gave appropriate notice of desire to change or terminate it. No such notice was ever given.

For at least 10 years prior to the asserted reorganization of the Association in 1962, it had but two functioning officers. Glen Barnes and James Stuart were elected to the offices of president and secretary-treasurer, respectively, in 1952, the year of the last election of officers prior to 1962, and remained in office during that period. Barnes was not President Yuncker's assistant at the time of his election but did assume his present post in 1957 during his tenure as president of the Association. Stuart has been Respondent's upstairs office manager and an admitted supervisor for 20 years and was so all during his tenure as officer of the Association.

All of the funds of the Association during its entire existence have been derived from two sources, namely, dues and Coca-Cola vending machines in Respondent's plant. The dues have always been 50 cents per year, and have been collected from the employees by supervisor department heads and turned over to the Association's secretary-treasurer. In addition, at least four employees had dues deducted from their pay by Respondent. It appears that all employees below the rank of company official paid dues, for they were all eligible for membership and belonged.¹

As to the other source of Association income, the vending machines, the evidence indicates that they were originally purchased by the Association from the Company on an installment plan based on the number of drinks sold from each machine. As the machines became obsolete, Respondent gave the Association used coolers of about the same value as the original machines. Respondent's employees service the machines, and the Association receives a commission from the Company on drinks purchased by the employees. In 1962, the commission amounted to something over \$300, which is about the average over the years.

As of mid-August 1962, when new officers of the Association were elected, the Association had approximately \$2,400 in a checking account in a local bank and had accounts receivable of about \$2,000. These receivables were based on loans made by the Association over the years. The Associations' funds, except for some

¹ Frank Holland, Respondent's secretary-treasurer, was not a member of the Association but he admitted that he collected dues from ". . . the men in the office" and turned them over to Stuart.

miscellaneous expense items, charitable contributions, and donations of flowers, have been used primarily as a loan fund for members of the Association. Barnes, Respondent's second in command, and Stuart, an office manager, being the Associations' only officers, had complete control of the assets of the Association, kept the checkbook and records, and controlled personally the loans and charitable contributions. Stuart testified that an applicant for a loan would have to be employed for 6 months, be a good risk, and have the recommendation of his supervisor before a loan would be made. Barnes and Stuart decided that \$500 contributions to the United Givers Fund should be made by the Association. There have not been any meetings of the Association during Barnes' time in office, and the membership has had no formal voice, therefore, in settling the loan or gift policy of the Association. In addition, the record shows that Respondent's office and record-keeping facilities are used in the making and collection of loans. Stuart and Barnes interview applicants for loans during working hours, and Respondent's payroll facilities are used to make deductions from the borrowers' pay for delivery to the Association. Lending money is a considerable part of the Associations' relationship with employees. In 1960, for example, about \$8,500 was lent and repaid. No interest has ever been charged on the loans.

2. Events in August 1962 and subsequent thereto

An election of officers of the Association took place on August 22, 1962. Barnes and Stuart, or other supervisors, were not present at this meeting and the new officers elected were rank-and-file employees. It is contended by the Association that there is . . . a clear line of cleavage between the organization that existed prior to August 1962 . . ." and the organization that elected officers on August 22, 1962, and subsequently participated in the Board election. In my opinion, however, the line between the "old" Association and the "new" is shadowy, indistinct, and virtually nonexistent.

Edward Vance, a route salesman who was elected president of the Association on August 22, 1962, testified that he, and a dozen or so other employees whose names he could not remember, went to see Barnes and talked to him about the Association. Barnes, according to Vance, said he was an officer of the Company and could have nothing to do with the Association, and therefore Vance and the others "took it on their own from there."

Vance next saw James Yuncker, Respondent's president, and asked him for the use of Respondent's conference room and Yuncker said, ". . . it was all right." Nothing was said about the purpose of the request, said Vance. I do not believe Vance was a completely candid witness about the inception of the "new" Association, but in any case, his own admissions reveal the lack of a visible fracture between the old and the new. Vance admitted that he was elected temporary president of the Association in a meeting in the plant conference room on or about August 8. He testified that the Company had called a sales meeting of drivers for the same afternoon, and that the employees stayed for the Association meeting. During the sales meeting of all drivers, Barnes said he could not participate further in the Association. In the subsequent Association meeting, however, supervisors were present and attempted to participate. Confusion resulted when some of the employees objected to the presence of their supervisors, and most of the employees left. James Crawley, the Association's vice president, testified that 25 or 30 employees remained and Vance was elected temporary president for a week.

Vance testified, and it was also stipulated, that the funds of the Association, as it existed prior to August 22, have remained in the same bank and the bank has merely been notified that the new officers may sign checks against the funds. In addition to having control of the funds, the Association still collects commissions from the Company on the sales from the vending machines. Vance stated that although the Association had collected no dues since he had been elected there had been expenditures, and that he and other officers had signed checks. It also appears that, although the Association has made no loans since the new officers were elected, it is still receiving payments on loans made by the Association prior to the election.

Vance testified that a new constitution for the Association is under consideration but for all intents and purposes the old constitution is still in effect. The Association has not printed new application or dues cards and, as indicated earlier, has collected no dues since August 1962. Nevertheless, the Association which participated in the Board election in September 1962, submitted to the Board, on August 24, 1962, a list of ". . . members in good standing of Coca Cola Em-

ployees Association . . ." who had designated the Association, according to the certificate accompanying the list, as their bargaining agent. This list was received by Vance from the Company a week earlier, and since the Association had collected no dues after August 22, 1962, or had any list of new members, it had to be nothing but a list of employees who had paid dues to the Association before August. The list was submitted to the Board as a "showing of interest" to justify according the Association a place on the ballot.

Other evidence blurring the alleged separation between the old Association and the new appears in the record. The Association, of course, operates under the same name as it always did. Although Vance was elected temporary president of the Association on or about August 8, 1962, Stuart and Barnes were still signing checks for loans from the Association on August 7. As stated earlier, the Association is still receiving payments on loans made prior to August 22, 1962, and indeed, the new vice president of the Association is still paying on a large loan. Although the Association has collected no dues since the August election of officers, supervisors were still collecting dues for the Association as late as the first week in August. This money, of course, has gone into the Association's treasury and is being used for current expenses. In addition, Respondent's secretary-treasurer, Holland, suggested a change in language to be added to the back of the Association's dues card in late July, and the stamp which would imprint the inscription was ordered by Stuart, picked up by Supervisor Kramer, used in the first week of August, and paid for by an Association check signed by Stuart and Barnes on August 9, 1962.

Finally with respect to separation, the Company took no formal action at any time to advise the employees that it would no longer support the Association or participate in it, or to advise the employees that they were free to join or not join the Association. The only evidence in the record of any attempt to separate the two organizations in the minds of the employees is found in the testimony of Association officers and Barnes, and their testimony is vague, uncertain, and contradictory in parts. Vance, for example, testified that the only statement made by Barnes was at the sales meeting preceding the first Association meeting and that Barnes there said he could no longer have anything to do with the Association. Barnes said he spoke at the first Association meeting and that he was invited to that meeting by Vance. At another point Barnes said he resigned orally to Vance, and that Stuart did too. Stuart does not bear this out, and the only action that Stuart took to disassociate himself and the Company from the Association was to cease activity in the Association and turn all books and records over to the new officers. Viewing the testimony in the best possible light for Respondent, the most favorable inference that can be drawn is that Barnes made a laconic statement at a meeting of employees about not having anything more to do with the Association and then walked out.

C. Analysis and conclusions regarding the Association

At the hearing I rejected Respondent's offer to prove that the Teamsters had information regarding the nature and existence of the Association, and the matters regarding it, which later formed the basis for the charge it filed with the Board, at the time it entered into the consent-election agreement on August 24, 1962. Respondent contends that the Board is precluded from entertaining the charges of violation of Section 8(a)(2) of the Act, therefore, unless there is a showing of continuing violations after the consent agreement was executed. I find no merit in this first position of Respondent.

Respondent, in effect, equates the agreement for a consent election to a settlement of unfair labor practice charges, which the Board generally honors as a matter of policy unless there is a violation of the agreement. The consent agreement, however, was not a settlement of unfair labor practice charges respecting the Association for there was no such charge filed until subsequent to the elections. As General Counsel suggests, there is no evidence that the consent agreement purported to be or was intended as a settlement of Respondent's alleged unfair labor practices. The rights which the Board seeks to vindicate are public and not private rights, and the actions of the Teamsters in agreeing to have the Association on the ballot cannot estop the Board, even if the Teamsters knew that the Association was vulnerable. The Board does not vouch for the legality of any union when, for administrative convenience, it permits the parties to agree to a speedy election. When a charge is subsequently filed questioning the legitimacy of a union, it is the Board's duty to investigate it, and it may proceed to disestablish such organization in order that the Act's purposes may not be frustrated. Although the Board has on occasion pointed to the existence of continued unfair labor practices after the agreement or election,

this is but an added reason for proceeding with the charge and not a limitation on the Board's authority.²

I also find and conclude, contrary to the contention of Respondent, that the Association was a labor organization prior to the election of new officers in August 1962. It is true that the Association had not been particularly effective, and that it was quiescent for many years of its life, from a conventional labor relations point of view. But these characteristics may be earmarks of company domination and are not the tests by which an organization is measured as a "labor organization" under the Act. It is to be recalled that Barnes testified that even in the early days of its existence the Association was intended to have representatives to discuss wages with management. When an outside union tried to organize Respondent's employees in 1947, the Association became more alive and a constitution declaring the Association's purpose to be collective bargaining was adopted, and a labor agreement subsequently negotiated. Although no labor activities of a conventional sort on its part were evident for years after that, the Association did not die but continued its loan and social activities, and did not change its governing law or amend its labor agreement. Perhaps the threat from outside vanished, but, in any case, it is somewhat significant that when there was again talk of outside organizations in the summer of 1962, Respondent's officer, Holland, drafted an inscription for the Associations' dues cards by which the recipient agreed to have the Association represent him in matters pertaining "to working conditions, grievances and wages." Shortly thereafter, with no discernible break in continuity, as set forth below, new officers of the Association were elected but kept the name, the funds, and the books and records of the old. The Association is presently admittedly a labor organization, and I find that it has been such since its inception, existing in part for the purpose of dealing with Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work.³

If the Association was a labor organization at all times prior to the election of employee officers in August 1962, as I have found, then it is clear—and it is not even seriously controverted—that it was dominated, interfered with, and assisted financially and otherwise in violation of Section 8(a)(2) of the Act. The evidence has been set forth in detail above but, in short, Respondent's supervisors collected the Association dues and turned them and part of the vending machine income over to the Association. The Association's officers were agents of Respondent, and being the only officers, completely controlled the policy and the activities of the Association, including the disbursement of Association funds. In addition, Respondent used its personnel, time, and facilities in the operation and management of the Association. Separately, most of these acts amount to control of rather than mere interference with the Associations' affairs, and, in combination, it is evident that domination of the Association resulted.

Respondent's and the Association's claims that there was a real reorganization of the Association and a clear cleavage between the old and the new must also be rejected. The facts as found above with respect to events in August 1962, and thereafter, show that essentially the only "reorganization" of the Association was in the election of new officers and little else. A complete fracture is required between a dominated organization and its successor under the cases, and, in the absence of such a cleavage, the effect of the domination can only be erased by an order completely disestablishing the alleged successor.⁴ Not only do the connecting links between the Association before the election of new officers and after, such as the complete transfer and use of funds collected by the Company for the use of the Association, but the absence of any notice by the Respondent to employees that it would not deal with the dominated organization and that employees were free to start fresh, convinces me that the effects of Respondent's domination and support of the Association can only be dissipated by complete disestablishment of it, and I will so recommend.⁵

² *Locomotive Finished Material Company*, 52 NLRB 922, 926-927, *affd.* 142 F.2d 802 (C. A. 10); *Valentine Sugars Inc., and Valite Corporation*, 102 NLRB 313, 315-316. See also *The Wallace Corporation v. NLRB.*, 323 U.S. 248, 253; *NLRB. v. Sun Shipbuilding and Dry Dock Co.*, 135 F. 2d 15, 17-18 (C.A. 3); *Magnolia Petroleum Company v. NLRB.*, 115 F. 2d 1007, 1012-1013 (C.A. 10).

³ *NLRB v Cabot Carbon Company and Cabot Shops, Inc.*, 360 U.S. 203.

⁴ *NLRB. v. Southern Bell Telephone and Telegraph Company*, 319 U.S. 50; *NLRB v. Link-Belt Company*, 311 U.S. 584.

⁵ This is my recommendation regardless of the existence of unfair labor practices after the Association officers were elected. However, there is evidence of Respondent's demon-

D. *The discharge of Everett Dorman*

Dorman was hired in July 1961 as an experienced cooler repairman. There is no question raised about his competency.

On August 7, 1962, Dorman was advised by Supervisor Williams that there would be an Association meeting that afternoon and to be present. He attended and spoke in favor of the Association. On August 8, Dorman, concerned about what he considered company efforts to select the officers of the Association, contacted the Teamsters and signed a union card. He became active in the Teamsters and distributed union cards.

On or about August 8, Supervisor Williams told Dorman that President Yuncker wanted to see him. Dorman visited Yuncker who asked the employee if he were for the Union. Dorman gave Yuncker an evasive answer, and Yuncker asked the employee if he would work with Vance to help the Association. Dorman replied that he would.

On September 11, 1962, Dorman went to an Association meeting and spoke in favor of an outside union as opposed to the Association. He urged the employees to attend the Teamsters' meetings.

Sometime during the next day while Dorman was making his rounds servicing Respondent's coolers located in the vicinity of Indianapolis, he made his customary telephone call back to the plant for instructions and was told by Supervisor Williams that Yuncker wanted to see him. He returned to the plant and saw Yuncker. Barnes was present at the meeting. Yuncker asked Dorman why he had spoken out so strongly for the Teamsters at the meeting the previous evening. Dorman misled Yuncker by telling him that his strategy was to pull the Teamster vote from the Brewery Workers (which he claimed to be very strong) and thereby let the Association win the coming Labor Board election. Yuncker approved Dorman's pretended plan and told him to do it his way.

Dorman was designated and acted as an observer for the Teamsters in the Board election of September 16, which took place in Respondent's plant. In the election the Teamsters polled 47 votes, the Association 30, and the Brewery Workers 15. On September 20, Williams again told Dorman to come in off his rounds to see Yuncker and Dorman did so. Barnes was present in the president's office. Yuncker accused Dorman of not "taking his men" to the Association in the election as the results clearly indicated. Dorman admitted that he had not but rather had "taken them" to the Teamsters. Yuncker was angered and called Dorman a "dirty lying son of a——" but did not finish the phrase. Barnes also accused the employee of lying. Dorman then returned to work.

Later in the day, Dorman was called in again to see Yuncker. Yuncker told the employee to think over what Yuncker had been trying to get across to him. Dorman walked out.

On the same day, after Dorman had reported back to the plant after his rounds, Williams told him that Yuncker wished to see him again. Williams escorted Dorman to Yuncker's office and Barnes was again present. Dorman was told that they were waiting for Supervisor Gumberts. When Gumberts arrived Yuncker told him that Dorman was his new "assistant manager" and that he would report for duty the next morning. Dorman told the group that he could not accept the job and asked if he could still vote for the Teamsters. Yuncker told him that he could not since he would be a company man on the company payroll.

Dorman led Yuncker to believe that he would accept the job so that he could gain time to think the problem over. He contacted the Teamsters, and then faked illness over the weekend, reporting to the Company that he was sick. On Monday, September 24, 1962, he reported to his old department and Supervisor Williams. Williams told Dorman that he was now a foreman, but Dorman demurred. Dorman then went to Yuncker's office. Yuncker stated that he understood the employee was not reporting to his new job and Dorman told him he would if he were permitted to participate in the election and union affairs. Yuncker told Dorman that he could not since he would be a "company man." Dorman said he could not report. Yuncker told the employee that he was a "damn fool." There is some question about whether Yuncker told Dorman he was fired, or whether Dorman asked if he was, and got an affirmative reply. In any event, Dorman was not permitted to have his old job, and did not report to the new, and has not worked for Respondent since.

President Yuncker testified about his meetings and conversations with Dorman and, although the emphasis he placed on certain factors was different than Dorman's,

strated preference for the Association in August and September 1962 (discussed in section III, D, *infra*), and this too may be considered by the Board in ordering disestablishment. *N.L.R.B. v. Southern Bell Telephone and Telegraph Company, supra*, footnote 4.

the basic facts in Dorman's testimony are not really in dispute. Yuncker's motivation in offering Dorman a supervisor's job is, however, in issue.

Yuncker said that Dorman came to his office a number of times a week all during the election campaign to tell Yuncker what he was doing. Yuncker said these meetings were voluntary on Dorman's part, and that Yuncker had some doubts at the time that Dorman was telling him the truth about his activities on behalf of the Association. Yuncker admitted that he called Dorman to his office after the first election and asked him, "What happened to your crowd," and that Dorman replied, "They voted for the Teamsters." Yuncker then accused Dorman of doing the same. Yuncker agreed that he told Dorman after the first election that Dorman was the "lowest-down liar . . ." Yuncker had ever talked to, and that all that Dorman had told him about his activities in the election campaign was a lie.

Yuncker did not flatly deny that he interrogated Dorman about his union affiliations or tell him to work with Vance to get the Association in, although he denied generally any acts of interference. He did not deny that he asked Dorman why he had spoken out for the Teamsters at an Association meeting, and was only able to say that he could not recall Dorman's reply that it was his plan to split the Brewery Workers' vote in the election by drawing some employees to the Teamsters.

Yuncker's account of his offer of a supervisor position to Dorman was as follows: He said that when the Retail Clerks Union had won the inside unit election he sent for Supervisors Gumberts and Williams and told them that there would be a 40-hour week and an assistant foreman would be needed. It appears from Yuncker's testimony that Dorman and Barnes were also present when Yuncker first announced to Gumberts and Williams that Dorman would be the new assistant foreman. This also was the first that Dorman had heard of it.

Yuncker stated that he personally offered Dorman the job as assistant foreman in the basement and that Dorman agreed to take the job and report. On Monday, according to Yuncker, Dorman told him that his attorney had told him that he need not take the job offered him. Yuncker asked the employee if the attorney had told him that he did not have to work for the Company unless he wanted to and got no reply. According to Yuncker, Dorman then walked out. He did admit under cross-examination, however, that Dorman protested taking the job by stating that he could not face the men he was working with if he took the supervisory job.

With respect to the job itself, Yuncker stated that he thought Dorman would make a "good man in the basement . . ."; that the Company paid no attention to seniority but placed men according to ability only. He said that Dorman would have received no cut in pay, but did not know what Dorman was making at the time. It appears that the man Dorman was to assist was earning less than Dorman made as a repairman, but Yuncker appeared unaware of this. Yuncker said he did not know anything about the quality of Dorman's work and that he probably asked Dorman's supervisor, Williams, for a recommendation. It appears clear that Gumberts, for whom Dorman would work, was not consulted. Williams said Yuncker asked him for a man ". . . that could be trustworthy . . ." and he recommended Dorman, but Yuncker said that he told Williams that Williams' department was overstaffed and he wanted a "good man" from him.

Williams and Gumberts were present when Yuncker offered Dorman the job as supervisor, Williams admitted that Dorman acted as if he did not want the job. Williams was also present when Dorman saw Yuncker for the last time, and although he denied that Yuncker said that Dorman was fired, he said he could not remember the exact words that Yuncker used. Supervisor Gumberts' role in Dorman's transfer was described by him as follows: He had needed an assistant foreman to help Foreman Jones for about 2 months, and had told Yuncker so. On Wednesday, September 20, 1962, Yuncker called Gumberts to his office and told him he was assigning Dorman to him. Gumberts thanked Yuncker, particularly because Dorman's mechanical ability would be helpful in making minor repairs on conveyor equipment in the basement. Dorman was present when Gumberts was told he had a new assistant. Gumberts stated that he has not permanently filled the job which Dorman was offered, but has an employee in it on an acting basis. Gumberts admitted that he did not know what Dorman's rate would have been as assistant foreman but thought it probably would remain the same as before. He knew that Foreman Jones was earning about \$75 per week but did not know that Dorman, who was slated to assist Jones, was making over \$100 per week.

Respondent contends that Dorman was offered a job as supervisor for good business reasons; that he accepted and quit. It contends that the offer of a promotion was not in any way illegally motivated, and strenuously attacks Dorman's credibility. I have carefully examined Dorman's testimony and considered it in the light of the whole record and, although I feel Dorman did engage in exaggerations at times and

was inclined to view facts in retrospect from a perspective most favorable to his own case, and, indeed, without any apparent rhyme or reason incredibly disputed the authenticity of his own signature on an Association document, I am convinced that his account of how he came to lose his job is basically true. Respondent's account contains inconsistencies and implausibilities, but more importantly, President Yuncker, in essence, agrees with and corroborates Dorman.

It is really not very important whether Dorman was constantly and voluntarily in Yuncker's office before the Board election, as Yuncker testified, or present only six or seven times at Yuncker's command. But even here, I credit Dorman for Supervisor Williams did not deny that he told Dorman, on August 8, that Yuncker wanted to see him, or that he called Dorman in from his rounds in September to see Yuncker. In addition, Barnes was present during most of Dorman's meetings with Yuncker and all that he was able to contribute to the record about Dorman was a rather terse statement that Dorman was offered another job "because of his mechanical ability . . ." and quit after his "promotion." It would seem in view of Barnes' presence and close association with Yuncker he would know more about what happened and whether Dorman had been in Yuncker's office as often as Yuncker said. But regardless of whether Dorman was called to Yuncker's office, or went freely in the beginning, Yuncker did not deny that he asked Dorman to work for the Association and censored him for speaking out for the Teamsters at an Association meeting. In addition, there is no real dispute that, when the results of the first election showed a plurality for the Teamsters, Yuncker became angered, accused Dorman of voting for the Teamsters and called him a liar. The only logical explanation of Yuncker's attitude toward Dorman, expressed so forcefully to Dorman after the election, and on the witness stand, is that Yuncker felt that Dorman had doublecrossed him by pretending to be for the Association while at the same time working for the Teamsters.

When, therefore, in the circumstances of asserted breach of faith and general untrustworthiness on Dorman's part (Yuncker testified that he suspected that Dorman was lying all along about his activities) Respondent tendered the employee a "promotion" to management's ranks, its claim that it was motivated solely by legitimate business reasons is more than suspect, it is incredible. It need only be recalled that President Yuncker himself, who normally has little to do with personnel management, and who did not know what Dorman would be paid or what Foreman Jones, Dorman's supervisor to be, earned, actively handled the whole Dorman affair. That he should interest himself in an ordinary personnel matter involving the very employee he had just accused of lying about his union activities is obviously more than a coincidence. In addition, Yuncker's alleged "promotion" of a person in whom he admittedly had no confidence is contradictory on its face. Other circumstances surrounding the "promotion" reveal its real basis. Gumberts, who would be over Dorman, was not consulted about him, and such important details as Dorman's salary were not discussed. Although Gumberts had needed a man for about 2 months, Yuncker announced his decision suddenly to him and in Dorman's presence. The precipitate nature of Yuncker's action, in the context of his recent conversations with Dorman, is evidence that the decision to "promote" and Dorman's activities were closely related.

I conclude that Yuncker offered Dorman a job as a supervisor as a reprisal against Dorman and in resentment at his activities on behalf of the Teamsters, rather than the Association as desired by Yuncker, and for the purpose of removing Dorman from the voting unit and stifling his union activities. Respondent's action was illegally motivated and was tantamount to a discharge of Dorman from his regular job. By such conduct Respondent discriminated against him in violation of Section 8(a)(3) and (1) of the Act.

E. Independent violations of Section 8(a)(1) of the Act

Yuncker's interrogation of Dorman about his activities on behalf of the Association and the Union, as described above, had no legitimate purpose, and, in the circumstances of Dorman's discharge and Respondent's domination and support of the Association, violated Section 8(a)(1) of the Act.

Employee Dallas McKinney was also interrogated by President Yuncker. He testified credibly that a few days after September 17, 1962, election Supervisor Williams sent him to Yuncker's office. Yuncker asked the employee if he liked his job and what he had against Yuncker. McKinney told Yuncker he had nothing against him, and Yuncker asked him why he was talking Union. Yuncker told McKinney that he knew what was best for the employees and to sign up with Vance in the Association. McKinney promised Yuncker that he would stop talking for

the Union. McKinney continued to advocate the Union and a few days later he was again called into Yuncker's office. Yuncker told him he was a liar and that "... one of these days ..." Yuncker and the employee were "... going to part company." I find that by interrogating McKinney about his union activity and impliedly threatening him with reprisal for it, Respondent violated Section 8(a)(1) of the Act.

Employee Charles Thomas also testified credibly that sometime in August 1962 he was called to Yuncker's office and asked if he knew who was trying to organize a union. Yuncker then asked the employee if he owed any money to the Association and what he would do if the Association called the loan. Yuncker told the employee to "... stick with the Company Association because we would get along better with the Company Association than we would with outside organizations." I find that by interrogating Thomas as described, and by implying that his loan could be called if he did not remain loyal to the Association, Respondent violated Section 8(a)(1) of the Act.⁶

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE 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 of commerce.

V. THE REMEDY

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

It has been found that Respondent did dominate and interfere with the administration of the Association and contribute financial and other support to it. Since the Association is incapable of functioning as a legitimate labor organization, it will be recommended that the Board issue its conventional order of disestablishment of the Association.

Having found that Respondent discriminated against Everett Dorman in violation of Section 8(a)(3) of the Act, it will be recommended that Respondent cease and desist therefrom and offer Everett Dorman full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he would have earned as wages from the date of the discrimination against him to the date of the offer of reinstatement less interim earnings, and in a manner consistent with Board policy set out in *F. W. Woolworth Company*, 90 NLRB 289. Interest on backpay shall be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

It will also be recommended that the Respondent preserve and, upon request, make available to the Board or its agents, payroll and other records to facilitate the computation of backpay.

It will be further recommended, in view of the nature of the unfair labor practices the Respondent has engaged in, that it cease and desist from infringing in any manner upon the rights guaranteed employees by Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Coca-Cola Employees Association are labor organizations within the meaning of the Act.

3. By dominating and interfering with the administration of the Association and contributing financial and other support to it, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(2) of the Act.

⁶ Respondent's interrogation of and threats to Dorman, McKinney, and Thomas, with suggestions that they support the Association, is evidence of Respondent's continued support of the Association after the asserted cleavage in the Association in August 1962. See footnote 5, above

4. By discriminating in regard to the hire and tenure of employment of Everett Dorman, thereby discouraging membership in the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

5. By engaging in the conduct set forth in section III, E, entitled, "Independent violations of Section 8(a)(1) of the Act," the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, it is recommended that the Respondent, Coca-Cola Bottling Company—Indianapolis, Indiana—Incorporated, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees about their union activities in a manner constituting interference, restraint, and coercion in violation of Section 8(a)(1) of the Act, and threatening its employees with reprisals because of their union activities.

(b) Dominating or interfering with the administration of Coca-Cola Employees Association, or any other labor organization of its employees, or contributing financial or other support thereto.

(c) Discharging or otherwise discriminating in respect to the hire and tenure of Everett Dorman or any other employe for the purpose of discouraging membership in Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights as guaranteed by Section 7 of the Act.

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

(a) Withdraw and withhold all recognition from, and completely disestablish, Coca-Cola Employees Association of Indianapolis, or any successor thereof, as representative of any of its employees for the purpose of dealing in respect to grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) Offer Everett Dorman immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for loss of pay in the manner set forth in the section of the report entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records needed to analyze and compute the amount of backpay and the right to reinstatement under the terms of this Recommended Order.

(d) Post at its plant at Indianapolis, Indiana, copies of said attached notice marked "Appendix."⁷ Copies of the notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and be maintained 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify said Regional Director, in writing, within 20 days from the date of receipt of this Intermediate Report and Recommended Order, what steps it has taken to comply herewith.⁸

⁷ 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 "Pursuant to a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

⁸ 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 this Order, what steps Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT interrogate our employees about their union activities in violation of the law.

WE WILL NOT threaten our employees with reprisals because of their union activities.

WE WILL NOT dominate or interfere with the administration of Coca-Cola Employees Association of Indianapolis, or any other labor organization, or contribute financial or other support thereto.

WE HEREBY WITHDRAW all recognition from and completely disestablish Coca-Cola Employees Association of Indianapolis, as representative of any of our employees for the purpose of dealing concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and will not recognize it or any successor thereto for any of the foregoing purposes.

WE WILL NOT discourage membership in Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discharging or refusing to reinstate any of our employees, or in any manner discriminating in regard to their hire or tenure of employment.

WE WILL offer to Everett Dorman immediate and full reinstatement to his former or a substantially equivalent position and make him whole for loss of pay suffered as a result of the discrimination against him.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the right of self-organization, to form labor organizations, to join or assist Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for their mutual aid or protection, or to refrain from any or all such activities.

Coca-Cola Bottling Company—Indianapolis, Indiana—Incorporated,
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, 614 ISTA Center, 150 West Market Street, Indianapolis 4, Indiana, 46204, Telephone No. Melrose 3-8921, if they have any question concerning this notice or compliance with its provisions.

Harvey Aluminum (Incorporated) and Frank Vidales. Case No. 21-CA-4696. June 10, 1963

DECISION AND ORDER

On January 8, 1963, Trial Examiner Maurice M. Miller 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 142 NLRB No. 113.