

In the Matter of W. S. WATKINS AND W. W. WATKINS, CO-PARTNERS,
DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF W. S.
WATKINS & SON *and* LUMBER & SAWMILL WORKERS, LOCAL 2903,
AFFILIATED WITH THE UNITED BROTHERHOOD OF CARPENTERS & JOIN-
ERS OF AMERICA, A. F. L.

Case No. 20-C-1176.—Decided October 30, 1943

DECISION

AND

ORDER

On September 13, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and that they take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. No exceptions to the findings and recommendations of the Trial Examiner have been filed. The Board has considered 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 the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the qualifications noted below:

1. The Trial Examiner has found that the seven employees named in the complaint were discriminatorily discharged on February 16, 1943, because of their membership in the Sawmill Workers. In reaching this conclusion, the Trial Examiner has relied in part on a finding that the respondents' contract of August 1, 1942, with the Millmen was not a closed-shop contract. We are not convinced that Section V of the contract is not more properly construed as making membership in the Millmen a condition of employment for all employees whose work involved the operation of machines or the use of carpenter tools. However, we deem it unnecessary, under the circumstances, to determine the legal effect of the contract. Admittedly, the closed-shop provision did not cover all the respondents'

employees. Nevertheless, the respondents discharged all their employees who were members of the Sawmill Workers, regardless of the nature of their work; and Watkins' testimony regarding his reasons for the discharges clearly indicates that the respondents were motivated by a desire to eliminate the members of the Sawmill Workers from the mill, rather than by a bona fide desire to enforce their contract with the Millmen. Furthermore, the record shows that the Millmen had not requested the respondents to discharge any of the employees herein involved. We are convinced, and we find, that the respondents discharged the employees in question not because of the contract but solely in order to encourage membership in the Millmen and discourage membership in the Sawmill Workers. We therefore find, as did the Trial Examiner, that, by discharging the seven employees named in the complaint, the respondents engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act.

2. The Trial Examiner has found that there is no merit in the respondents' contention that Reice was not discharged but voluntarily quit his employment. Reice, like other employees of the respondents, was asked by Watkins, on the morning of February 16, 1943, what union he belonged to, but, on replying "the Brotherhood of Railroad Trainmen," was permitted to enter the mill. Later, however, he was further questioned by Superintendent Garyigus and, when he admitted that he had a working permit from the Sawmill Workers, was told, "Well, you can go on and go back to work and then you can join the other union."¹ Thereupon Reice left the mill, stating that "as the rest of the boys in the union I belong to is out why I'm not going to stay here." By improperly conditioning Reice's continued employment on his joining the Millmen,² the respondents in effect discharged him, as found by the Trial Examiner. We see no reason for distinguishing between Reice and the other members of the Sawmill Workers discharged by the respondents on February 16, 1943.³ We therefore find that on February 16, 1943, the respondents discriminated against Reice, within the meaning of the Act.

3. The record tends to indicate, although we do not deem it necessary to decide, that both Hansen and Cherrington were supervisory employees, Hansen being yard foreman⁴ and Cherrington being foreman of the molding department. It further appears that Hansen was

¹ The Trial Examiner so found, on the basis of conflicting testimony, and we agree with his resolution of the conflict.

² Reice, as a laborer, was admittedly not covered by the closed-shop provision of the contract.

³ Cf. *Matter of Draper Corporation*, 52 N. L. R. B. 1477.

⁴ Hansen testified that as yard foreman he spent in excess of 50 percent of his time actually working with the men under him, that he had no authority to hire or discharge, and that his position was comparable to that of a leadman.

president of the Sawmill Workers and that Cherrington was active in soliciting members for that union. The respondents do not contend, however, that either Hansen or Cherrington was discharged in an attempt to maintain the attitude of neutrality required of the respondents by the Act in matters relating to the self-organization of their employees. On the contrary, the record makes it clear that the respondents objected not to Hansen's and Cherrington's membership and activities in a union, but only to that union's being the Sawmill Workers rather than the Millmen. Under the circumstances, we find, as did the Trial Examiner, that the discharges of Hansen and Cherrington, like those of the five other employees, were discriminatory, within the meaning of Section 8 (3) of the Act.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, W. S. Watkins and W. W. Watkins, co-partners, doing business under the trade name and style of W. S. Watkins & Son, Reno, Nevada, and their agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Lumber & Sawmill Workers, Local 2903, affiliated with the United Brotherhood of Carpenters & Joiners of America, A. F. L., or in any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of their employment;

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

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

(a) Offer to Florenz (Jack) Cipar, Lloyd Ericksen, Edmund Hansen, James Hersner, and John Reice immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights or privileges;

(b) Make whole Glenn Cherrington, Florenz (Jack) Cipar, Lloyd Ericksen, Edmund Hansen, James Hersner, John Reice, and John M. Sterud for any loss of pay they have suffered by reason of the respondents' discrimination against them, by payment to each of them of a sum

of money equal to the amount which he normally would have earned as wages from February 16, 1943, to the date of the respondents' offer of reinstatement or, in the case of Cherrington and Sterud, to the date of his reemployment, less his net earnings during said period;

(c) Post immediately in conspicuous places throughout their mill in Reno, Nevada, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to their employees stating: (1) that the respondents will not engage in the conduct from which they are ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that they will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that they will not discriminate against any employee because of membership in or activity on behalf of the Sawmill Workers;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondents have taken to comply herewith.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Mr. Louis L. Penfield, for the Board.

Mr. John F. Halley, of Reno, Nevada, for the respondent.

Mr. H. H. Williams, of Sacramento, Calif., for the Sawmill Workers.

STATEMENT OF THE CASE

Upon an amended charge duly filed August 5, 1943, by Lumber & Sawmill Workers, Local No. 2903, affiliated with the United Brotherhood of Carpenters & Joiners of America, (A. F. L.) herein called the Sawmill Workers, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region (San Francisco, California), issued its complaint dated August 5, 1943, against W. S. Watkins and W. W. Watkins, co-partners, doing business under the trade name and style of W. S. Watkins & Son, herein called the respondents, alleging that the respondents had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With respect to the unfair labor practices the complaint alleges, in substance, that the respondents: (1) on February 16, 1943 and thereafter questioned their employees regarding their affiliation with the Sawmill Workers, and advised their employees that they must join Millmen's Local 2142, affiliated with the United Brotherhood of Carpenters & Joiners of America, A. F. L., hereinafter called the Millmen; (2) on February 16, 1943 discharged seven named employees¹ because of their membership in the Sawmill Workers and thereafter refused to reinstate them, except that they offered to reinstate certain of them upon condition that they join the Millmen; and (3) that by these acts they have interfered with and are interfering with the exercise of rights guaranteed to employees by Section 7

¹ Glenn Cherrington, Florenz (Jack) Cipar, Lloyd Ericksen, Edmund Hansen, James Hersner, John Reice, and John M. Sterud.

of the Act. The complaint and notice of hearing were duly served upon the respondents, the Sawmill Workers, and the Millmen.

The respondents, by their answer verified on August 16, 1943, admitted certain of the allegations in the complaint, but denied that they had engaged in any unfair labor practices. They affirmatively alleged in substance that there existed on February 16, 1943, between themselves and the Millmen a contract requiring, as a condition of employment, membership in the Millmen of certain classifications of their employees, and that on or about this date the Millmen threatened to strike unless the respondents abided by the requirement above mentioned. The answer further alleged, specifically with respect to employee Edmund Hansen, that this employee was laid off because of his unreasonable demands for overtime.

Pursuant to notice, a hearing was held at Reno, Nevada, on August 19, 20 and 21, 1943 before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondents were represented by counsel, and the Sawmill Workers by an International Representative of the United Brotherhood of Carpenters & Joiners of America, herein called the Brotherhood. All parties participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the close of the hearing the Trial Examiner granted, without objection, a motion by counsel for the Board to conform the pleadings to the proof in minor respects. Counsel for the Board and for the respondents argued orally before the Trial Examiner, said argument appearing in the official transcript of the proceedings. Both counsel waived the privilege of filing a brief with the Trial Examiner after the close of the hearing.

Upon the record thus made, and from his observation of the witnesses, the Trial Examiner makes, in addition to the above, the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

W. S. Watkins and W. W. Watkins, co-partners doing business under the trade name and style of W. S. Watkins & Son, maintain a principal office and place of business in Reno, Nevada, where they are engaged in the manufacture, sale and distribution of sash, doors, cabinet work, moulding, and related lumber products.

During 1942 the respondents purchased, for use in the manufacture of their products, lumber and other raw materials valued at more than \$100,000, all of which was shipped to them from points outside the State of Nevada. During the same period the respondents produced and sold products valued at more than \$100,000, about 60 per cent of which was shipped to points outside the State of Nevada.

At the hearing the respondents admitted that the Board had jurisdiction in these proceedings.²

II. THE LABOR ORGANIZATIONS INVOLVED

Lumber & Sawmill Workers, Local 2903, affiliated with the United Brotherhood of Carpenters & Joiners of America, A. F. L., and Millmen's Local 2142, affiliated with the United Brotherhood of Carpenters & Joiners of America, A. F. L., are labor organizations admitting to membership employees of the respondents.

²The findings in the above section are based upon admissions in the respondents' answer and upon a stipulation entered into between counsel for the Board and for the respondents during the hearing.

III. THE UNFAIR LABOR PRACTICES

A. Events leading up to the discharge of 7 employees on February 16, 1943

1. The respondents' contractual relationship with several unions, particularly the Millmen and the Sawmill Workers

The respondents' management officials directly involved by the issues of this case are co-partners W. S. Watkins and his son W. W. Watkins, and superintendents William H. Garrigus. W. S. Watkins opened the Reno mill, herein concerned, in 1937, employing a number of wood workers formerly on his payroll in Oakland, California. According to his testimony, he urged these employees to organize a union, which would include as members workers of other similar plants in Reno, in order to equalize wages in the local industry.

In March, 1938, responding to Watkins' urging, a local of the Millmen was chartered in Reno. In July of the same year the respondents entered into a contract with it covering wages and working conditions. Thereafter from year to year similar contracts were executed. In February, 1943, when the discharges herein involved took place, there existed a contract entered into August 1, 1942, which provided, in part, as follows:

SECTION I. Benchman (sic), sash and doormen, stickermen, framemen, and shapermen, at the rate of One Dollar (\$1.00) per hour. Boxmen, rip saw and resaw men and men operating other woodworking machines at the rate of Eighty-five Cents (85¢) per hour.

SECTION II. Common labor may be employed in mills, provided they do not operate machines or use carpenter tools.

SECTION V. No person shall be allowed to operate any machine, ore (sic) use carpenter tools who is not a member of Local Union No. 2142 U. B. of C. & J. of A. unless he signifies his willingness to become a member.

Identical provisions had been included in the preceding annual contract³

In March, 1942 the respondents hired as an employee Humbert Pelizzari who then, as well as at the time of the hearing, was president of the Millmen's local. During the same month, upon W. S. Watkins' urging⁴ and with the approval of the Millmen, the Sawmill Workers organized certain classifications of the respondents' employees not specified in the agreement with the Millmen. Following a conference attended by Watkins, a representative of the Common Laborers Union, (A. F. L.), herein called the Laborers, Pelizzari and another representative of the Millmen, and Edmund Hansen, president of the Sawmill Workers, the respondents entered into a contract with the last-mentioned organization which provided for certain wages and working conditions covering "cut off swampers, rip saw tail off men, and planer tail off men." This agreement covered the period from April 1 to August 1, 1942. The Sawmill Workers made no effort to seek renewal of the agreement upon its expiration.

Although the record does not reveal specific terms and periods of coverage, the respondents for some time have also had agreements with other craft unions

³ As noted hereinafter, the respondents contend that the seven employees named in footnote 1 above were discharged in accordance with the above-quoted provisions of Section V. Also as found below, these provisions (1) clearly did not constitute a "closed shop" agreement; (2) were not enforced as such by either of the parties at any time; (3) and were not considered or claimed as such by the respondents until after the employees had been discharged for other reasons.

⁴ The testimony of the Sawmill Workers' president, Edmund Hansen, was undisputed that W. S. Watkins communicated with him and asked him to come to the plant and "sign up" some of the men.

and with the Laborers, above-described, embracing different classifications of their employees. The only contractual relationships involved in this case are those with the Millmen and Sawmill Workers.⁵ Both of these organizations include in their membership employees of other concerns in Reno as well as employees of the respondents.

2. Employment by the respondents of Hansen and subsequent increase of membership among the respondent's employees in the Sawmill Workers

Edmund Hansen, identified above as head of the Sawmill Workers, was employed by the respondents in August, 1942, as a resawyer. In November he was placed in charge of stock in a new department, and about the last of the year was made foreman of the yard crew, unloading and grading lumber.

Although at the time of his hiring the Sawmill Workers' Agreement had expired, and although as a resawyer he operated a machine, Hansen was not required, either by the Millmen or by the respondents to become a member of the Millmen. Nor were other Sawmill Workers members, then employed by the respondents, and operating machines, required or requested to transfer into the Millmen.

Between August 1942 and February 16, 1943 a number of new employees joined the Sawmill Workers or paid installments upon initiation fees. Some of them had worked for a time under working permits issued by the Millmen and thereafter transferred into the Sawmill Workers. Such transfers were made with the knowledge of but without substantial objection by either the respondents or the Millmen.⁶

By February 16, 1943 about ten of the respondents' employees, including the individuals named in footnote 1 above, were members of or were paying initiation fees to the Sawmill Workers.

3. Notification by Sawmill Workers of intent to seek wage increases

Early in February, 1943, the Sawmill Workers voted to seek an increase in wages for its members from the respondents and other Reno employers. In order to clarify the jurisdictional lines between the Millmen and the Sawmill Workers at the respondents' plant, representatives of the two unions met on two occasions, the last on February 12. Although the record does not establish that any definite understanding was reached, on Saturday, February 13, the Sawmill Workers wrote to the respondents asking for an increase of wages, and for a meeting with the respondents on February 15. On the latter date Hansen telephoned to W. S. Watkins and requested him to be present later that day at a meeting of the local's representatives and other woodworking employees to discuss wages. Watkins replied that he had nothing to discuss with the Sawmill workers and hung up the receiver.⁷

⁵ The validity of no contract between the respondents and the Millmen is in issue in this case. The issues as they relate to the contract existing on February 16, 1943, simply raise questions as to interpretation of Section V of that contract; that is, whether or not certain employees were covered by the terms of that Section and whether or not they were actually discharged in accordance with them.

⁶ The above findings are based upon the testimony of both Hansen and Pelizarri. Hansen testified that in September 1942, when Glenn Cherrington was employed and sought membership in the Sawmill Workers, there had been some dispute as to whether he should join this organization or the Millmen. His testimony is uncontradicted that after a conference with Watkins it was decided by both unions that Cherrington should join the Sawmill Workers.

⁷ Hansen's testimony as to this interview was undisputed.

B. The discharge of 7 employees on February 16, 1943

1. The events of February 16

On the evening of February 15, after Hansen had called him, Watkins told the watchman to lock the mill. Watkins appeared at the mill gate early the morning of February 16 and waited for his employees to come to work. He testified that he did this because:

I didn't know which men I wanted to get who belonged to this Union [Sawmill Workers] but I wanted to get them segregated so I could have 2142 [Millmen] talk to them . . .

He further admitted:

. . . each one that came in I asked him what union he belonged to and if he belonged to the Mill and Timber Workers [Sawmill Workers] I told him to go in the glazing room and meet a committee that was in there from this other Union . . . If they argued with me I told them there wasn't any work for them.⁸

On the same morning, according to their uncontradicted testimony, Pelizarri and Edward McDonald, the latter another official of the Millmen, were instructed by Watkins to go to the glazing room and sign up in their organization the employees who belonged to the Sawmill Workers. The Millmen representatives obeyed Watkins, although neither the Millmen nor its officials had theretofore asked the respondent to take this or any other action with respect to the Sawmill Workers.

As a result of Watkins' action, at least two of the Sawmill Workers transferred at once to the Millmen.⁹ Others sent to the glazing room refused to transfer and were thereupon discharged.

Employee Cherrington became angry when accosted by Watkins in the above-described manner. He went home and stayed for three days. He then returned, transferred into the Millmen, and about three weeks later voluntarily quit his job. The respondents conceded at the hearing that Cherrington received no pay during the three days he remained away before joining the Millmen.

When employee John Reice was asked by Watkins what union he belonged to, he replied: "the Brotherhood of Railroad Trainmen", and was permitted to enter the mill. Shortly thereafter he was asked by Superintendent Garrigus if he belonged to Hansen's union. Reice admitted that he had a working permit from this organization. Garrigus then said that he should join the Millmen, but could continue work. Reice replied that as long as the other "boys" in his union were out he would not stay, and left the mill. Two days later he returned to the plant, was given his pay check in full and a discharge slip stating that he was laid off, on February 16 for the reason: "Out of Work."¹⁰

⁸ Employees accorded this treatment by Watkins included the individuals named in the complaint, listed in footnote 1 above. Lloyd Ericksen's testimony is undisputed that when he told Watkins he belonged to Hansen's union he was informed there would be no work for him, but that he might go into the glazing room to warm up. Other employees, including John Sterud, Fred Hersner and Robert Elam, testified similarly, without contradiction. Hansen, however, was told that there was no work for him and was not permitted to enter the mill to get his apron. While Florenz (Jack) Cipar was told immediately, upon admitting that he belonged to the Sawmill Workers, to go home and that there was no work for him.

⁹ Employees Mihalovich and Elam.

¹⁰ These findings are based upon the credible testimony of Reice, Garrigus denied having told the employee that he should join the Millmen. In view of Watkins' admitted conduct that morning, it is reasonable to believe that the superintendent followed the same course of action, and the Trial Examiner does not accept his denial as true.

Each of the other six employees named in the complaint and listed in footnote 1 above received discharge notices identical with that given to Reice.

2. Refusal of Watkins to discuss discharges with International Representatives

Within an hour or two after the discharges, Hansen and H. H. Williams, International Representatives of the parent organization of both local unions, went to the respondents' office to interview W. S. Watkins. When Williams asked Watkins to explain the discharges, the latter replied, "You're not running my business; I'm running it; get out!"

3. Meeting of February 20 of respondents and union officials

On or about February 20 representatives of both locals met with W. S. Watkins at the office of Thomas O Craven, U. S. Attorney for the District of Nevada, who had previously been retained as counsel for the respondents. At this meeting Williams pointed out that the respondents' contract with the Millmen was not a closed shop agreement. As a result of the ensuing discussion, the existing contract was amended to include the following provisions:

SECTION I. Company agrees to recognize union [Millmen] as the sole collective bargaining agency for its employees, exclusive of confidential clerical employees, glaziers, teamsters, and maintenance electricians.

It shall be a condition of employment that all employees coming under the jurisdiction of Local 2142 as defined above, shall be members in good standing in union. Notification in writing, to company by union secretary of the failure of any employee to abide by the condition of this clause, shall be deemed cause for discharge.

The contract, as thus amended, was due to expire August 1, 1943, a few days before the opening of this hearing. Although no direct evidence establishes that the contract was extended beyond that date, or a new contract entered into, the fact that closed shop provisions are now in effect is implicit in the oral argument of counsel for the Board before the Trial Examiner.²¹

Although efforts were made at the meeting of February 20, and thereafter, to arrange for the reinstatement of the discharged employees, Watkins refused to discuss the matter.

4. Subsequent reemployment of Sterud

On August 4, 1943, a few days before the hearing, the respondents rehired John Sterud, upon his yielding to the requirement that he join the Millmen. There is no showing in the record, however, that Sterud was made whole for any loss of pay between February 16 and August 4, 1943. In view of the fact that the respondents conceded that Cherrington had not been made whole for his loss of pay during the three days he was out of employment, the Trial Examiner infers that no different treatment was accorded to Sterud.

There is no evidence in the record that any of the employees named in the complaint, except Cherrington and Sterud, obtained or were offered reemployment by the respondents after February 16, 1943.

²¹ Questioned by the Trial Examiner regarding his contention as to reinstatement provisions for the discharged employees, counsel for the Board replied:

. . . it may be that they would have to join the Millmen because of an apparently valid existing contract . . .

5. Contentions and admissions of the respondents as to the discharges

(a) With respect to the discharges in general

In its answer the respondents allege that they were informed on or about February 14 "by officers and committees" of the Millmen that several of their employees, members of the Sawmill Workers, had refused to transfer to the Millmen, and that if such transfer were not made and if the respondents did not enforce the provisions of the existing contract with the Millmen and require such transfer, the Millmen would go on strike.

This contention is without support of any evidence and was contradicted by Millmen officials who denied that any threat of a strike had ever been made known to Watkins by them, had ever been voted upon at a union meeting, or that transfer of membership from the Sawmill Workers to the Millmen had ever been sought, either directly with the individuals or through the management.

Furthermore, the admissions of Watkins at the hearing refute the above-noted allegations in the answer. When asked why he took his admitted action on February 16, he answered:

Well, I'll tell you. For five or six—well, I'd say about three to four weeks there had just been an undercurrent throughout the mill and the night of the 15th there—why, that was about three or four in the afternoon and different ones of the fellows that I would talk to always seemed to be just an undercurrent in the mill and there was something the matter. As if there was going to be something the matter, so I tried to find out what it was. I generally leave the mill alone. And I go through the mill and if I see a man that ought to be fired I fire him right there and then. Don't monkey around about it.

His attention again directed to the "undercurrent" he had mentioned. Watkins continued:

I knew there was something the matter around the mill but I couldn't find out exactly what it was and I got ahold of Bill the superintendent, and I asked him if he knew what was the matter. Well, he says, its the same darn thing all over again. This gang over here is trying to get control of this mill.

He identified "this gang" as the Sawmill Workers, and testified that he had previously heard reported that this organization was trying to "ease into the mill." He further stated that he had never "had a dollar's worth of trouble with nobody" until Hansen came to work for him.

When, on cross-examination, it was pointed out to Watkins that he, himself, had asked the Sawmill Workers to organize his employees, he replied:

Certainly. But we only had about two or three and we wound up with a lot more.

Also on cross-examination he admitted that the only "protests" he had ever received about the organizing of the Sawmill Workers were "rumors" which he had heard since the first of 1943. He also testified that he had known the Sawmill Workers "were getting some men and I knew they had no right to get them."

Watkins testified, with respect to Hansen's effort to arrange for a meeting on February 15:

. . . Hansen had been wanting to get part of the men in that mill and I made up my mind he wasn't going to get them and by golly I didn't give

a whoop whether Hansen wanted me to meet the International man or not . . .

When asked why, since he had been aware of an "undercurrent" for several weeks he had waited until February 16 to take summary action, Watkins replied:

I'll be jiggered if I know.

and later added:

It was the end of the pay period; that is one of the reasons that it could be, see, and with the talk that was going around the mill I knew that something had to be done and done darn quick, and in dealing with these men that is the way I've always dealt with them and while I might have bumped up against some ruling or something like that, why I didn't realize anything about that at the time.

When asked why he wanted all of the employees in the Millmen, he answered:

Well, because I never had no trouble like that, where you're dealing with one union. Here I have the Glazer's Union, I have the Electrical Union and I have the Teamster's Union. I don't have no trouble with them at all, never have; but in the mill if you have two unions you are going to have trouble. I've got one sticker over on one side, I got in the moulding department over here; I've got two stickers over there. Well, now, if this man runs that and this man runs that, where is your dividing line? I've had the same thing in Oakland there. I had three and four hundred men under me and the tank and pipe men we used to use when they didn't have anything there; in order to hold them over in our place. And I'd always have trouble, by golly. After a while I put an end to that, our own union.

The following colloquy is also revealing:

Q. Well, did you feel that it was up to you to decide which union these men should be in?

A. (WATKINS.) Well, that morning I did.

Q. You did that morning?

A. Yes.

Q. And so you decided to select the Millmen; is that right?

A. That is right . . .

When questioned as to why he would not confer with the Williams on the morning of February 16, Watkins replied:

Well, I'll tell you, I don't know why I didn't, but, by golly, I figured that I could straighten that out myself. There wasn't many men then. I have always been able to talk to men. These particular men I just couldn't talk to them as far as joining up with this other union.

He finally admitted that he had refused this interview because:

I was hot.

When asked whether his real objection was to the employees' refusal to join the Millmen or their joining the Sawmill Workers, Watkins declared:

No. I'll tell you. I was the most disappointed guy you ever seen with these men. Every man that belonged to that Mill and Timber Workers (Sawmill Workers) was a crackerjack of a man, every darn one of them, and we spent time organizing them and they were a darned good outfit.

He further admitted that membership in either union did not affect a workman's ability, but testified:

I don't want this monkey business. Do' you realize the troubles a man has trying to operate today? It's not only labor; labor is the easiest of the whole thing. You've got your lumber, your stuff to buy, and it's terrible. I'm telling you! I know!

The following colloquy not only refutes the allegations in the answer, but plainly reveals the motives prompting Watkins' action of February 16:

Q. You objected to their joining the Lumber and Sawmill Workers; is that it?

A. No. They should have joined our own union (Millmen) but where they started to go in I only started with two and I wound up with 10 or 12 or 15. I didn't even know who I had.

Q. That is what you objected to, their going into that union?

A. That is right; getting too many from that union, because I already had a bargaining agency or bargaining contract with this other union.

Q. The Lumber and Sawmill Workers hadn't demanded that you bargain with them, had they?

A. No. But I've already told you, when you have two unions and one is trying to get the best of the other one and the other one is already there, by golly, you're going to have trouble in the mill. Now that is all there is to it. And you can't stop it. It had to be stopped and I stopped it, and that is all there is to it, and whatever the bill is I'll pay it, but by golly, I'm sure not going to work—I'd do the same thing all over again. We might just as well have it understood right here on the record—the same thing all over again.

Q. You admit that you shouldn't have done this?

A. I admit that I was hot-headed, that I do admit. It could have been done very easily another way, but this is the way I've always done it and that is the way it had to be done. We can't monkey around on these things. You can have all these laws you want to, but by golly, I'm telling you the law is a handicap and it isn't a good law.

The answer also alleges that the respondents informed each of the employees named in the complaint of the existence of a closed shop contract with the Millmen and that the "question of their employment . . . would have to be settled" with the Millmen, and that the "said employees could continue in the employment of respondents when they had settled the matter of their Union affiliation" with the Millmen. No evidence was adduced by the respondents to support this allegation.

During the hearing counsel for the respondents claimed, in effect, that because some of the employees named in the complaint operated machines, they were covered by Section V of the above-quoted contract with the Millmen, and that the respondents were justified in discharging them because they had not joined the Millmen, even if they had not been informed of the respondents' interpretation of that clause as being a closed-shop provision. Counsel admitted, however, that the nature of the work of employees James Hersner and John Reice was such that they were not covered by the respondents' interpretation of the provision. He further stated that he had no "objection" to the Trial Examiner's finding a violation of Section 8 (3) of the Act as to Hersner.

(b) With respect to the discharge of Hansen

As a separate defense in the case of Hansen, the respondents' answer alleges that W. S. Watkins, on or about January 30, instructed "his foreman and time-keeper" to lay Hansen off; that Watkins thereafter left the city until February 3 when he returned to find Hansen still employed; that the foreman explained that he had forgotten the order; that Watkins had then ordered that Hansen be laid off on February 15; that Hansen was on that date laid off and given his pay check; and that the reason for the discharge was his unreasonable demand for an hour's overtime work each day.

Assuming that by the term "foreman", used in the answer, the respondent meant "superintendent", the testimony of Garrigus supports certain portions of the answer, but refutes others. The superintendent testified that he had been told by Watkins in January to discharge Hansen, but that he had not done so because the mill was short-handed and the employee was needed. Although admitting that it was customary to give an employee notice of an intention to discharge him, Garrigus testified that no such notice was given to Hansen. As to the matter of overtime, the testimony of Hansen, Garrigus and Watkins is in agreement that when he had been hired it was with the understanding that he should receive at least one hour's overtime each day. The testimony of the superintendent and Hansen is likewise in agreement that sometime after the latter had been transferred to the yard, early in 1943, he was not allowed this overtime and protested. Garrigus testified that he considered Hansen's request to be "insubordinate," despite the agreement under which he had been hired.

Watkins made no claim that Hansen's request was "insubordinate," but testified that he had been told by his son that Hansen had said he would quit if he did not get overtime, and so had decided to "get him out." Watkins' testimony on the point of overtime is both confused and contradictory. Although stating that Hansen continued until his discharge to receive more overtime than agreed upon; he also testified that for several weeks Hansen did not get overtime, and later admitted that he did not know whether or not the employee received overtime.

As to the actual discharge, Watkins testified that although he had arranged to have the employee's check made out for February 15, he forgot to discharge Hansen until the following day.

(c) With respect to the discharge of John Reice

The respondents' answer alleges, as a separate defense in the case of employee Hersner, that he was not a member either of the Sawmill Workers or the Millmen. During the hearing the evidence developed and counsel for the respondents stated that the foregoing allegation pertained to John Reice, and not Hersner.

As found in footnote 10 above, Garrigus denied having told Reice, in effect, that if he wanted to work he must join the Millmen. The superintendent testified that after the employee reported for work he asked what the excitement was about. Upon being informed that it "was nothing very serious," according to Garrigus' testimony, the employee told him that he was a member of the Railroad Brotherhood, and did not want to become involved in a labor dispute, went home and did not return.

6. Conclusions as to the discharges

The evidence fails to support either of the respondents' contentions: (1) that the contract of August, 1942, with the Millmen contained a closed shop provision

covering any of the employees named in the complaint; or (2) that these employees were so informed before they were discharged on February 16, 1943. The terms of Section V, even if viewed apart from the practice under them, plainly do not make membership in the Millmen a condition of employment, but only of operating a machine or using carpenter tools. As to practice under the contract, the testimony of Millmen officers makes clear that the organization made no effort until ordered to do so by Watkins on February 16, to urge members of the Sawmill Workers to transfer to the Millmen—and then only because they were members of the former organization, and not because they operated machines. Thus, neither in terminology nor practice, can the contract of August, 1942, be found to be a closed shop agreement. And while recording secretary McDonald of the Millmen claimed, at the hearing, that he had considered it to be a “closed shop” contract, he admitted that it contained a “loophole” and did not cover certain employees. Proof that both the Millmen and respondents eventually recognized that the contract had not contained closed shop provisions at the time of the discharges is implicit in that fact that after February 20, 1943 the contract was amended to include such provisions. Under these circumstances, including Watkins’ candid admissions as to why he actually discharged the employees, the Trial Examiner concludes and finds the respondents’ contentions, set forth above, to be without merit.

Likewise, the record refutes the contention that the Millmen threatened to strike unless members of the Sawmill Workers transferred, or that the Millmen so informed the respondents.

As to the respondents’ separate contention as to the discharge of Hansen, it is without credible or reasonable support in the record. Watkins’ confused testimony that Hansen both did and did not receive overtime, and his final admission that he did not know, stamps his testimony on this point as untrustworthy. The contention in the answer that Garrigus “forgot” to discharge Hansen early in February is inconsistent with the superintendent’s testimony that the reason he did not discharge him was because he needed him. And Watkins’ testimony that he “forgot” to dismiss Hansen on February 15 is inconsistent with his sworn answer (dated August 16, 1943, five days before his testimony at the hearing), in which he stated that Hansen was dismissed on February 15. The Trial Examiner concludes and finds that there is no merit in the respondents’ contention that Hansen’s request for overtime was the cause of his discharge.

Nor is there merit in the respondents’ contention that Reice voluntarily quit his employment. No explanation was made by witnesses for the respondents as to why, two days later when he returned to the mill for his pay check, Reice was given a discharge slip identical to that issued to other employees admittedly discharged or why, if the respondents actually considered Reice to have voluntarily stayed away from work, he was not offered reinstatement following the conference in Craven’s office.

Counsel for the respondents conceded at the hearing that Hersner was discharged in violation of Section 8 (3) of the Act.

It is clear from all the evidence, particularly the testimony of Watkins, that he resented the fact that a number of his employees were joining the Sawmill Workers and that this organization was preparing to ask for an increase in wages for its members, Watkins decided to take summary action. At the hearing, as noted above, he frankly admitted that his action might have been illegal but that he would do it again.

The Trial Examiner concludes and finds that the 7 employees, named in footnote 1 above, were discriminatorily discharged on February 16, 1943, because they were members of the Sawmill Workers, and that the respondents thereby dis-

couraged membership in that organization. By these discharges and by questioning their employees on February 16 as to their membership in a labor organization, the respondents interfered with, restrained and coerced their employees in the exercise of rights guaranteed to them in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondents, set forth in Section III above, occurring in connection with the operation of the respondents' business 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 the free flow of commerce.

V. THE REMEDY

Having found that the respondents have engaged in certain unfair labor practices, the Trial Examiner will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondents discriminated as to the hire and tenure of employment of the following named employees:

Glenn Cherrington	Florenz (Jack) Cipar
Lloyd Ericksen	Edmund Hansen
James Hersner	John Reice

John M. Sterud

because of their membership in the Sawmill Workers, on February 16, 1943. It has also been found that Cherrington was reemployed three days later and thereafter voluntarily quit his employment, and that Sterud was reemployed on August 4, 1943. In order to effectuate the policies of the Act, it will be recommended that the respondents offer to each of the above-named employees, except Cherrington and Sterud, immediate reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges. It will also be recommended that the respondents make each of the aforementioned employees, including Cherrington and Sterud, whole for any loss of pay he has suffered by reason of the respondents' discrimination, by payment to him of a sum of money equal to the amount he normally would have earned as wages from February 16, 1943 to the date of the offer of reinstatement, or, as to Cherrington and Sterud, to the date of reemployment, less his net earnings¹² during that period.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Lumber & Sawmill Workers, Local 2903, affiliated with the United Brotherhood of Carpenters & Joiners of America, A. F. L., and Millmen's Local 2142,

¹² By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber Workers Union, Local 2590*, N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

affiliated with the United Brotherhood of Carpenters & Joiners of America, A. F. L., are labor organizations within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of:

Glenn Cherrington
Lloyd Ericksen
James Hersner

Florenz (Jack) Cipar
Edmund Hansen
John Reice

John M. Sterud

thereby discouraging membership in the Sawmill Workers, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

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

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the Trial Examiner recommends that the respondents, W. S. Watkins and W. W. Watkins, co-partners, doing business under the trade name of and style of W. S. Watkins and Son, and their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Lumber & Sawmill Workers, Local 2903, affiliated with the United Brotherhood of Carpenters & Joiners of America, A. F. of L., or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

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

2. Take the following affirmative action, which the Trial Examiner finds will effectuate the policies of the Act:

(a) Offer to the employees named in Section V, The Remedy, except Cherrington and Sterud, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights or privileges;

(b) Make whole the employees named in Section V, The Remedy, including Cherrington and Sterud, for any loss of pay they may have suffered by reason of the respondents' discrimination against them, by payment to each of them of a sum of money equal to the amount which he would have earned as wages from February 16, 1943 to the date of the respondents' offer of reinstatement or, in the case of Cherrington and Sterud, to the date of actual reemployment, less his net earnings during said period;

(c) Immediately post notices to their employees in conspicuous places throughout their mill in Reno, and maintain such notices for a period of at

least sixty (60) days from the date of posting, stating (1) that the respondents will not engage in the conduct from which it is recommended that they cease and desist in paragraphs 1 (a) and (b) of these Recommendations; (2) that they will take the affirmative action set forth in paragraphs 2 (a) and (b) of these Recommendations; and (3) that they will not discriminate against any employee because of membership in or activity on behalf of the Sawmill Workers;¹³

(d) Notify the Regional Director for the Twentieth Region, San Francisco, California, in writing within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondents have taken to comply therewith.

It is further recommended that, unless on or before ten (10) days from the receipt of this Intermediate Report the respondents notify the said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid.

As provided in Section 33 of Article II, of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended, effective October 28, 1942—any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau building, Washington, D. C. 25, an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

C. W. WHITEMORE,
Trial Examiner

Dated September 13, 1943.

¹³ Even if a closed shop contract, specifically covering these individuals, is now in effect between the respondent and the Millmen, International Representative Williams stated at the hearing that nothing in the by-laws of the United Brotherhood prevents an employee from belonging to two or more locals of the parent body.