

In the Matter of CHENEY CALIFORNIA LUMBER COMPANY *and* LUMBER  
AND SAWMILL WORKERS LOCAL 2647

*Case No. 20-C-1195.—Decided December 30, 1943*

DECISION

AND

ORDER

On October 25, 1943, the Trial Examiner 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 from the unfair labor practices found and take certain affirmative action, as set out in the copy of the Intermediate Report attached hereto. None of the parties filed exceptions or briefs, or requested oral argument before the Board at Washington, D. C. The Board has considered the rulings of the Trial Examiner at the hearing and finds that no prejudicial errors were 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.

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 respondent, Cheney California Lumber Company, Greenville, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Lumber and Sawmill Workers Local 2647, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner 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 its employees in the exercise of the right to self-organization, to form,

join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the 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 Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges;

(b) Make whole Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn for any loss of pay they have suffered by reason of the respondent's 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 the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during said period;

(c) Post immediately in conspicuous places in and about its sawmill plant located at Greenville, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that the respondent's employees are free to become and remain members of Lumber and Sawmill Workers Local 2647, affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of his membership or activity in that or any other labor organization;

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

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Order.

#### INTERMEDIATE REPORT

*Mr. John Paul Jennings*, for the Board

*Mr. Francis Cheney*, of Medford, Ore., for the respondent.

#### STATEMENT OF THE CASE

Upon a charge duly filed June 1, 1943 by Lumber and Sawmill Workers, Local 2647, affiliated with the American Federation of Labor, herein called the Union, 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 26, 1943, against Cheney California Lumber Company of Greenville, California, herein called the respondent, alleging that the respond-

ent had engaged in and was engaging in unfair labor practices affecting commerce, 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. Copies of the complaint, accompanied by notices of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that the respondent: (1) discharged Clayton Block and Ira Ware on or about March 19, 1943, and Leslie Allan and Lindsay Glenn on or about May 21, 1943, and has at all times since said dates refused and failed to reinstate said employees because of their membership in and activities on behalf of the Union; discharged Allan and Glenn for the further reason that the respondent desired thereby to influence, and did influence, a Board election scheduled for, and held on May 22, 1943, for the purpose of determining whether the respondent's employees desired to be represented for collective bargaining purposes by the Union; (2) during approximately September and October 1942, informed its employees that it objected to their joining the Union, and that it might close the mill if the Union succeeded in organizing the employees; during March 1943, questioned its employees regarding their union affiliations, and again advised its employees that it objected to their joining the Union and that they would be better off if they did not join the Union; but instead should discuss their problems with the respondent through a committee of employees; and (3) by the acts above described, the respondent has interfered with, restrained, and coerced its employees and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Subsequent to the hearing and on or about September 26, 1943, the respondent filed its answer<sup>1</sup> in which it denied generally the commission of any unfair labor practices, and alleged affirmatively that it discharged Block, Ware, Allan and Glenn for cause.

Pursuant to notice, a hearing was held at Greenville, California, on September 14 and 15, 1943, before Peter F. Ward, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded all parties. At the close of the hearing, counsel for the Board made a motion, without objection, that the pleadings in the proceedings be amended to conform to the proof. The motion was granted by the undersigned. Oral argument before the undersigned was waived by the parties. While all parties were afforded an opportunity to file briefs with the undersigned, none has been received.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The respondent is a California corporation, organized early in 1942. It operates a sawmill near Greenville, California, where it is engaged in the manufacture, sale and distribution of lumber and lumber products, including railroad ties and studding. Its principal sales office is located at Tacoma, Washington. During the year ending June 30, 1943, the sales of the respondent amounted to approximately \$285,000. During the same period the respondent manufactured

<sup>1</sup> Up to the commencement of the hearing the respondent had filed no answer but requested and was granted the privilege of filing a formal answer after the close of the hearing.

approximately 17,000,000 board feet of lumber. Approximately 8 percent of such total sales was of products sold and delivered outside the State of California. The balance of such sales was of products sold and delivered F. O. B. Greenville. Its principal manufactured product consists of railroad ties which are sold to the Western Pacific and the Southern Pacific railroads, with the preponderance of such sales going to the Western Pacific Railroad. B. B. Cheney, the respondent's president, testified that the respondent had contracts for the sale of ties with "most all the transcontinental railroads in this country."

## II. THE ORGANIZATION INVOLVED

Lumber and Sawmill Workers, Local 2647, affiliated with the American Federation of Labor, is a labor organization admitting to membership of employees of the respondent.

## III THE UNFAIR LABOR PRACTICES

### A. *Interference, restraint, and coercion*

The respondent first began operations at its Greenville, California sawmill early in 1942. The owners of the respondent corporation also operate the Cheney Lumber Company, Inc, of Tacoma, Washington, and other companies. Lionel Pease who had operated a sawmill for one of the other Cheney companies, was made general manager and put in charge of the respondent's Greenville mill.

In or about September 1942, Alvin Waitts, employed as an edgerman, undertook to organize the respondent's employees on behalf of the AFL. He succeeded, in having 17 or 18 employees sign union application cards.

On or about September 20, Pease, having learned of the union activity in the sawmill, called the employees together after working hours and addressed them concerning the Union. In this connection, Waitts, credibly and without contradiction, testified:

Q. What did Mr. Pease say to you at that time?

A. He told us he'd rather we wouldn't join no Union. That he'd rather just have a one big happy family down there and we'd work it out with us and himself and the Company.

Q. Do you remember what else (else) he had to say?

A. He told us that he'd pay us the Union scale and if we did join the Union that there was some was overpaid the Union scale and they would automatically have to come down to the Union scale.

Subsequently, Waitts asked Pease what he had against the Union and the latter replied, "Well,—I'll tell you. I don't like them, and—I don't want a damn thing to do with them." Waitts further testified:

By Mr. Jennings:

Q Did Mr. Pease have anything further to say or did you have anything further to say at that time?

A. He told me—oh, he had a kind of a story that if they [unions] got into a strike somewhere else that we'd have to kick in, you know and help save them, and all of that; and oh, that is about all he said at that time.<sup>2</sup>

<sup>2</sup> Pease was not called as a witness and all the testimony of this and succeeding witnesses who testified concerning statements and conduct attributed to Pease stands uncontradicted. The record discloses that Pease is no longer employed at the respondent's Greenville mill. Its failure to produce Pease as a witness is discussed below. See footnote No. 18, *infra*.

Harold Norberg, an employee who was present at the meeting, testified:

Q. Now what did Pease say at that time?

A. Well, he brought the Union up the first thing; then he mentioned that he understood we was wanting a Union in there and he said he really didn't see why we needed any. He'd pay union scales and I don't remember if that was the time he granted seniority or not. I believe we had two meetings.

Lindsay Glenn, an employee, testified that in 1942 he "was fighting the union"; that at such meeting he heard Pease state: "I understand that you're trying to organize here,—I wanted to talk to all of you,—I pay top wages and —I don't want no union here. What we want to make out of this is something like a little family affair;" and that Pease continued, "I can't see what you want a union for, and pay out a dollar and a half a month or something like that."

At the time the above meeting was held Glenn worked from 12:00 noon until 8:00 o'clock p. m., as he filed saws after the mill closed down for the day. On the night of the meeting Pease and Glenn had a discussion concerning the Union, during which, according to Glenn, Pease stated: "Glenn, before I would operate under the Union, under the contract, I'd shut the god-damned thing down air tight." Employee Kenneth Blair testified that he was present at the time of Pease's speech. His version of the talk was as follows:

He just said that he didn't want a Union, and if there was anything that we wasn't satisfied with, to come to him and he'd see if he couldn't settle it with us without having a Union.

Employee William Beem, who was present at the Pease talk, testified:

Q. Do you remember what he [Pease] said?

A. Well, he said that he didn't care to have the Union started, said we (sic) were satisfied and didn't want it changed, he wanted it kept that way. Just like a big family there, and he hated to see the boys pay out hard earned money to keep up a union.

Following the meeting at which Pease had expressed his anti-union views, Beem talked to him in his office, and according to his testimony asked him "if he knew what he was doing in regards to fighting the Union" and testified that he [Pease] said "he didn't care much what he was doing. He was doing as his own duty—he was doing his duty."

Following the first meeting, above described, Pease held another meeting with the employees during which a discussion was had concerning wages and seniority. In this connection, Harold Norberg testified:

Q. And did he call the men together in the same fashion the second time?

A. Yes, and he told them that he'd grant them seniority and we decided that seniority was the main thing we wanted there because there was a lot of the older men that weren't getting promoted the way they felt they should be and he said he'd see that they got seniority. So we told him well, if that was it we'd just drop the case of the Union.

Pease also suggested, according to Norberg, "that there should be a committee of three appointed to decide which ones should have seniority, which ones should

have certain jobs and which ones were capable of handling them \* \* \*"<sup>3</sup> A committee composed of Jake Williams, Lindsay Glenn and Harry Major was appointed.

The committee subsequently held conferences with Pease in the latter's office, at one of which Pease submitted a working agreement which, Glenn testified, "looked good and [was] reported to all the men that it did."

As above stated Pease was not produced as a witness and the testimony of Waitts, Harold Norberg, Glenn, Blair and Beem, as set forth above, was not controverted or denied. Each of the above named witnesses appeared to be and impressed the undersigned as credible witnesses. From the above and upon the record it appears that the facts as testified to by said witnesses occurred substantially as testified to by them, and it is so found.

After Pease had called the employees together as above set forth, and informed them that he did not want the Union in the mill, Waitts discontinued his organizational activities, because as he testified, "nobody would talk to me about the Union at all." "—They wouldn't talk union any more." Union activity became and remained dormant until on or about March 1943. At this time some of the employees had become dissatisfied with the numerous shut downs of the mill and were complaining of discrimination in the distribution of work.

On or about March 23, Boyd Wyatt, who was employed by the District Council of the Carpenters & Joiners, on behalf of the Lumber and Sawmill Workers, as an organizer, went to Greenville and undertook to organize the respondent's employees. The mill was not operating on March 24, and on that day Wyatt met a group of the employees in front of the local post office and found that, due to the fact that they felt they were being discriminated against, "they were just ripe to join the Union." Wyatt succeeded in signing up some sixteen employees to application cards in the course of thirty minutes on this occasion. By March 25, he had secured 3 to 5 additional signers and, on March 25 called on Pease and advised him that a majority of the mill employees had signed up in the Union, and asked Pease to negotiate a contract with the Union. Pease refused to do so and stated that he would rather have an election. According to Wyatt, Pease got "hot-headed" during the interview and stated that he "would shut the God damned thing down . . . before he would let it go Union." Pease also stated that he doubted if the Union had a majority, whereupon Wyatt suggested that they call a National Labor Relations Board Examiner and have a cross-check of the cards against the mill pay roll. Pease countered with the suggestion that the matter be turned over to the Labor Board "so it could be carried out according to Hoyle." As is set forth below, an election agreement was subsequently entered into.<sup>4</sup>

Employee Ruel Smith testified credibly and without contradiction that he accompanied Wyatt when the latter called on Pease on March 25, and requested the latter to recognize the Union, which Pease refused to do. Smith took no part in the conversation but, on the same day when he asked Pease for his pay check in order that he could visit his brother at Pittsburg, California, who was about to be shipped over seas, Pease replied, "Okay, but I don't like to sign a union man's check."

<sup>3</sup> Norberg did not fix the date of this second meeting. Glenn fixed it as having occurred in the spring of 1943. From all of the circumstances disclosed in the record the undersigned is of the opinion that such meeting was held before the seasonal shut-down of the mill, in 1942-3 and so finds.

<sup>4</sup> The testimony of Waitts, Harold Norberg, Glenn, Blair, Bruce, and Wyatt, above referred to is uncontroverted and, in the main, supported by corroborative testimony of other credible witnesses and circumstances.

As is set forth in detail in Section III B below, Ira Ware and Clayton Block, who each signed union application cards on March 24, were discriminatorily discharged. Ware was discharged on March 26 and Block on April 5.

During April 1943 Wyatt filed a Petition for Investigation and Certification under the provisions of Section 9 (c) of the Act. Thereafter, a Field Examiner for the Board went to Greenville, where an agreement was entered into between the Board, the Union, and the respondent for the holding of a consent election. The date of the election was first fixed as of June 2, 1943, but due to the intercession of Leslie Allan, employed as a lumber spotter, and other employees who objected to the long delay, an agreement was reached on May 19 to the effect that the election should be held on the following Saturday, May 22. At the time the new date for the election was fixed, Wyatt designated Lindsay Glenn as an observer on behalf of the Union. Glenn and Allan were employed together on a certain operation described below. On May 21, both were discharged under instructions from Ben Cheney, respondent's president. Their discharges are discussed in detail in Section III B below.

The election was held pursuant to the agreement on May 22 at which time the respondent challenged the votes of Glenn and Allan, on the ground that they had been discharged for cause and were no longer employees of the respondent. They cast challenged votes. The result of the election, without the Glenn and Allan votes being counted, was 16 to 16, a tie vote.

#### B. *The discriminatory discharges*

The complaint alleges in substance that the respondent discharged Ware, Block, Allan and Glenn because of their union activities and that Allan and Glenn were also discharged for the further reason that the respondent desired to and did thereby influence the results of the Board election held May 22, and referred to above.

The answer alleges affirmatively and in substance that the respondent discharged Block on or about March 19, 1943, for "his repeated failure to report for work on occasion too numerous to mention"; that it discharged Ware on or about March 19, 1943 "for reasons of willful failure and refusal to do the work assigned to him, thereby causing undue hardship on fellow employees; and that it discharged Allan and Glenn for willful disregard of its orders and "performing their work in such a manner as to cause the breakdown of machinery and the endangering of lives of fellow employees." The facts concerning each of the discharges are considered below.<sup>5</sup>

During March 1943, Ware, Block, and Albert Norberg discussed and advocated the Union with other employees. Among others, this pro-union group had an argument with Herman Higday, (who had succeeded Jake Williams as foreman in 1943), Joe Josephson, and George Christiansen.<sup>6</sup> During this argument, Higday stated, according to the uncontradicted and credited testimony of Albert Norberg, as follows:

He [Higday] says if we didn't like where we was working and trying to cause trouble is what they thought it was to get the Union in there, why we could go some other place.

A few days after Norberg, Ware, and Block's argument with Higday and the others, Albert Norberg was called to the office by Pease, who advised him that

<sup>5</sup> The evidence and the records of the respondent reflect that Block was discharged on April 5, 1943 and that Ware was discharged on March 26, 1943.

<sup>6</sup> Higday and Christiansen had accompanied Pease when the latter went from the State of Washington to Greenville to take charge of the respondent's sawmill.

he (Norberg), Ware and Block were talking too much, and that if he did not stop such talking he would have to let Norberg go.

When Harold Norberg, a brother of Albert, learned of Pease's threat to discharge the latter, he called on Pease concerning such threat. According to the undisputed and credited testimony of Harold Norberg, Pease said that Block, Ware and Albert Norberg were doing too much talking and that he had already decided that he was going to discharge Block and Ware, and he thought he would have to discharge Albert Norberg too, "if he didn't quit talking so much." With reference to Ware, Norberg quoted Pease as saying, "He was stirring up too much trouble trying to get the men organized." Norberg further testified that he told Pease, that ". . . I thought he better leave him [Albert] on there or else I didn't care whether I stayed either." As a result of Harold Norberg's talk with Pease, Albert was permitted to continue at work.<sup>7</sup>

Block testified credibly, without contradiction and the undersigned finds, that he was first employed by the respondent in May 1942 and worked during the entire season, except during a period in July 1942 when he had an appendicitis operation. He worked continuously thereafter except for the seasonal shut-down during the winter of 1942-1943, and on March 18, 1943, he went to the hospital with an infected finger, where he remained until March 23, when he was discharged from the hospital. On March 24, while en route to the doctor's office, he passed the post office where a group of the employees were signing union application cards, and he too joined the group and signed a union card. Jake Williams, who had acted as foreman in 1942, was present near the group of signers at this time.

During the time Block was absent from work due to his infected finger he spent part of the time about the mill. He testified, without going into detail, that on one occasion Pease tried to "explain to us where he thought we was wrong about the Union," and that, on this occasion Foreman Higday referred to the "stir-up" about the Union as an "Oakie-flourish."

Block was released for duty by his doctor and returned to work on April 5. He was immediately sent to Pease by Higday. Pease advised him that he could use him no longer and discharged him, giving as his reason that his "work was no good." Block was given a termination slip which recited that the reason for the discharge was "Failure to do his work." Upon Block's protest, Pease later replaced the termination slip with another one which recited "To take a more essential job in logging industry for Alton Jacks." Block was subsequently employed by Jacks.<sup>8</sup>

Following Block's discharge, Wyatt called on Pease concerning the matter and asked why Block was discharged. Pease replied that he had "discharged Clayton Block because he was absent from work so much . . ."

<sup>7</sup>On the day of this conversation, Pease had so fully determined to also discharge Albert Norberg that he had had prepared and delivered to Norberg, not only his current pay check, but a check for the immediately preceding work which customarily was held up and paid the following week. Such payments in full were only made on the occasion of a discharge. Notwithstanding this, however, and entirely because of Harold Norberg's intercession, the discharge of Albert was not made effective.

<sup>8</sup>Actually, Block had made a tentative arrangement to go to work for Alton Jacks at such later date as Jacks' operation could use him, and intended to quit the respondent's employ within a few weeks, at the time he was discharged. The record does not reflect how or whether this information reached Pease, although Block testified that, when he was discharged he announced to a group of employees at the mill that "I didn't care if Lionel did fire me, that I was going to quit in a couple of weeks anyway, because I had a job with Mr. Jacks"

Other than Block's testimony that Pease told him that he was discharged because his "work was no good"<sup>9</sup> and the statement made by Pease to Wyatt that Block was discharged because he was "absent from work so much," there is no evidence to support the allegation of the answer that Block failed to report for work "on occasions too numerous to mention." While Pease was not produced as a witness, assuming *arguendo* that the respondent could not have produced Pease as a witness, it could have introduced employment records showing the days the mill operated and the days that Block was at work. This it did not do. The record discloses that Block was absent on two occasions when confined to a hospital and did not otherwise unduly absent himself from work, and it is so found. From the foregoing it is found that some days prior to April 5, 1943, while Block was absent because of illness, the respondent determined to discharge him because of his activities on behalf of the Union; that his work had not theretofore been a subject of criticism and that he had, in fact, been regular in his attendance at work except when sick and away from his work on instructions from his doctor, of which the respondent was fully advised, and that on his return to work on April 5, the respondent did, in fact discharge him for the reason that he had engaged in union activities and not for the other reasons above set forth.

Ware was first employed by the respondent on or about July 1, 1942 and worked continuously until the seasonal shut-down for the winter of 1942-1943. During the shut-down he was employed at Hurlong, Minnesota, on a war job. Prior to March 1, 1943, Ware got in touch with Pease and asked him if it would be advisable to quit his Hurlong job and return for work at the mill. Pease replied, "I might not be able to put you on immediately, but [will] within a few days." Ware finished out the month at Hurlong and returned to Greenville about March 1, and shortly thereafter Pease returned him to work. Prior to his discharge, Ware's work had never been criticized by Pease or by the foremen.<sup>10</sup>

Ware had been a member of the A. F. of L. for about 3½ years and during his entire employment with the respondent, consistently wore a union button. On March 24 he signed a further designation card with the Union at the post office, and assisted in having others sign application cards. He was one of the group of three composed of Albert Norberg, Block and himself who, shortly before, had argued with Higday, Josephson, Christiansen and other anti-union employees, on behalf of the Union. As found above, Pease complained to the Norberg brothers that Ware "was stirring up too much trouble about the Union." On March 26, Williams, the former foreman, asked Ware if those who had signed union cards had a right to back out if they wanted to, and was advised by Ware that he did not think so. On or about March 22, Ware made arrangements with Pease to go to Reno, Nevada, with his son who was seeking to join the United States Navy, and thus did not work from on or about March 21 until March 26. When Ware returned to work on March 26, Pease met him and told him that he would not need him any more. When Ware asked the reason for his discharge, Pease replied that Ware let the other men "on the pond" do all his work. Ware responded, "The reason you are letting me go is because you know I'm pretty heavily in these union activities." Pease replied "No" . . . "You can leave it to the boys." . . . "You left all your work for them to do, wouldn't put the logs up". However, the respondent produced no testimony to support this.

<sup>9</sup> This reason was not alleged in the answer, notwithstanding the answer was not prepared or filed until after the close of the hearing.

<sup>10</sup> These findings are based upon the credible and uncontradicted testimony of Ware.

When Wyatt sought to learn the reason for Ware's discharge, Pease advised him "for failure to do his work," and that "one other man" had complained about Ware's work. Pease also advised Wyatt that he wanted to "can" Ware "before the Union came into existence" and that he was "doing it now because later, when the Union came in he wouldn't be able to." Ware got a job about a month after his discharge and had made efforts to get one prior to that time.<sup>11</sup>

Other than the foregoing, there is no evidence in the record to support the contention of the respondent that Ware was discharged for willful failure to do his work, "thereby causing undue hardship on his fellow employees." As above found, Pease was not produced as a witness nor were any of the "fellow employees" called to support the respondent's contentions.

In view of the above and the record and Pease's statement to the Norberg brothers that Ware talked too much and "was stirring up too much trouble trying to get the men organized," and in the light of the respondent's anti-union background, particularly as disclosed by Pease's actions, it is clear and the undersigned finds that Ware was discharged on March 26, for the reason that he engaged in union activities.

In order that the contentions of the parties concerning the discharge of Glenn and Allan may be discussed with some clarity, it is necessary to consider certain operations having to do with the "edger" on which they were jointly employed. An edger is operated directly by an edgerman, a lumber spotter and a strip catcher. The timber comes to the edgerman in "slabs" 8 feet long, by means of rolls and is fed onto an edger table about 7 feet wide. Here it is handled by a lumber spotter whose duty it is to spot the lumber against the straight edge (saws). He straightens the lumber on the chain (by which it is moved forward) in order that both sides may be trimmed as the lumber goes through the saw. A lumber spotter must also pull out any "bad" lumber. From the edger the lumber, 2 x 4's in this case, goes to planer.

A strip catcher's duty is to catch the strips or edgings that are cut from the lumber (2 x 4's) and dispose of them in the proper place. Under the edger table and the big chain that transports the lumber is a "big" conveyer which carries refuse to the burner for disposal. Prior to the spring of 1943, all strips and bad lumber were thrown into the big conveyer, except that for a time when it was piled on "horses" to be trucked away and used for fuel.

Approximately in April 1943, the respondent constructed a second conveyer, called the "hog," which was built along the side of the edger table on which the strip catcher worked. The hog was elevated and carried strips and bad lumber to a point where the material is ground up or "hogged" and made ready for burning or disposal otherwise.

Short strips or short pieces of bad lumber if not caught or handled by either the strip catcher or lumber spotter, would "rake off" in to the big conveyer and would on occasion catch on a "bucket" and cause the chain to break, unless a man was posted at a certain point on the big conveyer to abstract them.

The speed at which lumber may go through the edger is determined by the amount of lumber delivered to the edgerman. "If it comes in fast you have to shoot it through fast," and the strip catchers "have got to handle it." It was necessary at times for the lumber spotter to climb upon the edger table to get short strips. This could be done if lumber does not come through too fast. Sub-

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<sup>11</sup> Following his discharge, Ware applied without success for employment at the other local mills, at least one of which could not employ him because it had not yet gone into production. He could have obtained employment in other communities but was unwilling to leave his home in Greenville for that purpose. He remained unemployed for about a month when he obtained a job in a local box factory and was still employed there at the time of the hearing.

sequent to the time Glenn and Allan were discharged, a bell was installed for use by the strip catcher with which to notify the edgerman when the lumber started piling up. Also subsequent to the discharge of Glenn and Allan, a new conveyer chain was installed.

Glenn, who had worked at "sawmilling" some 15 to 20 years, was employed by the respondent in February 1942. He first worked at building the mill and repairing. After the mill went into operation he worked on different jobs and was eventually assigned to a yard job with a raise in pay. Thereafter he was assigned to fill different vacancies of absent employees as they occurred. He in effect became a utility man, and so continued until on or about April 1943. As found above he was opposed to the Union in 1942. He became a member of the committee proposed by Pease. During March 1943, he took time off to visit a son at San Francisco who is in the military service, and returned about March 27. Upon being advised that a majority of the employees of the respondent had joined the Union, he decided to do likewise and signed a union application card on March 27.

Glenn then talked with Pease. In this connection, Glenn testified:

Well, I says, "Lionel, she went Union while I was gone," and he said "No." I said, "Yes, the majority signed up." And I said, "I signed up," and when I said that he said "Well, Glenn! ———"

He further testified that Pease contended the Union had not signed a majority, and when Glenn insisted to the contrary, Pease replied, "They just told you a go-damned (sic) lie to get you to sign." When Glenn informed Pease that he had seen the cards and told that he had signed, the conversation ended. Prior to his joining the Union, Pease was always friendly toward Glenn. Thereafter he would pass Glenn without speaking.

Upon his return from San Francisco, Glenn worked on the chain a day or two and then was assigned to the edger as a strip catcher. At about this time, Glenn sought to claim an oiling job through his claim of seniority, and in company with Harold Norberg, called on Pease on Sunday to discuss it. Pease said that he would lose four or five men if he gave the job to Glenn. Through Norberg's insistence Pease agreed that the men could vote on it on Monday, the following day. On Monday, Glenn canvassed the employees and explained the plan for a vote to them. Pease, however, refused to permit the vote to be taken and gave the oiler job to George Christiansen, who was actively opposed to the Union.

Glenn succeeded in signing 11 employees to union applications and was otherwise active on behalf of the Union. He wore his union button, which caused Foreman Higday to remark: "—that God-damned button you got don't mean nothing, nothing but a damn fool would wear that anyway."

On May 19, and after the election referred to above was set for May 22, Wyatt designated Glenn as the Union's observer at the election. On May 20 Higday kept unusually close watch over Glenn and on a number of occasions accused him of throwing short strips in the big conveyor, a charge Glenn denied and suggested that Higday talk to Allan, who as is set forth below, had permission to use the big conveyor when necessary. President Cheney also kept a more or less close scrutiny over Glenn on this day. Glenn, who realized that he was being closely watched, exerted himself in an effort to properly perform his job.<sup>12</sup> Glenn's discharge on May 21 is discussed in conjunction with Allan's discharge set forth below.

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<sup>12</sup> The evidence reflects that, with the conveyor then in use, short strips falling or thrown on it frequently became caught and caused the conveyor chain to break unless a man was specially stationed to free them. This condition is intimately connected with the discharge of Glenn and Allan and is dealt with at length in conjunction with Allan's discharge.

Allan, a brother-in-law of employee Blair, was employed by Pease on or about April 15, 1943 following some correspondence between the parties. At the time he was employed he asked Pease if the job was "unionized or not," and Pease answered, "No." Allan stated that he was a "union member, and wanted to know." Allan added, "It won't interfere with my work." After working as a slasher for two days Allan took over the lumber spotter's job and thereafter worked on the edger table with Glenn. When he first started to work Allan threw all the strips in to the big conveyor, the hog not having been installed. On occasion it was necessary for him to climb upon the edger table to recover short strips. This he could do if lumber was not coming through too fast.

After Allan had been at work for a time the hog conveyor was installed, after which he was instructed to and did put all "possible" strips into the hog conveyor. After the hog conveyor had been in operation for a time, the respondent caused the big conveyor to be "boxed" to the end that it would be impossible for strips to be thrown into it. As a result of such "boxing" short strips, not finding an outlet into the big conveyor, would cause the lumber to pile up, making it necessary for Allan to climb onto the table and release the piled-up lumber. Allan then told Higday that unless the floor was taken off the big conveyor "to where those short ones go through," he would quit. Higday refused to remove the floor and Allan did quit.

Thereafter the respondent assigned two of its "best men" to handle the lumber and determine whether it was necessary to take the floor out or not. On the following day Allan returned to the mill for his release and Higday asked him if he would take his job back. Allan replied that he would do so if he "could throw these strips under [into] the conveyor that it is impossible for me to get in the hog, I'll take it back. Otherwise, no soap." Higday told him to take the job on those conditions and he did so. Thereafter neither Pease nor Higday ever told Allan not to throw strips into the big conveyor. He continued to use the big conveyor for strips that he was unable to put in the hog conveyor. He so used it on May 20, at the time when Higday was criticizing Glenn concerning the strips.<sup>13</sup>

Allan was a member of the United Brotherhood of Carpenters and Joiners when he was hired. On April 15 he signed a further designation with Local 2647. Prior to the scheduled election he was requested to solicit three employees for membership whom the Union "seemed to be afraid to approach." Allan talked to the three men and succeeded in signing one to a union application.

Allan was the "ringleader" of the group of employees who sought to have the election moved up from June 2 to May 22.

As a result of Higday's "raising the devil" with Glenn on May 20, he and Allan decided to discuss the matter in person with Cheney. Allan contacted Cheney and asked for an appointment. Cheney told Allan that he (Cheney) would see Pease and advise them what time Cheney could see them. Cheney later fixed the time for the meeting as 7:00 o'clock on the night of that day. Later Glenn concluded that "it wouldn't be worth while to talk to" Cheney, and Allan cancelled the date.

When Glenn and Allan reported for work on May 21, Higday sent them to the office to see Pease. When Pease arrived he told them that the strips they threw into the big conveyor caused a breakdown, but did not tell them they were fired. Cheney, however, did state that they were fired. Pease then issued termi-

<sup>13</sup> These findings are based on the credible and uncontradicted testimony of Allan. Higday, though not shown to be unavailable, was not produced as a witness. Cheney, in his testimony, referred to Allan's conduct in this instance as "the kiddish fit" but did not dispute the fact that Allan returned to work under the conditions related above.

nation slips to them which recited that each "left voluntarily." Many of the employees gathered around the office and threatened to go on strike, but returned to work after Glenn advised them to do so.<sup>14</sup>

On May 22 Glenn acted as observer of the election as the Union's representative and both voted challenged ballots.

The respondent contends in substance and effect that Glenn and Allan were discharged for throwing strips into the big conveyer. In support of such contention Cheney testified that he personally requested them not throw such strips into the big conveyer. Both Glenn and Allan denied that Cheney made such a request. The undersigned does not credit Cheney's testimony in this regard.<sup>15</sup>

The record clearly discloses that Higday did 'accuse Glenn' of putting short strips into the big conveyer and that in each instance Glenn told Higday that he was not putting the strips in such conveyer and advised Higday to talk to Allan. The credible evidence discloses that Allan was putting the short strips that he could not get into the hog conveyer into the big one, and that no one cautioned him against so doing. This was all pursuant to his arrangement with Higday as described above.<sup>16</sup> On the evidence and the record, the undersigned is convinced and finds that Glenn did not throw any strips into the big conveyer on May 20, and that Allan did so only to the limited extent necessary.

The record discloses that it is not possible even with the new conveyer chain which the respondent installed in June 1943 and after the Glenn and Allan discharges, to keep strips out of the conveyer. Ernest Davis, who succeeded to Glenn's strip catcher job, called as a witness for the respondent, testified that the small strips that break up do fall through into the conveyer. Also, in this connection Waitts testified without dispute, "but the short ones that come out there, sometimes in spite of all you can do you can't keep them from it [conveyer]."

It is clear from the record and undisputed that the conveyer chain in question was an old one which broke down frequently both before and after Glenn and Allan worked on the edger table, and from causes other than and in addition to short strips being thrown into it. It is significant that since the discharge of Glenn and Allan a new conveyer chain has replaced the old one and a bell system has been added to permit the strip catchers to warn the edgerman when the lumber is coming through too fast.

In view of the foregoing and the record, it appears that the respondent's officers and agents, being opposed to the Union and seeking a means of influencing the election results, deliberately harassed Glenn by false accusations on May 20, and in order to deprive the Union of the benefit of their votes at the forthcoming election, on May 21 discharged Glenn and Allan because of their union activities and in order to adversely influence said election, and it is so found.<sup>17</sup>

### C. Concluding findings

As found above Alvin Waitts during on or about September 1942 initiated a movement for the purpose of organizing the respondents' employees and succeeded in procuring from the employees 17 or 18 signed applications for union

<sup>14</sup> Three employees did quit their jobs as a result of the discharges, and did not return.

<sup>15</sup> See footnote No. 19.

<sup>16</sup> It should be noted that the undisputed evidence discloses that at the time Allan quit his job, as above set forth, the big conveyer had been "boxed" over or floored so that it was impossible for strips to be thrown into it. Since it was possible for strips to be thrown into it on May 20, the flooring must have been removed, and the undersigned so finds.

<sup>17</sup> At the time of the hearing Glenn was employed at the Bethlehem Shipyards, Alameda, California, and Allan was employed by Yuba Manufacturing Co., Benicia, California.

membership. When Pease learned of the union activity, he called the employees together and advised them that he was opposed to having a union at the mill and preferred that they have "one big happy family" there instead. Pease stated that he would pay the union scale of wages and in effect he warned the men that since some were paid more than the union scale, their wages would be automatically reduced in the event the union came into the mill. He advised certain employees privately that if the union came in he would "shut the god-damned thing down." Pease told Waitts that in the event the Union came in and subsequently had strikes elsewhere the employees would have to "kick in" and help save them. As found above Pease held a second meeting at which he agreed to grant seniority to the mill employees and suggested that the employees select a committee to pass on questions of seniority. After the committee was appointed as suggested Pease submitted a proposed agreement, which "was better than the Union."

After Pease had voiced his opposition to the Union in September 1942, union activity discontinued completely and did not revive until about March 1943. At this time Pease again took steps to discourage such activity, first by the discharge of Ware and Block and subsequently by the discharge of Glenn and Allan. The latter discharge occurred on the eve of an election held on May 22 to determine whether the Union should be selected as the bargaining representative.

Also, as found above, Pease, Foreman Higday and former Foreman Williams made anti-union statements to a number of the employees none of which are denied in the record.<sup>18</sup>

The respondent offered no affirmative proof in support of the reasons alleged in its answer for the discharge of Ware and Block. In support of its alleged reasons for the Glenn and Allan discharges it relies in the main on the testimony of President Cheney,<sup>19</sup> who testified that he personally told Glenn and Allan not to

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<sup>18</sup> Neither Pease, Higday or Williams, although not shown to be unavailable were called as witnesses. The record discloses that these three left the respondent's Greenville Mill in June 1943, and that Pease was employed for a time in one of the mills belonging to the Cheney family. The respondent at no time pleaded surprise or asked for a continuance of the hearing in order to secure the attendance of Pease or the former foremen named in the testimony herein. President Cheney testified that he did not know the whereabouts of Pease, but stated in substance, that he understood that Pease had planned to acquire a sawmill of his own. The Cheneys operate a number of mills in the Pacific coast states and have spent many years in the lumber industry. The undersigned is convinced that if the respondent had desired the presence of Pease and the foremen at the hearing herein, it would have had no difficulty in locating them and either had them attend the hearing or caused their depositions to be taken. In view of the fact that the respondent did not claim surprise or request a continuance and did not make arrangements to have them present, the undersigned is of the opinion and finds that the respondent would not expect Pease and the foremen to deny many of the statements and acts attributed to them, as above set forth. This conclusion is strengthened by the fact that the respondent offered proof and stressed the fact that the present general manager and foreman have engaged in no anti-union activities.

<sup>19</sup> Cheney did not impress the undersigned as a credible witness. He denied having ever discussed the Union affiliation of the men with Pease or that he knew of Pease's activities in connection with the Union. The undersigned does not believe that Pease would have taken the steps which he did to stifle the union's efforts; grant them seniority; and propose an agreement without Cheney's consent or at least without his knowledge. It is improbable that Pease would grant seniority without telling Cheney of the fact that the men accepted the agreement for it in lieu of the Union, as was testified to by Harold Norberg.

La Fleur, the present manager who was at the mill in April 1943 installing the hog and other machinery, Manning, a sawyer who admitted his antagonism to the Union and Pettie, a planner man, all testified that Allan and Glenn had been instructed not to throw strips in

throw strips into the big conveyor and that they nevertheless did so. The undersigned is convinced that the operations of May 20 were no different than on other days, except that there was a premeditated effort on the part of Higday to harass Glenn in order to have a pretext to justify his discharge prior to the election.

While the record discloses that Pease promptly accepted the suggestion that the consent election be moved up from June 2 to May 22, it also discloses considerable unrest existed among the employees, which unrest resulted in most of the men leaving their work upon learning of the discharge of Glenn and Allan on May 21.

Upon all the evidence and on all of the circumstances in this case, the undersigned is convinced and finds that by discharging Ira Ware on March 26, 1943, Clayton Block on April 5, 1943, Lindsay Glenn and Leslie Allan on May 21, 1943, the respondent discriminated in regard to their hire and tenure of employment, thereby discouraging membership in the Union, and by the statements and activities of the General Manager, Lionel Pease, and its Foremen Herman Higday and Jake Williams,<sup>20</sup> the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce

#### V. THE REMEDY

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

The undersigned has found that the respondent has discriminated in regard to the hire and tenure of employment of Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn, thereby discouraging membership in the Union. In order to effectuate the policies of the Act, it will be recommended that the respondent offer to Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn and to each of them, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and that it make them whole for any loss of pay they may have suffered by reason of the discrimination against them, by payment to each of them of a sum of money equal to the amount which each normally would have earned as wages during the period from the date of the discrim-

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the conveyor after the hog was installed. In view of Allan's undisputed testimony that Higday had authorized him to do so when necessary and the fact that he did so without objection from Higday, this testimony is not credited as to Allan being instructed to refrain from using the conveyor. On the contrary, it is found that Allan so used the conveyor by special permission from Higday. As to Glenn, it is found that he had been so instructed and that he followed such instructions at all times, although there was occasions over which Glenn had no control when strips would fall into the conveyor from the edger table.

<sup>20</sup> Jake Williams was a foreman during all of 1942 and a part of 1943.

ination against him, to the date of the offer of reinstatement, less his net earnings<sup>21</sup> during such period.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

#### CONCLUSIONS OF LAW

1. Lumber and Sawmill Workers, Local 2647, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act

2. The respondent, by discriminating in regard to the hire and tenure of employment of Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn, thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

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

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 above findings of fact and conclusions of law, the undersigned recommends that the respondent, Cheney California Lumber Company, and its officers, agents, successors and assigns shall:

##### 1. Cease and desist from:

(a) Discouraging membership in Lumber and Sawmill Workers, Local 2647, affiliated with the American Federation of Labor, or any other labor organization of its employees by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes 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 undersigned finds will effectuate the policies of the Act:

(a) Offer to Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges;

(b) Make whole Clayton Block, Ira Ware, Leslie Allan, and Lindsay Glenn for any loss of pay they may have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money in the manner set forth in the above section entitled, "The remedy";

<sup>21</sup> 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 and Sawmill Workers Union, Local 2590*, 8 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.

(c) Post immediately in conspicuous places in and about its sawmill plant located at Greenville, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations; (2) that it will take the affirmative action set forth in paragraph 2 (a) and (b) of these recommendations; and (3) that the respondent's employees are free to become or remain members of Lumber and Sawmill Workers Local 2647, affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that or any other labor organization;

(d) Notify the Regional Director for the Twentieth Region in writing within ten (10) days from the receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent 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., 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 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:

PETER F. WARD,  
*Trial Examiner.*

Dated October 25, 1943.