

In the Matter of MINNESOTA MINING & MANUFACTURING COMPANY,
EMPLOYER and UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA,
CIO, PETITIONER

Case Nos. 32-CA-21 and 15M-R-108.—Decided February 10, 1949

DECISION

AND

ORDER

On October 12, 1948, Trial Examiner Howard Myers issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (1) and (3) of the Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief. The Respondent's request for oral argument is hereby denied, as the record and brief, in our opinion, adequately present the issues and the positions of the parties.

The Board¹ has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.² The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only insofar as they are consistent with this Decision and Order.

1. We agree with the Trial Examiner that the Respondent interfered with, restrained, and coerced its employees, in violation of Section 8 (a) (1) of the Act. However, in so finding we rely exclusively upon the following facts:

¹ Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-man panel consisting of the undersigned Board Members [Chairman Herzog and Members Houston and Murdock].

² The objection to the consolidation of these cases was properly overruled. *Matter of Dixie Shirt Company, Inc.*, 79 N. L. R. B. 127, fn. 2; *Matter of Hoosier Cardinal Corp., et al.*, 67 N. L. R. B. 49, fn. 1. National Labor Relations Board Rules and Regulations—Series 5, Sections 203.33 and 203.64. The motion to sever was properly rejected. *Matter of Phelps Dodge Copper Products Corporation*, 63 N. L. R. B. 636. The fact that the Respondent did not receive a copy of the objections to the election was immaterial. *Matter of Northwest Engineering Corporation*, 63 N. L. R. B. 1219. The Respondent was not prejudiced by the denial of permission to take the deposition of Charles J. Olson, because the Trial Examiner assumed the very fact the deposition was intended to prove. The rejected Exhibit was irrelevant.

(a) Superintendent Neikirk's and Foreman Elliott's interrogation of employees³ concerning their union activities and sympathies;⁴

(b) Neikirk's attempted surveillance of union activities by questioning some employees as to the union activities and sympathies of their co-workers;⁵ and

(c) the timing, and the manner of presenting and publicizing, the wage increase,⁶ hospitalization, pension, vacation, and bonus or profit-sharing plans.⁷

The Respondent contends that the interrogations were not violative of the Act because no witness testified that he was influenced in his voting by these statements. The Board and the courts have repeatedly held that the Act is violated by the commission of coercive acts, regardless of whether such acts are effective in accomplishing the intended results.⁸ Furthermore, interrogation has repeatedly been held to be a *per se* violation of Section 8 (1).⁹

³ Namely, Williams, Frank Cantrell, and Tom Baker; Napoleon Carr, McDaniel, and "Jimmie"; House; Ward; Parker; Ball; Boyd.

⁴ Although Neikirk denied asking employees if they were members of the Union, or how they were going to vote, he admitted interrogating them about their attitude toward the Union. Interrogation concerning attitudes toward unions is as much prohibited as interrogation concerning membership or voting intentions. *Matter of Consolidated Machine Tool Corporation*, 67 N. L. R. B. 737, 738; *Matter of Wytheville Knitting Mills, Inc.*, 78 N. L. R. B. 640.

⁵ Namely, Marsden, Carr, Stubbs, Ball, and Boyd. *Matter of Columbian Carbon Company*, 79 N. L. R. B. 62; *Matter of Wire Rope Corporation of America, Inc.*, 62 N. L. R. B. 380. The fact that the Respondent's attempt did not succeed does not excuse this violation either. *Matter of Dixie Shirt Company, Inc.*, 79 N. L. R. B. 127, see *infra*, footnote 8.

⁶ The Respondent's contention that *Matter of Loudonville Milling Company*, 79 N. L. R. B. 304, requires us to find that this wage increase, made during the union's organizational campaign was not interference, is without merit. The record in this case discloses something more than the *method* by which the Respondent arrived at the decision to make the increase; the record in that case did not. Neikirk, in announcing the raise, emphasized in many closet sessions with small groups of employees that the Respondent and not the Union was responsible for the raise. In this context, the raise "interferes with the right of self organization by emphasizing to the employees that there is no necessity for a collective bargaining agent." *May Department Stores Co. v. N. L. R. B.*, 326 U. S. 376, 385; see also *Matter of Lancaster Garment Company*, 78 N. L. R. B. 935; *Matter of Miller-Quincy Mfg. Company, Inc.*, 53 N. L. R. B. 366.

However, we do not base this finding upon the fact that the general wage increase was put into effect without first notifying or consulting the Union known to be claiming to represent the majority of the employees.

⁷ We credit the assertions of the Respondent that these plans were in existence from April, 1947. The record, however, establishes that they were first publicized almost a year later and in the 2 months preceding the election. The time chosen to advertise the bounty of the respondent could only have been intended to prevent the "attempts of outside labor organization effectively to appeal to its employees. . . ." *N. L. R. B. v. Christian Board of Publication*, 113 F. (2d) 678, 681 (C. A. 8), enforcing 13 N. L. R. B. 534; *Matter of Gate City Cotton Mills*, 70 N. L. R. B. 238, 250.

⁸ *N. L. R. B. v. Illinois Tool Works*, 153 F. (2d) 811, 814 (C. A. 7), enforcing 61 N. L. R. B. 1129; *N. L. R. B. v. Winona Textile Mills, Inc.*, 160 F. (2d) 201 (C. A. 8), enforcing 68 N. L. R. B. 702; *Matter of The Pure Oil Company*, 73 N. L. R. B. 1, 3 and cases cited therein; *Matter of Dixie Shirt Company*, 79 N. L. R. B. 127.

⁹ *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 518, 520; *P. H. Glatfelter Co. v. N. L. R. B.*, 141 F. (2d) 631, 633 (C. A. 8); *N. L. R. B. v. Cities Service Oil Co.*, 129

The Respondent further argues that the activities of Neikirk and Elliott are protected by Section 8 (c) of the Act. Although we cannot accept the Trial Examiner's apparent adoption of a "totality of conduct" theory,¹⁰ and do not rely on his rationale for not accepting Section 8 (c) as a defense, we disagree with the Respondent. Section 8 (c) does not protect the acts we here find violative of Section 8 (a) (1). As we have heretofore held, interrogations as to union activities and sympathies and solicitations of surveillance are not expression of "any views, argument, or opinion, or the dissemination thereof", within the meaning of Section 8 (c).¹¹ The disclosure by the Respondent of employee benefit plans, during the period of the Union's organizational campaign and during the pendency of a Board-ordered election, under the circumstances here present is likewise beyond the protection of Section 8 (c). It is sufficient to point out that such disclosure clearly constituted a "promise of benefit" within the meaning of that provision.¹²

2. For the reasons appearing in the Intermediate Report, we agree with the Trial Examiner that Robert Ball and Fred Boyd were discriminatorily discharged in violation of Section 8 (a) (3) of the Act.¹³ However, we do not find, as did the Trial Examiner, that the lay-off of Harold House was violative of the Act.

Knowledge by a Respondent of the dischargee's union membership is a prerequisite to a finding that the discharge was made for that reason. In our view, the record fails adequately to establish such knowledge on the part of the Respondent concerning House. The Trial

F. (2d) 933, 934 (C. A. 2); *Matter of Sewell Manufacturing Company*, 72 N. L. R. B. 85; *Matter of Wytheville Knitting Mills, Inc.*, 78 N. L. R. B. 640.

¹⁰ Intermediate Report at p. 9. *Matter of The Bailey Company*, 75 N. L. R. B. 941; *Matter of Volney S. Anderson and Mildred C. Anderson, d/b/a Pacific Moulded Products Company*, 76 N. L. R. B. 1140; *Matter of Burns Brick Company*, 80 N. L. R. B. 389.

¹¹ *Matter of Ames Spot Welder Company, Inc.*, 75 N. L. R. B. 352, 355, fn. 6. In addition, we have held such interrogation to be by its nature coercive. *Matter of Sewell Mfg. Co.*, 72 N. L. R. B. 85, 87.

¹² *Matter of Hudson Hosiery Company*, 72 N. L. R. B. 1434, 1437, and cases cited in footnote 6; *Matter of Wilson & Co., Inc.*, 77 N. L. R. B. 959; *Matter of Macon Textiles, Inc.*, 80 N. L. R. B., No. 238.

¹³ The Respondent's contention that the Trial Examiner, in finding violations of Section 8 (a) (3), credited only the witnesses for the General Counsel is without support in the Intermediate Report and record. Furthermore, the importance of observation of witnesses to any finding of their credibility is such that we will not overrule the credibility findings of the Trial Examiner unless they are clearly erroneous.

The evidence in the record that Robert Ball was friendly, rather than hostile, toward Superintendent Neikirk at the time he received notice of his discharge is immaterial. See *Matter of Wadesboro Full-Fashioned Hosiery Mills, Inc.*, 72 N. L. R. B. 1064; *Matter of Wytheville Knitting Mills, Inc.*, 78 N. L. R. B. 640. We can, in evaluating the motive for the discharge of known union leaders, take into consideration the Respondent's hostility toward unions to the extent, as here, that it is not privileged under Section 8 (c). See *Matter of Spencer Auto Electric, Inc.*, 73 N. L. R. B. 1416; *Matter of Consumers Cooperative Refinery Assn.*, 77 N. L. R. B. 528.

Examiner inferred this knowledge from the fact that House, like many of the other employees, was interrogated as to his knowledge of the Union's organizational campaign and his attitude toward the Union and that House had admitted knowing of the campaign. An admission of knowledge of the existence of an organizational campaign is not necessarily a confession of membership. House testified, furthermore, that he had been inactive as a union member, engaging in none of the activities which would have made manifest his membership. Mere union membership on the part of a dischargee does not make his discharge discriminatory.¹⁴

3. We find, as did the Trial Examiner,¹⁵ that these acts of the Respondent violative of Section 8 (a) (1) interfered with the free choice of representatives by its employees at the election of March 17, 1948, and we shall therefore set that election aside.¹⁶

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Minnesota Mining & Manufacturing Company, Little Rock, Arkansas, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Gas, Coke and Chemical Workers Union of America, CIO, or in any other labor organization of its employees, by laying off 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) Interrogating its employees concerning their union affiliations, activities, or sympathies, or those of their coworkers or in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Gas, Coke and Chemical Workers Union of

¹⁴ *Matter of Lawrence R. Hagy, D. D. Harrington and Stanley Marsh*, 74 N. L. R. B. 1455, 1474; *N. L. R. B. v. Mylan-Sparta Company, Inc.*, 166 F. (2d) 485, (C. A. 6) and cases cited therein.

¹⁵ The Respondent's contention that the Trial Examiner was without authority to recommend the setting aside of the election is without merit. See *supra* note 2. The argument based on the assertion that a hearing officer does not have authority, under Section 9 (c) of the amended Act, to make recommendations is not applicable to investigation of objections to elections. See National Labor Relations Board Rules and Regulations—Series 5, Section 203.61 (b); furthermore, Section 203.61 (c), on which the Respondent relied, provides that such hearings shall be conducted in accordance with the provisions of Sections 203.56, 203.57, and 203.58 only "insofar as applicable."

¹⁶ *Matter of Aircraft Hosiery Company*, 78 N. L. R. B. 333; *Matter of Dixie Shirt Company, Inc.*, 79 N. L. R. B. 127.

America, CIO, or any other labor organization, 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, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the amended Act.

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

(a) Offer Robert Ball and Fred Boyd immediate and full reinstatement to their former or substantially equivalent positions¹⁷ without prejudice to their seniority or other rights and privileges;

(b) Make whole Robert Ball and Fred Boyd 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 equal to the amount which he normally would have earned as wages during the period from the date of his lay-off to the date of the Respondent's offer of reinstatement, less his net earnings¹⁸ during that period;

(c) Post at its plant in Little Rock, Arkansas, copies of the notice attached hereto marked "Appendix A."¹⁹ Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

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

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed, insofar as it alleges that the Respondent discharged Harold House in violation of Section 8 (a) (3) of the Act.

¹⁷ In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible and if such position is no longer in existence then to a substantially equivalent position." See *Matter of The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 N. L. R. B. 827.

¹⁸ 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, which would not have been incurred but for this unlawful discrimination and the consequent necessity of his seeking employment elsewhere. *Matter of Crossett Lumber Company*, 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. *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

¹⁹ In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted in the notice, before the words: "A DECISION AND ORDER," the words: "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

IT IS FURTHER ORDERED that the election held on March 17, 1948, among the employees of Minnesota Mining & Manufacturing Company, Little Rock, Arkansas, be, and it hereby is, set aside.²⁰

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT interrogate our employees concerning their union affiliations, activities, or sympathies or those of their coworkers or in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist UNITED GAS, COKE AND CHEMICAL WORKERS UNION OF AMERICA, CIO, or any other labor organization, 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, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the amended Act.

WE WILL OFFER to Robert Ball and Fred Boyd immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

All our employees are free to become, remain, or refrain from becoming members of the above-named union or any other labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the amended Act. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

MINNESOTA MINING & MANUFACTURING COMPANY,
Employer.

By _____

(Representative)

(Title)

Dated _____

²⁰ When the Regional Director advises the Board that the circumstances permit a free choice of representatives, we shall direct that a new election be held among the Respondent's employees.

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

INTERMEDIATE REPORT

Mr. Charles A. Kyle, for the General Counsel.

Mr. Richard L. Post, of St. Paul, Minn., for the Respondent.

Mr. Ira S. Williams, of Little Rock, Ark., for the Union.

STATEMENT OF THE CASE

Upon a petition duly filed on June 23, 1947, by United Gas, Coke and Chemical Workers of America, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, held a hearing on December 8, 1947, to determine whether the employees of the Little Rock, Arkansas, plant of the Minnesota Mining & Manufacturing Company, herein called the Respondent, desired to be represented by the Union for the purposes of collective bargaining. Thereafter and on March 4, 1948, the Board issued an order directing that an election be conducted among the Respondent's employees in a certain appropriate unit under the auspices of the Regional Director of the Fifteenth Region (New Orleans, Louisiana).

On March 17, 1948, the said election was held and a majority of the votes were cast against the Union.¹ The Union filed objections to the conduct of the election on or about March 22, 1948, and on or about April 23, 1948, the said Regional Director issued his report on the objections finding that substantial and material issues were raised to the conduct of the election and recommended that the results of the said election be set aside and that a new election be held. To this report the Respondent, on or about May 3, 1948, duly filed exceptions. On June 15, 1948, the Board ordered that a hearing be held for the purpose of resolving the issues raised by the Union's objections.

Upon an amended charge duly filed by the Union on June 30, 1948, the General Counsel of the Board, herein called the General Counsel, issued a complaint alleging that the Respondent had engaged in, and is engaged in, unfair labor practices affecting commerce, within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended (Public Law 101, Chapter 120, 80th Congress, First Session), herein called the Act. Copies of the complaint and amended charge, together with notice of hearing thereon, were duly served upon the Respondent and the Union.

On July 2, 1948, the then Acting Regional Director for the Fifteenth Region issued an order, dated that day, directing that the complaint and representation cases, being cases Nos. 32-CA-21 and 15M-R-108 respectively, be consolidated.

With respect to the unfair labor practices, the complaint, in substance, alleged that the Respondent (1) through certain named agents, its superintendent, and its foremen, by means of certain stated acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and (2) discriminatorily discharged Robert Ball and Fred Boyd, Jr. on March 23, 1948, Harold House on March 26, 1948, and Elmer B. Harrison on January 13, 1948,² and thereafter refused to reinstate them because they had joined and assisted the Union and had engaged in concerted activities with other

¹ Of the 114 valid votes cast, 49 were for the Union, 64 were against, and 1 protested

² At the hearing, the General Counsel's motion to dismiss the complaint as to Harrison was granted without objection.

employees for the purposes of collective bargaining and other mutual aid and protection.

On or about July 12, 1948, the Respondent duly filed an answer admitting certain allegations of the complaint but denying the commission of any of the alleged unfair labor practices.

Pursuant to notice, a hearing was held on July 14, 15, and 16, 1948, at Little Rock, Arkansas, before the undersigned, Howard Myers, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel and the Union by a representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues was afforded all parties. At the close of the General Counsel's case-in-chief, the Respondent moved to dismiss the complaint in its entirety for lack of proof. The motion was denied. At the conclusion of the taking of the evidence, the General Counsel's motion to conform the pleadings to the proof was granted without objection. The parties waived oral argument before the undersigned. They were then advised that they might file briefs and proposed Findings of Fact and Conclusions of Law with the undersigned on or before July 31, 1948. A brief has been received from the Respondent which has been carefully considered by the undersigned.

Upon the entire record in the case and from his observations of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Minnesota Mining & Manufacturing Company has its principal offices in St. Paul, Minnesota. It owns and operates plants in various parts of the country. At its little Rock, Arkansas, plant, the employees of which are the only ones involved in this proceeding, the Respondent is engaged in the manufacture, sale, and distribution of roofing granules. During the 12-month period immediately preceding the issuance of the complaint herein, the sales at the Respondent's Little Rock plant amounted to over \$3,000,000, approximately 95 percent of which was shipped from that plant to points located outside the State of Arkansas. During the same period, the Respondent purchased coloring pigment for its Little Rock plant amounting to more than \$25,000, over 95 percent of which was received at that plant from points located outside the State of Arkansas.

The Respondent does not dispute the Board's jurisdiction. The undersigned finds that the Respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

United Gas, Coke and Chemical Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The background*

Operations at the Respondent's Little Rock plant commenced in April 1947. Shortly thereafter the Union commenced an organizational campaign which culminated with a petition for certification being filed by the Union with the Board on June 23, 1947. A hearing upon the said petition was duly held on December 18, 1947. On March 4, 1948, the Board issued its Decision and Direction of Election and pursuant thereto an election was duly held on March 17,

1948, under the auspices of the Regional Director for the Fifteenth Region, among the employees in the unit found by the Board to be appropriate. The Union lost the election by the vote of 64 to 49.³

B. Interference, restraint, and coercion; the disputed election

In January 1948, Superintendent Theodore Neikirk called into his office individually, or in small groups, if not all, the non-supervisory employees and told the employees that their hourly wages had been increased 10 cents per hour. According to the testimony of Jimmie Williams, Neikirk also told him and the three other employees, who accompanied him to Neikirk's office on that occasion, that they should understand that the Respondent was the one who was giving the employees the raise and that the Union had nothing to do with it.

Williams further testified that in March 1948, he and some employees were called into Neikirk's office and that Neikirk said to them :

In a few days there would be an election coming up, and he said, "I want you boys to remember me." In other words, you boys have never voted for the Union; I will send out some ballots showing you just how to vote—you know, for the Union or against the Union—and then he asked us concerning, had we ever been a member of a Union. I think one of the other fellows told him that he had.

Williams also testified that, in the course of this March meeting, Neikirk asked him if he belonged to the Union; that he replied in the affirmative; that Neikirk then asked him "whether the Union ever had done anything beneficial for him; and that when he informed Neikirk that he thought they had, the latter replied, "Well, the Union will never be much good to nobody."

Regarding a meeting he and some of his coworkers had with Neikirk shortly before the scheduled Board's election on March 17, Williams testified, in part, as follows :

Well, he [Neikirk] said, he gave us a cigar, and he told us boys to sit down, and he said, "Now you boys have heard about the Union, they have a Union meeting over here." We told him we heard, got wind of it, and he said, "Some of the boys have been attending this meeting. Now there is going to be an election coming up next Wednesday," I believe it was, "and I don't want you boys to let me down. Some of you boys know how to vote and some of you don't know how to vote. Those of you who don't, I have something to show you just how to vote for the Union or against the Union." And he said, mentioned, "now you can vote any way that you wish to vote, but for my part, I am not a Union man."

Williams also testified that during the morning of March 17, the day of the Board's election, Neikirk and Lyle H. Fisher, the Respondent's industrial relations director, came to where he and the other two members of the loading gang were working; that during the conversation that then ensued, Neikirk asked the three employees whether they were "with him"; that the three employees replied that they were; and that Neikirk then said "Remember, boys, you said you were with us; I don't want any double-crossing."

Napoleon Carr, who attended the Neikirk meetings with Williams and participated in the above conversations testified to by Williams, corroborated, in the main, the testimony of Williams.

³ An additional ballot was cast but that ballot was protested. The record does not show whether the protest was ever resolved.

Fred Marsden, a kiln operator, testified that on or about February 4, he and about 10 other employees were called into Neikirk's office; that Neikirk told them about the Board's election and that Neikirk said he was "out to win" it; that Neikirk added that the Respondent had a vacation plan which Neikirk then proceeded to outline; and that Neikirk then stated he did not like Unions, and particularly the CIO because "it was run by a bunch of Communists." Marsden further testified that Neikirk further said that the employees had the right to vote either for or against the Union; that the election would be by secret ballot and no one would know how the individual employees voted; and that Neikirk concluded the interview by saying he hoped the employees "were on the right side of the fence."

Regarding conversations he had with Neikirk on March 8 and 9, Marsden testified as follows:

We sat and jabbered back and forth about lots of things that wasn't pertaining to this case, and then he showed me an article in the Chicago Tribune relating to a certain man being a Communist. He said he was run out of the CIO and was sent across the border, and asked me if I would take that across over to the plant and show it to the other fellows, and I told him I would. That evening I showed Reddy Kindy, J. B. Evatt, Pfeiffer—I showed them that paper, that article in the paper. And then I was asked if I could find out—

Trial Examiner MYERS. Who asked you?

The WITNESS. Mr. Neikirk.

Trial Examiner MYERS. When?

The WITNESS. Before I left the office—if I would take and try to find out how the boys felt about the Union and how they were going, in a round about way, how they were going to vote. I stated to Mr. Neikirk that at the present time the boys told me plain to my face it was none of my damned business how they voted. So he asked me if I would come back the next day and report, which I did, and he asked me if I had found out how the boys were voting and I says to him, "I told you, Mr. Neikirk, what they would tell me—that it was none of my business how they voted." That is, I believe, all there was to that conversation at that time.

Harold House, whose lay-off will be discussed below, testified that on or about March 15, he and two coworkers were called into Neikirk's office; that the three of them were asked by Neikirk if they were for the Union or for Neikirk; that none of the employees replied; and that Neikirk then said, "You might be all hot-headed Union men, but I don't see that it will do [you] any good and I want you to be with me. If you have confidence in me, well, let the Union alone."

House further testified that about 3 days prior to the Board's election Neikirk sent for him and that he had the following conversation with Neikirk:

Well, he [Neikirk] asked me if I was for the Union and I didn't answer yes or no. And he asked me if I had confidence in him, the most confidence in him or the Union. I still didn't say anything. And he went on and said, "Well, now, whether you boys want to get a Union or not," he said, "they can't do anything for you." He said, "Are you for me or are you for the Union?" Then I said, "Well, regardless of what comes about, what the situation leads to, it wouldn't make me an enemy to you or at least I wouldn't feel hard towards you. We would still be just like we are. There wouldn't be anything there regardless of what came about,

and I would rather not come out and just tell just exactly what I was to anybody because it might cause feelings either way, hard feelings either way."

Robert Ball, whose lay-off will be discussed below, testified that on or about March 8, 1948, the following conversation between him and Neikirk took place in the latter's office:

He [Neikirk] says, "Now I know that you are President of the Union." I said, "Well, you still know more about it than I do." He said, "Well, I didn't know whether you knew it or not." I didn't give him a direct answer on it, because I didn't want to put myself on the spot. We talked on a little bit about vacations with pay, paid holidays, and he says, "I am out to win this election." He said, "I have got to have a little help." I asked him then if there were any complaints on my work, and he said, "No, not none." I asked him if he was going to lay me off and he said it might lead up to it. I said, "Mr. Neikirk, if you are, please give me a week's notice," and he said, "I will," and I said, "Don't drop it out on me at 3 o'clock in the afternoon." He said, "I won't." So that ended that conversation. Well, it didn't either. He said, "Go back over there and go to work," because he said, "this layoff may never come." He says, "If business picks up so I won't have to lay off, I won't."

Ball further testified that during the above quoted conversation Neikirk asked him how employee Fred Boyd, whose discharge is discussed below, felt about the Union and that he replied that he did not know.

On or about January 8, 1948, Ira Ivey, R. L. Dumond, and four other employees were called into Neikirk's office. Regarding what transpired there, Ivey testified as follows:

A. Well, he [Neikirk] pointed us all out and said, "You boys know what you are all over here for, I reckon." He said, he pointed us out one by one and said, "I brought you over here to talk to you about the Union," he said, "I want also to talk to you about Mr. Dumond (the Union's Vice-President) here." He said, "I want to know what your opinion about him is." We all told him, we didn't have any opinion.

* * * * *

Q. Now what did Mr. Neikirk say about Dumond?

A. Well, he said he had him on the spot, and he had all us in there in regard to what we thought about Dumond.

Q. What did he say?

A. Well, he said, "I got him on the spot," and he said, "I want your opinion, all you guys' opinion about Dumond."

Q. Well, was there any discussion as to what you guys thought?

A. No, we all told him that we hadn't thought much about it and passed it on.

Q. There wasn't any further conversation about it?

A. Well, he said—Let's see. He said, "If you guys are for the Company, okay; and if you are for the Union, why, he said, it is not okay." He said, "I don't like the Union." He says, "I don't like it, and I ain't going to have it. I don't like the CIO."

* * * * *

Q. Well, did he show you any newspapers?

A. Yes, sir, he showed us a newspaper clipping.

* * * * *

Q. Did Mr. Neikirk make any remarks when he showed you the clipping?

A. He said he didn't like the CIO and he was not going to have it.

Q. Did he say what kind of a Union the CIO was?

A. Well, it originated in Moscow, was supposed to.

Ivey further testified that shortly after he had received the January 1948 general 10 cents increase in wages, he asked Neikirk for another wage increase. Regarding this incident Ivey testified as follows:

Well, I went over to see him (Neikirk) about an increase in pay, so while I was over there he asked me how did I feel about the Union, and I told him that I hadn't thought much about it. He said, "You said you are for a Union." I said, "How do you know I am for a Union?" He says, "I know." So he said, "You go on back home and bring me a different line." He said, "If you are for the Company, okay, and if you are for the Union," he said, "it is not okay."

Ivey also testified that on March 17, the day of the Board's election, Neikirk said to him, "Today is election day, you had better vote right."

John Hardman testified to a conversation he had with Neikirk in January 1948, wherein the latter asked him if he had heard that the Union was trying to organize the employees and that when he replied in the negative, Neikirk then said, in case he heard anyone discussing the Union, he should "tell the boys to come over [because] he (Neikirk) wanted to talk to them."

The evening before the Board's election the Union held a meeting in a public hall near the plant. On the following day, according to Andrew Ward's undenied and credible testimony, his foreman, Jack Jones, and he had the following conversation:

Well, he (Jones) said, "I thought you were for Mr. Neikirk and now you were at the meeting last night." I said, "Yes, sir, I was there." And he said, "Now don't let the old man down." "No, sir," I said, "I told Mr. Neikirk that I was for him."

Ward further testified that later that day, March 17, Neikirk and Lyle Fisher came to where he was working; that Neikirk said to him, to quote Ward's testimony, "I thought you were for me and they elected you a shop steward"; that he replied, "Yes, sir, they did, but I couldn't keep them from electing me a shop steward"; that Neikirk then asked, "You are for me, ain't you"; and that he replied in the affirmative.

While not specifically denying making the statements attributed to him by Williams, Carr, Marsden, House, Ball, Ivey, Hardman, and Ward, Neikirk testified that he called the employees into his office in January 1948, in order to explain to them the Respondent's wage policy and to inform them of the general wage increase which just had been granted; that the other meetings and talks he had with the employees were for the purpose of explaining to them the Respondent's personnel and labor policies, its bonus or profit-sharing plan, its pension plan, its hospitalization plan, and its vacation-with-pay plan; that he did not indicate in any of his talks with the employees that the Respondent would discontinue any benefit it had granted prior thereto if the Union won the election, nor did he at any time promise the employees any additional benefit if the Union lost the election; that he did not ask any employee how the employees intended to vote in the Board's election; that his main reason for calling the employees to his office was because "quite a few" employees had never participated in a Board-conducted election and he "felt as though it was my duty to explain the working

of the election" to the employees; that he told some of the employees that they had the absolute right to vote for or against the Union; that to other employees he said, "You know what we stand for; you know what you have; now, let your conscience be your guide"; and that he used the phrase, "Let your conscience be your guide" "simply because I had already explained it to them that our personnel policies, our labor policies, that is something that they already have. Now, what a union can give you more than that, I wouldn't know."

Neikirk impressed the undersigned as being a witness who was withholding the true facts, which facts were within his personal knowledge, and, therefore, the undersigned does not credit his testimony. Neikirk admitted being opposed to the unionization of the employees and that he wanted to so impress the employees. He did not deny, moreover, the testimony of Williams, Carr, Marsden, House, Ball, Ivey, Hardman, and Ward which testimony clearly indicates that Neikirk queried them and other employees about their membership and activities in behalf of the Union and as to how they intended to vote in the election. The undersigned was impressed with the sincerity and candor with which Williams, Carr, Marsden, House, Ball, Ivey, Hardman, and Ward testified and finds that Neikirk made the statements which each of them attributed to him.

The undersigned further finds that Neikirk's queries about the employees' membership in the Union and his questions with respect to how the employees intended to vote in the election coerced and intimidated the employees and thus interfered with the free exercise of their right to chose a bargaining representative. The undersigned is not unmindful of the fact that many employees testified, in effect, that they were not coerced or intimidated by Neikirk's statements and that despite his statements they voted in the election as they wanted and that they had always felt free to join or not to join any labor organization they desired. The undersigned is of the opinion, and finds, that this testimony does not overcome the more positive evidence in the record that Neikirk's statements removed from the employees the complete freedom of choice of the selection of a bargaining representative which the Act contemplates. Moreover, such testimony by employees concerning the effect, or lack of effect, of the Respondent's acts on them, aside from being generally unreliable because of the very nature of the circumstances involved, is not probative of whether the Respondent had actually engaged in the illegal conduct found above. Furthermore, the record reveals other incidents which further establish the Respondent's illegal position. Thus, on the day prior to the Board's election, Foreman Elliott called the five or six men composing the loading dock crew together and, according to Jimmie Williams' testimony, the following then took place:

Well, he (Elliott) said, "Boys," he said, "you know what we are here for. In other words, we called this meeting together to find out how you boys felt towards the Union." He said, "A few of you boys know about the Union and a few of you don't," and he said, "I can tell you about it, how the Union operates and how they don't." Well, Taker didn't have anything to say. And then he asked, "Did we have anything to say?" So we refused to say anything, and he said, "Well, the Union, you would be just strangers." I asked the question, "How could we be strangers", and he explained—He mentioned that if we get the Union that we would be strangers—in other words, he couldn't be friendly with us and we couldn't be friendly with him. I asked him how would we become strangers, and he said, "Well, just like that I take one of you men and send you up to help Taker or have Taker help you. Well, I couldn't do that if the Union was here." He explained the best he could. We

wanted to know more about it, and he asked was there anything to be said about it. . . .

Regarding this incident, Elliott testified that he called the crew together because he wanted "to find out how they felt, if they had any questions they wanted to ask about the Union or about the Company, why, I would try to answer them for them." Williams impressed the undersigned as an honest and forthright witness. This fact, coupled with the absence of any denial on Elliott's part with respect to the statements attributed to him by Williams, convinces the undersigned that Elliott made the said statements and the undersigned so finds. The undersigned further finds that the said statements of Elliott, as testified to by Williams, are violative of the Act.

The Respondent's counsel contended at the hearing that Neikirk's and Elliott's statements to the employees are protected by Section 8 (c) of the Act. Insofar as presently relevant, that section provides that "The expressing of any views, arguments, or opinion . . . shall not . . . be evidence of an unfair labor practice . . . if such expression contains no threat of reprisal or force or promise of benefit." The legislative history of the Act in silhouette against the contemporary background, clearly indicates that the objective of Section 8 (c) was to preclude an inference of unfair conduct from an unconnected statement of attitude alone. It was not designed to preclude, as here, consideration of connected, immediately relevant utterances.

Viewed in this light, by Neikirk's interrogations of the employees concerning their union activities and sympathies as to how they would vote in the election and by Neikirk questioning some employees as to the union activities and sympathies of their coworkers, the Respondent engaged in acts violative of Section 8 (a) (1) of the Act. By Elliott's veiled threat that if the Union won the election the employees would become more burdensome, the Respondent violated Section 8 (a) (1) of the Act.

Assuming, *arguendo*, that Neikirk's and Elliott's statements did not in themselves contain any such threat of reprisal or force or promise of benefit, that fact, standing alone, would not bring the statements within the purview of Section 8 (c) for, as the legislative history of the Act shows, the Congress did not intend that the threats and promises of benefit which remove expressions of views and opinions from the protection of that section must necessarily appear in the context of such statement. It was not, moreover, the intention of the Congress to preclude a consideration of threats or promises of benefit where, as here, they are implicitly and inextricably a part of the conduct in question.⁴

The undersigned further finds, contrary to the Respondent's contention, that the granting of the general wage increase and Neikirk's explanation to the employees of the Respondent's hospitalization plan, pension plan, vacation plan, and bonus or profit-sharing plan were for an unlawful purpose. Assuming, as the Respondent contends, that the determination to grant a general wage increase had been made some time prior to the advent of the Union and after a "survey of the comparable rates in the area" had been made, the undersigned is convinced, and finds, that the wage increase was put into effect and the various beneficial plans were announced or explained for the purpose of inducing the employees to abandon their efforts to bargain collectively. This finding is buttressed by the fact that the general wage increase was put into effect without

⁴ See 93 Cong. Rec. 4261, 3950, 6601, 6603, 6604-6605, 6673, 7002; Sen. Rep. No. 103, 80th Cong., 1st Sess., p. 23; House Rep. No. 510, 80th Cong., 1st Sess., pp. 43, 45; House Rep. No. 245, 80th Cong., 1st Sess., p. 33

first notifying or consulting the Union, even though the Respondent well knew that the Union was then claiming to represent the majority of the employees. While the Respondent was not obligated by statute to consult or notify, before granting a wage increase, a union who had not proven its majority status, the Respondent, however, adroitly timed the granting of the wage increase to impress upon the employees that continued union affiliation was a fruitless gesture and that they could rely upon the employer's unilateral generosity to attain their economic ends. This finding finds support in Neikirk's statement of March 15, to House and two other employees, "I don't think [the Union] will do [you] any good. . . . If you have any confidence in me, well, let the Union alone." Moreover, the beneficial plans, referred to above, which were allegedly in existence since the beginning of operations of the Little Rock plant were never made known to the employees until shortly prior to the Board's conducted election and then announced by Neikirk during his interrogation of the employees concerning their union sympathies and as to how they intended to vote in the election. By the said actions the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by the Act and thereby violated Section 8 (a) (1) of the Act.

Upon the basis of the above findings, the undersigned concludes, and finds, that the Respondent interfered with the conduct of the election of March 17, 1948, thereby depriving the employees of the freedom of choice of representatives contemplated by the Act. Accordingly, the undersigned recommends that the said election be set aside and vacated.

With respect to the meeting of the employees called by the Respondent on March 16, the General Counsel argued at the hearing that the remarks made by the various speakers contained statements which are violative of the Act. With this argument, the undersigned disagrees and finds that the remarks are not such as are proscribed by the Act. Likewise, contrary to the contention of the General Counsel, the letter which the Respondent sent to each employee on March 12, contains no statement which might properly be construed as being violative of the Act.

C. The discharges

The complaint, as amended at the hearing, alleged that the Respondent, in violation of the Act, laid off Robert Ball and Fred Boyd on March 23, 1948, and Harold House on March 26, 1948. In its answer, the Respondent averred, and at the hearing contended, that the three named persons were not discharged in violation of the Act, but were laid off due to lack of work. The answer further averred that between February 22 and March 28, 1948, the Respondent laid off 19 employees, including the 3 persons involved herein for lack of work and that "all lay-offs were made without consideration of the union activity of the employee but said lay-offs were made on the basis of plant efficiency and seniority" and that many of the said laid-off employees, including House, have been re-employed or have been offered re-employment when vacancies occurred.

The facts pertaining to the three named discharges will be discussed *seriatim*:

Robert Ball was first employed by the Respondent on May 17, 1947, as a welder third-class and during his employment performed acetylene and electric welding and millwright work. Ball worked on the 3rd shift until that shift was discontinued on February 20, 1948. Thereafter he worked on the first shift until he was laid off on March 23, 1948. Ball's starting wage was \$1 per hour. During his employment he received three 10-cent per hour increases.

Ball joined the Union in August 1947, and shortly thereafter was elected its vice president. In November 1947, after E. F. Cupples, the then president of

the Union was discharged, Ball was elected president. He was active in behalf of the Union and Neikirk was fully aware of this activity and of the fact that Ball was the Union's vice president. Neikirk also knew that Ball was elected president for on March 8, 1948, according to Ball's credible testimony, the following conversation ensued between him and Neikirk:

He [Neikirk] says, "Now I know that you are President of the Union." I said, "Well, you still know more about it than I do." He said, "Well, I didn't know whether you knew it or not." I didn't give him a direct answer on it, because I didn't want to put myself on the spot. We talked on a little bit about vacations with pay, paid holidays, and he says, "I am out to win this election." He said, "I have got to have a little help." I asked him then if there were any complaints on my work, and he said, "No, not none." I asked him if he was going to lay me off and he said it might lead up to it. I said, "Mr. Neikirk, if you are, please give me a week's notice, and he said, "I will," and I said, "Don't drop it out on me at 3 o'clock in the afternoon." He said, "I won't." So that ended that conversation. Well, it didn't either. He said, "Go on back over there and go to work", because he said, "this lay-off may never come." He says, "If business picks up so I won't have to lay off, I won't."

Furthermore, later that day, March 8, Ball's supervisor, Basil Whitmeyer, said to Ball, according to the latter's undenied and credible testimony, that Neikirk was surprised that Ball "got mixed up" with the Union.

Whitmeyer, testified, in response to a question propounded to him by the Respondent's counsel that the reason for the lay-off of Ball "because we cut out the third shift and didn't have any work for him." Not satisfied with the answer because admittedly Ball had been on the first shift for over a month prior to the lay-off, Respondent's counsel then asked Whitmeyer why Ball was selected in preference to any other welder. To this question Whitmeyer replied, "on account of his ability." Pressed still further, Whitmeyer then said that despite the fact that Ball was a good worker, the other welders were more capable.

Neikirk testified that Ball was selected for lay-off in preference to any other welder because "his job was eliminated."

Both Neikirk and Whitmeyer admitted that Ball was a capable worker and that Ball would have been retained in the Respondent's employ had not the third shift been eliminated.

The record clearly indicates and the undersigned finds that the Respondent never found any fault with Ball's workmanship. In fact, the record affirmatively shows that Neikirk on several occasions complimented Ball's ability to perform his work. Moreover, both Neikirk and Whitmeyer admitted that they would rehire Ball if the third shift was again put into operation.

The Respondent's answer averred that the lay-offs of Ball, Boyd, and House "were made on the basis of plant efficiency and seniority." Surely, the Respondent could not have given Ball's seniority any consideration when it laid him off because the Respondent's records clearly show that of the four welders first-class in the Respondent's employ when Ball was laid off, Ball had more seniority than any of them. Furthermore, Ball performed millwright work for the Respondent and, according to the Respondent's records, he had more seniority than any millwright in the Respondent's employ on March 23, 1948, the day he was laid off.

Fred Boyd was first employed by the Respondent on May 26, 1947, as a millwright second-class and worked on the third shift until that shift was elimi-

nated on February 20, 1948. Thereafter, and until his lay-off on March 23, 1948, he worked on the first shift. Boyd's starting wage was \$1.00 per hour which was increased in January 1948, to \$1.10 per hour.

Ball joined the Union in May 1947, and attended its meeting fairly regularly. His union affiliations were well known to the Respondent for on the day following meeting of the Union on March 16, Neikirk asked Ball whether the meeting was well attended and Ball replied in the affirmative. Besides, several days prior to the above conversation, Neikirk questioned Ball regarding Boyd's sympathies for the Union.

Neikirk testified that Boyd, like Ball, was selected for lay-off because the third shift had been discontinued. Neikirk, like Whitmeyer, admitted that Boyd would be rehired if the third shift was put in operation again.

Regarding the reason for laying off Boyd, Whitmeyer testified, under direct examination by the Respondent's counsel as follows:

Q. Why was he [Boyd] terminated?

A. Because we cut out the third shift.

Q. Why was he chosen in determining he was to be terminated, laid off? Did you look at the same things which you did when Ball was laid off, compare his ability with that of other employees?

A. Yes, we compared ability.

Q. In your opinion, were the employees who remained on the payroll better workmen in their line of work?

A. Yes.

Harold House was first employed by the Respondent on June 11, 1947, as a millwright first class, which classification he retained throughout his employment. His starting wage was \$1.15 per hour and at the time of his lay-off, on March 26, 1948, he was receiving \$1.30 per hour.

In August 1947, Neikirk offered to promote House to a leadman⁵ but House declined for personal reasons.

In November 1947, House joined the Union. The Respondent was fully aware of House's union membership for in December 1947, Neikirk called House and two or three other employees into his office and asked them whether they had heard that the Union was attempting to organize the plant. Each admitted that he had. Neikirk then proceeded to advise the said three or four employees to refrain from joining or aiding the Union. House then asked Neikirk what assurances the Respondent would give the millwrights with respect to job security. Neikirk assured House that he and the other millwrights were excellent workers and that they were "on the docket to stay" despite any temporary lay-offs which might arise.

On or about March 14, Neikirk and House, according to House's credible testimony, had the following conversation:

Well, he [Neikirk] asked me if I was for the Union and I didn't answer yes or no. And he asked me if I had confidence in him, the most confidence in him or the Union. I still didn't say anything. And he went on and said, "Well now, whether you boys want to get a Union or not", he said, "they can't do anything for you." He said, "Are you for me or are you for the Union?" Then I said, "Well, regardless of what comes about, what the situation leads to, it wouldn't make me an enemy to you or at least I wouldn't feel hard

⁵ According to House's credited testimony a leadman in the Respondent's plant performed the duties of an acting foreman and was responsible for the work done by the men under his supervision.

towards you. We would still be just like we are. There wouldn't be anything there regardless of what came about, and I would rather not come out and just tell just exactly what I was to anybody because it might cause feelings either way, hard feelings either way."

House testified and the undersigned finds, that on March 26, Whitmeyer, his supervisor, told him that he was being laid-off "due to shortages of orders" and he was being selected because he had less seniority than the other millwrights.⁶

Neikirk testified that lack of business necessitated the lay-off of House.

Whitmeyer testified that House was selected for lay-off because of curtailment of production and "he was the youngest [on] the seniority list of the maintenance employees." However, according to the Respondent's employment records, House had more seniority at the time of his lay-off than any of the other four millwrights, then in the Respondent's employ, except one.⁷

With respect to the three discharges, the Respondent contended at the hearing, and in its brief, that the General Counsel did not prove that the complainants were selected for lay-offs on a discriminatory basis. To this contention the undersigned can not agree.

From the credible evidence, and the record as a whole, a finding is justified that the Respondent did, in fact, select the complainants herein for lay-off on a discriminatory basis. No plausible explanation whatever was offered by the Respondent other than that business compelled it to reduce its force, and that when it decided to lay off Ball on March 23, and House on March 26 ability and seniority were taken in consideration. And when it laid off Boyd ability was the primary reason. But the Respondent introduced no evidence furnishing a basis for comparing the ability of the laid-off employees here involved with the ability of those retained.⁸ At the hearing, and in its brief, the Respondent offered various reasons for selecting the complainants for lay-offs, but when these reasons are weighed against the credible evidence in the case it is plain, and the undersigned finds, that the reasons advanced were not the controlling reasons for the selection. The undersigned further finds that Ball, Boyd, and House were laid off, and that Ball and Boyd have been refused reinstatement, because they were members of the Union.

Upon the entire record in the case, the undersigned concludes and finds, that, by laying off Ball and Boyd on March 23, 1948, and thereafter refusing to reinstate them, and by laying off House on March 26, 1948, and refusing to reinstate him until May 25, 1948, because of their respective union memberships and activities, the Respondent has discriminated with regard to the hire and tenure of their employment, thereby discouraging membership in a labor organization and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (a) (1) and (3) thereof.

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

⁶ House was reinstated on May 25, 1948, when another millwright quit the Respondent's employ.

⁷ On May 25, 1948, House replaced millwright Gathin who had quit. The record does not show Gatkin's seniority status on March 26, 1948, the date of House's lay-off.

⁸ The testimony of Neikirk and Whitmeyer that the retained millwrights and welders were better workers and could perform more diversified jobs than Ball, Boyd, and House is unconvincing and unreliable and therefore not credited by the undersigned.

among the several States, and such of them as has been found to be unfair labor practices, 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 unfair labor practices violating Section 8 (a) (1) and (3) of the Act, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has discriminated in regard to hire and tenure of employment of Robert Ball, Fred Boyd, and Harold House, the undersigned will recommend that the Respondent offer to the said Ball and Boyd immediate and full reinstatement to their former or substantially equivalent positions,⁹ without prejudice to their seniority and other rights and privileges. The undersigned will also recommend that the Respondent make the said Ball and Boyd whole 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 he would have normally earned as wages from the date of his respective discharge to the date of the Respondent's offer of reinstatement, less his net earnings during that period.¹⁰

The undersigned will also recommend that the Respondent make Harold House whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him by payment to him of a sum of money equal to the amount he would have normally earned as wages from March 26, 1948, the date of his discriminatory lay-off to May 25, 1948, the date of his reinstatement, less his net earnings.

The scope of the Respondent's illegal conduct discloses a purpose to defeat self-organization among its employees. It sought to coerce them in the exercise of the rights guaranteed them in the Act by discriminatorily laying off Ball, Boyd, and House. Such conduct, which is specifically violative of Section 8 (a) (1) and (3) of the Act, reflects a determination generally to interfere with, restrain, and coerce 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 purposes of collective bargaining or other mutual aid or protection, and presents a ready and effective means of destroying self-organization among its employees. Because of the Respondent's unlawful conduct and since there appears to be an underlying attitude of opposition on the part of the Respondent to the purposes of the Act to protect the rights of employees generally,¹¹ the undersigned is convinced that if the Respondent is not restrained from committing such conduct, the danger of their commission in the future is to be anticipated from the Respondent's conduct in the past, and the policies of the Act will be defeated. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act, to prevent a recurrence of unfair labor practices, and thereby minimize industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, the undersigned will recommend that the

⁹ In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible and if such position is no longer in existence then to a substantially equivalent position" See *Matter of The Chase National Bank of the City of New York, San Juan Puerto Rico Branch*, 65 N. L. R. B. 827

¹⁰ See *Matter of Crossett Lumber Co.*, 8 N. L. R. B. 440.

¹¹ See *May Department Stores Company, etc. v. N. L. R. B.*, 326 U. S. 376.

Respondent cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. United Gas, Coke and Chemical Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8 (a) (1) of the Act.

3. By laying off and discriminating in regard to the hire and tenure of employment of Robert Ball, Fred Boyd, and Harold House, thereby discouraging membership in United Gas, Coke and Chemical Workers Union of America, affiliated with the Congress of Industrial Organizations, the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8 (a) (3) 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

On the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the Respondent, Minnesota Mining & Manufacturing Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Gas, Coke and Chemical Workers Union of America, affiliated with the Congress of Industrial Organizations, or any other labor organization of its employees, by laying off 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 employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization to form labor organizations, to join or assist the Union, or any other labor organization, 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 undersigned finds will effectuate the policies of the Act:

(a) Offer to Robert Ball and Fred Boyd immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges;

(b) Make whole Robert Ball and Fred Boyd for any loss of pay each may 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 lay-off to the date of the Respondent's offer of reinstatement, less his net earnings during that period;

(c) Make whole Harold House for any loss of pay he may have suffered by reason of the Respondent's discrimination against him by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of his discriminatory lay-off, March 26, 1948, to the date of his reinstatement, May 25, 1948, less his net earnings during that period;

(d) Post at its plant in Little Rock, Arkansas, copies of the notice attached to this Intermediate Report marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being signed by the Respondent's representative, be posted by the Respondent, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Fifteenth Region in writing, within ten (10) days from the date of the receipt of this Intermediate Report, what steps the Respondent has taken to comply therewith.

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 will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order 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 six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 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 service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections and exceptions thereto shall be deemed waived for all purposes.

HOWARD MYERS,
Trial Examiner.

Dated_____

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist UNITED GAS, COKE AND CHEMICAL WORKERS UNION OF AMERICA, or any other labor organization, 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.

WE WILL OFFER to Robert Ball and Fred Boyd immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

WE WILL also make whole Harold House for any loss of pay suffered by him as a result of our discrimination against him.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

MINNESOTA MINING & MANUFACTURING COMPANY,
Employer.

Dated _____ By _____
(Representative) (Title)

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