

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 thereof.

V. THE REMEDY

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

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

CONCLUSIONS OF LAW

1. Textile Workers Union of America, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees employed by Respondent at its rug manufacturing plant at 2800 North Pulaski Road, Chicago, Illinois, including plant clerical employees and shipping and receiving employees, but excluding office clerical employees, mailing department employees, professional employees, guards, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. At all times since August 29, 1957, the Union has been and continues to be the exclusive bargaining representative of all employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on and after September 8, 1957, to bargain collectively with the Union as the exclusive representative of its employees in the aforesaid unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By the aforesaid refusal to bargain collectively, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

[Recommendations omitted from publication.]

Warren Petroleum Corporation and Petroleum Trades Employees' Union, Inc. *Case No. 22-CA-7. April 11, 1958*

DECISION AND ORDER

On October 9, 1957, Trial Examiner Herbert Silberman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices and recommended that the complaint be dismissed insofar as it alleges violations of Section 8 (a) (3) of the Act. Thereafter the Respondent filed exceptions to the Intermediate Report, for the sole purpose of limiting the conclusions of law and recommended order of the Trial Examiner to Respondent's Newark, New Jersey, terminal, the only plant involved in this proceeding. The General Counsel, the Charging Party, and the Respondent have entered into a stipulation agreeing to this amendment.

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

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

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 Warren Petroleum Corporation, its officers, agents, successors, and assigns, at its Newark, New Jersey, terminal, shall:

1. Cease and desist from:

(a) Coercively, or otherwise unlawfully, interrogating employees concerning their or other employees' membership in, or activities on behalf of, Petroleum Trades Employees' Union, Inc., or any other labor organization.

(b) Threatening employees that it will curtail operations or engage in other reprisals against employees to discourage their affiliation with, or support of, Petroleum Trades Employees' Union, Inc., or any other labor organization.

(c) In any like or related 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 Petroleum Trades Employees' Union, Inc., or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all 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 National Labor Relations Act, as amended.

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

(a) Post at its plant in Newark, New Jersey, copies of the notice attached to the Intermediate Report marked "Appendix."¹ Copies of said notice, to be furnished by the Regional Director for the

¹This notice is amended by substituting for the words "The Recommendations of a Trial Examiner" the words "A Decision and Order." In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Twenty-second 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 Respondent to insure that said notices are not altered, defaced or covered by any other material.

(b) Notify the Regional Director for the Twenty-second Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint herein be dismissed insofar as it alleges that the Respondent has discriminated in regard to the hire and tenure of employment of Albert Marchione and William R. Gingerelli and has extended the hours of work for the day shift in reprisal for the employees' union activities, in violation of Section 8 (a) (1) and (3) of the Act.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Petroleum Trades Employees' Union, Inc., herein referred to as the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Second Region (New York, New York),¹ on April 29, 1957, issued a complaint against the Respondent, Warren Petroleum Corporation, alleging that the Respondent had engaged in and was engaging 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, 61 Stat. 136, herein called the Act. Copies of the charges, complaint, and notices of hearing thereon were duly served upon the parties.

With respect to the unfair labor practices, the complaint, as amended at the hearing, alleges, in substance, that the Respondent, in violation of Section 8 (a) (3) of the Act, on December 28, 1956, discriminatorily discharged Albert Marchione and William R. Gingerelli and thereafter has failed and refused to reinstate them to their former or to substantially equivalent positions, and has further discriminated against its employees to discourage membership in labor organizations by extending the hours of work for the day shift without any increase in pay; and by this and other conduct set forth in the complaint interfered with, restrained and coerced its employees in the exercise of the rights guaranteed to them by Section 7 of the Act, in violation of Section 8 (a) (1) thereof. The Respondent in its answer, as amended at the hearing, admits that it terminated the employment of Albert Marchione and William R. Gingerelli, but denies the commission of any unfair labor practices and affirmatively asserts that: (1) it has no obligation to reinstate said employees to their former positions because such jobs no longer exist; and (2) at the time Albert Marchione and William R. Gingerelli were discharged, they were supervisors as defined in Section 2 (11) of the Act.

Pursuant to notice, a hearing was held on various days between June 5 and June 26, 1957, at New York, New York, before Herbert Silberman, the duly designated Trial Examiner. All parties were represented at the hearing by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to file briefs with the Trial Examiner and to engage in oral argument at the close of the hearing. Decision was reserved on Respondent's motion, made at the conclusion of the General Counsel's case-in-chief, to dismiss the complaint insofar as it alleges violations of Section 8 (a) (3) of the Act. This motion is disposed of by the findings, conclusions, and recommendations herein contained.

¹ On September 3, 1947, the General Counsel transferred this proceeding to the 22d Region and changed its docket number from 2-CA-5219 to 22-CA-7.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Warren Petroleum Corporation, a Delaware corporation, with its principal office and place of business in Tulsa, Oklahoma, and with plants and factories in various States of the United States, maintains a storage and terminal facility in Newark, New Jersey, where it is engaged in the storage, processing, and distribution of propane. During the calendar year 1956, Respondent received at its Newark terminal propane valued at in excess of \$1,000,000 which had been transported thereto from outside the State of New Jersey, and Respondent sold propane valued at in excess of \$1,000,000 of which about one-fourth was shipped from Respondent's Newark terminal to States other than the State of New Jersey. I find that the Respondent is, and has been at all times material hereto, engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Petroleum Trades Employees' Union, Inc., is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Respondent's operations

At its Newark, New Jersey, terminal, Respondent receives, stores, processes, and sells propane, a highly combustible product which is used as a fuel. Approximately every 13 days a tanker arrives at Respondent's dock and discharges its cargo of propane through a system of pipelines into the terminal's storage tanks. Respondent processes the propane by passing the product through dehydrating towers where entrapped moisture and other impurities, particularly hydrogen sulphide, are removed. The purified propane is then stored in other tanks from which it is drawn for delivery to Respondent's customers. The propane is sold in bulk by pumping it into trucks or tank cars furnished by the customers.

C. R. Heaney, manager of Respondent's marine department, whose office is in Tulsa, Oklahoma, is in charge of the Newark terminal. He maintains contact with the plant by telephoning its superintendent at least once each week, usually on Fridays, and by frequent personal visits to the terminal. In immediate charge of the Newark terminal is the plant superintendent, Jay C. McCorkle, who has held this position since November 1954 when he succeeded V. E. Dunbar. Until 1953, there was also an assistant superintendent, who was the only other salaried employee at the Newark plant. This position has been vacant since the last incumbent, Tom Martin, was transferred from Newark. For a period of about 6 months following Martin's departure there was no intermediate supervision of any kind between the superintendent and the field employees.² About August 1953, a new classification, that of leadman, was established and Albert Marchione and William R. Gingerelli were appointed to the jobs. A question in issue is whether the leadmen were supervisors within the meaning of Section 2 (11) of the Act.

Respondent maintains a stable work force as is exemplified by the fact that only one field employee was hired in the years 1955 and 1956. Although the Newark terminal is operated continuously, during the times material hereto, the personnel complement was composed of only the superintendent, 1 or 2 office clerks, 2 leadmen, and 9 loaders. The employees regularly worked five 8-hour shifts each week. Two loaders were assigned to each of the two night shifts and the remaining employees worked on the day shift. The loaders were rotated among the day and night shifts. The leadmen, however, were assigned to the day shift only, and their schedules were arranged so that one or the other was at work on weekends and all holidays. Thus, since provision had to be made for days off, during the weekdays, 3 loaders usually worked on the day shift and on 3 of the days both leadmen were also on duty while on the other 2 days only 1 leadman was at work.

There has been no formal delineation, either by way of written job description or other official communication, of the duties of the employees occupying the various

² Employees who do the production and maintenance work are referred to as field employees.

job classifications.³ The work performed at the Newark plant is routine and largely repetitive. The principal operation is loading trucks and tank cars. One employee is stationed at all times on the loading platform for this purpose. In addition, general maintenance such as cleaning, painting, cutting grass, and effecting repairs to equipment is performed for the most part by employees on the day shift. Night-shift employees do little else than load trucks and make security rounds. Semi-monthly a cargo of propane is delivered to the terminal and all available employees assist in unloading the tanker. No skilled craft work is involved in any of Respondent's operations and it requires from 3 to 6 months to train a new employee so that he will be permitted to work on the night shift without supervision. With the exception of a few specialized jobs, all employees, after their indoctrination period, are competent to perform all the jobs at the plant. Prior to December 28, 1956, these specialized jobs were performed by the leadmen. Since their discharge, these jobs are being done by Morgan Spangenberg. His classification has been changed from loader to maintenance man and his rate of pay has been increased 20 cents per hour so that he is now receiving approximately the same hourly rate that the leadmen were being paid when they were discharged.

For reasons of safety the employer insists upon at least two men on duty at all times. As a consequence, in the event a night-shift employee is absent or late for reason of illness or other cause, one of the other loaders will be called upon to substitute and will on such occasion work overtime. The only other reason for overtime work is in connection with the semimonthly receipt of propane.

B. The status of the leadmen

Respondent contends that, as leadmen, Marchione and Gingerelli were supervisors, while the General Counsel argues that their authority was limited to matters of a routine nature not requiring the use of independent judgment and therefore they were not supervisors within the meaning of Section 2 (11) of the Act.

Prior to 1953, there was no leadman classification at the Newark terminal. The field employees were supervised by the plant superintendent and the assistant superintendent. The position of assistant superintendent became vacant when its last incumbent, Tom Martin, was transferred from the Newark plant. At that time Marchione and Gingerelli enjoyed a preferred status. Marchione was classified as pumpman and Gingerelli as loading rack foreman⁴ and they were being paid 11 cents per hour more than the other field employees. Approximately 6 months after Martin's transfer, according to Heaney, it was decided to appoint Marchione and Gingerelli leadmen with the intention that one of them subsequently would be advanced to the position of assistant superintendent.⁵ About August 1953 Marchione's and Gingerelli's classifications were changed to leadmen. However, they did not receive any formal notification of this change in their classifications,⁶ they were never specifically apprised of their duties and authority as leadmen, and initially were given no wage increase with their new job titles. Subsequently, on October 27, 1953, Respondent entered into a collective-bargaining agreement under the terms of which the differential in the wage rates between the leadmen and the loaders was increased from 11 cents to 18 cents per hour. This increase became effective on November 9, 1953.

³ In addition to leadman and loader, the Respondent has at times classified employees as maintenance man, pumpman, and loading rack foreman.

⁴ Heaney testified he considered that Gingerelli as loading rack foreman was "a part of supervision . . . because he primarily assisted in the smooth running of the terminal" However, Respondent offered no evidence regarding the duties or authority which Gingerelli possessed as loading rack foreman so that there is no record support for Heaney's opinion. Respondent makes no contention that Marchione, as pumpman, was part of supervision.

⁵ The position of assistant superintendent has remained vacant since Martin's transfer in 1952. Heaney testified that it is Respondent's present intention to reappoint an assistant superintendent.

⁶ Neither Marchione nor Gingerelli was able to testify with any certainty when their classifications were changed to leadmen. Heaney's testimony in this respect is self-contradictory. At one point during the hearing he testified that the two men were designated leadmen shortly after Assistant Superintendent Martin was transferred from the Newark terminal early in 1952, but another time he testified that the event occurred in August 1953. Furthermore, Respondent's time sheets do not reflect the changes in Marchione's or Gingerelli's classifications to leadmen until November 9, 1953.

Marchione testified without contradiction that the nature of the work which he and Gingerelli performed was not changed by reason of the change in their job classifications to leadmen.⁷ The leadmen continued to do the same work in the field as the other employees except only that they spent considerably less time loading tank cars and trucks. There were particular jobs which only the leadmen performed. With respect to the loading operation, they alone were authorized to seal tank cars and make the necessary corrections in the event a truck or tank car had been overloaded; and with respect to maintenance, there were certain repairs which only the leadmen made. Also, only the leadmen were authorized to run the dew-point tests. None of these operations involved the direction of other employees and presumably were entrusted to the leadmen because of their greater experience.⁸ The one function Marchione and Gingerelli performed after they were designated leadmen which they did not do prior thereto was to give the loaders on the day shift their daily work assignments.

During the time Marchione and Gingerelli served as leadmen they reported each morning or every other morning, as the situation warranted, to the plant superintendent for instructions as to what maintenance work he wanted done that day or during the next 2 days. The leadmen then returned to the field, assigned the work tasks to the loaders on the day shift, and together with the loaders did the maintenance work. Usually only 3 loaders worked on the day shift and, since 1 had to be assigned to the loading rack, the maintenance work was divided between the remaining 2 loaders. Respondent contends that the leadmen exercised discretion in making these assignments. However, all the loaders were capable of performing all the jobs at the plant (except only such jobs as were specifically reserved for the leadmen), and the work was unskilled and for the most part repetitive. Thus, the leadmen were not called upon to make any judgment as to the relative capabilities of the loaders to perform the particular tasks nor to give the loaders any special directions in the performance of the work. The only discretion exercised by the leadmen in making the work assignments was the purely routine one of dividing the work. Similarly, in connection with the semimonthly unloading of the tanker the leadmen assigned the loaders to the various positions in the field or on the dock. This function also was of a routine nature because the various tasks were repetitive and capable of being performed by all the field employees. See *Allan V. Bevier, Inc.*, 118 NLRB 1335.

Respondent sought to prove that the leadmen supervised the quality of the work performed by the field employees. The only evidence adduced in this regard pertains to an instance when Gingerelli told a loader, who was engaged in scraping pipe in preparation to applying paint thereto, that because he had not removed all the rust the paint would not adhere to the pipe and therefore it should be scraped again. This single incident in a period of more than 3 years hardly suffices to establish that the leadmen were charged with the responsibility of supervising the quality of work done in the field. Furthermore, Heaney testified that because none of the operations at the terminal required the exercise of any high degree of skill there was no need for direct supervision of the work performed by the loaders.

Heaney and McCorkle testified that the leadmen had authority to authorize overtime and to excuse men from duty in the event of illness or other causes. No clear evidence of the exercise of such authority was developed at the hearing and there was no evidence that the leadmen were told they had such authority. Moreover, since Respondent maintained lists in the office designed to insure that overtime would be equitably apportioned among all the field employees, even if the leadmen did direct an employee to work overtime that would only be an exercise of a ministerial function.⁹

Respondent contends that the leadmen effectively recommended the discharge of loaders. In support of this argument it cites the discharges of two former employ-

⁷ Gingerelli testified that Mr. Phelps, who was Respondent's general manager or vice president, told him, "We were leadmen, to distinguish the difference of the other men, that we were the oldest men in the plant working."

⁸ Although not entirely clear from the record herein there is testimony tending to indicate that Marchione and Gingerelli also performed these specialized jobs before they were appointed leadmen. Since December 28, 1956, when Marchione and Gingerelli were discharged, these specialized jobs have been performed by Morgan Spangenberg, whose classification has been changed from loader to maintenance man.

⁹ For several months during 1953 Gingerelli prepared the shift schedules for the loaders. Heaney testified that Gingerelli was relieved of this function because various loaders had complained about their assignments. Thus, for 3 years prior to his discharge Gingerelli had no authority to assign loaders to their shifts.

ees, Baum and Wilson. It is unnecessary to review the considerable testimony introduced in the record in this connection. Sufficient for the purpose of this case is the fact that in each instance the discharge was made by the plant superintendent after independent personal investigation of the facts.

McCorkle attempted to describe the extent of the leadmen's authority. He testified that, "Shortly after I became superintendent. Mr. Gingerelli brought it up himself because it has never been clear cut, he says. The guys in the field gives him quite a bit of static on getting the jobs done and he said Mr. Dunbar would back him up sometimes and sometimes he would leave him hanging out on a limb. I said, 'You don't need to worry about being hung out on the limb with me. If you are right, you are right.'" McCorkle further testified that he told the leadmen, "As far as I was concerned, they were running the field and the men were to follow their directions, the loaders were to follow their directions, under Marchione and Gingerelli. If they didn't, all they had to do was come to me and I would see that their orders were followed through." With respect to whether this information was communicated to the loaders, McCorkle testified, "I don't specifically remember calling them all together, but certain people come to me and questioned me as to whether they could give them orders or not, and I think over a period of time that would take in practically everybody." This testimony by McCorkle reveals that from the time Marchione and Gingerelli were appointed leadmen until after November 1954, when McCorkle became plant superintendent, there existed a question regarding the right of the leadmen to give orders of any kind to the loaders. McCorkle attempted to clarify the leadmen's authority. However, the question raised by his testimony that "the loaders were to follow their [Marchione's and Gingerelli's] directions" is whether McCorkle was referring to the transmittal by the leadmen to the other field employees of his own instructions or whether he was referring to authority on the part of the leadmen to initiate work. It is clear that reference was being made to the former because it was McCorkle's practice to give the leadmen specific instructions as to what he wanted done in the field each day. The leadmen exercised no discretion to determine upon their own initiative what should be done or, with only minor exceptions, when it should be done.¹⁰ Furthermore, McCorkle's testimony reveals that, in the event a loader failed to obey the directions of a leadman, the only authority the leadman had with respect to the discipline of such employee was to report the incident to McCorkle.¹¹

Respondent asserts that the leadmen were in charge of the plant on weekends and during McCorkle's absences and such fact is indicative of their supervisory status. McCorkle did not work on weekends, although he usually made brief appearances at the plant on those days, while either Marchione or Gingerelli did. It appears that in addition to the leadman only one loader was assigned to the day shift on Saturdays and Sundays. The situation therefore was not significantly different than that which prevailed on the night shifts when it is conceded by the Respondent that the plant operated without the presence of any supervisor.¹² In

¹⁰ The only times the leadmen exercised any discretion in determining when a job was to be done were during periods of inclement weather. Certain jobs were set aside to be performed on rainy days when it was impractical to do outdoor maintenance work. On such occasions, the leadmen sometimes assigned indoor maintenance jobs to the loaders without being specifically told to do so by McCorkle.

¹¹ The only instance of disciplinary action following the failure of an employee to obey the instructions of a leadman, cited by the Respondent, is the discharge of Stanley Baum. During the unloading of a tanker Baum refused to turn off a valve as he was told to do by Gingerelli. Baum was discharged the same night. McCorkle, before discharging Baum, made an independent investigation of the incident and subsequent to the discharge there was an arbitration proceeding in connection therewith. At the hearing in this proceeding Respondent did not develop what reason was given to Baum for his discharge nor the basis upon which the arbitrators resolved the dispute arising from the discharge. Specifically, neither McCorkle nor anyone else on behalf of the Respondent testified that Baum was told he was discharged for refusing to obey an order given by leadman Gingerelli. It may well be that Baum was discharged for conduct endangering the safety of the plant rather than for disobedience of a leadman's order. See *F. M. Reeves & Sons, Inc.*, 114 NLRB 1243.

¹² Marchione testified that on weekends, unless McCorkle was present, the leadmen were in charge of the terminal. Similarly, Morgan Spangenberg testified that on the night shifts the senior of the two loaders was in charge. Neither witness was referring to the authority of any field employee over any other employee although it is not altogether clear what meaning they ascribed to the words "in charge."

this circumstance, the fact that a leadman was regularly scheduled to work on weekends does not indicate that they had supervisory authority. See *Haleyville Textile Mills, Inc.*, 117 NLRB 973, *The Interstate Company*, 118 NLRB 746. Furthermore, for approximately 6 months prior to the appointment of Marchione and Gingerelli as leadmen there was no intermediate supervision of any kind between the superintendent and the field personnel, and also for the 6 months' period between the discharge of the leadmen and the hearing herein, this same condition existed. This establishes that Respondent's operations do not require the presence of a supervisor on weekends and holidays any more than it does during the night shifts.¹³

There have been times when the leadmen were in fact in charge of the plant. These occasions arose during the 2-week periods in the years 1955 and 1956 when McCorkle was absent on his vacations. It is my opinion that by leaving either Gingerelli or Marchione in charge without any superior available locally inherently reposed in them authority to make independent judgments if emergencies arose. The leadmen testified that during these periods they did only such work as McCorkle outlined for them before he left on his vacation and that nothing arose which required them to make any independent decisions. However, lack of opportunity to exercise authority is not necessarily proof of its absence.

It is also Respondent's position that the leadmen were representatives of management and therefore supervisors within the meaning of the Act. Heaney testified that "The leadmen were actually our field supervisors. They were our contact men between the office personnel and the field. Their general duties were to pass on instructions or to assign the work load, to make any recommendations they saw fit to expedite the efficient handling of the plant, to make recommendations concerning discipline; duties along that nature." However, there is no evidence in the record that the leadmen ever made such recommendations or were ever advised that they were expected to make such recommendations or that their recommendations would have received any greater consideration than a recommendation made by any other field employee. It is true that it was the duty of the leadmen "to pass on instructions . . . to assign the work load." But, as explained above, in so doing they exercised no independent judgment. With respect to Heaney's testimony that the leadmen were "contact men," McCorkle testified that employment complaints were registered initially with the leadmen. The leadmen denied that this was the case and there is no evidence of even a single grievance having been registered with a leadman. While there is no evidential support for the contention that the leadmen acted as representatives of management, the contrary is demonstrated by the fact that for longer than a year the leadmen were the shop stewards in the plant and as such acted as the representatives of the employees.

Respondent's final argument is based upon the special employment advantages enjoyed by the leadmen and the confidence reposed in the leadmen by Respondent's officials. In this regard Respondent points to the fact that the leadmen were paid 18 cents per hour more than the other field employees, did not work on the night shifts, were permitted to keep keys to the office, and were authorized to requisition materials. Although these factors serve to distinguish the leadmen from the other field employees none of them demonstrates that the leadmen had any authority over the loaders. Respondent also adverts to the fact that a policy manual issued by it and distributed only to its supervisors was shown by McCorkle to the leadmen, that Heaney on some of his frequent trips to the Newark terminal conversed with the leadmen concerning plant matters and that the leadmen were given authority to telephone Heaney in Tulsa. These factors illustrate a possible confidential relationship between the leadmen and managerial officials but do not reveal that the leadmen had any responsible authority over other employees. On the other hand, there is evidence demonstrating that the Respondent considered the leadmen rank-and-file employees rather than supervisors. During the period that Marchione and Gingerelli were leadmen, 2 or 3 elections among Respondent's Newark employees were conducted by the National Labor Relations Board in units which excluded supervisors as defined in the Act. In each of these elections Gingerelli and Marchione were permitted to vote without challenge.¹⁴ Furthermore, on

¹³ Night-shift employees were instructed that in the event problems arose to first telephone McCorkle and if he was not available to try to reach Gingerelli or Marchione. The only problems encompassed by these instructions related to technical matters. Thus, Marchione testified to only one instance when he was called during the night and that involved the question of an adjustment of valves.

¹⁴ See *N. L. R. B. v. R. H. Osbrink Manufacturing Company*, 218 F. 2d 341, 344 (C. A. 9).

October 27, 1953, Respondent entered into a collective-bargaining agreement in which it recognized the contracting union as the exclusive bargaining agent for all hourly rated employees except "supervisory employees with authority to hire, promote, discharge, discipline, or otherwise affect the status of the employees or effectively recommend such action." The contract further provides that if an employee is promoted to a supervisory position he shall be excluded from the coverage of this agreement. Despite these provisions of the contract, its wage clause makes provision for the leadmen as well as the other field employees. This plus the fact that leadmen were permitted to vote in the elections indicate that the parties concerned, including the Respondent, did not consider leadmen to be supervisors.

The term supervisor is defined in Section 2 (11) of the Act by the authority an individual has over other employees. Possession of any one of the authorities listed in the section places the employee invested with such authority in the supervisory class,¹⁵ provided that the exercise of the authority is not of a merely routine nature, but requires the use of independent judgment. It is conceded that the leadmen had no authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, or discipline other employees. Respondent contends, however, that the leadmen had authority "effectively to recommend such action." I have found, however, that the Respondent has failed to support this contention by evidence demonstrating that the leadmen had ever made effective recommendations in that regard. The testimony by Heaney and McCorkle that the leadmen had authority and were expected to make such recommendations is meaningless in the circumstances of this case because there is no evidence that the leadmen had ever been advised they had such authority.

In support of its position herein, the Respondent relies heavily upon the fact that the leadmen made daily assignments of work to the loaders on the day shift. In so doing, however, they did not determine what should be done or when it should be done, but merely carried out the specific instructions they received from the plant superintendent. The only discretion the leadmen exercised related to the division of the work among the loaders on the day shift. Since all the loaders were qualified to do all the jobs, it did not require the use of independent judgment on the part of the leadmen to make the assignments of the work. Thus, "the discretion given [the leadmen] appears to be 'routine' in the natural sense of that word." *Precision Fabricators, Inc. v. N. L. R. B.*, 204 F. 2d 567, 569 (C. A. 2). It is Respondent's contention also that the leadmen had authority "responsibly to direct" other loaders. Although the evidence upon which the Respondent relies in this connection is vague, it may be assumed that because the leadmen themselves worked with the loaders in the field they exercised some degree of leadership in the performance of the work. Because the various jobs performed by the loaders were unskilled and for the most part repetitive, no judgment except of a routine nature was required to be exercised by the leadmen in determining the manner in which the work was to be performed. Thus, the direction and leadership which the leadmen may have displayed derived from their greater experience and was not that type of authority contemplated by the language of the Act. "Responsibly to direct" other employees contemplates the exercise of authority in such a manner as tends to identify and associate the supervisor with management and not that type of the direction which a more skilled employee gives to those who are less skilled. See *N. L. R. B. v. Quincy Steel Castings Co., Inc.*, 200 F. 2d 293, 295-296 (C. A. 1).

The fact that the leadmen were paid a higher hourly rate than the other employees and possessed some employment advantages such as not being required to work on the night shifts and the further fact that certain technical jobs were entrusted to the leadmen alone merely show that the leadmen possessed greater competence than the other employees and that the Respondent sought to reward them therefor. None of these factors involve or indicate authority over other employees which is the *sine qua non* of a supervisor under the definition of the Act. Similarly, the fact that Heaney and McCorkle consulted with the leadmen about plant matters indicates that management reposed confidence in the leadmen but does not indicate that the leadmen exercised authority over other employees. The only times that the leadmen, in fact, had authority over the other employees were during the plant superintendent's annual 2-week vacation periods. However, such "spasmodic and infrequent assumption of a position of command and responsibility does not transform an otherwise rank-and-file worker into a 'supervisor.'" *N. L. R. B. v. Quincy Steel Castings Co., Inc.*, *supra*. Upon all the evidence herein, I find that Marchione

¹⁵ *Ohio Power Co. v. N. L. R. B.*, 176 F. 2d 385 (C. A. 6), cert. denied, 338 U. S. 899.

and Gingerelli were not supervisors within the meaning of Section 2 (11) of the Act during the times material to this proceeding.¹⁶

C. Background

Following an election conducted by the National Labor Relations Board, on August 20, 1953, Amalgamated Local No. 589, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (CIO) was certified as the collective-bargaining representative for the field employees at Respondent's Newark plant. Case No. 2-RC-6023. Gingerelli and Marchione were the leaders in the 1953 organizational campaign and, after certification of Local 589, they served on the Union's negotiating committee and were designated as the job stewards.

Some months later the president of Local 589, DiModica, was expelled by the International. He thereupon organized and became president of another labor organization known as Independent Industrial Union. DiModica was successful in winning over the Respondent's Newark employees to his new union and on August 18, 1954, following a National Labor Relations Board election, the Independent was certified as their collective-bargaining representative. Case No. 2-RC-6885. In November 1954 McCorkle was appointed plant superintendent. Soon thereafter, McCorkle began a campaign to oust the Independent as the employees' collective-bargaining representative. Thus, employees Albert Pearson, Joseph DiLeo, and Dominick Catanzarite testified that McCorkle told them that they would be a lot better off without the Independent. Marchione testified that he had many conversations with McCorkle wherein the latter sought to persuade him that the employees would be better off without union representation and made many promises concerning the benefits the employees would receive if the Independent was ousted from the plant. Gingerelli testified that over an extended period of time McCorkle applied constant pressure upon him to assist in the campaign against the Independent. According to Gingerelli, McCorkle urged him to file a petition with the National Labor Relations Board seeking the decertification of the Independent. He told Gingerelli it was his belief that Gingerelli had enough influence with the men to persuade a majority to vote against the Independent in a decertification election. McCorkle promised Gingerelli that if he filed the petition, the Company would underwrite all his expenses and, in addition, made various promises concerning the benefits the employees would receive should the Independent be decertified. Gingerelli took all the necessary steps to cause a decertification petition to be filed. As McCorkle had promised, all his expenses in that connection were paid by the Respondent. A decertification election was held which the Independent lost and, on August 29, 1955, the National Labor Relations Board issued a certificate to that effect. Case No. 2-RD-286.

The employees' organizational interest remained dormant for only 16 months. On December 11, 1956, Petroleum Trades Employees' Union, Inc., addressed a letter to the Respondent in which it claimed to represent a majority of the employees at Respondent's Newark plant and requested recognition as their bargaining agent. The Union subsequently filed a representation petition with the National Labor Relations Board and an election was held on January 24, 1957. The Union won the election and was certified by the National Labor Relations Board on February 1, 1957. Case No. 2-RC-8627.

D. Interference, restraint, and coercion

All the events material in this case occurred between December 11, 1956, when the Union demanded recognition as the bargaining agent for Respondent's Newark employees, and January 24, 1957, when the representation election was held. During this period, Superintendent McCorkle, seeking to prevent the Union's designation as the employees' statutory representative, engaged in conduct which transgressed the boundaries of protected free expression and trespassed upon the rights guaranteed employees by Section 7 of the Act. Thus, Marchione testified that about December 14, 1956, McCorkle showed him the Union's letter requesting recognition and inquired what he knew about the matter. Marchione replied that he and the other employees desired a union. To this, McCorkle responded, "Well, I wish you a lot of luck, but I just hope nobody gets hurt."¹⁷ Similarly, Albert Pearson testified that on December 15, McCorkle said with reference to the Union's letter of recognition, "Somebody is going to hang for it." McCorkle's responses to Marchione and

¹⁶ *United States Gypsum Company*, 118 NLRB 20.

¹⁷ McCorkle did not contradict Marchione.

Pearson, I find, were veiled threats that the Respondent might engage in reprisals against employees who supported the Union. Joseph DiLeo testified that, in December 1956, McCorkle told him in the presence of another employee, Sam McGowan, that "if the Union comes in, that he (McCorkle) would knock off one shift."¹⁸ Frank Joseph Heller testified without contradiction that a week or two before the January 24, 1957, election, he had a conversation with McCorkle. McCorkle told Heller that employees Drum and Spangenberg had promised McCorkle their vote and asked Heller how he felt about it. Heller avoided giving a direct answer to this question. McCorkle then asked Heller how the other fellows felt. Heller responded that he did not know how they were going to vote. Some days later, according to Heller, McCorkle remarked to him that "if the Union would come in it would be a black eye for him (McCorkle)." William Drum testified without contradiction that a week or 10 days before the election, he had a conversation with McCorkle in the presence of Spangenberg. According to Drum, "Mr. McCorkle told me that if the Union came in, there was going to be some men knocked off; that we would be closed down on weekends, closed down on the night shift, and he had tricks that he could fire us all. . . . If it didn't come in, we would keep operating like we was before." I find McCorkle's threats to Marchione and Pearson that Respondent might engage in reprisals against union supporters, McCorkle's threats to DiLeo and Drum that, in the event of a union victory in the pending election, Respondent would cease operating on a continuous basis and would lay off some men, and McCorkle's interrogation of Heller concerning his voting intentions and the voting intentions of other employees, in the circumstances,¹⁹ constituted interference, restraint, and coercion within the meaning of Section 8 (a) (1) of the Act.

E. *The discharges*

Albert Marchione and William R. Gingerelli were discharged by Superintendent Jay C. McCorkle in the morning of December 28, 1956, for the asserted reason that they had falsified company records by submitting daily dewpoint test reports for the period from December 19 through December 27, 1956, when they had not made the tests. It is the General Counsel's position that this was a fabricated reason and that Marchione and Gingerelli were discharged because the Respondent suspected that they had been instrumental in bringing the Union into the plant.

The leadmen were charged with the duty of making a daily test of the propane stored in the terminal to determine the dewpoint, i. e., the amount of entrapped moisture in the product, and of submitting a written report of the results of their tests upon forms provided by the Respondent.²⁰ McCorkle testified that between the middle of November and early December 1956, he began to suspect that the leadmen were not taking the daily dewpoint tests, and communicated his suspicions to Heaney during one of their weekly telephone conversations. According to McCorkle, "So then I informed Gingerelli and Marchione, and everyone in the terminal, to be extremely cautious on taking their dewpoint tests." About December 12, he informed Heaney that he believed the dewpoint tests still were not being made. Following the receipt of a new cargo of propane on December 16, McCorkle noticed that the apparatus used to take the tests was in the identical spot on several successive days. Because there was only one such apparatus this indicated that the dewpoint tests were not being taken. To verify his suspicions, on December 19, McCorkle broke the end of the thermometer which is used in the testing apparatus in such manner that the defect could not be observed unless a test were made. Nevertheless, from December 19 through December 27, he received written test reports from the leadmen.²¹ On December 21, McCorkle told Heaney about the matter and asked permission to take action against Gingerelli who had submitted the test reports for December 19, 20, and 21. Heaney said, "No. Let it go. We will see how long it will take them to get smart, and you know that is actually going on."

¹⁸ I credit DiLeo's testimony, despite McCorkle's denial.

¹⁹ McCorkle questioned Heller as to how he intended to vote in the election and what he knew about other employees' voting intentions, after indicating to Heller that he had previously interrogated Drum and Spangenberg about the same subject and, in the light of McCorkle's later comment that a union victory at the polls would be a black eye for him, tended to make Heller apprehensive that McCorkle might engage in reprisals against employees who offered support to the Union.

²⁰ Marchione and Gingerelli had been making these tests since 1951.

²¹ Gingerelli submitted the test reports for December 19 through December 21 and Marchione submitted the test reports for December 22 through December 27.

Heaney, who in general corroborated McCorkle's testimony, testified that about December 12, McCorkle advised him of McCorkle's suspicions that the test reports were being falsified.²² Heaney instructed McCorkle to try to find some way to prove his suspicions.²³ Then, according to Heaney's further testimony, on December 21, McCorkle informed him that he had broken the thermometer in the dewpoint apparatus 3 days earlier and was still receiving reports showing that the tests were being made. McCorkle inquired if he should call this to the men's attention and discharge them for falsifying company records. Heaney told McCorkle not to do so but to "see how long it takes them to get smart."

In the evening of December 27 an incident occurred which, according to McCorkle, precipitated his decision to discharge the leadmen the next morning. About 3:30 in the afternoon he inspected a compressor which recently had been installed at the terminal and noticed that no oil showed in its sight gage, which meant that the compressor was operating without adequate lubrication, and that the compressor was hot. McCorkle stopped the machine and returned to his office. When Marchione, who was on duty that day, went past the office a few minutes later McCorkle called him and asked him why there was no oil in the compressor. Marchione replied that there was oil in the compressor. McCorkle responded that there was no oil in the machine and that it was fortunate he had inspected it and was able to shut it down. According to McCorkle, an argument ensued in which, among other things, Marchione told him to stay in the office and mind his own business, and that he and Gingerelli were running the terminal and as long as they were doing it satisfactorily McCorkle had no complaint. McCorkle responded that running the compressor without oil was not satisfactory. McCorkle shortly thereafter telephoned Heaney's assistant, Bob Land, in Tulsa and reported the incident to him. Later that night, after thinking matters over, McCorkle decided to discharge both Marchione and Gingerelli.

Marchione testified that he checked the compressor regularly on December 27, 1956, and made a final check as late as 3 p. m. According to Marchione, when he last checked the compressor there was an adequate amount of oil in the machine.²⁴ Although Marchione denied that he raised his voice in his conversation with McCorkle that evening he acknowledged that the meeting was acrimonious. According to Marchione, before he left, McCorkle "told me that I'd better go out of here right now for he will run [me] down the road right now." Marchione further testified that he telephoned Heaney in Tulsa that night in order to "see if I can get that matter straightened out before [McCorkle] would fire me without Bob Heaney knowing the story."

The next morning McCorkle called both Marchione and Gingerelli to his office, accused them of falsifying their dewpoint test reports and discharged them.²⁵ Both Marchione and Gingerelli denied they had filed false reports.

The General Counsel attempted to demonstrate that Respondent's evidence concerning the broken thermometer and the leadmen's failure to make their daily dewpoint tests was a fabrication and to prove that Respondent discharged Marchione and Gingerelli because it believed they were responsible for the reappearance of a union at its Newark plant. That Respondent opposed union representation for its Newark employees is reflected by the attitude and conduct of Heaney and McCorkle. In 1955, Superintendent McCorkle spearheaded the campaign which resulted in the decertification of the Independent. With respect to the organizational effort which took place in December 1956 and January 1957, McCorkle admitted to employee Heller that if the Union "would come in it would be a black eye for him," and engaged in conduct, described above, designed to frighten employees from supporting the Union. Heaney also did not look upon the Union with favor. On the night of December 27, 1956, when Marchione telephoned him about the compressor incident

²² Heaney testified that McCorkle reported to him that the dew point testing apparatus "was in its exact location for several days, which he thought highly improbable that it would always be right exactly in the same spot." Although McCorkle testified that this fact aroused his suspicions that the tests were not being run, he did not testify that he had reported to Heaney that he had observed that the testing apparatus had not been moved for several days.

²³ McCorkle did not testify that he had received such instructions from Heaney

²⁴ The compressor can run continuously for more than 24 hours without requiring the addition of oil. Serious damage to the machine can result if it is permitted to run without lubrication.

²⁵ McCorkle testified that when he discharged the leadmen he also alluded to the previous evening's incident. Both Marchione and Gingerelli denied that McCorkle made any such reference.

the conversation touched upon the Union's letter of December 11 in which it requested recognition. According to Marchione, Heaney said to him, "It is a shock to me. . . . When I was at the terminal, I tried to get you fellows everything so that they wouldn't take your hospitalization away from you, and keep everything as it was. Then I assumed everything was all right, and then I get back to my office and I find this letter here." Heaney also told Marchione that "we didn't keep our promise."²⁶ The credited testimony of Albert Pearson demonstrates that McCorkle suspected that Marchione and Gingerelli were responsible for the revival of union activities at the Newark plant. According to Pearson, on December 15, in a conversation with McCorkle, the latter said with reference to the Union's request for recognition, "You jumped the gun on us, didn't you?" McCorkle then asked Pearson who were the troublemakers and whether it was the same two who brought the Union in the last time. (It was well known that Marchione and Gingerelli had been active in the earlier organizational campaigns.) Pearson said he did not know. McCorkle concluded the conversation with the remark that "Somebody is going to hang for it. And I know it won't be me, so I am not worried about it."²⁷ Pearson further testified that on December 28, after the leadmen had been discharged, McCorkle said to him, "Well I got rid of the troublemakers . . . Al [Marchione] and Bill [Gingerelli]. Just stay on the ball now or else."²⁸

The proof adduced by the General Counsel of Respondent's opposition to union representation for its Newark employees, of McCorkle's suspicions that Marchione and Gingerelli were the instigators of the new organizational drive, of his veiled threats that the Respondent might engage in reprisals against employees who were responsible for the renewed union activity at the plant and of McCorkle's statement to Pearson, after he had discharged Marchione and Gingerelli, that "I got rid of the trouble makers," indicates Respondent's discriminatory disposition. However, if the leadmen's employment was terminated for misconduct which alone would have been cause for and would have prompted such action, then the discharges did not violate the Act even though the Respondent welcomed the opportunity to remove the leaders of the union movement from the plant. *R. J. Oil & Refining Co., Inc.*, 108 NLRB 641, 647; *Texas Consolidated Transportation Company*, 101 NLRB 1017, 1019. Still to be considered, therefore, are two questions: first, whether Marchione and Gingerelli were guilty of the misconduct alleged by the Respondent; and second, if so, would they have been discharged for that reason alone absent McCorkle's suspicions concerning their union activities.

The issue as to whether Marchione and Gingerelli were guilty of the acts of misconduct cited by Respondent turns upon whether the witnesses called by the General Counsel or the witnesses called by the Respondent are credited with respect to the compressor incident and the dewpoint test reports. With respect to the compressor incident, the testimony of McCorkle that his inspection of the machine at 3:30 p. m. on December 27, showed it to be without oil and running hot is corroborated by Morgan Spangenberg. Spangenberg testified that, at McCorkle's request, at about 4 p. m. that day he added three quarts of oil to the compressor, which is its entire capacity, and noticed that the machine was still hot. Spangenberg also testified that a visual inspection of the area about the machine showed no indications that there had been any leak which could account for the absence of oil in the compressor. Spangenberg who testified in some detail about several subjects pertinent to the issues in this case was subjected to considerable cross-examination. He impressed me as being a candid witness who was sincerely striving to relate the facts as he knew them. I find that Spangenberg was a reliable witness and credit his testimony.²⁹ In view of Spangenberg's corroboration of

²⁶ Heaney did not contradict Marchione. He testified that when Marchione mentioned that the men had decided they wanted a union he said, "I thought we had decided once before that if you or the men had any complaints about the working conditions or anything else, you would talk to me to see if we couldn't get it straightened out; that you would relate those complaints to me."

²⁷ Dominick Catanzarite testified that the next day, December 16, McCorkle said to him with reference to the Union's letter demanding recognition, "they jumped the gun." Later the same day, McCorkle said to him, "Don, I found out all about the Union, and I am not mad at you."

²⁸ This is undenied.

²⁹ Employees Drum and Garland gave testimony tending to corroborate Marchione's contention that the machine had not run out of oil. Drum testified that he saw Marchione inspecting the compressor at 10 a. m. and Garland testified that he saw Marchione make such inspection at 2 p. m. on December 27. However, neither testified that he personally inspected the machine and knew from his own observations that it

McCorkle's testimony with respect to the compressor incident, I credit McCorkle that when he inspected the machine at 3:30 p. m. on December 27 there was no oil showing in the sight gage and the machine was running hot, and discredit Marchione's testimony that he inspected the machine at 3 p. m. that day and the oil gage showed half full.

The conflict in testimony with regard to the dewpoint tests cannot be resolved by the testimony of any disinterested witnesses. Marchione and Gingerelli testified that they took the test on each day they submitted a report.³⁰ There is no direct corroboration of their testimony. Likewise, there is no direct corroboration of McCorkle's testimony that he broke thermometer of the dewpoint apparatus on December 19. Indirectly, Heaney did corroborate McCorkle by testifying that on December 21 McCorkle reported to him that the latter deliberately had broken the thermometer. However, Heaney did not testify that he knew anything about the situation other than what was reported to him by McCorkle. Thus, the veracity of McCorkle is pitted against that of Marchione and Gingerelli. Needless to say, all three have a vital concern in the outcome of this proceeding. As a witness, Gingerelli was aggressively assertive to the point of belligerency. His testimony reflects a deliberate effort to present the facts in the light most favorable to his interests in this proceeding. In so doing inaccuracies crept into his testimony which are revealed by comparison with other evidence as to which there is no dispute or by self-contradictions. Marchione impressed me as being even less reliable than Gingerelli. He was a more composed and less excitable witness than Gingerelli, but his testimony contains even more evident inaccuracies than Gingerelli's. Although self-interest in the outcome of a proceeding is not necessarily inconsistent with an individual being a truthful witness, in this instance, I find that both Gingerelli and Marchione permitted their partisanship to overbalance their obligation to tell the facts as they remembered them without distortion or elaboration. McCorkle, like Marchione and Gingerelli, impressed me as permitting his interest in the outcome of this proceeding to color his recollection of the facts. This is particularly reflected by his many positive assertions of fact which he was completely unable to support when questioned with respect to the details thereof. In addition, there were minor inconsistencies between his testimony and Heaney's. Nevertheless, of the three, I consider McCorkle to have been the most reliable. Accordingly, I credit McCorkle's testimony that on December 19 he broke the thermometer of the dewpoint apparatus and I find, as contended by the Respondent, that Gingerelli and Marchione submitted false test reports on December 19 through 27, 1956.

Both Heaney and McCorkle testified that taking the dewpoint tests was an important function at the terminal.³¹ This is confirmed by the fact that only the leadmen were entrusted with the responsibility of running these tests. Thus, the leadmen's failure to make the tests was not an inconsequential neglect of duty. Their offense was compounded by the fact that they falsely reported making tests when they had not done so, which would indicate to the Respondent the untrustworthiness of the two field employees upon whom theretofore it had placed its greatest reliance. In the circumstances, termination of Marchione's and Gingerelli's employment does not appear to have been an excessively harsh disciplinary measure. Furthermore, McCorkle's action in this case accorded with Respondent's established policy. In 1955 Respondent issued a manual governing personnel policies and practices at all its plants. With respect to discharges, the manual instructions are:

Discharges for cause are only made after adequate warning except in cases of extreme offenses. The following is a list of extreme offenses considered sufficient grounds for immediate dismissal. This list does not necessarily limit the reasons for discharge.

had an adequate amount of oil. It is thus possible, if the testimony of Drum and Garland is accurate, that Marchione inspected the machine and although observing that the oil level in the sight gage was low failed to do anything about the matter so that the oil might have been entirely consumed by 3:30 p. m. when McCorkle inspected the compressor.

³⁰ Employee Garland testified that he saw Marchione with the dewpoint apparatus about noon on December 27. The purpose of this testimony is to indicate that Marchione must have taken the test on that day because otherwise there would have been no reason for him to have had the apparatus in his hands. Garland did not testify that he saw Marchione making the test.

³¹ The purpose of the test was to ascertain whether the propane was sufficiently free of moisture to meet established standards of purity.

Included in the appended list is: "Falsifying or attempting to falsify the company records." ³² I find, therefore, that Marchione and Gingerelli engaged in misconduct of such nature as would have motivated Respondent to discharge them regardless of other considerations. I further find that Marchione and Gingerelli were discharged "for cause" within the meaning of Section 10 (c) of the Act and Respondent therefore has not violated Section 8 (a) (3) of the Act.

The complaint alleges that Respondent also discriminated against its employees, by extending the hours of work for the day shift in reprisal for their activities, in behalf of the Union. However, the Respondent adduced credible evidence demonstrating that the change was prompted by friction which had developed among the employees because of the problems attendant upon the early relief of the day-shift employees by the night-shift employees. On the other hand, the General Counsel has failed to prove by a preponderance of the evidence that the change in the day-shift schedule was made for unlawful discriminatory reasons. Accordingly, I shall recommend also that this allegation of the complaint be dismissed.

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 II, 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.

CONCLUSIONS OF LAW

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

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

3. The Respondent has engaged in no conduct constituting an unfair labor practice within the meaning of Section 8 (a) (3) of the Act.

[Recommendations omitted from publication.]

³² Marchione testified that he was acquainted with this policy.

APPENDIX

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 Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT question our employees concerning their or other employees' union membership or activities in a manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the National Labor Relations Act.

WE WILL NOT threaten employees that we will curtail operations or otherwise discriminate against them to discourage their affiliation with or support of Petroleum Trades Employees' Union, Inc., or any other labor organization.

WE WILL NOT in any like or related 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 Petroleum Trades Employees' Union, Inc., or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all 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 National Labor Relations Act, as amended.

All our employees are free to become, remain, or refrain from becoming or remaining, members of Petroleum Trades Employees' Union, Inc., or any other

labor organization, except to the extent that this 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 Act.

WARREN PETROLEUM CORPORATION,
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.

Jefferson Mills, Division of Kahn and Feldman, Inc.¹ and Textile Workers Union of America, AFL-CIO, Petitioner. Case No. 5-RC-2358. April 11, 1958

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Lawrence S. Wescott, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

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

Upon the entire record in this case, the Board finds:

1. The Employer's plant is located at Pulaski, Virginia, where it is engaged in processing raw nylon yarn. In 1957 the Employer processed raw nylon yarn valued at an amount in excess of \$1,000,000 for domestic and foreign customers. During this period, the Employer's services to foreign customers were valued in excess of \$50,000. During the same period, the Employer processed yarn intended for foreign export for the Martinsville, Virginia, plant of E. I. du Pont de Nemours & Company, which services were valued at an amount in excess of \$100,000. Upon the entire record, we find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction over the Employer.³ The Employer's motion to dismiss on commerce grounds is accordingly denied.

2. The labor organization involved claims to represent certain employees of the Employer.

¹ The name of the Employer appears as corrected by a stipulation of the parties received since the hearing and hereby made a part of the record in the case.

² The Employer's challenge to the adequacy of the Petitioner's showing of interest is rejected, for it is well established that the sufficiency of a petitioner's showing of interest is a question for administrative determination, not subject to attack. See *Nepht Processing Plant, Inc.*, 107 NLRB 647.

³ *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.