

clause. It may be presumed that that is all which concerns the Employer now, and that in respect thereto, it will act with the deference due to controlling authority concerning how far the statute permits it to go in applying the sanctions of any union-security agreement in enforcing payment of any obligation on the part of its employees to the Union. There being thus every indication that these new authorizations will have no practical consequences in terms of the type of issue before us, it would seem appropriate, under the particular circumstances of this case, and considering the inconclusive state of the record concerning the subject, to dismiss the allegation of the complaint concerned with the procurement of the checkoff authorization cards in question.

IV. THE REMEDY

The case flows solely from actions taken in reliance upon a legal position, which happens to be in error, and the remedy should be so limited. Affirmatively, the employees of Branch 6 should be jointly and severally reimbursed by the Respondents for the strike assessments or any portion thereof paid after November 3, 1959, and the notices should be aimed at advising the employees concerning their rights in the matter. They should be advised, of course, that failure to pay assessments will not be a cause of discharge. However, they should also be advised concerning the significance of their checkoff authorizations, in a manner fair both to them and to the Union. This will be achieved, I think, by their being advised that the obligation to pay *assessments* is a matter between them and the Union, which the Employer will not enforce under any contract, and that while their checkoff cards do authorize deduction of assessments, the authorization is a voluntary one, which they are at liberty to revoke, subject to its terms.

Upon the findings above made and the entire record, I hereby make the following:

CONCLUSIONS OF LAW

1. By threatening employees with discharge if they did not pay the strike assessment and by exacting payment thereof pursuant thereto, the Employer discriminated against employees in violation of Section 8(a)(3) and interfered with, restrained, and coerced employees in the exercise of their statutory rights, in violation of Section 8(a)(1) of the Act.

2. By causing and attempting to cause the Employer to discriminate against employees in the manner aforesaid, the Union engaged in and is engaging in an unfair labor practice in violation of Section 8(b)(2) of the Act. Thereby, and also by itself threatening employees with discharge if they did not pay the assessment, the Union restrained and coerced employees in the exercise of their statutory rights, thus engaging in an unfair labor practice within the meaning of Section 8(b)(1)(A) of the Act.

3. Said unfair labor practices affect commerce within the meaning of the Act.

[Recommendations omitted from publication.]

C. E. Webster, An Individual Proprietor d/b/a Western States Stone Co. and Construction, Production and Maintenance Laborers Local No. 556. *Case No. 28-CA-683 (formerly Case No. 21-CA-4032). May 25, 1961*

DECISION AND ORDER

On December 13, 1960, Trial Examiner Eugene K. Kennedy 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. Thereafter, the Respondent filed exceptions to the Intermediate Report, together with a supporting brief.

The Board ¹ 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 and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, C. E. Webster, An Individual Proprietor d/b/a Western States Stone Co., Ash Fork, Arizona, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees and applicants for employment concerning their union activities in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

(b) Threatening never to sign a union contract, to close the plant or curtail its operations, or bring in men from California if the union is successful in its organizing attempt.

(c) Discouraging membership in Construction, Production & Maintenance Laborers Local No. 556, or in any other labor organization of its employees, by discharging or discriminating in any other manner in regard to hire or tenure of employment, or any term or condition of employment, to discourage membership in a labor organization.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist the Union, 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.

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

(a) Make whole Gordon Hunter, Ruth Hunter, Richard Reed, Maurice Houser, Charles Neatherlin, and Jean Neatherlin for any loss of pay they may have suffered from the date of the discrimination against them, respectively, and offer immediate reinstatement to said employees in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social secu-

¹ Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

rity payment records, timecards, personnel records and reports, and all records necessary to analyze the amounts of backpay due and the rights of the aforesaid discriminatees under the terms of this Order.

(c) Post at its Ash Fork, Arizona, plant copies of the notice attached hereto marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for the Twenty-eighth Region, shall, after being duly signed by Respondent's authorized representative, be posted by Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other materials.

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

²In the event that this Order is enforced by a 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."

APPENDIX

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, as amended, we hereby notify our employees that :

WE WILL NOT discourage membership in Construction, Production & Maintenance Laborers Local No. 556, or in any other labor organization of our employees, by discharging or failing to offer them reinstatement to their same or comparable positions because of their union membership and activities, nor will we discriminate in any other manner in regard to hire or tenure of employment, or any term or condition of employment, to discourage membership in a labor organization.

WE WILL NOT interrogate employees or applicants for employment concerning their union activities in a manner constituting interference, restraint, or coercion in violation of Section 8(a) (1) of the Act.

WE WILL NOT threaten that we will never sign a union contract, or close the plant or curtail its operations, or bring in men from California if the Union is successful in its organizing attempt.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to form, join, or assist Construction, Production & Maintenance Laborers Local No. 556, 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.

WE WILL offer to Gordon Hunter, Ruth Hunter, Maurice Houser, Richard Reed, Charles Neatherlin, and Jean Neatherlin immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered as a result of our discrimination against them.

C. E. WEBSTER, AN INDIVIDUAL PROPRIETOR
D/B/A WESTERN STATES STONE Co.,

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.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This matter was tried in Prescott, Arizona, on August 16 and 17, 1960. It involves the alleged wrongful conduct of C. E. Webster, An Individual Proprietor d/b/a Western States Stone Co., herein called Respondent, in terminating six employees and otherwise restraining and coercing employees with respect to their rights guaranteed by the National Labor Relations Act, as amended.

Upon the entire record in the case, my observation of the witnesses, consideration of General Counsel's brief, and oral argument of Respondent, I make the following:

FINDINGS OF FACT

I. NATURE OF THE RESPONDENT'S BUSINESS; JURISDICTION OF THE BOARD

Respondent is engaged in the processing and sale of stone in various plants located in California, Washington, and Arizona. The establishment involved in the present proceeding is located at Ash Fork, Arizona. Respondent, during the past 12-month period, has shipped stone processed at its Ash Fork, Arizona, plant to points outside the State of Arizona in an amount exceeding \$50,000 and is engaged in commerce and in business affecting commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Construction, Production, & Maintenance Laborers Local No. 556, herein called the Union, as reflected by the uncontradicted and credited testimony of Donald Wright, the business representative of the Union, admits to membership individuals employed by Respondent and exists for the purpose, in whole or in part, of dealing with employers, including Respondent, concerning terms and conditions of employment and is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

Ash Fork, Arizona, is a town of approximately 1,000. Respondent frequently employs transients and has a large turnover of employees as indicated by the fact that it employs approximately 200 employees annually, although the number employed at any one time has an approximate range of 20 to 30. The plant has three stoncutting machines each operated by a stoncutter along with a crew which loads, grades, and trims the stone. The base rate of pay for the employees terminated and apparently for at least most of the others was \$1.25 an hour with an opportunity to make an additional amount if G. B. Madison, superintendent, permitted

their pay to be computed according to the tonnage output of one of the cutting machines.

G. B. Madison, at all times material, was the superintendent of the Respondent's operation at Ash Fork as well as two other locations, and a supervisor within the meaning of the Act. He owns land contiguous with Respondent's Ash Fork yard which was commonly regarded as company property, and on which he had approximately 11 rental units which were rented to the employees.

Gordon Hunter, along with his sister, Ruth, had been employed by Respondent in September 1959. After Hunter had written to the union office in Phoenix, Arizona, seeking aid in organization, a union official came by Respondent's yard to see Hunter and a meeting was arranged at Gordon Hunter's home on the evening of April 21, 1960. Employees in attendance included Ruth and Gordon Hunter, Maurice Houser, Richard LeRoy Reed, and Paul Montoya. Gordon Hunter, with some assistance from his sister, obtained approximately 20 signed union authorization cards given him by the union official. After the Union filed a petition with National Labor Relations Board, a representation hearing was held and an election conducted on July 29, 1960, in which no votes were cast for the Union.

Before considering the question of discrimination in connection with the terminations of Gordon and Ruth Hunter, Maurice Houser, and Richard LeRoy Reed on April 27 and of Charles and Jean Netherlin on May 9, 1960, other alleged unlawful conduct charged to Respondent will be examined. This conduct is related to the question of the discriminatory discharges but is considered first only because participating in the events establishing separate Section 8(a)(1) violations are employees in addition to those alleged as victims of discrimination.

B. Interference, restraint, and coercion

After the termination of four employees on the morning of April 27, 1960, Madison stated to Gordon Hunter that "this company will not under any circumstances sign a god damn union contract." At this time, Madison also asked Hunter if he wanted to take any more of his boys with him and when Hunter said he didn't know what he meant, Madison said, "anyone else that might have signed a union card."¹

¹ These statements were made in the presence of employees Ruth Hunter, Richard LeRoy Reed, and John Crouch. Madison denied both these statements. His denials are discredited based not only on his demeanor but also because an examination of his testimony indicates that it contains implausible explanations. For example, he admitted telling prospective employees Respondent was having labor troubles, although when specifically questioned he was reluctant to admit that the labor troubles were connected with union organization. This extract from his testimony indicated to the Trial Examiner a typical evasiveness and the last portion is regarded as an inadvertent admission as to why he precipitously discharged the main union organizer and three other known union employees, and interrogated several others as to their union membership or activities on April 27, 1960.

TRIAL EXAMINER: Well, then, I am going to ask you this. Your testimony suggested to me that when you were talking to the Hands on the night of April 26th, and as my notes reflect that you advised them that things were uncertain for reasons including labor problems, is that correct?

THE WITNESS: That is correct.

TRIAL EXAMINER: Now, what information did you have or what were you referring to when you told the Hands that there were labor problems at that time?

THE WITNESS: Mr. Kennedy, that would make a long story.

TRIAL EXAMINER: Well, we can make it a long story, but I think that—

THE WITNESS: I am willing to go now.

TRIAL EXAMINER: I will narrow it down. Were you referring at all to the organizational attempts by the union that had been going on during the preceding month?

THE WITNESS: The organizational attempts wasn't my problem, sir.

TRIAL EXAMINER: Was the union?

THE WITNESS: No, sir, that wasn't my problem.

TRIAL EXAMINER: Then would you tell me what you meant when you told Mr. Hunter that he could take his boys with him on the morning of April the 27th?

THE WITNESS: Yes, I will tell you. I had understood by the two visitors the night before and three visitors two weeks before—I would not like at all to call their names—that they were going to close my yard down and force me immediately for a consent election.

To the extent Madison's testimony is inconsistent with the findings herein, although not specifically noted, it is discredited.

Ruth Hunter's credited testimony has Madison saying on April 27: "He said he could close the place down before he would allow a union to come in. He said there wasn't any union coming in under any circumstances."

Ruth Hunter and her sister, Dorothy Cloud, visited Madison on or about May 13, 1960, for the purpose of trying to secure a job for Dorothy Cloud. During the course of the conversation, Madison informed these two women that because of labor problems they might have to close down or leave some of the machines out. In this conversation Madison also stated to Ruth Hunter that he wasn't sorry that he had let Gordon go and advised Ruth Hunter not to listen to what Gordon told her, that it might get her in trouble, and that he might have to fire everyone and bring in some men from California.

On the evening of April 26 or on the morning of April 27, Madison hired William Leroy Hand. Although there were inconsistencies in William Hand's testimony, it is credited insofar as it reflects at the time of the hearing Hand was currently in the employ of Respondent and that when he was hired, Madison told him along with his brother, Charles Hand, that Respondent was having some trouble with the Union and asked if he were a union man. William Hand told Madison that he was strictly against the Union and Madison, in turn, told him that his continuing to work depended on leaving the Union alone and Madison also said something to the effect that anyone who joined the Union would be fired.² Subsequent to April 27, 1960, Madison asked William Hand if he had gone to the union meeting and had signed a union card. Hand replied that he had not signed a card, although he admitted to having attended the meeting.

Madison addressed some employees in the vicinity of the office on April 27, 1960, and stated that he had fired a bunch of union men and also pointed out Maurice Houser as an example of what would happen to any of them if they joined the Union or signed a union card.³

On April 27, 1960, in the afternoon, Madison asked Charles Neatherlin whether he or his wife had signed a union card and he replied in the negative. Madison then stated that was all that he wanted to know.

On May 9, 1960, after the termination of Neatherlin, and his inquiry of Madison as to why he was being fired, Madison told him,

I don't know, Charlie. You could have done all right here.

. . . You are a good, clean, sane, sober boy. You could have been all right here, but you got messed up with Gordon Hunter, and those people. You just got messed up with those people. It still isn't too late to back out of it.

On cross-examination Neatherlin's credited testimony has Madison at this same time telling him he could have been all right if he had not got mixed up in that "union deal."

Madison at this time also told Neatherlin that Richard Reed could have done all right if he had not got mixed up with the "wrong people." In the context of this record I find that Madison was referring to the Union as the "wrong people."

² William Hand was accompanied by his brother, Charles Hand, who was also in Respondent's employ at the time of the hearing. Charles Hand's testimony supports his brother's and Madison's denials and are not credited. Charles Hand testified as follows:

Q. Do you recall what was said at that time about the Union?

A. Well, they said they didn't intend to have the union. They were working the men without the union for one reason. If any fellows come through there looking for work and they wanted to hire them, they could; but as far as saying they would not hire union, he did not. He did not tell me that he would fire union men. All the conversation was that I got out of him was that he did not want the union, that he would shut the machines down if any of us joined. Not all the machines, just ours, the ones that joined.

Albert Knopf was Madison's assistant and a supervisor within the meaning of the Act. He claims he was present during the entire interview with the Hands. His denial of Madison's statement to the Hands is not credited. This credibility resolution is based not only on the demeanor of the respective witnesses but on the fact that the Hands, currently in the employ of Respondent, would appear to be giving a truthful version contrary to their own interest as employees, which would not hold true in the case of Knopf.

³ Houser testified credibly to this statement by Madison. Houser said the remark was made to individuals which included William Leroy Hand. Hand said he could not remember such a remark and Madison denied it. The credited testimony of employee John Crouch supports Houser's testimony, although he could not recall the identity of employees addressed by Madison.

On this occasion Madison also informed Neatherlin that he had two men that would go in front of the Board and swear that they were told either they had to join the Union or couldn't work there. Madison reiterated to a further question from Neatherlin, that he didn't know why Neatherlin was being fired. This introduction of the "Board" by Madison into the exchange between himself and Neatherlin is probably explained by the filing of the union petition with the Board on May 4, 1960, or by Madison's impression that this could have some legal effect in a "right to work state." The record is clear that he told prospective employees they were under no compulsion to sign a card or join a union.

Madison told W. R. Mitchell, when he was employed approximately in June 1960, that there was some labor trouble and nobody seemed to know whether "we was going to work or not, but while the place was working, why, I could work."

Paul Montoya, a witness called by Respondent, testified as follows on direct examination:

Q. (By Mr. PALMER.) Did Mr. Madison ever ask if you joined the union?

A. Yes, he did.

Q. What did you tell him?

A. I told him, "Yes, I did."

He said, "Paul, he say, you join the union, tell me the truth."

I say, "Yes, sir, I did which I shouldn't."

He say, "Well, you do what you please. You are a free man, but still if you join the union, you go through with the work with me. You do either one."

Q. He told you that?

A. Yes, sir.

On cross-examination he also gave this version:

Q. (By Mr. GRUENDER.) Mr. Montoya, do you recall when Mr. Madison asked you whether you signed a union card that you told him that you had but you didn't know what you were doing and you didn't want to get in no trouble?

A. I will answer that. The same morning when these people got, quit, me and Paul Aragon working in the line—

Q. Well,—

TRIAL EXAMINER: Let him finish.

The WITNESS: Mr. Madison went over there and told Paul Aragon, he say, "Paul, you join the union?"

Paul told him, "No."

He asked me, he say, "Paul, do you join the union?"

I say, "Yes, Mr. Madison."

He say, "Well, Paul, that's all I want to know." He say, "You old enough, you can join, do what you please. Join the union and still you got a job with me any time you want it."

So from then on I start thinking that these men over here, he's been pretty good men with me. So I say, "I don't know nothing about union."

So from here I just don't know was nothing with the union.

Q. (By Mr. GRUENDER.) All right. Did you ever make the statement that you told G. B. that you had signed a card for the union?

A. Yes sir, I did.

Q. And that you also told him that you didn't know what you were doing, that you didn't want to get into no trouble?

A. Correct.

Q. You did tell him that?

A. Yes sir, I did.

Q. That is what you told G. B.?

A. Yes sir, I did.

Madison also asked employee Thomas Ander Scott, before the Board election, whether he had joined the Union. About 2 weeks after the Hunters were discharged on an occasion when employee Crouch remarked to Madison that they were getting pretty well stocked with rock, Madison replied, "It was overstocked around here with union men, too." Based on the credited testimony of Charles Neatherlin it is also found that Madison on April 27 interrogated Inez Pena as to her union affiliation.

In January 1960, Madison, in connection with hiring an employee named Claude Burnia, told him that the Union had been trying to get organized there and asked Burnia if he was a unionman. After Burnia replied, "Hell, no," Madison gave him a job.

It is found that the above recited events, when viewed with the terminations hereinafter discussed, establish that Respondent persisted in an extensive, flagrant, and successful campaign of threats and intimidation to defeat the Union's organizational

effort. Included in its unlawful conduit which I find to be separate violations of Section 8(a)(1) are Madison's statements to the Hunters that Respondent would never sign a "god damn union contract"; that he would close the place down before he would allow a union to come in; his statements to Ruth Hunter and Dorothy Cloud that because of labor problems⁴ the plant might be shut down and that he might have to fire everyone and bring in men from California and shut down some of the machines; his interrogation of William Leroy Hand and Charles Hand as to their union affiliation on the occasion of hiring them, and his statements to them that their jobs depended on not being affiliated with the Union and his subsequent interrogation of William Hand as to his union activities; Madison's statement to William Hand and others pointing out Houser, who had just been discharged, as an example of what happened to people who joined the Union; Madison's statements to Charles Neatherlin that he and Richard Reed would have been all right if they had not got "messed up" with Gordon Hunter and "the wrong people"; and Madison's interrogation of Paul Montoya, Paul Aragon, Inez Pena, and Claude Burnia as to their union affiliation.

1. The termination of Gordon Hunter, Ruth Hunter, Richard Reed, and Maurice Houser on April 27, 1960

The issue in connection with these terminations as well as those of Charles and Jean Neatherlin on May 9, 1960, is whether these employees quit as alleged by Respondent or whether they were discharged because of their union activities.⁵

For some time prior to April 27, 1960, Gordon Hunter had been the operator of the No. 1 stonemasonry machine. About 3 or 4 days before April 27, Madison asked Charles Neatherlin if he would like to operate it as Madison was going to have to let go three or four employees.

On the morning of April 27, which was a Wednesday, Gordon Hunter, Ruth Hunter, Richard Reed, Maurice Houser, along with Paul Montoya and Paul Aragon, reported to work about 8 a.m. as the crew attached to the No. 1 machine. However, Madison shut it down at 8:10 a.m., apparently by removing some fuses thereby making it inoperative.⁶ He then called to Ruth Hunter, Gordon Hunter, Richard Reed, and Maurice Houser to come to the office. When they approached the office he told them to punch out their timecards and sent for the timekeeper, Everett Jessee, to make out their checks.⁷ At this time, after several inquiries as to why they were

⁴ In the context of the entire record I find "labor problems" to mean union organizational efforts when the term is used by Madison.

⁵ Respondent offered some evidence pointing to the unsatisfactory nature of the work of Gordon Hunter, the questioned ability of Houser to perform the work, and an incident involving Reed which Respondent asserts would have been justification for his discharge. However, in conformance with the issues framed by its answer, Respondent at the close of the hearing stated on the record it was relying on the principally litigated defense, i.e., the employees involved had quit, and hence no useful purpose can be here served by examining the asserted reasons Respondent had for discharging these six employees. It is found in any event the record does not contain credited probative evidence of cause for Respondent discharging any employee named in the complaint. It would seem that quitting and being fired for cause are mutually exclusive defenses and are not logically available to Respondent as alternates.

Moreover, Superintendent Madison's testimony, the principal actor and witness for Respondent, is unequivocal to the extent that the employees quit and were not discharged. He specifically denied that he had discharged any of them.

⁶ Madison testified as follows:

Q Now, after you shut down the thing and told Mr. Johnson to prepare this equipment that you have mentioned, what is the next thing you did?

A. Mr. Houser—the first thing I done was the men that I did not expect to use that day, I told to punch out.

Q. Now, who was that?

A. That was Mr. Maurice Houser, Gordon Hunter, Ruth Hunter, and Richard Reed. Possibly the other two, I don't remember who they were. I did not tell Ruth Hunter to punch out.

The record is clear that Ruth Hunter did punch her timecard when the other terminated employees did.

⁷ It was the practice of Respondent to pay its hourly paid employees on the Friday succeeding the week that work was performed. Only on the occasion of termination would the employees also be paid for the current week. In this event the employee would re-

being terminated, he advised them they were being told to punch their timecards because they were poor insurance risks, although he then stated to Ruth Hunter and Richard Reed he had nothing against their work.

Gordon and Ruth Hunter and Richard Reed then left and returned to the yard in 10 minutes. They talked to some employees and then about 10 a.m. Madison called them into the office and asked them if they were demanding their checks. All three said they were, if they were fired. Madison then told Gordon Hunter and Reed they could dig post holes until 5 p.m. and pick up their checks then. The post hole digging was purportedly to be done in connection with the construction of a new dock. This work had not commenced as of August 17, the date of the hearing. Madison asked Ruth Hunter if she wanted her checks and she replied it was up to him. He also advised her she could work on No. 2 machine until Friday and then get her check. It is not clear when Ruth Hunter could have started to work on April 27. Hunter and Reed both declined to dig post holes and Ruth Hunter took her checks instead of working on the No. 2 machine. At this time also Madison gave as a reason for telling Gordon and Ruth Hunter and Richard Reed they were terminated that the switchbox on No. 1 machine needed to be repaired, and told them it might take as much as all summer to be repaired.⁹ This machine had been operating during the entire winter without a cover for the switchbox and the record is clear that the correction was accomplished by noon on April 27 or shortly after. Charles Neatherlin's testimony is credited that he operated the No. 1 machine commencing about 1 p.m. on April 27.⁹

Maurice Houser who had signed a union card and attended the union meeting at the Hunters' home on April 21, did not come back and get his pay until about 1:30 in the afternoon. Houser was not offered any type of work after his discharge. About a week prior to April 27, Al Knopf, Madison's assistant, and a supervisor asked Houser how he was coming along with the Union and Houser in reply indicated they were doing pretty good. When Houser was leaving that afternoon he heard Madison point him out to employees as proof that Madison would fire anyone who supported the Union.¹⁰

In connection with the April 27 terminations which occurred about a week after the first union meeting Madison testified he knew of this meeting and he thought he knew who was there.¹¹

With respect to Richard Reed, Charles Neatherlin's testimony is credited to the effect that on May 9, 1960, Madison told Neatherlin that Richard Reed was a good boy too, "but he got mixed up with the wrong people." In view of the fact that Reed was working with Hunter and that he attended the union meeting about which Madison testified that he thought he knew who was there, there is an ample pre-

ceive two checks. Madison testified that he discharged very few and the one example he recalled was an employee fired at his own request so that he could get both of his checks without waiting an additional week. Everett Jessee, the timekeeper, testified that sometime between 8:10 and 8:30 he was called to his office on Madison's instructions. Jessee testified inconsistently in that he said that he was waiting around for 20 to 30 minutes before Madison told him to write the checks for the Hunters, Reed, and Houser, and then he testified that he was not able to hear all the conversation between Madison and the employees named because he was busy writing checks. In any event, it seems incredible that Madison would call Jessee into his office unless it was for the purpose of writing checks, or that Jessee would simply remain a bystander for about a half an hour before he was told by Madison to write the checks. The termination records of Ruth and Gordon Hunter and Richard Reed indicate they were paid for 15 minutes on April 27 which establishes their timecards were punched at 8:15 a.m. Houser's discharge record was not introduced but it is clear his card was punched at the same time.

⁹ Madison admits this statement but states he made it when he first gave the instructions to punch the timecards.

⁹ In addition to Madison's uncredited denial, Paul Montoya denied the No. 1 machine was operating on the afternoon of April 27. The content of Montoya's testimony as well as his demeanor compels a rejection of his testimony on this point in view of the opposing and credited testimony of Charles Neatherlin and Gordon Hunter.

¹⁰ Crouch, a witness for the General Counsel supports Houser's testimony although he could not place William Leroy Hand in the group of employees to whom these remarks were addressed as did Houser. Hand could not remember this incident and Madison at one point indicated he had used Houser as an example of someone who had joined the Union on a different day and then switched his testimony to saying he was using the broken windows as an example.

¹¹ Paul Montoya was present at this meeting. Madison characterized his knowledge of the meeting and the persons in attendance as based on hearsay.

ponderance of evidence to establish Reed was discriminatorily discharged. It is found that getting mixed up with "the wrong people" as expressed by Madison meant participation in the union organizational efforts and that this was the reason for Reed's discharge.

2. The alleged discharge of Charles and Jean Neatherlin on May 9, 1960

On the evening of May 7, 1960, which was a Saturday, Charles Neatherlin complained to Everett Jessee, the timekeeper, that he had not been paid for part of the work that he had done while in Respondent's employ. On this occasion, according to the credited testimony of Neatherlin, Jessee informed him in effect that the tonnage basis for paying employees was not observed by Madison and that he paid employees anything he wanted to. Whereupon Neatherlin and his wife secured the services of Gorden and Ruth Hunter to the extent of having Ruth Hunter put down in writing what Jessee had told them about the practices of Madison in paying the employees, and Gorden Hunter, the discharged union organizer, in conjunction with the Neatherlins, went back to see Jessee to have him sign the paper that had been signed already by Charles and Jean Neatherlin. Jessee refused to sign the paper and denied that he had made the comment about Madison's practices in paying the employees and suggested that Neatherlin go over to the timekeeper on Monday.¹² On Monday, which was May 9, Neatherlin punched his timecard out around 4:30 and went to the timekeeper's office. Neatherlin's credited version of events is as follows concerning his discharge by Madison:

He asked me, "What happened? Aren't you satisfied with your work here," and then I said, and I said, "Yes."

He said, "Do you want your check?"

I told him, "No." I didn't want my check. I just wanted to straighten it up. So he went back in and he was figuring, and he told Jessee, "Write out the check. While you are out, write out his wife's check."¹³

* * * * *

I asked G. B. what I was fired for, and he said, "I don't know, Charlie. You could have done all right here."

He said, "You are a good, clean, sane, sober boy. You could have been all right here, but you got messed up with Gordon Hunter, and those people. You just got messed up with those people. It still isn't too late to back out of it."

He told me, he repeated that two or three times. He said he had two men that would go in front of a Labor Board and swear that they was told that they either had to join the union or couldn't work there.

I told him that that would have to be proven.

He said, "Well, that's just like a bunch of junk you guys got that has got to be proven. I got two boys that won't even work here if the union goes in."

I said, "One is Jim Dray and who is the other one?"

Q. Is that all?

A. And I asked him again why I was fired, and he said, "I don't know."

* * * * *

A. G. B. said he wished everybody would quit, and I said "It would sure make it easier for you"; and he said, "It sure would."

He said, "The union might make it in," but he said, "they sure won't make it this time."

Madison's version is that Neatherlin came into the timekeeper's office on May 9 for the purpose of complaining about his wife's pay and that he wanted her to be paid on a tonnage basis, and that when he refused to pay Neatherlin's wife on a tonnage basis, Neatherlin asked for both their checks.¹⁴

3. Discussion and concluded findings with respect to alleged unlawful termination of these six employees

Based on the foregoing it is found that Madison was strongly opposed to union organization. To establish that he implemented this opposition by discharging employees there is available both direct and circumstantial evidence that Madison had knowledge of the union activities of the discharged employees. The first dis-

¹² Neatherlin's testimony about this event was not denied by Jessee.

¹³ The transcript is corrected to show that the witness testified, "While you are at it, write out his wife's check."

¹⁴ Madison's testimony on this is discredited for reasons noted heretofore.

charges occurred only 1 week after the first union meeting at the home of Gordon Hunter. On the evening of April 26 Madison testified that he had visitors who informed him the yard would be shut down unless he agreed to a consent election. Madison testified that he knew about the first union meeting and that he thought he knew who was there. The record supports the finding that Madison probably knew Gordon and Ruth Hunter, Richard Reed, and Maurice Houser attended this union meeting, and in any case that they were active proponents or identified with union organization. Gordon Hunter credibly testified that he carried the union authorization cards in plain sight at work in his shirt pocket between April 21 and 27. On the morning of April 27, after Gordon Hunter was discharged, Madison asked him whether he wanted to take any more of his boys with him. It is found that this remark reflected Madison's knowledge that Gordon Hunter was the prime mover in the attempt to organize. Further evidence of Madison's knowledge, not only of Hunter's but Neatherlin's union activities, may be found in his remark to Charles Neatherlin that he would have been all right if he had not got mixed up with Gordon Hunter and that union deal. Albert Knopf's admitted questioning of Maurice Houser as to how the union organization was going is evidence of Respondent's knowledge of Houser's participation in the union organizational effort. The answer of Respondent admits that Knopf was a supervisor. Knopf testified that he did not relate his conversation with Houser to anyone. Whether he did or not is not regarded as significant. What is significant is that a supervisor of Respondent shortly after the first union meeting evidenced in his question to Houser that Houser was known to be a proponent of the Union prior to his discharge.

The discharge of Reed at the same time as the Hunters and Houser reflects that he was regarded as part of Gordon Hunter's union group. Madison's statement to Charles Neatherlin that Richard Reed was a good boy too but he got mixed up with the wrong people in the context of the testimony makes it clear that Madison was telling Neatherlin that Reed was fired for becoming involved with the Union as was Neatherlin. Ruth Hunter and Jean Neatherlin were encompassed in Madison's attempt to discourage the Union primarily because of their relationship with Gordon Hunter and Charles Neatherlin, respectively. However, the record also reflects that prior to their discharge Charles and Jean Neatherlin attended a union meeting in a cafe in Ash Fork and that Ruth Hunter was seen by a supervisor, Al Knopf, when obtaining the signature of Jean Neatherlin on a union card at Respondent's plant. Also it is observed that Jean Neatherlin accompanied Gordon Hunter, the chief union proponent, and Charles Neatherlin on the evening of May 7 in an attempt to have Timekeeper Jessee sign a statement as to what he had purportedly told Neatherlin about Madison's abuse of the tonnage computations with respect to employees' pay. It seems patent that this incident of May 7 in which the Neatherlins participated with Gordon Hunter, the discharged union leader, triggered Madison's decision to discharge Charles and Jean Neatherlin on May 9.

Some evidence in support of the Hunters', Richard Reed's, and Maurice Houser's discharge on April 27 is contributed by Madison. It is uncontroverted that Madison directed Gordon and Ruth Hunter, Reed, and Houser to punch out their timecards at 8:15 a.m. on April 27.¹⁵ The termination records of Reed and the Hunters indicate they were paid for 15 minutes of work on April 27. According to Timekeeper Jessee this procedure in itself was very unusual as he testified that unless the employee wanted to go out on personal business it was not customary to have them punch out before the employee had put in at least a half day's work. About an hour after 8:15 a.m. on April 27 Madison offered Reed and Gordon Hunter, a job digging post holes for the rest of the day and he told Ruth Hunter on that day that she could work on the number two line through Friday, April 29. Madison testified that he told the Hunters, Reed, and Houser to punch out because he did not expect to use them that day. He then proceeded to testify that he did not tell Ruth Hunter to punch out. This is belied by the fact that her termination record contains an entry of 15 minutes work which would coincide for April 27 with records of Gordon Hunter and Reed who punched out at the same time and by Madison's subsequent testimony that he told Ruth Hunter to punch out because it would take some time to shift some one from the No. 2 line so that she could do the work there.

The contention that the Hunters, Reed, and Houser, 1 week after their first organizational meeting, would quit is unrealistic and is supported only by the discredited testimony of Madison. The fact that Richard Reed and the Hunters were offered short-term employment after their discriminatory discharge is directed to the ques-

¹⁵ Although Madison at one point testified that he did not tell Ruth Hunter to punch her timecard, his other testimony concedes he told her to punch out on April 27.

tion as to whether they were being offered immediate reinstatement to their former or substantially equivalent jobs and this will be noted in the recommendation as to the remedy. Charles and Jean Neatherlin and Maurice Houser were not offered any type of short-term employment.

Madison's alleged reasons for terminating the employees were not valid.¹⁶

The No. 1 machine was operating the same day, even though Madison told the discharges that it might take all summer to make the repairs. The record reflects that the repairs were expeditiously done and the machine was operating the same day. The question is suggested as to whether the installation of a switchbox cover and a ground could not have been performed while the machine was operating or at some time when it was not being used. Madison's telling the discharges of April 27 they were being terminated because they were poor insurance risks is not supported by any probative evidence and is rejected.

Based on the foregoing and record as a whole it is found that Gordon and Ruth Hunter, Maurice Houser, and Richard Reed were discharged at 8:15 a.m. on April 27 as part of Respondent's unlawful campaign to defeat the organizational attempts of the Union.

Charles and Jean Neatherlin's visit to Jessee in connection with Gordon Hunter, recognized by Respondent as the head of the Union's organizational effort, on the evening of Saturday, May 7, is the only plausible explanation for their precipitous discharge on Monday, May 9, the next workday. Madison's statement to Neatherlin that he could have done all right if he had not got messed up with Gordon Hunter and the union deal provides ample indicia for finding that the discharge of Charles and Jean Neatherlin was unlawful. Inasmuch as Madison is discredited with respect to his testimony on the circumstances of the Neatherlins' termination it is also found they were discharged in aid of Madison's attempt to defeat union organization.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, it is recommended that it shall cease and desist therefrom and take affirmative action to effectuate the policies of the Act. The discharges by Respondent of the employees named herein and its other unlawful conduct are violations going to the heart of the Act and it appearing that because of the widespread nature of Respondent's unfair labor practices that it will be likely to commit similar or related unfair labor practices in the future, it will be recommended that the Respondent cease and desist from violating any of the rights guaranteed employees by Section 7 of the Act.

It will be recommended that Respondent offer immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any of their rights or privileges, to Gordon Hunter, Ruth Hunter, Richard Reed, Maurice Houser, Charles Neatherlin, and Jean Neatherlin, and make whole such employees by paying them an amount of money in accordance with the Board's formula set out in *F. W. Woolworth Company*, 90 NLRB 289. If any of these employees are in the military services, it is recommended that Respondent immediately notify any such employee by registered mail addressed to their last known address that the aforementioned offer of reinstatement is continued until 90 days after discharge from active military service. The backpay period for any such employee now in the

¹⁶ As previously indicated Madison's testimony was considered unreliable and not credited when in conflict with the findings made. This is based on the entire record and all the facts as well as on his demeanor. Yet it is noted that Madison while frequently contradicting himself testified on occasions in conformity with the witnesses of the General Counsel. For example, at one point he testified that the offer of work digging post holes was about an hour after the Hunters, Reed, and Houser punched their timecards. This squares with the Hunters' testimony that the question of further work on April 27 was not mentioned by Madison until they came for their checks about an hour after they were told to punch out. Also of significance is that each employee had two checks ready for him at that time which according to the Respondent's practice signified a permanent cessation of employment with Respondent. Madison's specific denial of discharging the alleged discriminatees seems in the main to be aimed at the refusal of some to accept other work as well as in the case of Reed and the Neatherlins to establish they had quit.

military service will run from the date of discharge until the commencement of active military service and from the date 5 days after time of the application for reinstatement after the end of military service until the date of Respondent's offer of reinstatement. The backpay award for any employee in the military service, from the date of discharge until the date of entry into the armed services, shall be payable forthwith without waiting for a final determination as to the liability for backpay in the event any occurs after the termination of military service.

Contrary to Madison's contention it is found on the credited testimony of Maurice Houser that he was not offered work at any time on April 27. After Gordon Hunter and Richard Reed were discharged at 10 a.m. they were offered a job digging post holes for the balance of the day only. Having in mind their checks were already made out, that the post hole digging was not necessary as it had not been commenced as of the date of the hearing, and that they would receive less pay and would have only a few hours work at most, this offer to Reed and Gordon Hunter is found not to have constituted an offer of reinstatement to their same or substantially equivalent positions. With respect to the offer made to Ruth Hunter to work the balance of the week, it is observed she was being offered a job of limited duration, i.e., 2 days plus whatever time she would work on April 27, whereas before her discharge the record supports the finding that her job would be of indefinite duration. Madison's testimony makes it clear that employees were seldom if ever fired for reasons other than union activity. It follows Ruth Hunter was not offered reinstatement to the same or substantially equivalent position she held before her discharge on April 27, 1960.

In addition to recommending that Respondent cease and desist from infringing in any manner upon the rights guaranteed employees by Section 7 of the Act, it will also be recommended that Respondent be required to post the notices attached hereto at the location of its Ash Fork, Arizona, plant.

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. Construction, Production & Maintenance Laborers Local No. 556 is a labor organization within the meaning of the Act.

2. Respondent C. E. Webster, An Individual Proprietor d/b/a Western States Stone Co., is engaged in commerce within the meaning of the Act.

3. Respondent has violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging Gordon and Ruth Hunter, Richard Reed, Maurice Houser, and Charles and Jean Neatherlin.

4. Respondent has further violated Section 8(a)(1) of the Act by coercively interrogating employees and applicants for employment concerning their union affiliations, threatening to close the plant or curtail its operation if the Union was successful in threatening to bring in employees from California if the Union was successful in its organization attempt, and by stating it would never sign a union contract.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

[Recommendations omitted from publication.]

Local 598 Plumbers and Steamfitters (Kennewick) and Local 44 Plumbers and Steamfitters (Spokane), affiliates of United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO and MacDonald-Scott & Associates. Case No. 19-CC-136. May 25, 1961

DECISION AND ORDER

On January 5, 1961, Trial Examiner James R. Hemingway issued his Intermediate Report in the above-entitled proceeding, finding that