

Copies of the said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director, in writing, within 20 days of the receipt of this Recommended Order, what steps it has taken to comply therewith.<sup>5</sup>

<sup>5</sup> In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

## APPENDIX

### NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order 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 bargain collectively, upon request, with Insurance Workers International Union, AFL-CIO, as the exclusive bargaining representative of all employees in the bargaining unit described below concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of work, and if an understanding is reached, embody it in a signed agreement. The bargaining unit is:

All debit insurance agents in the Company's Cleveland East and Cleveland West district offices, Cleveland, Ohio, and its detached office in Lorain, Ohio, excluding office clerical employees, canvassers, canvassing agents, collectors, regular ordinary agents, guards, district managers, associated district managers, staff managers, and all other supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively as aforesaid, nor will we, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their right to bargain collectively through the said union or any other labor organization of their own choosing.

EQUITABLE LIFE INSURANCE COMPANY,  
Employer.

Dated----- By-----  
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio, Telephone No. MAine 1-4465, if they have any question concerning this notice or compliance with its provisions.

**Riggs Distler & Co., Inc. and Edwin A. Sweglar, Jr.; G. Howard Groscup; James C. Dunn, Sr.; C. Robert Fenner.** *Cases Nos. 5-CA-2029-1, 5-CA-2029-2, 5-CA-2029-3, and 5-CA-2029-4. March 25, 1963*

### DECISION AND ORDER

On November 15, 1962, Trial Examiner Paul Bisgyer 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 attached Intermediate

Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.<sup>1</sup>

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, Fanning, and Brown].

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 and the entire record in the case, including the exceptions and brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

### ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.<sup>2</sup>

<sup>1</sup> The Respondent has requested oral argument. This request is hereby denied, because the record, the exceptions, and the brief adequately present the issues and the positions of the parties.

<sup>2</sup> For the reasons set forth in his dissent in *Isis Plumbing & Heating Co.*, 138 NLRB 716, Member Rodgers would not grant interest on backpay, and does not approve such an award here.

### INTERMEDIATE REPORT AND RECOMMENDED ORDER

#### STATEMENT OF THE CASE

This consolidated proceeding was heard by Trial Examiner Paul Bisgyer on various dates between September 7 and 17, 1962, in Baltimore, Maryland, on complaint of the General Counsel issued on the basis of four charges filed on October 13, 1961,<sup>1</sup> and the answer of Riggs Distler & Co., Inc., herein called the Respondent. In substance, the complaint alleges that the Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, by discharging on October 12, 1961, Edwin A. Sweglar, Jr., G. Howard Groscup, James C. Dunn, Sr., and C. Robert Fenner, the Charging Parties herein, because of their membership in Local No. 28, Brotherhood of Electrical Workers, formerly International Brotherhood of Electrical Workers, AFL-CIO, herein called Local 28, and their lack of membership in Local No. 24, International Brotherhood of Electrical Workers, AFL-CIO, herein called Local 24. In its answer the Respondent admits the discharges, alleges that they were made for cause, and otherwise denies the commission of any unfair labor practices. The answer also alleges as an affirmative defense that Sweglar, Groscup, and Dunn were bound by adverse determinations made by the Department of Unemployment Security of Maryland that they were not entitled to unemployment benefits because their employment had been terminated for misconduct. At the conclusion of the hearing the parties waived oral argument. Thereafter, the General Counsel and the Respondent filed briefs which have been carefully considered. The Respondent's motion to dismiss the complaint made at the close of the hearing, on which I reserved ruling, is now denied in accordance with my findings and conclusions set forth below.

Upon the entire record<sup>2</sup> and from my observation of the witnesses, I make the following:

<sup>1</sup> The Charging Parties also filed charges against Local No. 24, International Brotherhood of Electrical Workers, AFL-CIO, alleging that it unlawfully caused the Respondent, Riggs Distler & Co., Inc., to discriminate against them. The charges were subsequently withdrawn because of insufficient evidence.

<sup>2</sup> This includes the pretrial statements of the Respondent's general foreman, Carl M. King, and Foremen Everett C. Hedrick and Sidney C. Adams, which were received in evidence on agreement of the parties as the equivalent of additional testimony of these witnesses. In accordance with the General Counsel's unopposed request, the official tran-

## FINDINGS AND CONCLUSIONS

## I. THE BUSINESS OF THE RESPONDENT

The Respondent is a Maryland corporation with its principal office and place of business in Baltimore, Maryland, where it is engaged in the electrical contracting business. During a representative 12-month period, the Respondent, in the course and conduct of its business operations, received gross revenue in excess of \$1 million for work performed on construction projects in various States of the Union. During the same period, materials valued in excess of \$50,000 were shipped directly to those sites for the Respondent's use from States other than the State in which the project was located.

Accordingly, I find that the Respondent is, and at all times material herein has been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

## II. THE LABOR ORGANIZATIONS INVOLVED

I find that Local 28 and Local 24 are labor organizations within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

## A. Question presented

This is not the conventional type of a case of an employer charged with discriminating against employees because of his opposition to unions generally. The Respondent's background of dealing with labor organizations makes this quite clear. Rather, what is basically involved here is alleged to be the byproduct of a bitter and prolonged conflict between Local 28, which is seeking to regain its bargaining status for electricians in the Baltimore area and its charter from the International Brotherhood of Electrical Workers, AFL-CIO, herein called IBEW, and the latter organization and its Local 24 which it chartered to supplant Local 28.<sup>3</sup> Specifically, the question to be decided here is whether the Respondent's general foreman, Carl M. King, for whose acts the Respondent is concededly responsible, brought about the Charging Parties' loss of employment at the Respondent's Crane Powerhouse job because of their membership in Local 28. Plainly, this is a factual question not susceptible of easy determination as it entails an inquiry into King's state of mind and, as often happens in cases of this type, requires the resolution of sharply contradictory testimony with the employees swearing to one version and management to another.

## B. The evidence

## 1. Background of the interunion dispute

For a number of years prior to September 1961, Local 28 maintained contractual relations with the Maryland Chapter of National Electrical Contractors' Association, herein called NECA, which bargained on behalf of the Respondent and other electrical contractors in the Baltimore area. Because of disagreement over the terms of a new contract, Local 28 went on strike about June 19, 1961.<sup>4</sup> Apparently, Local 28 did not secure the IBEW's consent to strike with the result that on August 7 the IBEW revoked its charter<sup>5</sup> and on August 27 chartered Local 24 in its place. The following month, NECA entered into an agreement with Local 24.

The record indicates, though not too clearly, that before and during the strike there were internal difficulties and dissension among the membership of Local 28 regarding the state of affairs between Local 28 and IBEW and a number of Local 28 members left its organization to join Local 24. Among those leaving Local 28 was

script of testimony taken in this case is hereby corrected to show that the statement beginning on line 2, page 83, was made by the Trial Examiner. In addition, on my own motion, the transcript is corrected to substitute the word "legal" for the word "little" on line 6 of the same page.

<sup>3</sup> For a history of some of the litigation in the Federal courts in Baltimore, Maryland, relating to this interunion conflict, see *Parks v. International Brotherhood of Electrical Workers, etc.*, 203 F. Supp. 288 (D.C. Md.), decided March 7, 1962, appeal pending in the U.S. Court of Appeals for the Fourth Circuit.

<sup>4</sup> Except as otherwise indicated, all the relevant events herein occurred in 1961.

<sup>5</sup> The right of the IBEW to do so is presently the subject of litigation in *Parks v. International Brotherhood of Electrical Workers, supra*.

Carl M. King, the Respondent's general foreman on the Crane Powerhouse job who became a charter member of Local 24. For 25 years King had been a member of Local 28, serving at different times as executive board member, assistant business manager, and business manager. In 1960, after 4 years as business manager, King was defeated for reelection. When the strike was called in June, King, along with all the other electricians, walked off the Crane Powerhouse job. King, however, returned in August. About this time King's subordinate foreman, Sidney C. Adams and Everett C. Hedrick, to whose crews the Charging Parties were later assigned, also began working for the Respondent and joined Local 24. They, however, were never members of Local 28. As of the date of the hearing in this case, the strike with its attendant picketing was still in progress.

2. Local 28 members apply for work at NECA and secure employment with the Respondent

Following a regular membership meeting of Local 28 on October 6, the rank-and-file members assembled and decided among themselves to return to work in order to protect their right to vote in the event the National Labor Relations Board conducted a representation election.<sup>6</sup> Accordingly, on Monday, October 9, the Charging Parties and other members of Local 28 applied at NECA's office for employment with the area's electrical contractors. After a friendly and cordial interview concerning their qualifications, the Charging Parties and five other Local 28 members were given referrals to the Respondent who hired them for the Crane Powerhouse job, without questioning them about their union affiliation. It is undisputed that the Charging Parties were qualified journeymen electricians<sup>7</sup> and were the first Local 28 adherents to return to work on this job since the strike began.

3. The Charging Parties report for work; their assignment and subsequent termination of employment

Sweglar and Fenner reported for work at the Crane Powerhouse job the same afternoon they were hired, while Dunn and Groscup reported the next morning, Tuesday, October 10.<sup>8</sup> To do so, they crossed the picket line, after explaining the situation to the pickets. The first day General Foreman King assigned Sweglar to work in the shop with Buck Dull, another Local 28 member.<sup>9</sup> Fenner, in the meantime, was assigned to another job. On Tuesday, at Sweglar's request, King paired him up with Fenner to work under Foreman Hedrick. Dunn and Groscup were paired up to work under Foreman Adams.

That Tuesday morning, while the Charging Parties and other Local 28 men were gathered in a group waiting for the starting whistle to blow, the Local 24 steward approached them and asked to see their union cards. As the job was an open shop, this led to a brief, heated exchange between the Local 28 men and the steward who thereupon made a hasty withdrawal to the Respondent's office. There he complained to King about the Local 28 men's refusal to exhibit their cards, expressing the view that he anticipated "trouble" ahead. King agreed with the steward that the cards should be exhibited. Nothing further transpired with respect to his incident.

The following morning, Wednesday, October 11, while the Charging Parties were signing in for work, they noticed that King's name had been crossed out on the timesheet and the word "rat" was inserted alongside it. Shortly thereafter, John F. Tewey, Jr., the Respondent's field accountant, presuming that a Local 28 electrician probably was responsible for defacing the sign-in sheet, admonished only the Local 28 electricians to refrain from such conduct in the future.

<sup>6</sup> Sweglar, one of the Charging Parties, who did not attend this meeting, learned of this decision and availed himself of this opportunity to return to work to support his family. Dunn, another Charging Party, similarly testified that he returned to work because he needed the money.

The Intermediate Report in *Local 28, Brotherhood of Electrical Workers and Maryland Chapter, National Electrical Contractors Association*, Cases Nos. 5-CB-458, 5-CB-459, 5-CB-460, issued March 19, 1962 (not published in NLRB volumes), to which no exceptions were filed, refers to the indefinite postponement on October 4, 1961, of the hearing on the representation petition in Case No. 5-RC-3596.

<sup>7</sup> Groscup has been a journeyman electrician for 45 years, Dunn for 20 years, and Sweglar for about 8 years. The record does not disclose Fenner's experience.

<sup>8</sup> The five other Local 28 men also reported either Monday or Tuesday.

<sup>9</sup> I find, contrary to King's testimony and in accordance with Dull's more convincing testimony, that Dull, who is still in the Respondent's employ, did not request King to separate him from Sweglar because he (Dull) wanted to work and not cause trouble.

Whether before or after the foregoing incident, King also approached the Local 28 group. Announcing in angry tones that some men had left the locker area early the day before, he stated that no one was permitted to do so until the 4 o'clock whistle blew and that if anyone did otherwise, he could "keep on walking." Evidently this admonition was primarily intended for Dunn's and Groscup's ears for it was they who admittedly had not waited for the 4 o'clock whistle on Tuesday but had proceeded to the parking lot a few minutes before 4, after they had deposited their brass checks in the locker room.<sup>10</sup>

In his pretrial statement, King asserted that he believed it was 3:55 Wednesday afternoon that he recommended to Henry B. Duke, the superintendent of the Crane Powerhouse job, that the Charging Parties be discharged for misconduct, although in his testimony at the hearing he thought it was probably Thursday morning, October 12, that he made the recommendation. According to King, he reached this decision on the basis of his personal observation and the reports received from his foremen, Adams and Hedrick. As was his practice, Superintendent Duke accepted the recommendation of King because of the latter's more intimate familiarity with the immediate details of the job. Thereafter, Field Accountant Tewey, at Duke's direction, prepared release and termination of employment forms for the Charging Parties, setting forth the reasons given to him by Duke. Undeniably, Duke had received the grounds for the discharges from King. Under the item in the form calling for "detailed statement of exact reason for termination," the same language was used for all the Charging Parties; namely, "Insubordination, lack of cooperation with other employees, lack of interest in work and wasting too much time." Incompetence to perform the work, however, is not asserted as a ground for the discharges.<sup>11</sup>

The Charging Parties continued working Thursday until near the close of the workday when Foreman Adams informed Dunn and Groscup, and a little later Foreman Hedrick told Swegler and Fenner, that Superintendent Duke wanted to see them in his office. When they arrived there,<sup>12</sup> Tewey asked them to sign the previously prepared termination forms. Voicing their indignation at the false reasons for their abrupt dismissal set forth in the termination forms, they refused. Thereafter, when Duke entered the office, they vehemently protested their discharges and requested reconsideration, which Duke declined to do. Obviously irked by this turn of events, Dunn spontaneously told Groscup to stop wasting his time pleading for his job as the "old bastard" did not have long to live anyway. It appears that Duke took this remark as a threat and responded that if he later found out that he was wrong about the discharges, he would be the first to apologize, but that he resented being threatened.<sup>13</sup> While intemperate language of this sort cannot be condoned, I find, all circumstances being considered, that no threat was actually intended by Dunn. After being paid off, the Charging Parties left and the next day filed the charges herein.

#### 4. Unrest on the job

According to King, the job ran smoothly and morale of the men was high until Local 28 men came on the scene when unrest appeared and "the job seemed to fall

<sup>10</sup> Depositing checks is a procedure equivalent to signing out. There is also undisputed testimony in the record, which I credit, that on some construction jobs employees are permitted to leave the site after they deposit their checks. Dunn and Groscup testified, in substance, that they assumed that this practice also prevailed on the Crane Powerhouse job and that they thereafter left the locker area when they did after noticing other men leave the construction site. A sign, however, is posted in the locker room, stating that the Respondent's employees "are not to leave locker area until whistle blows at the end of work day." Dunn and Groscup denied that they were aware of the sign, although they did not question its existence. I find that their departure was an innocent mistake which they never repeated.

<sup>11</sup> Foreman Adams, however, testified that he had to redo certain work performed by Dunn and Groscup and that they had tagged certain "source wires" with the wrong circuit number. Nevertheless, he conceded that he never mentioned the quality of their work to King. As later indicated, I do not consider Adams' testimony reliable.

<sup>12</sup> Dunn came first, followed by Groscup shortly thereafter, and Sweglar and Fenner coming last.

<sup>13</sup> During the exit interview, Dunn also mentioned that he had not seen King on the job more than once or twice and that King was probably afraid someone might drop something on him. Dunn's remarks quite clearly referred to an incident that occurred before Local 28 men were hired when an ironworker had dropped from a building a number of bolts which fell near King. Dunn testified that he learned about this incident from a steamfitter employed on the construction site. Conceivably, this remark was directed to what Dunn regarded as groundless reasons for his discharge.

apart." As to what in particular caused such unrest, King "couldn't put . . . [his] finger on it." However, he eventually concluded that the Charging Parties caused the unrest, attributing it to their hostile attitude. Except for one possible incident which King did not witness but which was allegedly reported to him, no evidence was adduced of any deliberately provocative acts committed by the Charging Parties to bring about such a condition.<sup>14</sup> The specific instance alluded to involved an obscene remark that Sweglar allegedly made to another employee in reply to the latter's inquiry as to how soon Sweglar would be finished with a saw he was using.<sup>15</sup> Foremen Adams and Hedrick also alluded in their testimony to unrest, contention, and confusion on the job, for which they, like King, blamed the Charging Parties. Although they, too, presented no tangible evidence of provocative acts committed by the Charging Parties, they agreed with King that the unwholesome atmosphere of unrest disappeared and normalcy returned to the job with the Charging Parties' discharge.

In the light of the entire record, the most that can be said about the alleged unrest and low morale on the job is that the Local 28 electricians' return to work was a source of anxiety to Local 24 electricians.

#### 5. The evidence concerning the Respondent's reasons for the discharges; the Charging Parties' work performance and conduct

As indicated previously, the grounds for the discharge of each Charging Party were the same—"Insubordination, lack of cooperation with other employees, lack of interest in work and wasting too much time." At the outset, it is noted that no evidence of insubordination was presented at the hearing. Clearly, no Charging Party defied authority. Indeed, Foreman Adams and Hedrick conceded that much in their pre-trial statements that no Charging Party ever talked back to them. Nor was any evidence adduced concerning any lack of cooperation by the Charging Parties with other employees except possibly Sweglar's rude remark involving the use of a saw which was mentioned above.<sup>16</sup> We now turn to the evidence regarding the Charging Parties' other asserted shortcomings.

#### Dunn and Groscup

King testified that he personally observed Dunn and Groscup during working hours engaged in conversations with members of other crafts lasting 15 to 20 minutes at a time but was unable to specify the days they occurred. In his pre-trial statement, however, King stated that he saw Dunn and Groscup on Tuesday and Wednesday talking to other craftsmen working in the vicinity for periods up to a half an hour. He further testified that one day he observed them standing around doing nothing from 3:30 to 4 o'clock. In his pre-trial statement King specified Wednesday as the day of the occurrence. Notwithstanding such asserted waste of time by Dunn and Groscup, King admitted that he did not order them to return to work or otherwise reprimand or warn them to mend their ways; nor did King direct Adams, their foreman, to do so. Although King insisted that it was not his policy to talk to employees about their conduct on the job it is nevertheless undisputed, as previously discussed, that he had reprimanded the Local 28 men about leaving the locker area before the 4 o'clock whistle blew, despite the fact that the precipitating incident involved nonworking time at the close of the day. In this connection, it is also noted that King testified that he had personally observed Dunn's and Groscup's early departure which occasioned the reprimand. However, in his pre-trial statement he indicated that Adams had informed him about his dereliction.

Concerning the reports he received from Foreman Adams on which he relied in making his decision to discharge Dunn and Groscup, King testified that Adams told him that Dunn and Groscup were no good to him because they would not work. King further testified that Adams referred to only one instance of such conduct when

<sup>14</sup> Wilford E. Jones, a charter member of Local 24, testified as a witness for the Respondent that between October 9 and 13, he never observed Local 28 men do anything which caused unrest except that he saw Sweglar make two telephone calls in the guard shack which made him apprehensive.

<sup>15</sup> Sweglar denied knowledge of such an incident. Probably, if the remark were made, it was not of such a significant or willful character as to be remembered. In any event, King admitted never speaking to Sweglar about this alleged remark; nor did Foreman Hedrick, who testified he was present when it was made, reprimand Sweglar for using profane language. Hedrick also conceded that profanity was occasionally used by the men on the job but in a joking manner.

<sup>16</sup> There is candid testimony by several of the Charging Parties that they were not particularly interested in associating with Local 24 men and the latter apparently felt the same way about associating with Local 28 men.

on the first morning (Tuesday) of their employment, they did no work but spent 30 minutes taking coffee before they looked him up for an assignment. In his pretrial statement, King stated that Foremen Adams and Hedrick complained that all the Charging Parties "were standing around not working, had an arrogant attitude towards the job and the other men on the job . . . and that they were not producing enough due to their wasting time."

Adams testified, in substance, that he had two discussions with King concerning Dunn's and Groscup's performance on the job. According to his testimony, the first occurred on Wednesday when he told King those men were standing around and were not producing and the second conversation took place on the same or next day when he told King that he could not work the men efficiently.<sup>17</sup> Adams' pretrial statement indicates that all these conversations occurred on Wednesday.

Turning to Dunn's and Groscup's performance and conduct on the job, Adams gave the following account: He observed them standing around every day not working for extended periods and on at least five occasions either he or King saw them talking to members of other crafts. Specifically, Adams mentioned one such conversation on Tuesday but could not remember the time of day or the particular area in which it happened. He also referred to another episode when he and King observed Dunn and Groscup speaking to some steamfitters for 15 minutes or longer and "up to 30 minutes" instead of working. On this occasion, Adams testified, he and King speculated on the possibility that Dunn and Groscup were agitating these craftsmen, although he and King were too far to overhear the conversation. Adams' pretrial statement clarifies this presumed agitation as directed against Local 24 men. Yet, Adams also testified that he did not know whether Dunn and Groscup caused any unrest among this crew. In his pretrial statement, on the other hand, Adams indicated otherwise that "their attitude toward the other men . . . was causing unrest among . . . [his] crew."

In addition to the foregoing, Adams attested to other shortcomings that Dunn and Groscup demonstrated on the job. According to him, he observed them on a number of occasions spending 20 to 30 minutes drinking coffee with members of other crafts and, although 5- to 10-minute coffee breaks were unofficially permitted,<sup>18</sup> he never commented to them that they were abusing this privilege. In his pretrial statement Adams also referred to an assignment he had made to Dunn and Groscup the first day they were there but which they could not perform because of a dangerous situation created by other craftsmen working above them. While agreeing that Dunn and Groscup acted properly in not proceeding with their assignment under those conditions, Adams stated that they should have come to him for reassignment instead of waiting 2 or 3 hours when he returned and put them on another job.

Notwithstanding Dunn's and Groscup's asserted indifference and inattention to their duties, Adams admittedly never reprimanded or warned them to alter their ways and stop wasting time and taking long coffee breaks. Nor did he even attempt to break up their asserted time-consuming discussions with other craftsmen, despite the fact that he and King suspected Dunn and Groscup of agitating them against Local 24 men. Significantly, only once did Adams speak to them about their conduct and that was on Wednesday "when he called them down" for not remaining in the locker area until the 4 o'clock whistle blew, although their neglect to do so was inadvertent and did not involve wasting working time. It is clear that this offense was never repeated.

#### Sweglar and Fenner

King testified that "on a couple occasions" he watched Sweglar and Fenner standing around doing no work and conversing with each other for half an hour at a time. When pressed by the General Counsel for particular times and occasions when he witnessed such conduct, King was evasive and could furnish no specific information other than what he had witnessed one day in the vestibule to the elevator in the Crane Powerhouse building. In his pretrial statement, King declared that once on Tuesday and once on Wednesday he saw them talking to each other "up to a half hour doing nothing" and timed them. Admittedly, however, King said nothing to them or endeavored to learn the reason.

King also testified that he personally observed Sweglar twice one day "running" to the telephone in the guard shack, which belonged to the prime contractor, but did not know what day it was. However, King did not mention in his pretrial statement that he witnessed Sweglar's preoccupation with the telephone. Significantly, here, too,

<sup>17</sup> Adams conceded in his statement that Dunn and Groscup spent no more time than other employees getting material from the toolroom.

<sup>18</sup> General Foreman King, however, testified that coffee breaks not exceeding 5 minutes were permitted

King said nothing to Sweglar about telephoning from the guard shack, although King testified that calls could be made from the Respondent's office with his permission.<sup>19</sup>

As for the reports he received regarding Sweglar's and Fenner's conduct, King testified that their foreman, Hedrick, advised him that they were not producing but were disrupting the crew. When asked for the particular details Hedrick had furnished him, King replied that it was "[o]nly wasting time." According to Hedrick's testimony, however, he first talked to King about Sweglar and Fenner Wednesday afternoon and told him that they were not cooperative with the other men; that they were apparently causing "contention and confusion" among the men, referring to one instance he witnessed when Sweglar used abusive language to a fellow worker; that this "trouble" was perhaps due to the Local 24 and Local 28 controversy; that while the quality of Sweglar's and Fenner's work was all right, the quantity was not; and that he did not want them in his crew any longer. Hedrick's pretrial statement indicates that he gave King more detailed information regarding his complaint against Sweglar and Fenner and added that on Thursday he again discussed them with King and recommended that "they should be let go as they were causing contention among the men."

Hedrick's appraisal of Sweglar's and Fenner's performance on the job is not unlike Foreman Adams' estimate of Dunn's and Groscup's performance. Hedrick testified that Sweglar and Fenner came to the job with a "chip on their shoulders" and would not talk to, or associate with, the Local 24 men. He, however, did not indicate how this attitude actually interfered with the work, if it did at all. Hedrick further testified that from the inception of their employment, Sweglar and Fenner engaged in conversations of 15- to 20-minutes' duration with members of other crafts when the latter came by the place where Sweglar and Fenner were working and vice versa; that one time, probably the second day, he told Sweglar and Fenner that they were not to waste "too much time on the job, we had a job to do"; and they nevertheless continued their practice of standing around engaging in the same lengthy conversations with other craftsmen. In his pretrial statement Hedrick asserted that he "never mentioned to Sweglar or Fenner about their talking to the other crafts" but on the second or third day "called their attention to the fact they were wasting a lot of time." Hedrick's statement also indicates that their conversations with other craftsmen occurred "whenever they were working near these men."

Hedrick also gave testimony that he saw Sweglar and Fenner "knock off" for lunch about 11:45 instead of 12 noon, on 2 days quit working at 3:30 p.m. and stand around doing nothing until 4 p.m., and on Thursday come 10 minutes late for work. Yet, these alleged instances of misconduct elicited no rebuke from Hedrick or any order to resume work.

Continuing with his account of Sweglar's and Fenner's indifference to their job, Hedrick testified that about 9 o'clock in the morning of the first day they began to work for him, he chanced to see them sitting at a table in the locker room taking a coffee break; that after returning about 15 minutes later from the office, which was his original destination, they were still sitting there; and that he thereupon told them that, although coffee breaks were not authorized, he permitted his men to take them provided they did not abuse the privilege.<sup>20</sup> Hedrick's pretrial statement fixes the time these two men spent in the locker room as 30 minutes, even though he testified that he did not know how long they were there before he had first seen them or how long they remained after he had later spoken to them. In the face of his admonition, Hedrick also testified, Sweglar and Fenner thereafter continued to spend 15 to 20 minutes drinking coffee.

Hedrick further testified that he also observed Sweglar make five telephone calls in the guard shack on 2 days during working hours. However, Hedrick said nothing to Sweglar about it. Although Hedrick conceded that he customarily allowed his employees to make telephone calls from the Respondent's office if such calls were necessary, he nevertheless did not inquire of Sweglar whether these calls were necessary, inform him as to the circumstances under which he permitted the calls to be made, or even that electricians were not allowed to use the telephone in the prime contractor's guard shack.

#### The Charging Parties' Version of Their Work Performance and Conduct

The Charging Parties recounted at length their work performance and conduct on the job during their brief period of employment on the Crane Powerhouse job. In substance, they denied that they wasted time, abused their coffee break privileges, were

<sup>19</sup> There is no announced rule prohibiting electricians from making telephone calls on the job. Nor does it appear to be unusual for them to do so.

<sup>20</sup> It is clear that coffee breaks are a common practice on the job.

indifferent to their responsibilities, or deliberately engaged in any conduct destructive of discipline or efficiency of the job. In addition, they accounted for lost time attributable to delays in securing materials,<sup>21</sup> waiting for the welder and receiving assignments from their foreman.

#### Credibility Resolution

I find the Charging Parties' testimony impressively sincere and straightforward, freely acknowledging matters which could not possibly serve their best interests. Thus, for example, they candidly described the friendly and cordial job interview accorded them by NECA and the Respondent; they openly admitted their conversations with members of other crafts who sympathized with Local 28's cause, but insisting that the conversations were generally brief and casual in the nature of greetings; Sweglar gave frank testimony concerning his calls to John E. Parks, a member actively involved in Local 28's dispute with IBEW and Local 24; Dunn and Groscup readily testified to their early departure from the locker area which they plausibly explained; Sweglar did not hesitate to acknowledge his erroneous testimony that from the area where he was working in the Crane Powerhouse building he had seen Chesler and Vail, officials of Local 24, enter the Respondent's office.<sup>22</sup>

On the other hand, the Respondent's account of the Charging Parties' derelictions was not convincing and impressed me as exaggerated, vague, and generally unreliable. I find it difficult to believe that, if the Charging Parties' work performance were as flagrant as their supervisors pictured it to be, the supervisors would countenance it without any reprimand or warning to mend their ways, or even any inquiry as to the cause.<sup>23</sup> Indeed, the Respondent's restraint to improve this alleged intolerable situation is even more remarkable in view of the fact that General Foreman King did not delay warning Local 28 men the very next morning after Dunn and Groscup had left the locker area a few minutes before 4, that they risked discharge if they repeated this offense, despite the fact that such early departure was on *nonworking* time. Similarly irreconcilable is Foreman Adams' rebuke to Dunn and Groscup for the same offense and his seeming reluctance to criticize them for allegedly wasting *production* time. Moreover, it seems incredible that King, Hedrick, and Adams would stand idly by, dissipating their own valuable time watching for the lengthy periods they claimed the Charging Parties were talking to members of other crafts, drinking coffee, or otherwise wasting their time and yet make no effort promptly to put a halt to such conduct. Particularly inexplicable is the fact that the Respondent's supervisors permitted the conversations with the other craftsmen to continue unabated, even though King and Adams suspected that the Charging Parties were thereby agitating against Local 24 men.

Accordingly, on the basis of my analysis of all the evidence in the record, my observation and appraisal of the reliability of the witnesses, the inherent probabilities of the case, I find that the Charging Parties' testimony more closely accords with the truth. I therefore find that the Charging Parties did not engage in the conduct asserted as ground for their discharge.

#### C. Concluding findings

The General Counsel contends that the evidence establishes that the Respondent violated Section 8(a)(1) and (3) of the Act by terminating the employment of the Charging Parties because of their membership in Local 28 and their failure to join Local 24. The Respondent, on the other hand, vigorously maintains that the General Counsel failed to meet his burden of proof. It urges, on the contrary, that the record shows that the sole motivating reason for the discharges was the Charging Parties' misconduct which was "calculated to waste time, demoralize the job, undermine the authority of their supervisors and hold them up to ridicule and contempt."

<sup>21</sup> Foreman Adams conceded that Dunn and Groscup spent no more time than the other employees getting material from the toolroom.

<sup>22</sup> Sweglar explained, however, that he really meant that he had seen Chesler and Vail walk in the direction of the Respondent's office and that, while he did not see them actually enter through the door, his testimony simply assumed that they did. This explanation, I find, is reasonable. It should be noted that the Respondent does not deny that Chesler and Vail were at the construction site. Indeed, General Foreman King's pretrial statement acknowledges that Chesler, the assistant business manager of Local 24, was there on Thursday, October 12.

<sup>23</sup> In accordance with my credibility resolution *infra*, I do not credit Hedrick's testimony previously discussed that on one occasion he told Sweglar and Fenner coffee breaks were not to be abused and at another time he told them not to waste time.

I have heretofore found that the Respondent has not substantiated its claim that the Charging Parties engaged in the conduct imputed to them. Much less do I find any evidence of the indicated deficiency plan. However, it does not necessarily follow from this evidentiary deficiency that discrimination was thereby proved. For it is axiomatic that an employer may discharge an employee for a good, bad, or even no reason at all, provided he does not do it for union membership or activities. However, while it is not for the Board to determine the sufficiency of an employer's non-discriminatory reason for a discharge, nevertheless it is equally well settled that where, as here, an employer's explanation for a discharge "fails to stand under scrutiny," such failure casts doubt on the purity of his motives and strengthens a possible inference of discrimination.<sup>24</sup> Similarly rendering the Respondent's motive suspect is the fact that the discharges were abruptly effected without any prior warning to the Charging Parties that they risked losing their jobs if they persisted in their alleged timewasting activities and indifference to their responsibilities.<sup>25</sup>

The question nevertheless remains that, if the asserted reasons did not prompt the discharges, what did. I find the answer in the revealing testimony of General Foreman King and Foremen Adams and Hedrick, on whose reports King relied in part in making his effective discharge recommendation to Superintendent Duke. As discussed previously, they detected unrest, contention, confusion, and demoralization on the job the moment Local 28 electricians began working. In addition, King and Adams suspected Dunn and Groscup of agitating members of other crafts against Local 24 men. Although no evidence of agitation or other deliberate, provocative acts by the Charging Parties was adduced, King, Adams, and Hedrick nevertheless attributed to the Charging Parties this unhappy condition which quickly disappeared on their discharge. All factors considered, I find that whatever unrest there was stemmed from the anxiety Local 24 electricians were experiencing over the employment of members of Local 28, whose organization was still persevering in its efforts to regain its charter from IBEW and its status as the bargaining representative of the electricians in the Baltimore area. Indeed, such concern manifested itself in the Local 24 shop steward's demand to the newly hired Local 28 members when they first appeared on the job to exhibit their union cards and his immediate complaint to King that they refused to do so, even though it appears that the Respondent was then operating an open shop at the Crane Powerhouse site. Moreover, according to Hedrick, the Local 24 shop steward talked to him a few times about Sweglar and Fenner and he (Hedrick) "could tell . . . [the steward] felt they should be fired." In addition, Hedrick testified, the steward told him that "practically all of the other men there on the job were wondering what was going on, why they [Sweglar and Fenner] were acting the way they did . . . . They wouldn't talk to nobody there, causing contention and confusion." Evidently for the same purpose the shop steward, as Adams admitted, also "may have mentioned these men" to him or he to the shop steward but he could not recall.

In light of the foregoing, particularly the preoccupation of the Respondent's supervisors with unrest and demoralization of the Local 24 men allegedly caused by the Charging Parties, the absence of credible evidence of the latter's asserted deficiencies and misconduct, the abruptness of the termination of their employment without prior warning, I am led to the inescapable conclusion that the motivating reason for the discharges was to eliminate this asserted unrest and demoralization and that the purported derelictions of the Charging Parties were merely a pretext to conceal King's true motivation.<sup>26</sup> Significantly, in the estimation of King, Adams, and Hedrick, this objective was achieved with the discharges. However, the Act does not sanction discrimination whether intended to assuage the anxiety of Local 24 employees over the employment of rival unionists or to restore peace and harmony

<sup>24</sup> *N.L.R.B. v. Dant & Russell, Ltd.*, 207 F. 2d 165, 167 (C.A. 9); *North Carolina Fishing Company v N.L.R.B.*, 133 F. 2d 714, 718 (C.A. 4), cert. denied 320 U.S. 738.

<sup>25</sup> *N.L.R.B. v. Dant & Russell, Ltd.*, *supra*, at 168.

<sup>26</sup> The fact that the Maryland Department of Employment Security had rejected the claim of Dunn, Groscup, and Sweglar for unemployment benefits on the ground that they were discharged for misconduct does not preclude a contrary determination on the record developed at the Board hearing herein. As the Court of Appeals for the Eighth Circuit so aptly pointed out in *N.L.R.B. v. Pacific Intermountain Express Company, etc.*, 228 F. 2d 170, 176, enfg. 110 NLRB 96, cert. denied 251 U.S. 952, "Each fact-finding agency is entitled to make its own decision upon the evidence before it, and the fact that another tribunal has reached a different conclusion upon the same issue arising out of the same transaction does not invalidate any decision which has proper evidentiary support." See also *United Brick & Clay Workers of America, et al v. Deena Artware*, 198 F. 2d 637, 642 (C.A. 6).

on the job allegedly jeopardized by the presence of the Charging Parties.<sup>27</sup> In such circumstances, the fact that King did not harbor any personal animosity against the Charging Parties is of no importance. Nor does the fact that the Respondent did not discharge all the Local 28 employees exculpate its discrimination against the Charging Parties.<sup>28</sup> Plainly such a wholesale discharge would have completely exposed King's hand.

In the final analysis, I conclude, the Respondent's testimony to the contrary notwithstanding,<sup>29</sup> that the Respondent terminated the employment of Dunn, Groscup, Sweglar, and Fenner because of their membership in Local 28 and thereby discouraged membership in that organization in violation of Section 8(a)(3) of the Act. I further find that by this action the Respondent also penalized these individuals for exercising a statutory right of maintaining their membership in, and adherence to, that labor organization, and hence independently violated Section 8(a)(1) of the Act.<sup>30</sup>

#### 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 its 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 its free flow.

#### V. THE REMEDY

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

Since the Respondent has discriminatorily discharged the Charging Parties, I recommend that the Respondent offer them immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges. However, such offer of reinstatement is conditioned upon their jobs still being in existence at the Crane Powerhouse construction site or at any other site to which they normally would have been transferred, absent discrimination.<sup>31</sup> In addition, I recommend that the Respondent make the Charging Parties whole for any loss of earnings they may have suffered by reason of the Respondent's discrimination against them by the payment to each of them of a sum of money equal to that which he normally would have earned from the date of his discharge to the date of the Respondent's offer or reinstatement or the date when work would not have been available to him for nondiscriminatory reasons, less his net earnings during the said period. Backpay shall be computed with interest on a quarterly basis in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, 291-294, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

<sup>27</sup> *N.L.R.B. v. Hudson Motor Car Company*, 128 F. 2d 528, 532-533 (C.A. 6), enf. 34 NLRB 815; *N.L.R.B. v. Gluek Brewing Company, etc.*, 144 F. 2d 847, 853-854 (C.A. 8), enf. as mod. 47 NLRB 1079.

<sup>28</sup> *N.L.R.B. v. W. O. Nabors, d/b/a W. C. Nabors Company*, 196 F. 2d 272, 276 (C.A. 5), enf. 89 NLRB 538, cert. denied 344 U.S. 865, and cases there cited.

<sup>29</sup> As the Ninth Circuit Court of Appeals so aptly noted in *Bon Hennings Logging Company v. N.L.R.B.*, decided September 4, 1962, 51 LRRM 2085, 2090 [308 F. 2d 548]:

. . . the Supreme Court in a recent opinion [*N.L.R.B. v. Walton Mfg. Co.*, 369 U.S. 404 (1962)] has laid to rest, quite properly, any contention that the uncontradicted evidence of an employer as to his motive for a certain course of action must be accepted by the Board. No one but the employer or his confidants are ordinarily in a position to give direct evidence of his motive, and, to understate the case, it is unlikely that unfavorable evidence would be forthcoming. Much so-called "uncontradicted" evidence is subject to conflicting inferences which may result from the evidence itself or the attendant circumstances. The duty to choose between such inferences and to assess weight and credibility is vested in the trial examiner . . .

<sup>30</sup> In view of the fact that the record contains no evidence that the Charging Parties engaged in union or concerted activities at the jobsite, I find it unnecessary to consider the General Counsel's further contention that, even if the Respondent mistakenly believed that the Charging Parties had improperly engaged in agitation, the Respondent violated the Act for discharging them for this reason.

<sup>31</sup> Groscup testified, without further clarification, that he was "forced to retire" in November 1961 apparently because of age. For this reason, the question of his entitlement to reinstatement shall be determined in the compliance stage of these proceedings.

## CONCLUSIONS OF LAW

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

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local 28 and Local 24 are labor organizations within the meaning of Section 2(5) of the Act.
3. By discriminating in regard to the hire and tenure of employment of Edwin A. Sweglar, Jr., G. Howard Groscup, James C. Dunn, Sr., and C. Robert Fenner as to discourage membership in Local 28 and to encourage membership in Local 24, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
4. By reason of the foregoing conduct, the Respondent has independently interfered with, restrained, and coerced employees in the exercise of their statutory rights within the meaning of Section 8(a)(1) of the Act.
5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondent, Riggs Distler & Co., Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
  - (a) Discouraging membership in Local No. 28, Brotherhood of Electrical Workers, formerly International Brotherhood of Electrical Workers, AFL-CIO, or in any other labor organization, or encouraging membership in Local No. 24, International Brotherhood of Electrical Workers, AFL-CIO, or in any other labor organization, by discharging employees or discriminating against them in any other manner in regard to their hire or tenure of employment or any term or condition of employment, except to the extent that their rights in that regard may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.
  - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent permitted by Section 8(a)(3) of the Act.
2. Take the following affirmative action which is necessary to effectuate the policies of the Act:
  - (a) Offer Edwin A. Sweglar, Jr., G. Howard Groscup, James C. Dunn, Sr., and C. Robert Fenner immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges and make each of them whole for any loss of earnings suffered by reason of the discrimination against him, as provided in the section entitled "The Remedy" of the Intermediate Report.
  - (b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports and all other records necessary to analyze the amounts of backpay due and the right to reinstatement under the terms of this Recommended Order.
  - (c) Post at its place of business in Baltimore, Maryland, and at its Crane Powerhouse construction site, if it still is engaged in performing electrical work there, copies of the attached notice marked "Appendix."<sup>32</sup> Copies of said notice, to be furnished by the Regional Director for the Fifth 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 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 material.

<sup>32</sup> In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

(d) Notify the Regional Director for the Fifth Region in writing, within 20 days from the receipt of this Intermediate Report and Recommended Order, as to what steps the Respondent has taken to comply herewith.<sup>33</sup>

<sup>33</sup> In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director for the Fifth Region, in writing, within 10 days from the date of this Order, as to what steps the Respondent has taken to comply herewith."

## APPENDIX

### NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner 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 Local No. 28, Brotherhood of Electrical Workers, formerly International Brotherhood of Electrical Workers, AFL-CIO, or in any other labor organization, or encourage membership in Local No. 24, International Brotherhood of Electrical Workers, AFL-CIO, or in any other labor organization, by discharging employees or discriminating against them in any other manner in regard to their hire or tenure of employment, except to the extent that their rights in that regard may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent permitted by Section 8(a)(3) of the Act.

WE WILL offer the employees listed below 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 suffered by reason of the discrimination against him, as provided in the section entitled "The Remedy" of the Intermediate Report:

Edwin A. Sweglar, Jr.  
G. Howard Groscup

James C. Dunn, Sr.  
C. Robert Fenner

RIGGS DISTLER & Co., INC.,  
Employer.

Dated----- By-----  
(Representative) (Title)

NOTE.—We will notify any of the above-named employees presently serving in the Armed Forces of the United States of their right to reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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

Employees may communicate directly with the Board's Regional Office, 707 N. Calvert Street, Baltimore 2, Maryland, Telephone No. Plaza 2-8460, Extension 2104, if they have any question concerning this notice or compliance with its provisions.

**Westinghouse Electric Corporation and Local 1105, United Electrical, Radio and Machine Workers of America. Case No. 13-CA-4964. March 25, 1963**

## DECISION AND ORDER

On December 4, 1962, Trial Examiner Arthur E. Reyman issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had not engaged in unfair labor practices as alleged in

141 NLRB No. 61.