The record clearly shows that the Respondent had reasonable grounds for believing that the Union had lost its majority, but nevertheless after consulting counsel and learning that it was obligated to bargain at least for the balance of the year following certification it continued to bargain and thereafter signed a written agreement covering a period ending 1 year after the date of certification. Moreover, the record also shows that over a period of years this Respondent recognized its obligation to bargain with labor organizations and that many unions including the Charging Union herein were parties to contracts with the Respondent The record further fails to show that the Respondent was responsible for the disaffection expressed by a majority of its employees toward the Union herein.

In view of the fact that the Respondent had reasonable grounds for believing that the Union had lost its majority representation in the certified unit, I am of the opinion that under all the circumstances shown herein, the Respondent was justified in refusing to bargain with the Union after the end of the year following its certification as bargaining representative, unless and until the question concerning the present status of the Union as majority representative is resolved in favor of the organization. After all, the Act is primarily concerned with protecting the self-organizational rights of employees. [19]

In respect to the second issue raised by the Respondent, I cannot agree that it was, in effect, denied due process by my rulings quashing the subpenas mentioned above The obvious purpose for serving the subpenas duces tecum on the persons named above was clearly an attempt to litigate the question concerning compliance by the Union with the filing requirements of Section 9 (f), (g), and (h) of the Act.

Under the Board's established policy approved by the courts this question of compliance may not be litigated at a Board hearing. [20]

It is true, in view of the principles enunciated by the United States Supreme Court in U. S. v. Morgan, 304 U. S. 1, pertaining to the record upon which a decision is based following an administrative hearing, that the Respondent is entitled to more information than appears in the formal record of this case regarding compliance with the filing requirements of Section 9 (f), (g), and (h) of the Act by the Union. The record, however, fails to show that the Respondent attempted to obtain such information from the affidavit compliance office set up by the Board to furnish such information, but rather sought to consume much time at a formal Board hearing in litigating the issue of compliance. It must be considered that the Board operates under a limited budget and should the issue of compliance be litigated in all representation and complaint cases heard by Board agents it would impede and delay the hearing processes to a material degree resulting in the unnecessary expenditure of large sums of money by the Government and the parties Since a means of securing such information is presently available to interested parties, such parties are not precluded from controverting the original conclusions reached by Board agents in respect to compliance before the Board itself, thus affording the parties a fair hearing on the issue involved.

Consequently, there is no question pending before me which, in my opinion, would warrant a finding that the Respondent was denied proper information concerning the compliance status of the Union.

Upon the basis of all the foregoing and the entire record, I recommend that the complaint herein be dismissed.

It is further recommended that unless on or before twenty (20) days from the date of this Intermediate Report and Recommended Order, the parties or either of them file exceptions thereto, the Board issue an order dismissing the complaint.

[19] N. L. R. B. v. Globe Automatic Sprinkler Company, 199 F. 2d 64 (C A. 3).

[20] N. L. R. B. v. Greensboro Coca Cola Bottling Company, 180 F. 2d 840 (C. A. 4); N. L. R. B. v. Red Rock Co., 187 F. 2d 76 (C. A. 5).

CRESCENT WHARF AND WAREHOUSE COMPANY AND ITS SUCCESSOR, WEST COAST TERMINALS CO., INC. *and* JAMES R. McLACHLAN. Case No. 21-CA-1398. May 8, 1953

DECISION AND ORDER

On January 8, 1953, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that Respondent Crescent Wharf and Warehouse Com-

pany[1] had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (3) and (1) of the National Labor Relations Act and recommending that said Respondent Crescent cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto. Thereafter, Respondent Crescent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.[2]

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, only insofar as they are consistent with our decision herein.

We do not agree with the Trial Examiner that the record establishes that Respondent Crescent, in violation of Section 8 (a) (1) and (3) of the Act, discharged the employees because they had threatened concertedly to resign unless their wages were increased or that the discharges were motivated by such concerted activity. In reaching this conclusion, the Trial Examiner found that the activity of the six employees in writing and signing the letter of April 3, 1952, was protected activity within the meaning of Section 7 of the Act. For reasons hereinafter stated, we believe that the Trial Examiner erred in so finding. Moreover, we find, contrary to the conclusions of the Trial Examiner, that the issue as to whether or not the activity of the employees of Crescent was protected depends for its resolution upon whether the letter of April 3 is to be interpreted as merely a threat to resign or whether it is to be regarded as a present resignation and abandonment of employment.

The difference in result, so far as protection under the Act is concerned, between a statement intended as a notice of abandonment and a statement not intended to have such effect, is clearly apparent from Board decisions dealing with the subject and consequences of abandonment. The Board has held that the act of abandoning employment is unprotected activity, whether undertaken individually or in concert.[3] In conformity with this principle, a voluntary, unconditional notice of resignation to take effect in the future, as distinguished from a conditional threat to resign in the future if conditions are not met,[4] is a complete act, in that nothing more is contemplated by the parties other than to await the running of time. As no

[1] Hereinafter called Respondent Crescent.

[2] As the record and the exceptions and briefs fully present the issues involved herein and the positions of the parties, the Respondent Crescent's request for oral argument is denied.

[3] Stibbs Transportation Lines, Inc., 98 NLRB 422; Carthage Fabrics Corporation, 101 NLRB 541.

[4] The Board has held that a threat to quit or resign under such circumstances is a protected activity. Elwood C. Martin et al., d/b/a Nemec Combustion Engineers, 100 NLRB 1118; Southern Pine Electric Cooperative, 104 NLRB 834.

further action is anticipated or sought as a condition precedent to the voluntary termination, the activity cannot be regarded as one calculated to enforce employer capitulation for purposes of mutual aid and protection. Accordingly, as the activity is one of termination of employee status, it is not protected by Section 7 of the Act.

In the light of the foregoing, we construe the letter of April 3 as a present resignation rather than a threat to resign. The Trial Examiner found, and we agree, that the letter was not preceded by a labor dispute.[5] Because of the absence of a preexisting labor dispute and because the letter, itself, contained no express words of condition, we are persuaded that there is no basis for inferring that the letter was a device selected by the 6 employees to enforce demands upon Respondent Crescent. Rather we find that the letter, the language of which is in terms of present resignation, was intended as the manifestation of a voluntary, unconditional decision on the part of the 6 employees immediately to resign from, and thus abandon, their employment. The action of the 6 employees was, therefore, not the kind of concerted activity which Section 7 protects. As this activity was unprotected we do not find that the Respondent Crescent violated Section 8 (a) (3) and (1) of the Act when it accepted the resignation or replaced the employees who signed the notice.[6]

Nor do we find any violation of Section 8 (a) (3) in the refusal by Respondent Crescent to rehire or reinstate the six employees. The employment relationship having been validly terminated by the employees' own act of abandonment, we will not, in the absence of direct evidence of discriminatory motive or finding of a preexisting labor dispute other than the act of abandonment itself, impute a discriminatory motive to Respondent Crescent from the act of refusal to rehire or reinstate.[7]

Because we do not find that either of the Respondents violated Section 8 (a) (1) or (3), we shall dismiss the complaint in its entirety.

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[5] Although the Trial Examiner found that the Crescent employees entertained the belief that they would receive a wage increase similar to that received by Luckenbach employees, there is no finding, and no evidence to support a finding, that Crescent employees ever made a demand upon Crescent for such increases prior to the resignation letter of April 3, 1952.

[6] The Respondent took steps to replace the employees in question and otherwise acknowledged the resignation before the expiration of the working period referred to in the notice of April 3. The Respondent was, however, justified in accelerating such period as it might properly waive a provision intended solely for its benefit.

[7] At the hearing, the Trial Examiner dismissed the complaint as to Respondent West Coast Terminals, Inc., on the ground that he did not find West Coast to be the successor of Crescent. We do not find it necessary to pass upon the Trial Examiner's ruling, as we find Respondent West Coast could not have been guilty of discrimination in refusing to hire the six employees for the same reasons that we find no discrimination in Respondent Crescent's refusal to reinstate or rehire them.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint against Respondent Crescent Wharf and Warehouse Company, Los Angeles, California, and against Respondent West Coast Terminals Co., Inc., Los Angeles, California, be, and it hereby is, dismissed.

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon charges filed by James R. McLachlan, the General Counsel for the National Labor Relations Board issued a complaint and an amended complaint against Crescent Wharf and Warehouse Company, herein called Crescent, and West Coast Terminals Co., Inc., herein called West Coast, alleging that Crescent and West Coast had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136. Copies of the charges, the complaint and amended complaint, and notice of hearing were duly served.

In respect to unfair labor practices, it is alleged that Crescent discharged six named employees on April 11, 1952, because of their concerted activity and that West Coast, as a successor to Crescent, discriminatorily refused the same individuals reinstatement.

By answer Crescent denied that it has engaged in unfair labor practices and West Coast denied that it had committed unfair labor practices or that it is a successor to Crescent.

Pursuant to notice, a hearing was held before the undersigned Trial Examiner in Los Angeles, California, from November 13 through 18, 1952 All parties were represented, were permitted to examine and cross-examine witnesses and to introduce evidence pertinent to the issues. After the close of the hearing, the General Counsel and Crescent argued on the record. A brief has been received from counsel for Crescent.

During the course of the hearing I granted a motion by West Coast to dismiss as to it; finding that West Coast was not a successor to Crescent and had not, itself, committed unfair labor practices. The facts relied upon by the General Counsel to establish West Coast as a successor to Crescent are in essence that from May 1, 1948, through September 30, 1952, Crescent, under a cost-plus contract, performed terminal operations for Luckenbach Steamship Company. For this period Luckenbach appears to have exercised substantial control over the number of employees used by Crescent and the amount of their compensation. On October 1, 1952, a similar contract covering the same operation was awarded by Luckenbach to West Coast and the arrangement with Crescent discontinued. West Coast on that date displaced Crescent, using substantially the same force of employees. There was, however, no arrangement, contractual or otherwise, between West Coast and Crescent to accomplish this substitution. There is not the slightest evidence that West Coast is "merely a disguised continuance of the old employer." Southport Petroleum Company v. Labor Board, 315 U. S. at 106, or even one "to whom the business may have been transferred whether as a means of evading the judgment or for other reasons." Walling v. Rueter, 321 U. S. 671, 674. Crescent transferred nothing to West Coast and the latter has not been shown to be identified with Crescent in interest or subject to Crescent's control. Indeed, such evidence as there is indicates that Crescent and West Coast are competitors, both seeking to perform the same kind of service for such transporters as Luckenbach.

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

FINDINGS OF FACT

I. THE BUSINESS OF CRESCENT

Crescent Wharf and Warehouse Company is a California corporation with its principal office at Terminal Island, Los Angeles Harbor, California. For a period of more than 4 years through September 30, 1952, Crescent has been engaged at Pier 228, Terminal Island, in

loading and discharging of cargo from Luckenbach vessels and in the receiving and delivery of cargo from and to Luckenbach ships as a terminal operator. In the year preceding the issuance of the complaint, more than 100,000 tons of cargo were handled by Crescent in such operations.

Luckenbach Steamship Company is an intercoastal carrier engaged in the movement of freight and passengers by vessel from East Coast and Gulf ports to ports on the Pacific Coast of the United States Crescent performs a necessary and integral part of the transportation service given by Luckenbach.

II. THE UNFAIR LABOR PRACTICES

Many of the office workers in the employ of Crescent at Pier 228 had at one time been employed by Luckenbach, and in the performance of their duties had frequent contact with Luckenbach employees. At a date which the record does not state with precision but which appears to have been in the fall of 1950, Crescent employees received a wage increase which established their wage rates on a somewhat higher plane than those received by Luckenbach employees doing comparable work. In the early months of 1952 Crescent employees were informed that Luckenbach workers would be given a wage increase retroactive to January 1 of that year and entertained the belief that they would receive the same treatment. Sometime in March the Luckenbach increases were announced and on March 30 the Crescent employees were informed that 3 of them would receive a slight increase Highly dissatisfied, 6 of them, on April 3, handed Terminal Superintendent Wotherspoon the following letter:

> This is to notify you that the undersigned tender their resignation as of April 15th, 1952, in lieu of satisfactory cost of living increases.
>
> It is felt that, since the operating department has had no cost of living increase, other than job increases for a few, since September of 1950, the proposed increases as conveyed by you are not in line with the cost of living index for this period, which, we believe is closer to 10%.
>
> It would appear that some plan of temporary increase consistent with the rising cost of living is in order and should have been inaugurated some time back as conditions warranted.
>
> /s/ Bernard L. McTier
>
> /s/ Ray Caigneau
>
> /s/ James McLachlan
>
> /s/ George Ryan
>
> /s/ Elsie Berkstresser
>
> /s/ Joy Ann Henry

Wotherspoon, who appears to have been entirely in sympathy with the signers, delivered the letter to President Bayly, advising Bayly in writing of the general dissatisfaction of the employees and of his concurrence in their reaction to the wage announcement. The following day, April 4, Andrew Wilson, Crescent's vice president, spoke to the employees in regard to their threatened resignation, telling them that he would like for them to reconsider, explaining that Crescent was unable to pay them any more wages than had been promised and suggesting the unwisdom of their proposed action Wilson said that if any of them had another job for which he must report by April 15, it was well enough for any such person to quit and to take the other employment, that another employer might look with some disfavor upon the collective action of the group, even though Crescent would not. Wilson went on to say that letters of recommendation often speak in high terms of an ex-employee up to the preposition "but" and warned them that what follows the "but" is often what determines an applicant's success in finding work. One of the signers of the letter of April 3, Ray Caigneau, remarked that the employees wanted no more than the cost-of-living wage increase to which they felt they were entitled. The rest of the group remained silent On the same day President Bayly spoke to Superintendent Wotherspoon in connection with recruiting replacements for the employees who had said they would resign. Wotherspoon expressed disinterest in taking any such action and told Bayly that he too was disposed to quit. Early in the following week Bayly and Wilson had several conversations with Wotherspoon in an unsuccessful attempt to persuade him to

stay on the job and to recruit a new working force. On Tuesday Bayly hired a replacement for Wotherspoon. Despite this on Wednesday, April 9, William Sheldon, Luckenbach's district manager, telephoned Wotherspoon in a final effort to get Wotherspoon to reconsider his decision and remarked that no six employees could tell Luckenbach what to do. On April 10 Philip Berkhoel, who had been hired as terminal superintendent, reported for work and on that day replacements were hired for McTier, Berkstresser, and Caigneau.

In the morning of April 11 William Lawrence, regional director of a division of the International Longshoremen and Warehousemen's Union, and John M. Fiesel, president of Marine Clerks Union, an affiliate of Lawrence's organization, called upon Bayly.

Lawrence told Bayly that he had heard of some difficulty affecting Crescent's office force and that he feared a development which might curtail the employment of longshoremen and marine clerks. Lawrence disclaimed any interest in representing the office workers and explained that his call was solely for the purpose of avoiding the establishment of a picket line which his members might feel obliged to respect. Bayly told Lawrence that the six employees were determined to resign and that Wotherspoon was taking the same action Lawrence said that his information was that the employees had reconsidered their threat and were willing to remain Wotherspoon, McTier, Caigneau, and McLachlan were then called to Bayly's office. In response to a question, Wotherspoon said that he would resign in any event. McLachlan expressed astonishment at this. Lawrence testified that he then asked the three office workers if they wanted to continue at work, and that each of them said he did. Lawrence then turned to Bayly, he testified, and asked that they be permitted to do so. According to Lawrence, Bayly said that the matter was out of his hands; that District Manager Sheldon must be consulted. Bayly agreed, according to Lawrence, to take the matter up with Sheldon that afternoon and to advise Fiesel of the result.

Bayly and Wilson testified that no inquiry was made by Lawrence of the employees concerning their desire to continue at work in the hearing of either of them[1] and that the only matter about which they were to consult Sheldon concerned a final plea in connection with raising wages. According to Bayly, Sheldon said that he had no authority in the matter of wages and that there was no point in his meeting with Lawrence.

At about 4 p. m. on April 11 each of the six employees and Wotherspoon was handed a notice of termination and paid through April 15. Each of them left his work immediately. On April 15 Caigneau, McLachlan, Ryan, and Henry came to Crescent's dock office and through McLachlan said they were reporting for work. Superintendent Berkhoel answered that there were no jobs for them.

Contentions and Conclusions

The General Counsel contends, first, that the employees were engaged in a protected concerted activity when they notified Crescent on April 3 of their intended resignations. The communication to Crescent on that day is somewhat ambiguous. It admits of the interpretation that the resignations are final because wage increases had not been forthcoming It may as well be interpreted as saying that the resignations would occur unless satisfactory wage increases were given. No change was made in the wage rates and those who replaced the six were paid the same salaries as their predecessors. The General Counsel also attributes significance to the remarks made by Wilson on April 4 in his attempt to persuade the employees to change their decision, particularly his reference to their collective action. I do not believe that the case turns upon an interpretation of the April 3 letter. The evidence is convincing enough that until April 11 Crescent justifiably believed that the employees were firmly determined to quit unless satisfactory wage increases were given.

In this context the meeting between Bayly and Wilson, for Crescent, and Lawrence and Fiesel, for the ILWU, assumes importance The interest of the latter 2 in this case is not discernible and I feel that their testimony, to the extent that it appears to be based upon a reasonably clear recollection, is to be preferred to that of Bayly and Wilson. Both Lawrence and Fiesel testified flatly that the 3 employees present on that occasion said they were willing to remain at work and that Bayly must have heard them.[2] Indeed Lawrence and Fiesel testified that Bayly was asked that they be permitted to do so, and that Bayly said he must discuss the matter with Sheldon. I credit the version of Lawrence and Fiesel and find that McTier,

[1] Both testified, however, that they saw Lawrence confer with the three but did not overhear what was said.

[2] The record does not support the assertion in Crescent's brief that only Fiesel testified to such effect. McLachlan, too, testified that the three employees answered Lawrence in Bayly's office that they were willing to remain at work. McTier testified that he recalled no such inquiry.

Caigneau, and McLachlan, in the morning of April 11, said in the presence of Bayly and Wilson that they were willing to remain on their jobs. On this day replacements for McTier and Berkstresser were already at work. A successor had been hired for Caigneau but had not yet reported.

No contention is made that employees who concertedly threaten to resign find less protection in the Act (at least to the effective date of resignation) than those who attempt to obtain concessions from their employer by threat of strike. In either situation the employer may make some move to counteract the effectiveness of the threat. Thus, it was of course appropriate for Crescent to attempt to recruit a new working force to replace those whom it believed would resign. Further, it would seem that Crescent might have accelerated the effective date of the resignations for any reason sufficient to it provided there was no controlling motivation to discriminate against the employees for their concerted action.[3] Although I am not unmindful of Wilson's "fatherly advice" to the employees on April 4 that they might regret their plan concertedly to quit, I am not convinced that in the circumstances the decision to dispense with the services of McTier, Caigneau, and Berkstresser on April 11 was based on retaliation A replacement for each had been hired. I find that their threatened resignations were effectively accepted when the replacements were hired.

Wotherspoon testified that after it was learned that the expected wage increases would not be granted, a situation which he described as "hectic and chaotic" developed. It is true that Wotherspoon appears to have been speaking of his own state of mind rather than attempting to describe conditions in the office, but undoubtedly the employees were unhappy and discontented. Wotherspoon's successor, Berkhoel, testified that on Friday, April 11, the employees demonstrated their feelings by maintaining a silence toward him and the 2 replacements who came to work that day. Because of this attitude, according to Berkhoel, he recommended to Bayly that all 6 be terminated immediately. Bayly testified that he acted upon Berkhoel's recommendation.

On this Friday, Crescent's workload was heavy. A vessel was scheduled to arrive in a few days and much preparatory work remained to be done. All of those discharged on Friday were competent, it was testified. Crescent found it necessary to transfer employees from other assignments and to borrow workers from Luckenbach for several days following in order to perform its terminal operations. Thus, it seems strange that the three for whom replacements had not been hired were not permitted to remain in their jobs. I am convinced that the management of Crescent was understandably, and perhaps naturally, vexed by the threat of resignations and that it discharged McLachlan, Ryan, and Henry because of the threat. The conduct of Crescent in this particular can be understood if not condoned. The threat of resignation did come at an embarrassing time and the demands of the employees appear to have been greater than Crescent felt it could reasonably meet. Wilson's appeal that the employees reconsider was met by a "stony silence." In these circumstances to have accepted the withdrawal of threats to resign as if they had never been made would have evidenced a victory over an emotional reaction unlikely of achievement But whatever attitude of bitterness that may have been displayed by the employees during the afternoon of April 11 must be considered in the light of the fact that they had in the morning of that day attempted to withdraw the threat of resignation and still were unsure of their status. It is not unreasonable, I believe, to assume that a different attitude might have been evidenced had Bayly agreed to keep those whom he had not replaced. The employees knew that their services were needed, had concluded that they preferred working for the wages they were receiving than to quit, and perhaps were in a situation of embarrassment comparable to that in which they had earlier placed Crescent. I find that McLachlan, Ryan, and Henry were discharged on April 11 because they concertedly had threatened to resign unless their wages were increased. I further find that at the time of discharge the threat to resign had been withdrawn. I find that the decision to discharge was motivated by the concerted activity of the employees, that the discharges necessarily discouraged such concerted activity, and therefore violated Section 8 (a) (3) of the Act.

By the discharges, Crescent denied to the employees the rights guaranteed by Section 7 of the Act and thereby interfered with, restrained, and coerced them in the exercise of such rights in violation of Section 8 (a) (1) of the Act.

As to McTier, Caigneau, and Berkstresser, it is probable that the same motivation on the part of Crescent was present. But I believe it only reasonable to conclude that the threatened resignations of these 3 were effectively accepted by Crescent when, in good faith, replacements for them were hired. I therefore find no violation of the Act in the discharge of the last-named 3.

[3] Betts Cadillac Olds, Inc., 96 NLRB 268.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Crescent set forth in section II, 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 thereof.

IV. THE REMEDY

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

I do not consider, in view of the somewhat peculiar factual setting of the unfair labor practices which occurred, that there is any substantial reason to anticipate the commission of other such acts. Thus it will be recommended that only such conduct as has been found to violate the Act be enjoined.

Crescent no longer operates the terminal facilities of Luckenbach and is unable to return McLachlan, Ryan, and Henry to the jobs from which they were discharged. However, Crescent is still an employer and has other operations at Terminal Island or in that vicinity. It will be recommended, therefore, that Crescent make whole James McLachlan, George Ryan, and Joy Ann Henry for any loss of pay they may have suffered by reason of the discrimination against them by payment to each of a sum of money equal to that each would have earned from April 11 through September 30, 1952, less the net earnings[4] of each during that period. The back pay shall be computed in the manner established by the Board and Crescent shall make available to the Board such payroll and other records as will facilitate the checking of the amounts due.[5] Crescent shall offer employment to each in whatever suitable vacancies exist in its other operations. If none, Crescent shall place the name of each upon a preferential hiring list for employment in the event of such vacancy. It will be recommended further that Crescent be required to make each whole for any loss of pay suffered by its failure to offer employment in the circumstances described.

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. By joining together and acting concertedly in the matter of wages, McTier, Caigneau, McLachlan, Ryan, Berkstresser, and Henry constituted themselves as a labor organization within the meaning of Section 2 (5) of the Act.
2. By discriminating in regard to the tenure of employment of James McLachlan, George Ryan, and Joy Ann Henry, thus discouraging concerted activity, Crescent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
3. By such conduct, Crescent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act and thus has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.
5. The discharges of Bernard McTier, Ray Caigneau, and Elsie Berkstresser were not in violation of the Act.

[Recommendations omitted from publication.]

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[4] Crossett Lumber Company, 8 NLRB 440.

[5] F. W. Woolworth Company, 90 NLRB 289.

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage concerted activities among you by discharges or by discriminating in any other manner in regard to hire, or tenure of employment, or any term or condition of employment.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce you in the exercise of your right to self-organization, to form labor organizations, to bargain collectively through representatives of your own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL make whole James McLachlan, George Ryan, and Joy Ann Henry for any loss of pay sustained as a result of the discriminating against them and, if suitable vacancies exist or occur, offer them employment.

CRESCENT WHARF AND WAREHOUSE COMPANY,
Employer.

Dated..... By.....
(Representative) (Title)

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

JOHN W. THOMAS & CO. *and* LOCAL 1086, RETAIL CLERKS INTERNATIONAL ASSOCIATION, A. F. of L., Petitioner

JOHN W. THOMAS & CO. *and* HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 458, A. F. of L., Petitioner.
Cases Nos. 18-RC-1879 and 18-RC-1902. May 8, 1953

DECISION AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Erwin A. Peterson, hearing officer.[1] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel [Members Houston, Styles, and Peterson].

Upon the entire record in these cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner in Case No. 18-RC-1879 seeks a unit of all regular and regular part-time selling and nonselling employees at the Employer's department store in Minneapolis, Minnesota, including employees in the leased departments, cashier-wrappers, stock employees, receiving and marking

[1] Hotel and Restaurant Employees Union, Local 458, A. F. of L., intervened and thereafter filed a petition which was duly consolidated with this proceeding.