or abandon their employment status. It was stipulated at the hearing that Gibbens had the status of a laid-off employee and that she was entitled to the next opening in her classification. However, when she refused to cross the picket line Stearns told her, as he testified, that the obligation no longer existed. This was tantamount to discharging Gibbens from her status as a laid-off employee with preferential employment rights because of her identification with the strikers and is the same action which the other strikers who testified attributed to Stearns in connection with them. When Stearns arrived at the plant it was obvious that a strike was in progress. The employees, or at least a number of them, instead of proceeding into the plant and to their work stations, were gathered about the entrance. When they failed to respond to his invitation to go in to work he distributed the paychecks. Having found that Stearns was not impelled by his interpretation of California law in thus advancing the payday, I am convinced that he did so to emphasize to the strikers present that their refusal to work signalled their separation from the Respondent's payroll. I consider the payment later that morning to Perkins to have the same intended significance and the payments to those individual employees whom he sought out at their homes to constitute a further implementation of this purpose. The evidence persuades me that Stearns did tell the strikers assembled before the plant gate on the morning of August 6, and later that day Perkins and White, that because they would not go to work their employment was terminated. I have no doubt but that he later learned that he should not have spoken in that fashion and has perhaps persuaded himself that he did not do so.

I find that by telling the striking employees on August 6, 1956, that because of their engagement in a lawful strike they had forfeited their employment with the Respondent, the Respondent interfered with, restrained, and coerced them in the exercise of rights guaranteed in Section 7 of the Act, and that the Respondent has thereby violated Section 8 (a) (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth 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 the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act. Reinstatement is not sought and therefore is not recommended.

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

CONCLUSIONS OF LAW

1. Amalgamated Local No. 990, International Union, Allied Industrial Workers of America, AFL–CIO, is a labor organization within the meaning of Section 2 (5) of the Act.
2. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
3. The aforesaid labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

Stretch-Tex Co. *and* United Textile Workers of America, AFL–CIO, Petitioner. *Case No. 10–RC–3526. September 13, 1957*

SUPPLEMENTAL DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

Pursuant to a Decision and Direction of Election issued on September 4, 1956, an election by secret ballot was conducted on

September 13, 1956, under the direction and supervision of the Regional Director for the Tenth Region, among the employees in the unit found appropriate by the Board. Following the election, the parties were furnished a tally of ballots. The tally shows that of approximately 90 eligible voters, 89 valid ballots were cast, of which 40 were cast for, and 43 against, the Petitioner, and 6 were challenged. Thus, the challenged ballots were sufficient to affect the results of the election. On September 17, 1956, the Petitioner filed objections to conduct affecting the results of the election.

In accordance with the Rules and Regulations of the Board, the Regional Director conducted an investigation of the issues raised by the challenged ballots and the Petitioner's objections, and on December 13, 1956, issued his report on election, challenged ballots, objections to the election and recommendations to the Board. In his report, the Regional Director recommended that the challenges to the ballots cast by Kathleen Sumner and Claudia Nelle Hobbs be overruled and that the challenges to the ballots of Claudine Blankenship, Juanita Beverly, and Doris Mellon be sustained. In these circumstances, he found it necessary to decide whether the sixth challenged ballot, which contained a partial erasure, was a valid one. The Regional Director also recommended that the Board order a formal hearing with respect to issues raised by the Petitioner's objections. To this report, the Petitioner and Employer filed exceptions. On February 28, 1957, the Board, having duly considered the matter, ordered that a hearing be held on issues raised by the challenges to the ballots of Blankenship, Beverly, and Mellon [1] and to the one containing an erasure, as well as by Petitioner's objections to the election. The Board further ordered that a Trial Examiner be designated for the purpose of conducting the hearing and that such Trial Examiner prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said challenges and objections.

On April 4 and 5, 1957, the hearing ordered by the Board was held before C. W. Whittemore, Trial Examiner. Both parties were represented and participated in the hearing. On May 14, 1957, the Trial Examiner issued and served upon the parties his report containing findings of fact and recommendations to the Board, a copy of which is attached hereto. The Employer thereafter filed exceptions to the Trial Examiner's report, together with a supporting brief.

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, Bean, and Jenkins].

[1] No exceptions were filed to the Regional Director's recommendation that the challenges to the ballots of Sumner and Hobbs be overruled and that recommendation is hereby adopted.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. These rulings are hereby affirmed. The Board has considered the Trial Examiner's report and the Employer's exceptions thereto and supporting brief. Upon the entire record in this case the Board finds:

1. The Employer has excepted to the credibility findings of the Trial Examiner. However, the Board will reverse a Trial Examiner's credibility findings in proceedings of this type only when the clear preponderance of all the relevant evidence convinces us that the Trial Examiner's resolution is incorrect.[2] We are not persuaded that the Trial Examiner's credibility findings in this case are incorrect.

2. The Trial Examiner found that Blankenship, Beverly, and Mellon were on temporary layoff status on election day and eligible to vote in the election, and he recommended that the challenges to their ballots be overruled. We agree with the conclusions and recommendation of the Trial Examiner.

As more fully detailed in the Trial Examiner's report, the Employer had a layoff policy in effect during the critical period herein which permitted senior employees who had unemployment compensation rights to volunteer for layoffs to be made by the Employer, thus obviating the necessity of the Employer's laying off employees with less seniority who had not yet earned compensation rights. Under this so-called voluntary layoff policy, the more senior employees who accepted the layoff could draw the unemployment compensation benefits they were entitled to and return to work without any loss in their seniority standing. Employees have been away from work on such voluntary layoff status for periods of at least 3 months' duration.

Each of the three employees under discussion accepted a voluntary layoff before the election, Beverly on July 13, 1956, Blankenship on July 20, and Mellon on August 17.[3] It is clear from the nature of the voluntary layoff policy that these layoffs, at the time they were made, were temporary ones and not permanent terminations. On the election date, therefore, these employees were eligible to vote unless there was some intervening change in their status which disqualified them from voting. The Employer contends that there was such a change. It asserts that it considered each of the three employees terminated before election time, and therefore no longer an employee—Blankenship on August 16, when the Employer states it learned that she had a full-time job with another employer in violation of a condition of the voluntary layoff policy; Beverly on August 16, when she allegedly

[2] *Standard-Toch Chemicals, Inc.*, 104 NLRB 1120.

[3] While Blankenship was reluctant to take the layoff on July 20 that she had previously indicated would be acceptable to her, the Employer's own testimony shows that it considered her layoff to be of the voluntary type, like Beverly's and Mellon's.

refused to comply with a request to return to work, also in violation of a condition of the voluntary layoff policy; and Mellon on September 12 or 13, before the polls opened, when she allegedly told the Employer she intended to look for another job. However, none of these employees was notified of her alleged termination before election day and, in fact, no affirmative action of any description was taken by the Employer prior to the election to change the temporary layoff status of the employees.[4] Moreover, when Blankenship called the Employer sometime after August 16, subsequent to her alleged termination, but before the election, to ask to return to work, she was turned down on the ground that work was not then available. And when Beverly and Mellon called the Employer in November to ask whether it was true, as they had apparently been informed by fellow employees, that they had lost their seniority, they were told that that was so for the reason that the ownership of the plant had changed hands and the new president wanted only the employees on the payroll at the time of the changeover.[5] It is thus plain that not only did the Employer fail to communicate to the employees on these occasions, at which times it would have been appropriate to do so, that they had theretofore ceased to be employees of the Employer, but its explanation to Beverly and Mellon that their status was affected by the change in ownership is difficult to reconcile with its present position that their connection with the Company was terminated before the election. Under all the circumstances, we are not satisfied that Blankenship, Beverly, and Mellon lost their employee status before the election, as the Employer contends. Nor does the record warrant a finding that the status which attached to each of the employees on the occasion of her layoff was otherwise altered before election time. We therefore conclude that Blankenship, Beverly, and Mellon were employees temporarily laid off within the Board's meaning of the term on election day and hence eligible to vote in the election. The challenges to their ballots are accordingly overruled.

3. It appears that the Trial Examiner has upheld the ruling of the Board agent conducting the election that the challenged ballot containing the partial erasure should be counted as a "Yes" ballot without himself passing upon the validity of the ballot on the ground that the Employer has in effect withdrawn its challenge to that ballot. While

[4] In this connection the Employer relies on the fact that when Mellon, on September 12 or 13, and Beverly, on September 13, called to ask whether they could vote, they were told that they were not eligible to do so. However, the Employer explained to Mellon at that time that her ballot would be challenged because of its lawyer's advice "to only let those vote that were on the payroll at the time of the election." And, as pointed out in the Trial Examiner's report, it was the Employer's practice to remove from the payroll the names of those on temporary layoff status as well as those permanently laid off. We are therefore unable to attach any significance to these incidents.

[5] It is not contended, nor does it appear, that the plant changed hands before the election.

the Employer's position with respect to the ballot is not altogether clear, it would seem that it is still contesting the validity of the ballot because of an erasure thereon but that it is also contending that the ballot should not have been received in evidence, as was directed in the Board's Order Directing Hearing, because, as was explained by its counsel at the hearing, "according to my recollection [it does not] represent the ballot in the form in which it existed at the time it was initially counted at the election." In the latter connection, the ballot was produced by the General Counsel at the hearing in a sealed envelope containing two signatures written across the sealed part of the envelope, which is the method customarily employed by the Board to safeguard disputed ballots. The objection to its receipt was based simply on a "recollection" of the ballot as cast and even this "recollection" was voiced only in argument against the admissibility of the ballot into evidence and was without corroboration from sworn testimony. Also, the objection to the ballot did not specify wherein it had been altered. In these circumstances, we find that the ballot was properly admitted into evidence pursuant to the Order Directing Hearing.

As for the ballot itself, it contains a clearly penciled "X" under the word "Yes" and a diagonal line, which had been erased but still remained faintly visible, under the word "No." We believe that the intention of the voter who cast this ballot to vote "Yes" is abundantly clear. We therefore find that the ballot is a valid one[6] and that it should be counted with the other valid "Yes" ballots as a vote for the Petitioner.[7]

4. Like the Trial Examiner, and on the basis of the testimony credited by him, we find that the Employer's general manager, at meetings with individual groups of employees held on about September 11, threatened to close the plant if the Petitioner won the election and thereby interfered with the freedom of choice of its employees in the selection of a bargaining representative.[8]

On the basis of all the foregoing, we shall direct that the ballots of Sumner, Hobbs, Blankenship, Beverly, and Mellon be opened and counted and that the Petitioner be certified if, despite the Employer's unlawful interference with the election, the aforementioned ballots give the Petitioner a majority of the valid votes cast in the election. However, if, upon the counting of such ballots, the Petitioner does not receive such a majority, we shall, because of the Employer's interfer-

[6] *N. L. R. B.* v. *Whitinsville Spinning Ring Company*, 199 F. 2d 585 (C. A. 1); *Belmont Smelting & Refining Works, Inc.*, 115 NLRB 1481; *General Motors Corporation*, 107 NLRB 1096; *Denver and Ephrata Telephone and Telegraph Company*, 106 NLRB 1134.

[7] Consequently, the election results now stand at 41 votes for, and 43 against, the Petitioner, with 5 challenged ballots to be opened and counted.

[8] The Trial Examiner's finding that the Employer did not also threaten the employees with a wage cut if the Petitioner was the election victor is not excepted to and is hereby adopted.

ence with the election, order the election set aside and a new one conducted.

[The Board directed that the Regional Director for the Tenth Region shall, within ten (10) days from the date of this Order, open and count the ballots of Kathleen Sumner, Claudia Nelle Hobbs, Claudine Blankenship, Juanita Beverly, and Doris Mellon, and serve upon the parties a revised tally of ballots.]

[The Board further directed that the Regional Director issue a certification of representatives to the Petitioner if it receives a majority of the votes cast.]

[The Board ordered that, in the event the ballots of Sumner, Hobbs, Blankenship, Beverly, and Mellon do not give the Petitioner a majority of the valid votes cast, the election of September 13, 1956, be set aside and a new election be conducted.]

[Text of Direction of Second Election omitted from publication.]

Copeland Refrigeration Corporation *and* International Union of Electrical, Radio and Machine Workers, AFL–CIO, Petitioner.
Case No. 8–RC–2979. September 13, 1957

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Carroll L. Martin, hearing officer. 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 this case to a three-member panel [Members Rodgers, Bean, and Jenkins].

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

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

2. The labor organization involved claims 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, the certified bargaining representative of the production and maintenance employees, exclusive of clerical and technical employees, at the Employer's several compressor and condenser manufacturing plants at Sidney, Ohio, currently seeks a separate unit of all clerical employees at these plants. The Employer contends that a unit of the office clerical employees is alone appropri-