

R & H Masonry Supply, Inc. and General Teamsters, Warehousemen and Helpers Union Local 890, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Case 32-CA-530

September 30, 1981

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On September 29, 1978, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding¹ finding that Respondent R & H Masonry Supply, Inc., violated Section 8(a)(5), (3), and (1) of the National Labor Relations Act, as amended. On September 17, 1980, following the Board's petition for enforcement of the aforesaid Order, the United States Court of Appeals for the Ninth Circuit issued its decision, enforcing in part the Board's Order, but remanding to the Board that portion of the Order requiring Respondent to reestablish its trucking operation and to reinstate certain discharged employees. On October 27, 1980, the court issued its judgment in conformity with its decision. Following the Board's acceptance of the court's remand, the Board issued its Supplemental Decision and Order² on March 5, 1981, in which it, *inter alia*, eliminated the requirement that Respondent reestablish its trucking operation. Thereafter, on July 21, 1981, counsel for the General Counsel filed a motion to amend the Board's Supplemental Order to delete from the notice to employees certain language that had previously been contained in the Board's original notice and enforced by the Ninth Circuit's judgment. The General Counsel asserts that the repetitive language is unnecessary and is not warranted in light of the limited scope of the court's remand. No response has been filed.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having considered the General Counsel's motion, and upon reexamination of the court's and Board's actions in connection with this case, the Board agrees that the Supplemental Order should be modified to reflect only those issues within the scope of the court's remand.

¹ 238 NLRB 1044.

² 254 NLRB 1082.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, R & H Masonry Supply, Inc., Salinas, California, its officers, agents, successors, and assigns, shall take the action set forth in the Supplemental Order, as modified below:

1. Delete paragraphs 1(a), (b), (c), (d), (e), (f), and (g).

2. Delete paragraphs 2(a) and (b), substitute the following paragraph for paragraph 2(c), and renumber the remaining paragraphs accordingly:

"(a) Upon request, recognize and bargain with General Teamsters, Warehousemen and Helpers Union Local 890, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive collective-bargaining representative of its employees in the following appropriate unit, including bargaining about its decision to close the trucking operation and the effects of the closure on the employees, and, if an understanding is reached, embody such understanding in a signed agreement:

"Truckdrivers, forklift drivers, over-the-road drivers, yardmen, helpers, maintenance mechanics employed by Respondent at its Salinas, California, facility; excluding supervisions, office clerical employees, and guards as defined in the Act."

3. Substitute the attached notice for the one set forth in the Supplemental Decision and Order.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

WE WILL make whole Rory Ross, Joseph Lippe, Gary Castro, and Paul Marquez, who were discharged on August 12, 1977, as a result of the termination of our trucking operation, for any loss of pay resulting from their discriminatory discharge, plus interest. Backpay will run from the date of discharge until such time as the aforesaid employees secure, or did secure, substantially equivalent employment with other employers or, in the event we reopen the trucking operation, until we offer to reinstate them.

WE WILL, in the event we reopen the trucking operation, offer immediate and full reinstatement to each of the aforesaid employees

to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL, upon request, recognize and bargain with General Teamsters, Warehousemen and Helpers Union Local 890, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive collective-bargaining representative of our employees in the following appropriate unit, including bargaining about our decision to close the trucking operation and the effects of the closure upon our employees, and, if an

understanding is reached, WE WILL embody such understanding in a signed agreement:

Truckdrivers, forklift drivers, over-the-road drivers, yardmen, helpers, maintenance mechanics employed by Respondent at its Salinas, California, facility; excluding supervisions, office clerical employees, and guards as defined in the Act.

WE WILL treat the initial year of certification as beginning on the date that we do the things set forth in this notice.

R & H MASONRY SUPPLY, INC.