

William Dong, an Individual Proprietorship, d/b/a Woodland Supermarket and Retail Clerks Union, Local No. 727, chartered by and affiliated with Retail Clerks International Association, AFL-CIO, CLC Cases 28-CA-4384, 28-CA-4478, and 28-CA-4484

January 26, 1979

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On September 1, 1978, the National Labor Relations board issued a Decision and Order¹ in the above-entitled proceeding wherein it found that Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, and ordered that Respondent cease and desist therefrom and take certain affirmative action to remedy such unfair labor practices. In its Decision, the Board concluded, *inter alia*, that Respondent's offers of reinstatement to three unlawfully discharged employees and to five discriminatees who were unfair labor practice strikers did not constitute valid offers because they were conditioned upon acceptance and return within an unreasonably short period of time. In so doing, the Board found that Respondent had sent these employees Western Union mailgrams, dated October 5, 1977, which indicated that if they wished to return to their jobs they should report to Respondent on or before October 7, 1977. Accordingly, as part of its Order, the Board required Respondent to offer reinstatement to the dischargees and the discriminatees who were unfair labor practice strikers and to pay backpay to them until such time as they were reinstated or Respondent made valid offers of reinstatement to them.

On September 25, 1978, Respondent filed its petition for reconsideration wherein it contends that the Board erred in concluding that the offers of reinstatement herein were invalid. In this regard, Respondent asserts that the October 5 mailgrams upon which the Board relied were confirmation copies sent to its attorney of telegraphic offers of reinstatement previously sent to the affected employees on September 29, 1977, and that therefore such employees in fact had 8 days in which to respond to its offers of reinstatement. Respondent thus urges that the offers of reinstatement were valid and that no further offers of reinstatement are required. On October 10, 1978, the General Counsel filed his response to the petition

for reconsideration, wherein he fully concurs in the factual statements set forth by Respondent that the telegraphic offers were sent to the affected employees on September 29, 1977. The General Counsel requests the Board to grant Respondent's petition for reconsideration and to find that Respondent's backpay liability to the eight employees was tolled as of September 29, 1977. The Charging Party did not file a response to the petition for reconsideration.

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.

The Board has reconsidered the record and its original Decision and Order in light of Respondent's petition for reconsideration and the General Counsel's response thereto, and has decided to grant Respondent's petition. Thus, we find that in the Board's original Decision the Board inadvertently but erroneously concluded that Respondent sent offers of reinstatement by Western Union mailgrams dated October 5, 1977, to the eight discriminatees herein, and that a careful reexamination of the record demonstrates that Respondent sent telegraphic offers of reinstatement to such employees on September 29, 1977. Accordingly, we now find that valid offers of reinstatement were tendered by Respondent on September 29, 1977. We shall, therefore, modify our original Order in this proceeding.

ORDER

It is hereby ordered that Respondent's petition for reconsideration be, and it hereby is, granted.

IT IS FURTHER ORDERED that the Board's original Decision and Order in this proceeding be, and it hereby is, amended as follows:

1. Substitute the following for paragraph 2(a) of the Order:

"(a) Make whole Eileen Kelly, Charles Helms, and Diana Nolan for any losses they may have suffered as a result of Respondent's discrimination against them from the date of their discharges until the date of Respondent's valid offer of reinstatement on September 29, 1977. Backpay is to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977)."

2. Substitute the following for paragraph 2(c) of the Order:

"(c) Make whole Greg Haig, Craig Snively, Marcia Tavolino, Dean Christianson, and William White for any losses they may have suffered with backpay for the period from July 28, 1977, when they uncon-

¹ 237 NLRB 1481.

ditionally applied for reinstatement, until September 29, 1977, when Respondent made valid offers of reinstatement to each of them, in the same manner as set forth in paragraph 2(a), *supra*.”

3. Substitute the attached notice for the notice attached to the original Decision and Order.

APPENDIX

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

After a hearing at which all parties had the opportunity to present evidence, it has been found that we violated the National Labor Relations Act, and we have been ordered to post this notice and to abide by the following:

The Act gives employees the following rights:

- To organize themselves.
- To form, join, or help unions.
- To bargain as a group through representatives they choose.
- To act together for collective bargaining or other mutual aid or protection.
- To refuse to do any or all these things.

I WILL NOT interrogate employees concerning their membership in, activities on behalf of, or sympathy for the Union.

I WILL NOT threaten employees with layoff or more arduous terms and conditions of employment if the employees join, support, or assist the Union.

I WILL NOT solicit employees to revoke their union authorization cards or require any employee to sign a document agreeing to refrain from designating the Union as the employees' collective-bargaining representative.

I WILL NOT promise employees positions in management if they withdraw their support from the Union.

I WILL NOT advise unfair labor practice strikers that they will never again work in the store.

I WILL NOT lay off, discharge, or refuse to reinstate employees because of their union membership or other protected concerted activities.

I WILL NOT refuse to recognize and bargain

with the Union as the exclusive representative of all the employees in the appropriate unit and I WILL NOT unilaterally establish and post new store work rules and regulations without consulting the Union.

I WILL NOT in any other manner discourage membership in a labor organization or interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act.

I WILL make whole Eileen Kelly, Charles Helms, and Diana Nolan for any losses they may have suffered as a result of my discrimination against them from the date of their discharges until the date of my valid offer of reinstatement on September 29, 1977, with interest.

I WILL make whole Craig Snively for the wages he lost from May 29 to June 10, 1977, with interest.

I WILL make whole Greg Haig, Craig Snively, Marcia Tavolino, Dean Christianson, and William White for any losses they may have suffered with backpay for the period from July 28, 1977, when they unconditionally applied for reinstatement, until September 29, 1977, with interest.

I WILL, upon request, bargain collectively with the above-named Union, as the exclusive representative of all employees in the appropriate bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time grocery employees, produce employees and cashiers employed at Woodland Supermarket located at 2480 North Pantano Road, Tucson, Arizona; excluding all meat department employees, casual employees, guards and supervisors as defined in the Act.

I WILL rescind the store work rules and regulations unilaterally established and posted in October 1977 without prior notice to or consultation with the Union.

WILLIAM DONG, AN INDIVIDUAL PROPRIETOR-
SHIP, d/b/a WOODLAND SUPERMARKET