

In the Matter of THE BELDEN BRICK Co. and UNITED BRICK & CLAY
WORKERS OF AMERICA (AFL)

Case No. 8-CA-37.—Decided May 11, 1949

DECISION

AND

ORDER

On February 25, 1949, Trial Examiner Charles S. Donovan 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 copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board¹ has reviewed the rulings made by the Trial Examiner 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 brief of the Respondent, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modification noted below.

We agree with the Trial Examiner that the Respondent unlawfully refused to bargain with the Union on and after February 3, 1948. On March 24, 1947, the Board certified the Union as the exclusive bargaining representative of the Respondent's production and maintenance employees. Thereafter, on October 21, 1947, the Respondent and the Union executed a contract to terminate on December 31, 1947. On January 23, 1948, within the certification year, some of the Respondent's employees filed a petition for decertification of the Union with the Regional Director. Upon the ground that a question concerning representation had been validly raised, the Respondent, on February 3, 1948, refused to continue negotiations with the Union.

The Board and the courts have frequently held that an employer is obligated to bargain with a certified union for a reasonable period

¹ Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Gray].

of time,² customarily for 1 year after certification.³ Hence, a petition for decertification filed during the year following certification of the incumbent union does not, except under unusual circumstances which are not present here, create a question concerning representation so as to relieve the employer of the obligation to bargain with the certified union.⁴

We have recently held that the effective life of a certification is not exhausted with the expiration during the year following certification of a contract for less than 1 year.⁵ As the decision in the *Mengel* case is applicable here, we find, as did the Trial Examiner, that the Respondent's refusal, on February 3, 1948, to bargain with the Union, constituted a violation of Section 8 (a) (5) of the Act.

Unlike the Trial Examiner, we do not determine whether the Respondent also violated Section 8 (a) (5) on January 21, 1948, by the conditions which it attached to its final offer on that day. We base our 8 (a) (5) finding solely upon the Respondent's refusal to bargain on and after February 3, 1948.

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 Respondent, The Belden Brick Co., and its officers; agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Brick & Clay Workers of America (AFL), as the exclusive representative of all production and maintenance employees at its Canton, Ohio, plant, excluding clerical employees and supervisors as defined in the Act; and

(b) Interfering in any other manner with the efforts of United Brick & Clay Workers of America (AFL), to bargain collectively on behalf of employees in the aforesaid bargaining unit.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Brick & Clay Workers of America (AFL), as the exclusive bargaining representative of all employees in the aforesaid bargaining unit, with respect to wages, rates of pay, hours of employment, and other conditions of

² *N. L. R. B. v. Botany Worsted Mills*, 133 F. (2d) 876 (C. A. 3) enf'g. 41 N. L. R. B. 218; *N. L. R. B. v. Appalachian Electric Power Co.*, 140 F. (2d) 217 (C. A. 4) enf'g. as modified 47 N. L. R. B. 821; *N. L. R. B. v. Century Oxford Manufacturing Corp.*, 140 F. (2d) 541 (C. A. 2) enf'g. 47 N. L. R. B. 835.

³ *Matter of Wilson & Co.*, 67 N. L. R. B. 662; *Matter of Simmons Engineering Co.*, 65 N. L. R. B. 1373.

⁴ See *Matter of Lft Trucks, Inc.*, 75 N. L. R. B. 998.

⁵ *Matter of The Mengel Company*, 80 N. L. R. B. 705.

employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its Canton, Ohio, plant, copies of the notice attached hereto marked "Appendix A."⁶ Copies of 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 the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (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; and

(c) Notify the Regional Director for the Eighth Region in writing within ten (10) days from the receipt of this Order, what steps the Respondent has taken to comply herewith.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL BARGAIN collectively upon request with UNITED BRICK & CLAY WORKERS OF AMERICA (AFL), as the exclusive representative of all employees in the bargaining unit described herein with respect to wages, rates of pay, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All production and maintenance employees at our Canton, Ohio, plant, excluding clerical employees, and all supervisors as defined in the Act.

WE WILL NOT in any manner interfere with the efforts of UNITED BRICK & CLAY WORKERS OF AMERICA (AFL), to bargain collectively with us as the exclusive representative of the employees in the appropriate unit described above.

THE BELDEN BRICK Co.

Employer.

Dated-----

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

⁶ In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "A DECISION AND ORDER," the words: "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING"

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

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Bernard Ness, Esq., and Harry L. Brown, Esq., of Cleveland, Ohio, for the General Counsel.

Chester Nikodym, Esq., of Cleveland, Ohio, for the Respondent.

Mr. William J. Leggett, of Midvale, Ohio, for the Charging Union.

STATEMENT OF THE CASE

Upon charges duly filed by United Brick and Clay Workers of America, affiliated with the American Federation of Labor, hereinafter called the Union, the General Counsel of the National Labor Relations Board¹ by the Regional Director for the Eighth Region (Cleveland, Ohio) issued a complaint dated July 19, 1948, against The Belden Brick Co., hereinafter called the Respondent, alleging that the Respondent has engaged in and was engaging in unfair labor practices affecting commerce, at its Canton, Ohio, plant within the meaning of Section 8 (a) (1) and 8 (a) (5) and Section 2 (6) and (7) of the National Labor Relations Act (49 Stat. 449) as amended by the Labor Management Relations Act, 1947 (61 Stat. 136), hereinafter referred to as the Act. Copies of the charge, the complaint, and notice of hearing were duly served upon the Respondent.

With respect to the unfair labor practices the complaint alleged, in substance: (1) On March 24, 1947, the Board certified the Union as the exclusive bargaining representative of the production and maintenance employees of the Respondent exclusive of clerical and supervisory employees; (2) at all times since March 24, 1947, the Union has been the representative for the purposes of collective bargaining of the employees in the Canton, Ohio, plant of the Respondent within the meaning of Section 9 (b) of the Act; (3) on January 21, 1948, and at all times thereafter, the Respondent refused to bargain collectively with the Union; (4) that said acts and conduct had a close, intimate, and substantial relation to trade, traffic, and commerce among the States and tend to lead to labor disputes burdening commerce or the free flow of commerce; and (5) said acts constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and 8 (a) (5) of the Act and Section 2 (6) and (7) of the Act.

The Respondent filed its answer on July 28, 1948, in which it admitted certain allegations as to its corporate entity, jurisdiction, the appropriateness of the bargaining unit, and as to the nature and extent of the business of the Respondent, but; (1) denied that the Union had at all times since March 24, 1947, been the bargaining representative; (2) alleged that a timely question of representation was raised by employees within the unit denying that the Union was their representative; (3) denied that the Respondent refused to bargain as alleged and alleged that the Union did not bargain in good faith; and (4) denied that it has engaged in any unfair labor practices or that the acts alleged had a close, intimate, and substantial relation to trade, traffic, and commerce or that they tended to lead to labor disputes or that they constituted unfair labor practices as alleged.

Pursuant to notice, a hearing was held in Canton, Ohio, on August 17, 1948, before the undersigned, Charles S. Donovan, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, the Respondent, and the Union were each represented by a representative, the latter having been present

¹ The representative of the General Counsel is herein referred to as the General Counsel, and the National Labor Relations Board as the Board.

throughout the hearing assisting the General Counsel in the presentation of the case. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the conclusion of the hearing all parties waived oral arguments. Opportunity was afforded the parties to file briefs within 15 days after the conclusion of the hearing. A brief was filed by the Respondent but none on behalf of the General Counsel or of the Union.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, an Ohio corporation, operates six plants in the State of Ohio, located respectively in Canton, Urichsville, Port Washington, Somerset, and Sugar Creek. Its business consists of the manufacture of various kinds of brick. During the year directly preceding the hearing it purchased for its Canton plant, the only one involved in this proceeding, raw materials consisting principally of clay, valued in excess of \$125,000 of which approximately 25 percent was received from sources outside Ohio, and sold finished products valued in excess of \$300,000, of which approximately 70 percent was sold outside Ohio. The Respondent admits and I find that the Respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

The Respondent admits and I find that United Brick and Clay Workers of America is a labor organization admitting to membership employees of the Respondent at its Canton, Ohio, plant.

III. THE UNFAIR LABOR PRACTICES

A. Background

On January 8, 1947, a majority of the employees in the unit of the Respondent's Canton, Ohio, plant consisting of all production and maintenance employees, excluding clerical employees and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, by secret election conducted under the direction and supervision of the Regional Director of the Eighth Region, Cleveland, Ohio, designated and selected the Union as their representative for the purposes of collective bargaining. On March 24, 1947, the Board issued its Decision and Certification of Representatives in which it found that the above unit constituted an appropriate bargaining unit for the purposes of Section 9 (b) of the Act, and certified the Union as the collective bargaining representative of all the employees in said unit.

During the summer and fall of 1947 the Union held a number of meetings with the Respondent in regard to the Canton plant, as a result of which a contract was signed on or about October 27, 1947. This contract, by its terms, expired December 31, 1947, which was the date upon which all the collective bargaining contracts of the Respondent with the Union at its other plants expired, the Union being the collective bargaining representative for the employees in the Respondent's Somerset, Urichsville, and Port Washington plants as well as Canton. On October 29 and 30, 1947, respectively, the Union gave notice to the Respondent and to the Federal Mediation and Conciliation Service of proposed

changes in parts of the agreement and wage scale. The Respondent gave similar notice.

During the first part of November 1947, the parties met and resumed negotiations aimed toward the consummation of a new contract to take effect after the expiration of the old on December 31, 1947. Some of the meetings were in regard to all four plants and others pertained only to Canton. The last meeting in regard to the Canton plant was on January 21, 1948. Subsequent meetings were held in regard to the other three plants.

At the end of a meeting on February 3, 1948, held at the Somerset plant regarding that plant, William J. Leggett, international vice president of the Union and the person who conducted most of the Union's negotiations with the Respondent, asked Mr. Burke Wentz, general superintendent of the Respondent and the person who conducted most of the negotiations on its behalf, about another meeting for the Canton plant. Mr. Wentz informed him that someone had filed a decertification petition and that they could not meet further until the outcome of that petition was known.

B. The meeting of January 21, 1948

The meetings of the parties prior to January 21, 1948, followed the regular pattern of such meetings with proposals and counterproposals. The main issues outstanding at that time were check-off and wages. There were also minor issues. The parties being unable to agree, the aid of the Federal Mediation and Conciliation Service was requested and the meeting of January 21 was arranged. This meeting was held at Canton and Mr. Eddy of the Federal Mediation and Conciliation Service was present. Representing the Respondent were Mr. Wentz, Mr. Paul B. Belden, Jr., president, Mr. William Belden, treasurer, and Mr. William Swinderman, plant superintendent, and representing the Union Mr. Leggett and a committee from the plant. The meeting was conducted in the usual manner with the Conciliator making suggestions and at times separating the representatives of the parties and meeting with each group privately and later bringing them together. The meeting consumed most of the day and ran into the evening. Sometime during the morning, Mr. Eddy suggested privately to Respondent's representatives that they present to the Union any additional offer they might have and let the employees vote on it. This proposal was later discussed at length at the joint meeting. Mr. Leggett would not agree to the conduct of the voting except under the complete control of the Union.

At the end of the meeting, the Respondent's representatives came into the joint meeting and said they had a final proposal to present. It was written on a piece of paper held by Mr. Wentz and was to be presented with the understanding that the Union give a prompt answer and that it be voted on by all the employees of the plant. Upon the refusal of Mr. Leggett to agree to call a meeting for a definite time for the purpose of voting on it the offer was not shown to the Union representatives and Mr. Wentz destroyed the paper. Thereupon, the meeting broke up and there was no future meeting arranged for at that time.

During the course of the discussion of the presentation of the proposal for vote by the employees the Respondent made several suggestions as to the place and the manner of conducting the voting. The Respondent suggested that both parties have an observer and also suggested, at one point, that the mayor be called in as a neutral party. The Respondent felt that since everybody at the plant would be affected all should have a right to vote, and its position was that the offer would not be shown to the Union representatives until they agreed to have the employees vote on it within a reasonably short length of time. Mr. Leggett maintained that the time and manner of voting was exclusively a union matter.

It was the Union's custom to submit all offers to the membership and since the same Union represented the employees in all four Respondent plants the Respondent knew of this custom and I find both parties assumed that this procedure would be followed, at least before Mr. Eddy's suggestion that the offer be presented to all the employees.²

C. Events following January 21, 1948—The decertification petition

On the Monday following the January 21 meeting (January 26, 1948) Mr. Wentz was informed that the men at the Canton plant wanted to meet with him and a meeting was arranged for late in the afternoon. This meeting was not at the request of the Union but of individual employees. Mr. Paul Belden, Jr., Mr. William Belden, and Mr. Swinderman were also present. The Union was not represented. Some of the men asked questions about their rights and stated that they had filed a decertification petition and wanted to get out of the Union. Wentz told them it was within their rights to do whatever they thought it right to do; that they could go through with the decertification if they chose or they could have no union if they wanted to or they could go back to the Union and that the Respondent would bargain with whomever turned out to be the responsible party. The men had a copy of the "Taft-Hartley Law." Wentz learned that Michael Zugic and William Meese, two employees, had gone to Cleveland on the 23rd and had filed the decertification petition.

On January 22 when the men came to work some of them asked the committee men how they made out at the meeting the previous day and were informed of the failure to reach an agreement and of some of the details of the meeting. Some of the men expressed concern over the failure to arrive at an agreement and a petition was circulated and arrangements were made for Zugic and Meese to go to Cleveland to file a decertification petition, which they did the following day.³

On February 3, 1948, at the conclusion of a meeting at Somerset in regard to that plant Mr. Leggett asked Mr. Wentz about another meeting for the Canton plant and Mr. Wentz informed him that since someone had filed a decertification petition they were not allowed to meet until this petition had been acted upon and that all consideration for further meetings was blocked until the Respondent heard from it. The Respondent has, since February 3, 1948, refused to negotiate with the Union in regard to the Canton plant.

On January 26, 1948, the Regional Director, by letter, notified the Respondent, the Union, and the petitioners of the filing of the decertification petition of January 23. On July 20, 1948, the Regional Director dismissed the petition on the ground that "an unfair labor practice in terms of refusal to bargain appears to be present." A request for a review by the Board was filed and at the time of the hearing was still pending.

² All of the findings as to what took place at this meeting are based upon the testimony of Leggett and Wentz who were in substantial agreement on most of the details. There was also testimony by Wentz indicating that he feared that if the offer were made without the condition of a prompt vote by the employees it would be held up and used as a bargaining wedge later. These fears may have been well grounded in Wentz' mind but the evidence does not justify my entertaining them. Wentz also testified that Leggett said they would not vote on the proposal until they met with the rest of the locals. I do not credit this testimony but feel that it was an extension of Wentz' fears. At any rate, contracts with the other locals were signed within a few weeks, so Wentz' fears of a long delay were unfounded in fact.

³ Zugic testified that subsequently, upon their failure to hear from this petition, two other petitions were filed. Only one, that of January 23, appears in evidence.

Concluding findings.

1. The appropriate unit—the representation by the Union

The Respondent, in its answer, admits the appropriateness of the unit but denies that the Union has at all times since March 24, 1947, been the representative for the purpose of collective bargaining. The only evidence bearing on this point is the testimony as to the events the day following the meeting of January 21 and the few days thereafter. There is no point in repeating this testimony in detail. It is clear that the Respondent's contention is without merit.⁴

I find that the unit hereinafter described constitutes a unit appropriate for collective bargaining within the meaning of the Act and that the Union was at all times since March 24, 1947, the representative of the employees in the unit for the purpose of collective bargaining.

2. The insistence on a vote by employees

The Board having on March 24, 1947, certified the Union as the exclusive bargaining representative of all the employees in the unit involved it was the duty of the Respondent to bargain with the Union for a reasonable time after that date. In the absence of special circumstances it has been the Board's policy to consider 1 year a reasonable time for this purpose.⁵ I find that there were no special circumstances warranting a deviation from this policy. At the time of the hearing it was a novel question as to whether the "reasonable time" would terminate upon the expiration of a contract which, by its terms, would expire before the end of the certification year. This question has since been decided by the Board in the negative.⁶ It was, therefore, the duty of the Respondent to bargain with the Union on January 21, 1948.

As stated above, the Respondent at the January 21 meeting refused to make its final offer to the union unless the union representatives agreed to call a meeting for a definite time for the purpose of having the employees vote on it.⁷ The Respondent in its brief calls attention to a section of the Amended Act⁸ providing that the Conciliator may seek certain means of inducing the parties to come to an agreement; including submission of the last offer to the employees, and says, "—it is not to be seriously contended that the parties to whom the suggestion is made shall give a categorical yes or no answer to the Director and thereafter remain mute on the subject." Obviously not. The discussion at the meeting of the method of voting and of the time when the voting was to take place was proper. The suggestion having been first made by the Conciliator as provided by the Act it cannot be said to have been a violation to explore its possibilities. Indeed, the Respondent was within its rights to argue strongly in favor of the submission. The Respondent, however, went further than a mere exploration of such possibilities and did more than argue in favor of the suggestion. It insisted, as a condition precedent to the making of its final offer, that the vote be taken and a

⁴ *The Mengel Company*, 80 N. L. R. B. 705, fn. 1. See also discussion following as to effect of expiration of short-term contract within the certification period.

⁵ This policy has been reinforced by the Amended Act, Sec. 9 (c) (3).

⁶ *The Mengel Company*, 80 N. L. R. B. 705.

⁷ The evidence is a bit confused as to whether the final stand of the Respondent was that all the employees should vote or simply the union members. The following findings would be the same on either version. I find, however, that the final insistence by the Respondent was that all of the employees vote.

⁸ Section 203 (c), which reads: "If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act."

time be set and, upon the refusal of the union representative to set such a time, refused to make the offer. While it is true that the custom of the Union was to submit offers to the membership for vote and the Respondent had reason to expect that this procedure would be followed, it was nonetheless the exclusive business of the Union to determine both the question of submitting it and the time of its submission. The insistence by the Respondent either upon the carrying out of this procedure or upon the offer being presented to all the employees, as an ultimatum, was an unwarranted interference with the internal affairs of the Union and might well have had the effect, and, as after events proved did have the effect, of discrediting the Union in the eyes of the employees. I therefore find that such insistence on the part of the Respondent constituted a refusal to bargain collectively with the Union.⁹

3. The effect of the decertification petition

At the close of the January 21 meeting there was no mention by either party of a future meeting. The finality of the Respondent's position at that time seems to indicate that it had no intention of meeting further. At any rate, the first time following that meeting when a future meeting was requested by the Union, on February 3, the Respondent made it clear that no future meeting was contemplated by it. The reason given by Mr. Wentz at that time for refusing to meet further was that someone had filed a decertification petition and that the parties could not negotiate further until that petition had been acted upon.

The Board has stated that its policy regarding decertification, where the issue of "contract-bar" is raised, is the same as is followed in certification cases.¹⁰ Although the issue of "contract-bar" does not appear in the instant case the same reasoning would appear to follow. There mere filing of a decertification petition would have no more effect upon the duty to bargain than has the filing of a petition by a rival Union for certification during the certification period of an incumbent Union. In the latter instance, it has been held to have no effect.¹¹ To hold that the filing of a decertification petition would have the effect of suspending the duty to bargain would be to place in the hands of a minority the power to thwart the will of the majority at any time during the certification period. It would destroy all semblance to stability in labor relations. The danger of such a policy is particularly apparent in a case such as the present where the whole decertification question was precipitated by the Respondent's unfair labor practice. I therefore find that the Respondent's continuing refusal to bargain with the Union on and after February 3, 1948, was not justified by the filing and pendency of the decertification petition.

In accordance with the above I find that the Respondent on January 21, 1948, and at all times thereafter has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

It is found that the activities of the Respondent set forth in Section III above, occurring in connection with operations of the Respondent 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.

⁹ See *Union Manufacturing Co.*, 27 N. L. R. B. 1300, 1306.

¹⁰ *Snow & Nealley Company*, 76 N. L. R. B. 390.

¹¹ *Con P. Curran Printing Company*, 67 N. L. R. B. 1419.

V. THE REMEDY

Since it has been found that the Respondent has engaged in unfair labor practices it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It having been found that the Respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the Respondent upon request bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case the undersigned makes the following:

CONCLUSIONS OF LAW

1. United Brick and Clay Workers of America, affiliated with the American Federation of Labor is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees at the Respondent's Canton, Ohio, plant, excluding clerical employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. United Brick and Clay Workers of America, was on March 24, 1947, and at all times thereafter has been, the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on January 21, 1948, and at all times thereafter, to bargain collectively with United Brick and Clay Workers of America as the exclusive representative of all its employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By said acts, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, the undersigned recommends that the Respondent, The Belden Brick Co., Canton, Ohio, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Brick and Clay Workers of America, as the exclusive representative of all production and maintenance employees at its Canton, Ohio, plant, excluding clerical employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action;

(b) Engaging in any other acts in any manner interfering with the efforts of United Brick and Clay Workers of America, to negotiate for or represent the employees in the aforesaid unit as exclusive bargaining agent.

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Brick and Clay Workers of America, as the exclusive bargaining representatives of all the employees in the bargaining unit described herein, with respect to wages, rates of pay, hours of employment and other conditions of employment, and if an understanding is reached embody such understanding in a signed agreement;

(b) Post in conspicuous places at its plant at Canton, Ohio, copies of the notice attached hereto, marked "Appendix A." Copies of 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 the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (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; and

(c) Notify the Regional Director for the Eighth Region in writing within twenty (20) days from the receipt of this Intermediate Report and Recommended Order what steps the Respondent has taken to comply herewith.

It is further recommended that, unless on or before twenty (20) days from the receipt of this Intermediate Report and Recommended Order the Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days after the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 25th day of February 1949.

CHARLES S. DONOVAN,
Trial Examiner.

APPENDIX A

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 our employees that :

WE WILL NOT engage in any acts in any manner interfering with the efforts of UNITED BRICK AND CLAY WORKERS OF AMERICA to negotiate for or represent the employees in the bargaining unit described below.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is :

All production and maintenance employees at our Canton, Ohio, plant, excluding clerical employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

THE BELDEN BRICK Co.,

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 any other material.