

In the Matter of AMBASSADOR VENETIAN BLIND WORKERS' UNION,
LOCAL NO. 2565, AFFILIATED WITH THE UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA, AFL and VIOLA DODD, AN
INDIVIDUAL

Case No. 20-CB-73.—Decided December 26, 1950

DECISION AND ORDER

On March 24, 1950, Trial Examiner George A. Downing 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 statement.

The Board 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, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modification.¹

We agree with the Trial Examiner that the Respondent violated Section 8 (b) (2) of the Act, in that it attempted to and did cause Ambassador Venetian Blind Company and Consolidated Interiors, Inc., to discriminate against Viola Dodd in violation of Section 8 (a) (3) of the Act. We reject, for the reasons set forth in *National Union of Marine Cooks and Stewards, C. I. O.* and *George C. Quinley, an individual*,² the Respondent's contention that no 8 (b) (2) finding can be made because the Employers were not joined as parties.³

¹ The Respondent's request for oral argument is hereby denied, as the record, the exceptions and brief, in our opinion, adequately present the issues and the positions of the parties.

² 92 NLRB 877.

³ For the reasons set forth in his dissenting opinion in the *Quinley* case, footnote 2, *supra*, Member Murdock believes that this ruling is erroneous, but concurs in the Decision and Order in this case because he deems himself bound.

The Remedy

We agree with, and adopt, the Trial Examiner's recommendations with respect to the remedy, with the minor modification noted below.

Since the issuance of the Trial Examiner's Intermediate Report, the Board has adopted a method of computing back pay different from that prescribed by the Trial Examiner.⁴ Consistent with that new policy, we shall order that the loss of pay be computed on the basis of each separate calendar quarter, or portion thereof, during the period *from* the date Respondent caused Ambassador Venetian Blind Company to discharge Dodd *to* 5 days after the date Respondent takes the remedial action set forth in 2 (a) and (b) of our Order. The quarterly periods, hereinafter called quarters, shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum of money equal to that which the employee would normally have earned for each quarter or portion thereof, his net earnings,⁵ if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter.⁶

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Venetian Blind Workers' Union, Local No. 2565, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL, and its agents, shall:

1. Cease and desist from causing or attempting to cause Ambassador Venetian Blind Company or Consolidated Interiors, Inc., their successors and assigns, to discriminate against Viola Dodd or any other employee in violation of Section 8 (a) (3) of the Act.

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

(a) Notify Ambassador Venetian Blind Company and Consolidated Interiors, Inc., in writing that it withdraws any objection to the employment of Viola Dodd and requests them to offer her immediate and full reinstatement;

(b) Notify Viola Dodd in writing that it has advised Ambassador Venetian Blind Company and Consolidated Interiors, Inc., that it

⁴ *F. W. Woolworth Company*, 90 NLRB 289.

⁵ *Crossett Lumber Company*, 8 NLRB 440.

⁶ Our back-pay orders shall be construed as set forth in *Wilhelmina Becker*, 91 NLRB 883.

withdraws its objection to her employment and requests them to offer her immediate and full reinstatement;

(c) Make whole Viola Dodd in the manner set forth above in the section entitled The Remedy;

(d) Post at its offices, if any, at San Francisco and Berkeley, California, copies of the notice attached hereto and marked Appendix A.⁷ Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof and be maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material;

(e) Mail to the Regional Director for the Twentieth Region signed copies of the notice attached hereto as Appendix A, for posting, the Employer willing, at the plant of Ambassador Venetian Blind Company and Consolidated Interiors, Inc., in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being signed as provided in paragraph 2 (d), above, be forthwith returned to said Regional Director for said posting;

(f) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

MEMBER STYLES took no part in the consideration of the above Decision and Order.

APPENDIX A

NOTICE TO ALL MEMBERS OF VENETIAN BLIND WORKERS' UNION, LOCAL NO. 2565, AFFILIATED WITH THE UNITED BROTHERHOODS OF CARPENTERS AND JOINERS OF AMERICA, AFL, AND TO ALL EMPLOYEES OF AMBASSADOR VENETIAN BLIND COMPANY AND CONSOLIDATED INTERIORS, INC.

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, as amended, we hereby notify you that:

WE WILL NOT cause or attempt to cause AMBASSADOR VENETIAN BLIND COMPANY, CONSOLIDATED INTERIORS, INC., or their successors

⁷ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "Decision and Order" the words "Decree of the United States Court of Appeals Enforcing."

and assigns, to discriminate against Viola Dodd or any other employees in violation of Section 8 (a) (3) of the Act.

WE WILL notify in writing AMBASSADOR VENETIAN BLIND COMPANY and CONSOLIDATED INTERIORS, INC., that we withdraw any further objection to the employment of the said Viola Dodd and request her reinstatement.

WE WILL make Viola Dodd whole for any loss of pay she may have suffered because of the discrimination against her.

VENETIAN BLIND WORKERS' UNION, LOCAL
 No. 2565, AFFILIATED WITH THE UNITED
 BROTHERHOOD OF CARPENTERS AND JOINERS
 OF AMERICA, AFL

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

Dated -----

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

Mr. Robert V. Magor, for the General Counsel.

Mr. Henry C. Todd (Todd and Todd), and *Mrs. Rose M. White*, of San Francisco, Calif., for the Respondent.

STATEMENT OF THE CASE

Upon a first amended charge duly filed on June 24, 1949, by Viola Dodd, an individual, the General Counsel of the National Labor Relations Board,¹ by the Regional Director for the Twentieth Region (San Francisco, California), issued a complaint dated November 28, 1949, against Venetian Blind Workers' Union, Local No. 2565, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL (herein called the Respondent and the Union), alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Sections 8 (b) (2) and 2 (6) and (7) of the National Labor Relations Act as amended (61 Stat. 136), herein called the Act.

With respect to the unfair labor practices the complaint alleged in substance that on or about October 27, 1948, the Respondent caused the Ambassador Venetian Blind Company (a copartnership composed of A. E. Latham, J. M. Wicks, R. E. Walters, and P. A. Veitch), herein called Ambassador and the Employer, to discriminate against employee Viola Dodd in violation of Section 8 (a) (3) of the Act, in that on or about said date the Respondent caused said Employer to terminate Dodd's employment because she was not a member in good standing of the Union and has since said date caused the Employer to refuse to reinstate Dodd for said reason, although at no material time was there in effect between Respondent and said Employer an agreement executed in conformity with the provisions of Section 8 (a) (3) of the Act requiring membership in Respondent

¹ The General Counsel and his representative at the hearing are referred to herein as the General Counsel and the National Labor Relations Board as the Board.

as a condition of employment; and that by said acts Respondent engaged in an unfair labor practice within the meaning of Section 8 (b) (2).

By its answer filed at the hearing² Respondent denied the commission of the alleged unfair labor practices.

Pursuant to notice a hearing was held at San Francisco, California, on February 9, 10, and 18, 1950, before George A. Downing, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence relevant to the issues. During the hearing the Examiner granted the General Counsel's motion to amend the allegations of the complaint relating to commerce and jurisdiction so as to accord with the evidence, the findings on which are set forth under Section I, *infra*.

As the hearing opened the Examiner granted the Respondent's request for a recess until 11 a. m. in order to enable it to procure the attendance of its counsel, and at 11 a. m. the Examiner granted the request of Respondent's counsel for a further recess until 2 p. m.

At 2 p. m. the Union moved for a continuance for 1 week due to the asserted illness of Rose M. White.³ The motion was denied, with leave to Respondent to renew the motion at the conclusion of the General Counsel's case. On the morning of February 10, Respondent renewed its motion for a continuance of 1 week. It was denied, again with leave to renew it on conclusion of the General Counsel's case. The motion was later granted, after the General Counsel had rested, and the hearing was resumed on February 18.

Upon resumption of the hearing on February 18, the Respondent made a further motion for a continuance "until the employer can be brought in,"⁴ and a motion to dismiss the complaint. Both motions were denied, and Respondent thereupon put in its case.

Oral arguments were made by the parties at the conclusion of the hearing. The parties were also advised of their right to file proposed findings of fact, conclusions of law, and briefs. A brief has been received from Respondent and has been considered.

Contemporaneously with its brief Respondent filed on March 6, its motion to add as parties respondent, Ambassador Venetian Blind Company, Consolidated Interiors, Inc. (a successor to Ambassador), and A. E. Latham. The motion was grounded on alleged insufficiency of time to formulate a defense and on the claim that if discrimination had occurred, the responsibility in damages therefor was that of the additional parties sought to be brought in and that Respondent should not be forced to respond in damages for their wrong.

The motion is denied. The record and the proceedings above summarized show that Respondent was afforded every reasonable opportunity to formulate its defense and to adduce evidence in support thereof. Insofar as the grounds of the motion relate to the necessity of additional parties, they are discussed herein among Respondent's other defenses, pp. 909-912 *infra*.

² The Examiner denied the General Counsel's motion under Section 203.20 of the Board's Regulations that the allegations of the complaint be deemed to be admitted and for the entry of a default judgment, and permitted Respondent to file its answer at the hearing.

³ Actually White was in attendance throughout the hearing except for approximately 1 hour at the beginning of the afternoon session on February 9.

⁴ Although not clearly stated, Respondent's motion apparently was intended as a motion to add the Employer as a party respondent.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Ambassador Venetian Blind Company was from 1946 to October 24, 1949, a copartnership composed of A. E. Latham, J. M. Wicks, R. E. Walters, and P. A. Veitch. During said period it was engaged in its plant at 650 Camelia Street, Berkeley, California, in the business of manufacturing venetian blinds from raw materials consisting of wooden parts, metal parts, and fabric parts. During the calendar year 1948, Ambassador purchased raw materials of a value of approximately \$200,000, of which approximately 25 percent was purchased and shipped from points outside the State of California.

During the same period the firm made sales of its manufactured product amounting to approximately \$480,000, of which approximately 15 percent was sold and shipped by Ambassador to points outside the State of California. Of said gross sales figure, approximately 30 to 35 percent consisted of sales to Montgomery Ward & Co., under an arrangement whereby Ambassador filled all mail orders received by Montgomery Ward on its catalog which is distributed in a number of western States including Arizona, Nevada, Oregon, and Utah, as well as in Hawaii. In all such cases Ambassador shipped the ordered goods direct to the customer of Montgomery Ward, using shipping labels and shipping documents supplied by the latter.

Ambassador has in addition customers of its own in other States to whom it made sales and shipments. These include customers in Oregon and Nevada and a customer in Hawaii, to the latter of whom the firm sold and shipped approximately \$7,000 worth of goods in 1948.

On these facts it is found that Ambassador is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Venetian Blind Workers' Union, Local No. 2565, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL, is a labor organization admitting to membership employees of Ambassador.

III. THE UNFAIR LABOR PRACTICES

The Facts

The facts which are material to the determination of this case can be briefly stated. They are established by the testimony of Viola Dodd, the charging party, and of A. E. Latham, copartner of Ambassador, who are corroborated on essential points by the testimony of Rose M. White, business agent and financial secretary of the Respondent. The only conflicts in the evidence concern chiefly immaterial and collateral issues, none of which affect the single crucial issue whether the Respondent Union caused the Employer to discharge or to lay off Dodd because she was not a member of the Union in good standing and whether in the absence of a valid union-shop clause the Union thereby caused the Employer to discriminate against Dodd in violation of Section 8 (a) (3), and thereby itself committed an unfair labor practice within the meaning of Section 8 (b) (2) of the Act.

Ambassador and its predecessor had for a number of years recognized the Respondent as the bargaining representative of their employees, and during most of said time had operated under contracts with Respondent. During periods material to the complaint, however, there was no union-shop contract in existence, nor any contract at all. Though on August 15, 1947, Ambassador and the Respondent had entered into a contract which contained a variety of union-shop clauses, effective August 1, 1947, and terminating July 31, 1948, there is no dispute, on the evidence, that Ambassador canceled the contract in February 1948, and that there was no contract in effect at the time of the strike on October 25, 1948, hereinafter referred to. Indeed, White testified that the strike was for "organizational purposes."

Dodd was employed by Ambassador from July 1946 to October 27, 1948. She joined the Union shortly after being hired but became delinquent in the payment of her dues in November 1947, or early in 1948. The delinquency was not thereafter liquidated.

On October 21, 1948, Ambassador laid off nine employees because of a recession in business. As a result the Union called a strike on Monday, October 25, which lasted 2 days.

The strike was settled on Ambassador's agreement to submit to a special adjustment board the Union's objections to the layoff and its contention that apprentices and other employees with less seniority should have been laid off ahead of the nine selected by the Employer. The issue so to be submitted to the adjustment board did not include any question concerning Dodd's status, whose dues delinquency had continued. However, White, who acted as the Union's representative in all its relations with Ambassador, imposed a further condition to the termination of the strike. Thus, in her negotiations with Latham on Tuesday, October 26, White had (according to Latham's testimony) also referred to the fact that Dodd was still in bad standing with the Union and stated that she would not allow the employees to go back to work and that the shop could not run if Dodd also was to be permitted to return.

White specifically denied telling Latham that the strike would continue until Dodd straightened out the matter of her dues with the Union. Her position, as disclosed by her following testimony on examination by the Trial Examiner, was that she and Latham had "mutually decided" that Dodd was not to be permitted to return to work after the settlement of the strike:

Q. Did you take any position with Mr. Latham as to whether Viola Dodd should be permitted to continue working, or not?

A. No, the position that we took at that time was that Viola Dodd was so far behind in her dues, and we had four people in there that hadn't straightened out or come into the Union that were non-paying apprentices, that we decided then mutually, between Mr. Latham and myself, that none of the people that didn't belong to the Union, or weren't in good standing or were delinquent, wouldn't come back to work after the pickets were taken off.

Q. That included Viola Dodd, then? She was in bad standing?

A. Yes.

Q. You agreed on that mutually?

A. That is right.

When Dodd came in with the other employees on Wednesday, the 27th, Latham called her to his office, informed her that because of her bad standing with the Union he could not permit her to continue working, and suggested that she

"take a few days off" until she could straighten out the question of her union membership.⁵

Dodd has not since been able to reinstate her membership in good standing. In fact after a trial on January 14, 1949, the Union debarred her from membership.

On two or three occasions after her layoff (the latest in December 1949), Dodd has applied to Latham for reinstatement, and Latham in turn has made inquiry of White if Dodd was in good standing with the Union and if he could employ her. White on each occasion refused to agree to Dodd's employment, stating that Dodd was not in good standing with the Union. Ambassador (and its successor) has at all times been ready, willing, and able to employ Dodd.

Concluding Findings

As stated above, White's version was that the decision that Dodd could not return to work was one mutually reached by Latham and herself. Latham's testimony was that White refused to allow the plant to go back to work (i. e., that she would continue the strike) if Dodd returned.

The evidence as a whole corroborates Latham, and the undersigned credits his testimony. Thus, Dodd testified that in a conversation with White on the morning of the 26th, White had stated "there was some nonunion members working inside and the strike would be called until they were cleared with the Union." White did not deny the conversation. Furthermore, White's testimony plainly disclosed that it was strictly the Union's policy not to permit delinquent members to continue in their employment. Thus, she testified on questioning by the Examiner:

Q. As I understand it, the International suspends after six months.

A. Six months of non-payment of dues.

Q. And how about the local, when a member is in bad standing?

A. *They are not permitted to work on the job when they are three months in arrears.* [Emphasis supplied.]

Q. They become in bad standing?

A. *The term we use is that they are delinquent and you have to pay your dues and get straightened out so you can continue working.* [Emphasis supplied.]

Indeed, the evidence discloses that even after Ambassador's cancellation of the contract in February 1948, White raised with Latham the question of the dues delinquency of various employee members and that Latham on each such occasion suggested to the employees that they pay up their delinquencies.

Moreover, White's position on the question which later arose, whether Dodd could be reinstated, supports the view that the Union used the existence and threatened continuance of the strike in procuring Latham's agreement not to permit Dodd's return to work. Thus, Latham and Dodd both testified (without denial from White) that subsequent to Dodd's layoff, White has consistently refused to agree to Dodd's reinstatement on the ground that she was not in good standing with the Union. Latham's testimony also establishes that Ambassador and its successor has been willing, except for the Union's objection, to reemploy Dodd.

⁵ It is clear from all the evidence that Dodd was laid off and not discharged. In fact Latham (individually) and Ambassador made separate loans to her, with the understanding, express or implied, that they were to be repaid on Dodd's return to work after she should have straightened out the question of her standing with the Union.

The evidence therefore patently establishes that, contrary to Respondent's contentions, it caused Ambassador to lay off Dodd and subsequently to refuse to reinstate her because she was not a member in good standing. The layoff and the subsequent refusal to reinstate Dodd under these circumstances was plainly discrimination within the meaning of Section 8 (a) (3), since the obvious intent and effect thereof was to encourage membership in the Respondent Union. Cf. *H. Milton Newman, etc.*, 85 NLRB 725. Respondent made no attempt either to plead or to prove the existence of a valid union-shop contract within the provisos of that section whereby such discrimination might have been justified. *Ibid.* In fact, the evidence is undisputed that no such contract was in effect.

But Respondent argues further that Dodd was not in fact discriminated against because the evidence discloses that both before and after her layoff she received certain favors and enjoyed certain privileges not accorded to other employees. To support this novel theory, counsel resorts to the citation of cases arising under the Interstate Commerce Act and to tax equalization cases. Such cases are obviously inapposite. As the Supreme Court has observed in an analogous situation where attempt was being made to apply a doctrine developed under the Interstate Commerce Act to a case arising under the Federal Trade Commission Act [*Federal Trade Commission v. Bunte Brothers*, 312 U. S. 349, 353]:

Translation of an implication drawn from the special aspects of one statute to a totally different statute is treacherous business. The Interstate Commerce Act and the Federal Trade Commission Act are widely disparate in their historic settings, in the enterprises which they affect, in the range of controls they exercise, and in the relation of these controls to the functioning of the Federal system.

There is no justification whatever for attempting to transplant to the present Act a definition of discrimination drawn from a "totally different statute" in view of the hundreds of Board and court decisions which have defined discrimination in its present context to include a layoff or discharge made to encourage or discourage membership in a labor organization.

Respondent's post-hearing motion to add additional parties poses other questions which border on a defense to the merits and which relate as well to the framing of an appropriate remedial order. Its contentions appear to be that a finding that discrimination occurred is a necessary predicate to a finding that Respondent caused discrimination; that the preliminary finding cannot be made in the absence of the parties who committed the discrimination; and that without them Respondent will be forced to respond in damages for a wrong committed by others. It is apparently Respondent's position that such other parties are solely responsible for the discrimination suffered by Dodd and are to be so held on a reinstatement order (see Section 10 (c)), rather than that they should be compelled to share such responsibility with Respondent (cf. *H. Milton Newman*, 85 NLRB 725; *Clara-Val Packing Co.*, 87 NLRB 703; *Union Starch and Refining Co.*, 87 NLRB 779). But in either event Respondent's position is untenable for reasons now stated.

The evidence of the discharge and of the surrounding events leading up to it was fully explored and adduced at the hearing, and Respondent has indicated no respect in which evidence pertinent to its defenses was not fully presented. Such evidence, above summarized, establishes unmistakably that Dodd was discriminated against by her employer within the meaning of Section 8 (a) (3), and that Respondent caused the Employer so to discriminate. Legal justification for such discrimination, as provided in the provisos to that section (i. e., the

existence of a valid union-shop contract), lay as easily within Respondent's power to establish as the Employer's but no such justification was here claimed or proved. Furthermore, the Respondent is the only person alleged to have committed an unfair labor practice; it is therefore the only person that can be deemed "responsible" for the discrimination found herein. Cf. *General Electric X-Ray Corporation*, 76 NLRB 64.

Nor is it possible to adopt Respondent's suggestion that additional parties be brought in, either for the purpose of absolving it from responsibility or of sharing with it responsibility for the discrimination. Such a suggestion is by no means a novel one, either under the Wagner Act or the present one.

Indeed, the relief which Respondent seeks to obtain may be roughly compared to that which was suggested in the dissenting opinion of Board Member Reynolds in *Lewis Meier and Company*, 73 NLRB 520, 524, *et seq.* In that case the Board found that the respondent employer had discriminatorily discharged certain employees under a closed-shop contract at the request of AFL because they had campaigned for the CIO at a time when it was appropriate for the employees to change their bargaining representative (applying the *Rutland Court* doctrine, 44 NLRB 587; 46 NLRB 1040).

Taking the view that a labor organization under the circumstances there presented qualified as an "employer" under the Act and that under the evidence the AFL as well as the respondent company was responsible for the violations of the Act, Mr. Reynolds suggested that the complaint should be dismissed "without prejudice to future consideration by the Board of the events covered thereby in any subsequent proceeding wherein all the persons apparently responsible for the discriminatory treatment . . . are properly made parties respondent." His suggested disposition of the case was impelled by explicit recognition of the fact that "the failure of the charging union to name the AFL as a party respondent in this proceeding makes it impossible for the Board to issue its order against the AFL as well as the respondent employer." See also *Durasteel Company*, 73 NLRB 941, 946, 947.

At that time the Act contained no limitation on the time for the filing of charges or the issuance of complaints thereon, and it would therefore have been possible for the "subsequent proceeding" envisioned in the dissent to have materialized. Such a possibility is here precluded by virtue of the limitation provisions of Section 10 (b) of the present Act.

In a subsequent decision (*E. L. Bruce Company*, 75 NLRB 522) the Board in an analogous situation gave express consideration to the provision of Section 10 (c) of the Act, as amended, which authorized the Board to require back pay of the labor organization responsible for the discrimination suffered by an employee. The Board held for two reasons that it could not issue an order against the union: (1) The amendment to Section 10 (c) could not be given retroactive effect; and (2) *since no charge was filed and no complaint issued against the union it would therefore be without power to issue an order against the union* (citing *Consolidated Edison Company v. N. L. R. B.*, 305 U. S. 197).

The language of Section 10 (c) as amended plainly supports the latter holding, since the Board's authority to find unfair labor practices and to remedy the effects of unlawful discrimination against an employee is limited to "any person named in the complaint." *General Electric X-Ray Corporation, supra.* The Respondent is the only person alleged in the present complaint to have committed an unfair labor practice; it is the only person that can be deemed "responsible" for the discrimination found (*ibid.*, p. 66). As held in the *Bruce* case, absent a charge filed against the parties now sought to be brought in and absent

a complaint issued against them on such charge, the Board is without power to issue an order against them.

The record in this proceeding does not disclose whether a charge was filed against parties other than the Union and, if so, whether complaints were issued thereon. If such steps were taken, the issues as to the unfair labor practices there charged and as to the appropriate remedial order against those Respondents are matters which will be determined in those proceedings. If, to the contrary, no charge has been filed and no complaint issued, the requirements of jurisdiction and of due process have not been met; nor is there provision in the Act or in the Board's Regulations for the type of substitution therefor which is invited by Respondent's motion and which the Board has held it is powerless to consider.

It is therefore concluded and found from the evidence on the record as a whole that the Respondent caused Ambassador to lay off Dodd on October 27, 1948, and has since caused Ambassador and its successor, Consolidated Interiors,⁶ to refuse to reinstate Dodd. It is further concluded and found that Respondent thereby caused Ambassador and Consolidated Interiors, Inc., to discriminate against Dodd in violation of Section 8 (a) (3) of the Act, and that by said acts Respondent has violated Section 8 (b) (2) of the Act.⁷

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Employer set forth 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

It having been found that Respondent engaged in unfair labor practices, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent on or about October 27, 1948, caused Ambassador Venetian Blind Company to discriminate against Viola Dodd in regard to hire and tenure of employment to encourage membership in the Respondent Union and that the Respondent, since that date, has caused and

⁶ On October 24, 1949, the partnership constituting Ambassador was succeeded by a California corporation, Consolidated Interiors, Inc. The corporation acquired Ambassador's plant, including its machinery and equipment, but not its accounts receivable. A portion of the consideration for the transfer of the partnership assets consisted of corporate stock issued or to be issued to copartners Latham, Walters, and Wicks. In fact Latham owns one-third of the entire capital stock of the corporation. He also owns the land and buildings which housed the Ambassador plant and offices, and he rented the premises to Ambassador, and later to the corporation, on a monthly basis.

After the transfer of assets, Consolidated continued to operate the business at the same location and it continued to manufacture the same products with the same staff of employees, with one or two exceptions, and with the same supervisory personnel. Consolidated also continued to recognize and to deal with the Respondent Union as the labor organization representing its employees, though contracts may not at all times have been in effect.

On these facts, Consolidated was clearly the successor to Ambassador (cf. *Eva-Ray Dress Manufacturing Company, Inc.*, 88 NLRB 361, and cases cited in footnote 26).

⁷ No finding is made on the question whether by such conduct Respondent also violated Section 8 (b) (1) (A) of the Act (cf. *Clara-Val Packing Co.*, 87 NLRB 703; *Union Starch and Refining Co.*, 87 NLRB 779) since the complaint fails to charge such a violation.

continues to cause the Ambassador Venetian Blind Company and its successor, Consolidated Interiors, Inc., discriminatorily to refuse to reinstate Dodd.

It will therefore be recommended that Respondent cease and desist from causing or attempting to cause Ambassador Venetian Blind Company and Consolidated Interiors, Inc., their successors and assigns, to discriminate against Viola Dodd or any of their other employees by discharging, laying off, or refusing to reinstate her or any of them in order to encourage membership in Respondent Union, except in accordance with Section 8 (a) (3) of the Act; and that Respondent also cease and desist from in any manner causing or attempting to cause Ambassador Venetian Blind Company and Consolidated Interiors, Inc., their successors and assigns, to discriminate against Viola Dodd or any of their other employees in violation of Section 8 (a) (3) of the Act.

It is further recommended that Respondent notify in writing Ambassador Venetian Blind Company and Consolidated Interiors, Inc., that it withdraws any further objection to the reinstatement of the said Viola Dodd and to her continued employment, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

It will also be recommended that the Respondent make whole the said Viola Dodd for any loss of pay that she may have suffered by reason of the discrimination herein found to have been committed against her by payment to her of a sum of money equal to that which she normally would have earned as wages from October 27, 1948, to the date of Respondent's cessation of its unfair labor practices less her net earnings during such period (see *Crossett Lumber Company*, 8 NLRB 440).

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

CONCLUSIONS OF LAW

1. The Respondent, Venetian Blind Workers' Union, Local No. 2565 affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By causing Ambassador Venetian Blind Company and its successor, Consolidated Interiors, Inc., to discriminate against Viola Dodd in violation of Section 8 (a) (3) of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

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

[Recommended Order omitted from publication in this volume.]