

the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) and Section 8 (a) (1) of the Act.

3 By interfering with, restraining, and coercing its employees in the exercise of the 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.

4 By discharging Minnie Barbour, the Respondent did not engage in any unfair labor practices

5. 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]

ALBERT LEONARD, ARNOLD DAVIS, SIDNEY DAVIS AND WILLIAM GITZES, CO-PARTNERS, JOINTLY AND SEVERALLY D/B/A DAVIS FURNITURE CO.; DOYLE FURNITURE CO., INC., A CORPORATION; LACHMAN BROS, A CORPORATION; HARRY FRANK, AN INDIVIDUAL, D/B/A MILWAUKEE FURNITURE COMPANY; A. EUGENE PAGANO AND M. DE CASTRO, CO-PARTNERS, JOINTLY AND SEVERALLY, D/B/A MISSION CARPET AND FURNITURE CO.; FRANK NEWMAN CO., A CORPORATION; REDLICK-NEWMAN CO., A CORPORATION; SHAFF'S FURNITURE CO., A CORPORATION; JOSEPH H. SPIEGELMAN AND LEON SPIEGELMAN, CO-PARTNERS, JOINTLY AND SEVERALLY, D/B/A SAN FRANCISCO FURNITURE CO.; STERLING FURNITURE COMPANY, A CORPORATION; JAMES F. WILEY AND VERA M. GARDNER, CO-PARTNERS, JOINTLY AND SEVERALLY, D/B/A J. H. WILEY THE FURNITURE MAN *and* CARROLL, DAVIS & FREIDENRICH, BY ROLAND C. DAVIS. *Cases Nos. 20-CA-250, 20-CA-264, 20-CA-252, 20-CA-249, 20-CA-246, 20-CA-245, 20-CA-247, 20-CA-253, 20-CA-254, 20-CA-248, and 20-CA-251. May 3, 1951*

Decision and Order

On February 16, 1951, Trial Examiner J. J. Fitzpatrick issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in unfair labor practices as alleged in the complaint and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report, and a supporting brief.¹ The Respondents also requested oral argument.

¹ On April 24, 1951, six employer associations filed a "Petition For Permission to File Brief Amicus Curiae or, in the alternative, to intervene in opposition to the Intermediate Report and Recommended Order of the Trial Examiner" and a "Brief in Opposition to the Intermediate Report and Recommended Order of the Trial Examiner." The petition must be denied as untimely, as the Board had already decided the merits of the case before receipt of the petition. Briefs from the parties to the case were due and had been received by March 12, 1951.

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

The Board has reviewed the rulings of the Trial Examiner 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 additions.²

The relevant facts in the instant case are substantially as follows. The Retail Clerks International Association, Local 1285 (AFL), herein called the Union, has bargained with the Retail Furniture Association of California on behalf of a number of its members since 1937. An impasse over a new contract occurred on June 3, 1949. At that time, the Union told the Association that the Union would probably strike one of the association members, Union Furniture Company, where wages were lower for most employees than for employees of the other members. The next day the Union placed pickets at the warehouse and 2 stores of Union Furniture Company, and none of its union employees reported for work. The employees of all other association members reported for work as usual. However, 11 of the 19 employer-members of the Association, Respondents herein, notified their employees by pamphlets or letters on June 4 that their stores were closed until further notice in view of the Union's strike action.³

The parties are in agreement that at no time did the Union attempt to bargain on other than an association-wide basis; in that respect, the facts in this case are weaker for the Respondents' ultimate contention than were those in the *Morand* case, *infra*. The Union did not threaten to strike any other member of the Association. The Union selected Union Furniture as the target for strike action because the Union believed that that employer was the obstacle to reaching agreement on an *association-wide* basis. In response to a letter from the claimants' attorney advising that the claimants have at all times been and still were "ready, willing and able to continue their employment," the Respondents' attorney replied by letter, dated June 13, 1949, that be-

² Without giving figures, the Respondents contend that the volume of commerce activity of some of the Respondents is so small that the Board would not assert jurisdiction over them as separate entities, and that the Trial Examiner's action in basing jurisdiction on the total commerce activities of the Respondents as a group is inconsistent with the General Counsel's prosecution of a complaint alleging unfair labor practices against each Respondent as a separate entity. We perceive no such inconsistency. The liability of each Respondent is an individual liability. The Trial Examiner made his jurisdictional finding, and we think properly so, on the basis of the total activities of the Respondents because they had joined together to act as a single group for the purposes of collective bargaining, as hereinafter appears.

³ Before the strike, the members of the Association agreed that if less than all of them were struck, the others would close to protect the competitive position of all of them. However, eight of the employer-members of the bargaining unit did not shut down.

cause negotiations had been conducted on the basis of a group unit and no separate demands had been made on Union Furniture, the Respondents regarded the strike as one against all employers in the unit. The strike was settled on or about July 9, 1949, when all the employees, including those of the 11 employers who were not struck, returned to work and an association-wide contract was concluded.

The complaint alleges that the 11 employers discriminatorily locked out their employees during the period from June 4 to July 9, 1949, in violation of Section 8 (a) (1) and 8 (a) (3) of the Act.

The Trial Examiner sustained the allegations of the complaint on the basis of the Board's decision in *Morand Brothers Beverage Company*, 91 NLRB 409. In that case, the Board held that a strike against a single employer of an association-employer unit did not under the statute justify the *discharge* of employees by association employers whose stores were not struck.

We agree with the Trial Examiner that the principles and policy considerations enunciated in the *Morand* decision are equally applicable to the facts in the instant case, where the employees were temporarily prevented from working by the Respondents' action in laying them off rather than discharging them. Regardless of how the strike may be viewed, the fact remains, as found by the Trial Examiner, that the Respondents laid off their employees *because* of protected concerted activity sponsored by the Union as their statutory bargaining representative and engaged in by union members of the same bargaining unit. The layoffs thus served notice on all members of the bargaining unit, the laid-off employees as well as the strikers and nonstrikers, that resort to lawful protected concerted activity by the employees of any employer-member of the bargaining unit would subject other employee-members of the bargaining unit to the reprisal of a temporary loss of employment. The Respondents' conduct thereby directly interfered with, restrained, and coerced all the employees in the bargaining unit in the exercise of their rights guaranteed by Section 7 of the Act, in violation of Section 8 (a) (1). The layoffs also constituted discrimination in the hire and tenure of employment of the Respondents' employees because of the union-sponsored strike against Union Furniture Company, thereby discouraging membership in the Union in violation of Section 8 (a) (3) of the Act. Whether the Respondents' conduct be viewed as a violation of Section 8 (a) (1) or of 8 (a) (3), we find that effectuation of the policies of the Act requires that the Respondents' employees be made whole in the manner set forth in the Intermediate Report.

Order

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations

Board hereby orders that each of the Respondents, Albert Leonard, Arnold Davis, Sidney Davis and William Gitzes, co-partners, jointly and severally, d/b/a Davis Furniture Co., Doyle Furniture Co., Inc., a corporation, Lachman Bros., a corporation, Harry Frank, an individual, d/b/a Milwaukee Furniture Company, A. Eugene Pagano and M. de Castro, copartners, jointly and severally, d/b/a Mission Carpet and Furniture Co., Frank Newman Co., a corporation, Redlick-Newman Co., a corporation, Shaff's Furniture Co., a corporation, Joseph H. Spiegelman and Leon Spiegelman, co-partners, jointly and severally, d/b/a San Francisco Furniture Co., Sterling Furniture Company, a corporation, James F. Wiley and Verna M. Gardner, co-partners, jointly and severally, d/b/a J. H. Wiley The Furniture Man, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Master Furniture Guild, Local 1285, affiliated with Retail Clerks International Association, AFL, or in any other labor organization of its employees, by locking them out or otherwise discriminating in regard to their tenure of employment or any term or condition of employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Master Furniture Guild, Local 1285, affiliated with Retail Clerks International Association, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; or to refrain from any or all such activities, 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, as guaranteed by Section 7 of the Act.

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

(a) Make whole each of its employees for the discrimination against him in the manner set forth in the section of the Intermediate Report entitled "The remedy."

(b) Post at its places of business in the San Francisco area, copies of the notice attached hereto, marked Appendix.⁴ Copies of said notice, to be furnished each Respondent by the Regional Director for the Twentieth Region (San Francisco, California), shall, after being signed by an appropriate representative of each Respondent, be posted by said Respondent immediately thereafter in conspicuous places including all places where notices to employees are customarily posted.

⁴ In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted in the notice, before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing"

Reasonable steps shall be taken by the Respondents to insure that the notices are not altered, defaced, or covered by any other material.

(c) 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 REYNOLDS took no part in the consideration of the above Decision and Order.

Appendix

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 NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist MASTER FURNITURE GUILD, LOCAL 1285, affiliated with RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities 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 by Section 8 (a) (3) of the Act.

WE WILL make whole each of our employees for any loss of pay suffered as a result of the discrimination against him.

All our employees are free to become or remain or to refrain from becoming or remaining members of the above-named union or any other labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

(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.

Intermediate Report and Recommended Order

Mr. David Karasick, for the General Counsel.

Carroll, Davis & Freidenrich, by *Mr. Roland C. Davis*, of San Francisco, Calif., for the Claimants.

St. Sure & Moore, by *Mr. J. Paul St. Sure* and *Mr. R. B. McDonough*, of San Francisco, Calif., for the Respondents.

STATEMENT OF THE CASE

Upon charges filed by Carroll, Davis & Freidenrich, attorneys, on behalf of employees of the retail furniture merchants named in the caption herein, a consolidated complaint was issued against the said merchants, herein collectively referred to as the Respondents, alleging that the Respondents engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) (3) and (1) and Section 2 (6) and (7) of the National Labor Relations Act (61 Stat. 136), herein called the Act. Copies of the charges, order for consolidation, complaint, and notice of hearing were duly served upon each of the Respondents and upon the attorneys for the charging parties, herein collectively referred to as the Claimants.

With respect to the unfair labor practices the consolidated complaint alleges that the Respondents and each of them, from about June 4 to July 9, 1949, "locked out and refused employment" to their respective employees because said employees, or some of them, were members and active in behalf of Master Furniture Guild, Local 1285, affiliated with Retail Clerks International Association, AFL (herein called the Union), or because of their concerted activities or the concerted activities of other members of the Union for the purpose of collective bargaining or other mutual aid or protection.

The Respondents collectively filed an answer denying the commission of the unfair labor practices set forth in the complaint and alleging that the "sales" and "shipments" of "at least eight" of the individual Respondents amounted to "less than the amounts determined by the National Labor Relations Board to be the measure of acceptance of jurisdiction by the Board."

The hearing was held at San Francisco, California, on December 18 and 19, 1950, before J. J. Fitzpatrick, the undersigned, duly designated Trial Examiner. The General Counsel, the Respondents, and the Claimants were represented by counsel.¹ All participated and were granted full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Before any testimony was taken, Attorney St. Sure moved that the complaint be amended so as to allege that the bargaining unit consisted of the grouped employers and that the group, rather than the individual respondents, committed the alleged unfair labor practices. This motion was denied as was the further motion by St. Sure to sever the complaint. At the conclusion of the hearing the parties waived oral argument but requested and were granted leave to file briefs after the close of the hearing. The San Francisco Employers' Council also requested and was granted leave to file a brief *amicus curiae*. Briefs have since been received from attorneys for the Respondents, the Claimants, and the San Francisco Employers' Council.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

¹ At the opening of the hearing, J. Paul St. Sure, attorney for the Respondents, was granted leave to intervene on behalf of certain other San Francisco retail establishments who, together with the Respondents named in the complaint, participated in the collective bargaining negotiations hereafter referred to

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENTS

The Respondents, together with 10 other employers engaged in the business of buying and selling furniture and household appliances at retail in the San Francisco, California, area, through authorized joint representatives, negotiated a collective bargaining contract on January 1, 1948, with the Union. During the year 1949, the total sales of the Respondents were in excess of \$12,400,000, of which an amount in excess of \$100,000. represented direct shipments of furniture and various household appliances from the places of business of the Respondents located in and about the city of San Francisco, California, to places outside the State of California. During the same year, the total purchases by the Respondents of furniture and household appliances which represented direct shipments from places outside California to places of business of the Respondents in and about San Francisco were in excess of \$4,600,000.²

I find, contrary to the contention in the answers, that the Respondents are engaged in commerce within the meaning of the Act.³

II. THE ORGANIZATION INVOLVED

Master Furniture Guild Local 1285, affiliated with Retail Clerks International Association, AFL, herein called the Union, is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A Background; sequence of events

All 11 Respondents herein, together with about 54 other retail furniture dealers in the San Francisco area, belong to a rather loosely formed organization known as the Retail Furniture Association of California, which has a total membership of about 400 furniture dealers throughout the State. Since 1937 the Union has bargained, usually annually, on a group basis with a number of the San Francisco area membership, the number depending on individual authorizations issued by the dealers to the Association. These authorizations ranged from 14 to 21, but never included all the San Francisco members. When the bargaining was completed, a contract with the Union was executed by the authorized agent or agents "for and on behalf of the employers named therein."

Such a contract was negotiated and signed in 1948 on behalf of 21 retailers in the San Francisco area (herein called the Companies), including the 11 Respondents named herein. The contract was effective for 1 year from January 1, 1948, but automatically renewed unless 60 days' notice was given prior to the termination date of a desire to change it.

About October 20, 1948, the Union proposed a series of amendments, including increased wage rates, and requested negotiations thereon. Pursuant to this

² Respondents' consolidated answer admitted the truth of allegations in the complaint as to the Respondents' business operations and Respondents stipulated that findings could be based thereon.

³ Although the answer suggests that certain of the individual Respondents' operations are so small that the Board normally would not assert jurisdiction against such Respondents considered as an entity, the Respondents did not press the point or offer evidence in support thereof. The above findings are on the stipulation and the admitted fact that all the Respondents were dealing as a group or unit with the Union. *The Everett Automotive Jobbers Association, et al.*, 81 NLRB 304, *Bunker Hill & Sullivan Mining & Concentrating Company, et al.*, 89 NLRB 243

request conferences were held, beginning on December 3 and up to and including February 27, 1949, between the union negotiating committee, and Ralph H. Brown, and J. Paul St. Sure, Association representatives duly designated by the Companies. During these meetings the Companies submitted a counterproposal offering, *inter alia*, a wage increase of 5 cents an hour. The conferees agreed to extend the term of the 1948 contract for 45 days to February 15, 1949,⁴ and make any amendments agreed to retroactive to January 1, 1949. Although the area of difference appeared to be only on the question of a wage increase the negotiators adjourned after the February 25 meeting without any agreement and with no arrangement for a subsequent meeting (as had been the practice at previous conferences), when the Companies announced there would be no wage increases beyond their original counterproposal of 5 cents an hour.

In early March the Union requested strike authorization against the Companies. Instead of granting strike sanction, however, the San Francisco Labor Council caused the conferees to resume negotiations before George W. Johns, assistant secretary of the Council. Two meetings with Johns resulted on a general agreement on all matters except wages. The union committee insisted that 5 cents an hour increase was inadequate for the lower paid employees and suggested that the Union Furniture Company which had most of its employees in the lower brackets, was holding up the negotiations, but the Companies refused to change their position as to wages.

After the conclusion of two meetings before Johns, the Union prepared a job reclassification of employees which it submitted to the Companies. On May 13, the latter's representatives turned down the reclassification proposal and stated that the 5 cents an hour increase would have to be accepted by June 1, 1949, or it would be withdrawn. The union representatives announced that such an attitude on the part of the Companies might result in a strike, probably against the Union Furniture Company. St. Sure replied that if such action was taken against Union Furniture Company the other Companies would close.

Following written confirmation of the Companies' position, another conference, apparently sponsored by Johns of the Council and also attended by a Mr. Vail, representing the International Union, was held on May 26. Johns suggested arbitration of the wage differences. The Union agreed to arbitrate but the Companies rejected the proposal. Johns made another attempt to get the parties to agree on June 3. At that time St. Sure changed the Companies' offer from 5 cents an hour increase to \$10 a month.⁵ The Union rejected the offer and announced that Union Furniture Company would probably be struck the next day.

About 7:30 a. m. on June 4, the Union placed pickets at the warehouse and two stores of Union Furniture Company. None of the union employees of that company reported for work thereafter until the strike was settled on July 7. No employees of the other companies struck. Nor was there any attempt to boycott the other companies. However, when the employees of the Respondents herein reported for work on the morning of June 4, they were notified by their respective employers, by pamphlets or letters, that the store was closed. The

⁴The contract was later further extended first to March 10, then through April 10, 1941. Prior to April 10 it was agreed by the conferees orally that the contract terms would remain in effect so long as the "negotiations continued."

⁵The difference between the 5 cents an hour increase and the \$10 a month would have meant about \$1.50 additional each month per employee

notice handed to the employees of Sterling Furniture Company is identical to that sent out to most of the companies, excepting Redlick. and reads as follows:

To our employees:

JUNE 3, 1949.

Since 1937 the furniture stores listed below have had a master collective bargaining contract with Retail Clerks Local Union #1285 AFL. Annual negotiations for modification of the agreement have been in progress for more than six months. The final offer of the employers was to increase contract salaries \$10.00 per month in all classifications (salespeople and office employees). The union's final demand was for increases ranging from \$16.00 to \$38.00 per month

The union has determined to strike to enforce its demands. Consequently, the following listed stores will be closed until further notice due to strike action of Clerks Local #1285:

Davis Furniture Company
Doyle Furniture Company
Lachman Brothers
Milwaukee Furniture Co.
Mission Carpet & Furniture
Frank Newman Co
Redlick's Furniture

Shaffs Furniture Co.
San Francisco Furniture Co.
Sterling Furniture Co.
Union Furniture Co.
Waxman Furniture Co.
J. H. Wylie Furniture

THE MANAGEMENT,
Sterling Furniture Company.

A similar notice was sent to the employees of Redlick,⁶ wherein it was stated "in our view a strike against any one of the group is a strike against all in the bargaining group.

Waxman Furniture Company was included in the list of stores that were to close apparently through error. Actually, Waxman remained open from June 4 through July 9, as did also eight other retailers who had participated in the negotiations as above set forth. On June 4, the Respondents inserted the following advertisements in local newspapers:

To the residents of the San Francisco Bay Area:

Since 1937 the furniture stores listed below have had a master collective bargaining contract with Retail Clerks Local Union #1285 AFL. Annual negotiations for modification of the agreement have been in progress for more than six months.

The final offer of the employers was to increase salaries \$10.00 per month in all classifications (salespeople and office employees). The union's final demand was for increases ranging from \$16.00 to \$38.00 per month.

The union has determined to strike to enforce its demands. Consequently, the following listed stores will be closed until further notice due to the strike actions of Clerks Local #1285.

We regret that our customers may be inconvenienced and will give notice of reopening as soon as a fair and reasonable basis for operation is achieved.

On June 9, 1949, the attorneys for the Claimants wrote each Respondent by registered mail as follows:

⁶ Apparently, the same concern which appears as Respondent, Redlick-Newman Co., in the caption of the complaint.

As you have known since Saturday, June 4, 1949, your employees who are members of Master Furniture Guild #1285 and covered by the collective bargaining contract of January 1, 1948, between your firm and the Guild, have been ready, willing and able to continue their employment with you.

This communication is to advise you officially that these employees remain continuously available for such employment and application is hereby made on their behalf for immediate reinstatement on their jobs.

If you do not intend to accept this application, please advise the undersigned of your reasons.

This application for reinstatement should be considered as continuously on file with you and will be immediately fulfilled by any or all of the employees for whom it is made upon notification by you directly to the employees or to the Master Furniture Guild or the undersigned.

St. Sure, on behalf of the Respondents, replied to this letter on June 13, 1949, as follows:

The members of the San Francisco Furniture Store group who are represented by this office in negotiations for a renewal of the master contract with Retail Clerks Local No. 1285 have forwarded to me your letters of June 9, 1949, requesting reemployment of members of that local.

As your letter states, the employees are those covered by the collective bargaining contract of January 1, 1948, which was executed by Ralph A. Brown as a master contract and by Jack Sparlin on the same basis. Since negotiations for renewal have been carried on, at the special request of the union, on the basis of the group unit, and since the union made no separate demands on Union Furniture Company prior to the strike, we regard the strike as one against all of the employers. We have so notified the individual employees concerned.

On June 16, the Union, through its Secretary, Jack H. Sparlin, sent the Union Furniture Company the following letter:

It has come to our attention through reports from our members and from a communication from your attorney to our attorney, that you have taken the position that you were not aware of the proposals of the Union for settlement of our strike against your company. Apparently some point is made by you of the fact that you had not been served directly with these proposals. We had been led to believe that you were made fully aware of all of the events occurring in the negotiations by your attorney, but if such has not been the case and you in fact desire to be served directly with the proposed agreement, the terms of which were given to your attorney prior to the strike, we are happy at this time to accommodate you in this respect.

There is herewith enclosed a copy of a proposed agreement between your firm only and our Union which, if and when executed, will provide the basis for immediate termination of the strike now in progress against your firm.⁷

Strike bulletins issued by the Union during the period from June 4 to July 9 stated that the strike against Union Furniture Company was due to the failure of the negotiations with the groups of employers and that the closing of the stores of each of the Respondents constituted a lockout against its employees. On July 7, the wage dispute with the Union was settled, the strike against Union Furniture Company was called off, and the employees engaged therein had returned to work by July 9. The settlement was embodied in a new contract

⁷ The inclosed agreements contained the same terms as the Union had submitted to the Companies prior to the strike.

which was formally executed in August 1949, effective as of January 1, 1949, and current at the time of the hearing.⁸ On or about July 9 the Respondents resumed operations and their employees were returned to work.

The General Counsel contends that the action of the Respondents, and each of them, in closing their respective places of business from June 4 to July 9, 1949, constituted a discriminatory lockout of their employees. It is the Respondents' position as stated in their brief that the Union "declared war" on the employers' group with which it was engaged in collective bargaining by striking one of them and that as a consequence the Respondents merely treated all employees as strikers until the bargaining was settled by a master contract.

B. Conclusion

The General Counsel and the Claimants cite *Morand Brothers Beverage Company, et al.*, 91 NLRB 409, decided by the Board in September 1950, as decisive of the issues herein. The Respondents, as well as the Employers Council, which as above found filed a brief as *amicus curiae*, also refer to *Morand*, but contend that the facts herein are not on all fours with that decision. In the *Morand* case the Board found that the discharge of all salesmen employed by members of a liquor dealers association because the union called a strike against one member thereof following an impasse in association-wide bargaining negotiations constituted a violation of Section 8 (a) (3) of the Act.

It is quite true, as the Respondents point out, that there are factual differences in the two cases. In *Morand* the Board found that the employees were discharged, whereas here the employees of the Respondent were laid off. I do not regard it as controlling, or even significant, on an issue of discriminatory treatment that the facts disclose a temporary layoff and not an outright discharge. Of course a temporary layoff is not as serious a matter to the employees involved as an outright discharge would be, but whether the separation from employment is permanent or temporary is a matter of degree. In either event the employees have been, during the period, deprived of their means of livelihood. The real question is *why* were they not working?

The Respondents also argue that in *Morand* the union sought to eliminate group bargaining by negotiating with individual employers and striking one of them, thus attempting to coerce the employers in the selection of their bargaining representative, but in the instant case no separate negotiations were sought nor was any attempt made to interfere with the employers' selection of a representative. However, in the *Morand* decision the Board did not find that the union coerced the employers in the selection or retention of their bargaining representative. Furthermore, in that case the Board clearly indicated that it did not regard separate negotiation efforts of the union as materially affecting the fundamental bargaining position of the parties when it said:

We are unable, on this record, to agree that the Local in this case sought to, or did, coerce any of the Respondents to resign from their Associations or to revoke their designations of the Associations as their bargaining agents. The action of the Local in seeking to bargain on a single-employer basis was not inconsistent with retention by the Respondents of their membership in their Associations nor, indeed, with the resumption of association-wide bargaining at an appropriate time. As we have already pointed out, the Local was not concerned with the Respondents' membership in the Associations, it was interested only in executing a satisfactory contract.

⁸ All the Respondents, and Union Furniture, through their representatives executed the contract.

That no separate negotiations were held or attempted in the instant case strengthens rather than weakens the applicability of the *Morand* doctrine.⁹ Reduced to the bare essentials the Respondents seek immunity for locking out their employees because Union Furniture, engaged with them in joint bargaining with the Union, was struck after the negotiations reached an impasse. In other words, Respondents say that, Union Furniture *employees* having struck, all other *employers* in the bargaining group had the right to close their respective plants to their employees as constructive strikers. As stated by the Board in *Morand*, "To hold that employees in a multiemployer unit who remain at work may be treated as strikers, solely because of a strike by other employees," would inject a new and unwarranted "concept in labor relations." The Board's holding, previous to *Morand*, that an employer cannot engage in conduct proscribed by the Act in order to prevent a strike, even though there is economic justification for such conduct, has met with judicial approval.¹⁰ Certainly withholding employment from employees comes well within the proscription.¹¹

I find, therefore, in line with the *Morand* decision above referred to, that the Respondents, and each of them, by closing their plants to their employees on June 4 to July 9, 1949, have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 and in violation of Section 8 (a) (3) and (1) of the Act.

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents, and each of them, set forth in Section III, above, occurring in connection with the operations of the Respondents 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

Having found that the Respondents have engaged in certain unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondents discriminated in regard to the tenure of employment of their employees by locking them out from June 4 to July 9, 1949. Although each of these employees has been reinstated, he is entitled to reimbursement for working time lost as a result of the discriminatory action. It will therefore be recommended that each of the Respondents make whole each of its employees for any loss of pay or commission he may have suffered by reason of the discrimination against him, by payment to him of a sum of

⁹ The Respondents claim that the extension agreement had not expired on June 4 when Union Furniture was struck. As previously found, the old contract was in effect so long as negotiations continued. May 13 the Companies announced that their wage increase offer of 5 cents an hour would have to be accepted by June 1 or it would be withdrawn. The Union had reiterated almost from the start of the negotiations that the 5 cents increase was inadequate and not acceptable. so on May 13 it told the Companies' representative that Union Furniture probably would be struck. It is true that after the June 1 deadline the Companies renewed their previous wage increase and in fact increased the offer slightly. but the renewed offer was promptly rejected and the Companies informed that the Union Furniture strike would start the next day. It is found that the negotiations had stalemated by June 3.

¹⁰ *Star Publishing Company*, 97 F. 2d 465, *Fred P. Weissman*, 170 F. 2d 952, cert. den. 336 U. S. 972.

¹¹ Respondents do not contend that their employees were locked out because the Respondents found it unprofitable to operate while Union Furniture was being struck. It is also noted that all the employers included in the bargaining group (referred to herein as the Companies) did not withhold employment, or close their plant while Union Furniture was being struck.

money equal to that which he normally would have earned in such position from the date of discrimination against him to the date of his reinstatement, less his net earnings during said period.¹² Each Respondent to make available to the Board, upon request, payroll and other records to facilitate the checking of the amount of back pay due.¹³

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

CONCLUSIONS OF LAW

1. Master Furniture Guild, Local 1285, affiliated with Retail Clerks International Association, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The Respondents, and each of them, by discriminating in regard to the tenure of employment of its employees, thereby discouraging membership in Master Guild, Local 1285, affiliated with Retail Clerks International Association, AFL, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondents, and each of them, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. 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.]

¹² *Crossett Lumber Co.*, 8 NLRB 440; *Republic Steel Company*, 311 U. S. 7.

¹³ *F. W. Woolworth Company*, 90 NLRB 289.

ANDERSON-WAGNER, INC. *and* WALTER STANLEY KACZMAREK, PETITIONER *and* LOS ANGELES BUILDING AND CONSTRUCTION TRADES COUNCIL; LOS ANGELES COUNTY DISTRICT COUNCIL OF CARPENTERS; MILLMEN AND CABINET MAKERS LOCAL NO. 721, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; BROTHERHOOD OF PAINTERS, LOCAL UNION NO. 792, DECORATORS AND PAPER HANGERS OF AMERICA; LOCAL UNION NO. 371, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; LOCAL UNION NO. 196, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; LOCAL UNION NO. 108, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; LOCAL NO. 250, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE U. S. AND CANADA, A. F. L.; AND LOCAL NO. 508, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE U. S. AND CANADA, A. F. L. *Case No. 21-RD-123. May 3, 1951*

Decision and Order

Upon a decertification petition duly filed, a hearing was held before Ben Grodsky, hearing officer. The hearing officer's rulings made at 94 NLRB No. 48.