IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that Respondent refused to bargain with the Union in violation of Section 8 (a) (5) and (1) of the Act.

IT IS FURTHER ORDERED that Respondent's motion for reconsideration be, and it hereby is, denied in all other respects.

MEMBERS MURDOCK and STYLES took no part in the consideration of the above Order Amending Decision and Order.

L. RONNEY & SONS FURNITURE MANUFACTURING CO., A CO-PARTNERSHIP CONSISTING OF LEWIS RONNEY, LILLIAN RONNEY, SAM RONNEY, AND MILTON RONNEY *and* SUSIE CLINTON, LEWIS HARRISON, FLORENCE JOHNSON, HELEN MONTGOMERY, ZULA PIPKIN, MIKE SENDEJAS, LUCILLE SIMS, AND HAROLD J. SUSHAN *and* FURNITURE WORKERS UNION, LOCAL NO. 3161 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, AFL, PARTY TO THE CONTRACT. *Case No. 21-CA-403. December 29, 1951*

Supplemental Decision and Amendment of Order

On March 30, 1951, the Board issued its Decision and Order [1] in the above-entitled matter, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and ordering that it cease and desist therefrom and take certain affirmative action, as set forth therein. On its own motion, the Board has reconsidered its decision in this proceeding, and hereby modifies and amends its Decision and Order in the following respects:

1. In its Decision, the Board affirmed the Trial Examiner's conclusion that the Respondent discriminatorily refused to rehire its former employees because of their membership in Local 576. The Board found, *inter alia*, that the Respondent thus discriminated against Harold J. Sushan, one of the charging parties in this case. The record, however, discloses that in January 1949 the Respondent called Sushan back to the plant and offered to put him back to work, though at a reduced rate of pay, corresponding to the rates which the Respondent was then paying its employees. Sushan, who had learned of another employment opportunity, did not give an immediate answer, but requested a few days to think it over. When he returned a few days later, the Respondent informed him that his job had already been filled.

[1] 93 NLRB 1049.

It is thus clear that the Respondent did not refuse to rehire Sushan, but in fact offered him reemployment, which he did not elect immediately to accept. This offer of reemployment was made at the time when the Respondent was restaffing its plant after the November 1948 shutdown, and occurred before the representation and union-authorization elections pursuant to which the Respondent and Local 3161 entered into a closed-shop contract.[2] As it appears that, unlike the later offers of reemployment hereinafter discussed, the offer to Sushan thus entailed no requirement of membership in Local 3161, we find that this offer of reemployment was a valid one, and that the Respondent did not discriminate against him. We shall therefore dismiss the complaint insofar as it alleges that the Respondent discriminated by failing to offer reemployment to Harold J. Sushan.

2. At the hearing, Susie Clinton, also one of the charging parties, credibly testified that she received a letter from the Respondent on August 22, 1949, requesting her to return to work. She did not respond to the letter because she was then working at another job. Although this job was at less pay than she had earned at the Respondent's plant, she then preferred it and said that she was "happy where I was." However, she was laid off from the job in November 1949, and testified at the hearing that she wanted to go back to work for the Respondent.

Although the Respondent's offer of reemployment to Clinton in August 1949 was not an unconditional one, but was subject to the union-security provisions of its April 5, 1949, contract with Local 3161, Clinton did not assert this as a reason for not wishing to return. Instead, her testimony discloses that there were other reasons, unrelated to the conditional nature of the Respondent's offer, that motivated her election at that time not to accept the Respondent's offer of reemployment. It thus appears that she would not have accepted the Respondent's offer, even had it been unconditional. In these circumstances, we shall not direct that Clinton be reinstated, and shall order only that she be made whole for loss of pay from the date of the Respondent's discrimination against her to the date of the Respondent's August 1949 offer of reinstatement.[3]

3. Lewis Harrison likewise received a letter from the Respondent on August 22, 1949, requesting him to return to work. A day or two later, he went to the plant and talked with Sam Ronney, who offered to put him back on his regular job. As Ronney could not assure him that the job would provide sufficiently steady employment, Harrison was unwilling to quit a course of "G. I." training in which he was then engaged, and refused the reemployment offer. Thus Harrison, like Clinton, was offered reinstatement by the Respondent, but refused it for

[2] See footnote 5 of the Board's Decision and Order, *supra*.
[3] *Eagle-Picher Mining & Smelting Company*, 16 NLRB 727, 811.

reasons clearly unrelated to the conditional nature of the offer. We shall not direct that he be reinstated, and shall award back pay to him only to the date of the Respondent's offer of reinstatement.[4]

4. Mike Sendejas received a letter from the Respondent on November 5, 1949, offering him reinstatement. He was then employed at another furniture factory, and did not respond to the offer. At the hearing, he asserted, as among the reasons for not having accepted the Respondent's offer, that the Ronney plant was then under contract with the AFL. He indicated that if the offer had been made before he procured his present job, he would have returned to the Respondent's plant. But he also said that he thought he would not have "much of a chance" at the Ronney plant because he had filed a charge with the Board. In view of Sendejas' express awareness of the conditional nature of the Respondent's reinstatement offer (i. e., that the plant, as he testified, was "under the A. F. of L." at the time the offer was made), we do not believe it to be clearly established that he would have rejected the offer in any event and regardless of the requirement of membership in Local 3161. In these circumstances, we shall not modify but shall reaffirm our decision as to Sendejas, finding that the Respondent discriminated against him by refusing to rehire him, and that the Respondent failed to make him an adequate or valid offer of reemployment, and directing that he be offered reinstatement and made whole for any loss of pay from the date of the discrimination against him to the date of a valid offer of reinstatement.

5. In its decision, the Board also affirmed the Trial Examiner's conclusion that the Respondent assisted Local 3161 in violation of Section 8 (a) (2), including, among the grounds for such finding, that the Respondent prepared and submitted a list of its employees with up-to-date addresses for the known purpose of aiding Local 3161 to solicit the employees to abandon Local 576 and to join the AFL.

We have reexamined the record as it relates to this finding, and have noted that in August or September 1948, when the list of employees was transmitted by the Respondent's labor relations consultant to the Council's business representative, and when the Respondent's employees were circularized by letter from the Council seeking their allegiance to the AFL, Local 3161 was not engaged in soliciting membership among these employees. Local 2488 was being, or had been, organized to seek membership among the employees of certain firms whose employees had been represented by Local 576 of the CIO. However, the Council's letter, used to solicit the Respondent's employees, purported to solicit membership not in a local but in the Council itself, and the application card which accompanied the letter was likewise for membership in the Council. Local 3161 was then affiliated with the Council, as

[4] *Eagle-Picher Mining & Smelting Company, supra.*

shown by the Council's letterhead under which this letter was circulated. And Local 3161 eventually became the successor of Local 2488, receiving Local 2488's members by transfer upon the latter's dissolution. In these circumstances, we reaffirm our finding that by preparing and submitting a list of its employees, the Respondent unlawfully assisted Local 3161.

Order

IT IS HEREBY ORDERED that the Board's Order in this case be, and it hereby is, amended by striking therefrom subparagraph (a) of paragraph numbered 2, and substituting in lieu thereof the following:

> (a) Offer to Florence Johnson, Helen Montgomery, Zula Pipkin, Mike Sendejas, and Lucille Sims immédiate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges; make them whole in the manner set forth in the section entitled "The Remedy" for any loss of pay they may have suffered by reason of the Respondent's discrimination against them; and make Susie Clinton and Lewis Harrison whole for any loss of pay they may have suffered by reason of the Respondent's discrimination against them, in each case for the period from the date of such discrimination to the date of the Respondent's offer of reemployment as set forth in this Supplemental Decision.

IT IS HEREBY FURTHER ORDERED that the notice required to be posted by the Respondent, attached as Appendix A to the Board's original Decision and Order in this case, be, and it hereby is, amended by striking the third paragraph from such notice and substituting in lieu thereof the following:

> WE WILL OFFER to the following named employees immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights or privileges previously enjoyed: Florence Johnson, Helen Montgomery, Zula Pipkin, Mike Sendejas, and Lucille Sims. We will make whole the foregoing employees, Susie Clinton, and Lewis Harrison for any loss of pay suffered as a result of the discrimination against them.

IT IS HEREBY FURTHER ORDERED that the complaint herein be, and it hereby is, dismissed insofar as it alleges that when the Respondent resumed operations, on or about January and February 1949, it failed and refused to reemploy Harold J. Sushan, in violation of Section 8 (a) (3) of the Act.

MEMBERS MURDOCK and STYLES took no part in the consideration of the above Supplemental Decision and Amendment of Order.