

Appendix A

NOTICE TO ALL MEMBERS OF PLUMBERS AND STEAMFITTERS UNION, LOCAL No. 393,
AND TO ALL EMPLOYEES AND PROSPECTIVE EMPLOYEES OF ANDERSON AND ROWE,
INC.

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 members and the employees of ANDERSON AND ROWE, INC., that:

WE WILL NOT cause or attempt to cause ANDERSON AND ROWE, INC., or its successors and assigns, to discriminate against Sebastian Fidone or any other employee or prospective employee in violation of Section 8 (a) (3) of the Act.

WE WILL NOT restrain or coerce employees or prospective employees of ANDERSON AND ROWE, INC., its successors or assigns, in their exercise of the right to refrain from any or all of the concerted activities listed in Section 7 of the Act, except to the extent that such right may be affected by the proviso in Section 8 (b) (1) (A) of the Act, or by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

WE WILL notify in writing ANDERSON AND ROWE, INC., that we withdraw our objection to the employment by it of Sebastian Fidone as a plumber on the Sterne and Price Project, Santa Clara County, California, and will request ANDERSON AND ROWE, INC., to offer Sebastian Fidone employment as a plumber on that project.

WE WILL notify Sebastian Fidone that we have advised ANDERSON AND ROWE, INC., that we withdraw our objection to his employment as a plumber on the Sterne and Price Project, Santa Clara County, and that we request ANDERSON AND ROWE, INC., to offer him employment as a plumber on that project.

WE WILL make Sebastian Fidone whole for any loss of pay suffered by him as a result of our having caused his discharge by ANDERSON AND ROWE, INC., on the Sterne and Price Project, Santa Clara County, California.

PLUMBERS AND STEAMFITTERS UNION,
LOCAL No. 393

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.

INTERNATIONAL BROADCASTING CORPORATION (KWKH) and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL. *Case No. 15-CA-312. February 17, 1953*

Amendment to Decision and Order

On May 16, 1952, the Board issued its Decision and Order in the above-entitled case,¹ finding that the Respondent had engaged and was

¹ 99 NLRB 130.

102 NLRB No. 146.

engaging in certain unfair labor practices, and ordering the Respondent to cease and desist therefrom and take certain affirmative action. On December 17, 1952, the Board issued a notice to the parties to show cause, on or before December 29, 1952, why it should not quash certain subpoenas issued by the Trial Examiner at the hearing in this case, which were addressed to the representative of the General Counsel at that hearing, directing him to produce certain documents in his files. The Respondent has filed a response to this notice, referring the Board to the portions of the record of the hearing setting forth the positions of the Respondent and the General Counsel with regard to the issuance of, and compliance with, the foregoing subpoenas.

The Board has considered the Respondent's response to its notice to show cause and the entire record in this case, insofar as relevant to the instant matter, and, supplementing its Decision and Order herein, makes the following additional findings of fact and order:

After the General Counsel² had rested, and during the course of the presentation of Respondent's case, Respondent's counsel requested the Trial Examiner to issue a subpoena to the General Counsel requiring him to produce from his files a copy of a pretrial affidavit obtained by a field examiner for the Board from Marshall, one of the General Counsel's witnesses. The Trial Examiner issued the subpoena, as requested. The General Counsel then moved to revoke the subpoena, on the broad ground that the Respondent had no legal right to have the affidavit in question produced, and also on the ground that compliance with the subpoena would violate Section 102.90 of the Board's Rules and Regulations, effective March 1, 1951.³ Respondent's counsel at this point asserted that he required the copy of the affidavit "in connection with the defense of charges" against the Respondent, and that he desired an opportunity "to examine this affidavit for the purpose of seeing whether or not all of the facts in the possession of Mr. Marshall have been produced at this hearing, all of the facts that are relevant to the issues in this case." The Trial Examiner thereupon denied the General Counsel's motion to revoke the subpoena, but declined to direct the General Counsel to comply therewith, in view of the provisions of Section 102.90 of the Board's Rules.

² As used hereinafter, the term "General Counsel" refers to the attorney who acted for the General Counsel at the hearing.

³ This section of the Rules provides, in pertinent part:

No . . . attorney . . . whether officer or employee of the Board shall produce or present any files, documents, reports, memoranda, or records of the Board . . . whether in answer to a subpoena duces tecum or otherwise, without the written consent of . . . the general counsel if the official or document is subject to the supervision or control of the general counsel. Whenever any subpoena or subpoena duces tecum, calling for records . . . as described hereinabove shall have been served upon any such persons . . . , he will, unless otherwise expressly directed by . . . the general counsel . . . appear in answer thereto and respectfully decline [by] reason of this rule to produce or present such files, documents, memoranda, or records of the Board . . .

In response to the Respondent's request that the Board take action to enforce the subpoena, the Trial Examiner stated, in effect, that such request was in the record for consideration by the Board. The Respondent's request that the proceeding be adjourned to permit it to seek enforcement of the subpoena was denied by the Trial Examiner.

Under circumstances similar to those recited above, the Trial Examiner, at the Respondent's request, also issued a subpoena to the General Counsel directing him to produce copies of all affidavits in his possession obtained in the investigation of the case; the General Counsel complied with this subpoena as to affidavits obtained from certain of Respondent's witnesses, but moved to revoke the subpoena as to all other affidavits sought; the motion to revoke was denied, and no action was taken by the Trial Examiner on the Respondent's request that the subpoena be enforced.

The Respondent excepted to the Intermediate Report on the ground, among others, that the General Counsel had not complied with the foregoing subpoenas, and that the documents subpoenaed were necessary to the defense of the case.

The witness Marshall and any other witnesses whose statements were subpoenaed testified at the hearing and were cross-examined at length by the Respondent. The Respondent has shown no reason for believing that these witnesses had withheld any relevant information. So far as appears from the record, the documents were subpoenaed by the Respondent only on the chance that it might discover therein some evidence favorable to the Respondent which had not been disclosed at the hearing. In declining to permit such "fishing expeditions," the Federal courts have held that a party has no absolute right to compel the production by an adverse party of written statements, which, as in the instant case, were not used in court, but solely in preparation for trial,⁴ particularly where the statements are part of the Government's files.⁵

We conclude, therefore, that it is within the Board's discretion to revoke the instant subpoenas.⁶ In the exercise of this discretion, we have determined to revoke the subpoenas, in view of the following considerations:

Apart from the question whether the instant subpoenas sought to "invade the privacy of [the General Counsel's] course of prepara-

⁴ *Goldman v. United States*, 316 U. S. 129, 132, affg. 118 F. 2d 310, 315 (C. A. 2); *N. L. R. B. v. Quest-Shon Mark Brassiere Co.*, 185 F. 2d 285, 289-90 (C. A. 2). See, also, *Hickman v. Taylor*, 329 U. S. 495, 508, 509. In the *Quest-Shon Mark* case, the court sustained the action of the Trial Examiner in quashing subpoenas which, as in the instant case, required the General Counsel to produce pretrial statements of witnesses.

⁵ *Goldman v. United States*, *supra*.

⁶ We find nothing in Section 11 (1) of the Act which denies to the Board the power to revoke subpoenas within its discretion. While prescribing the conditions under which the Board is required to revoke a subpoena, that subsection does not preclude the Board from revoking subpoenas in its discretion for reasons not specified therein.

tion,"⁷ there was no showing as to the Respondent's purpose in seeking the production of the witness' statements other than the general allegation that it needed the statements for the defense of the case and the assertion at the hearing that inspection of the statements might disclose relevant evidence which had not been adduced at the hearing. Absent any other showing as to the necessity for the production of these statements, and in view of the availability at the hearing of the witnesses whose statements were subpoenaed, we find insufficient reason to grant the Respondent's request that the subpoenas be enforced, and they will be revoked.⁸

Order

IT IS HEREBY ORDERED that the subpoenas issued by the Trial Examiner at the hearing in this case, directed to the General Counsel, be, and they hereby are, revoked.

MEMBER HOUSTON took no part in the consideration of the above Amendment to Decision and Order.

⁷ See *Hickman v. Taylor*, *supra*, at p. 512.

⁸ See *N. L. R. B. v. Quest-Shon Mark Brassiere Co.*, *supra*, at pp. 289-290.

MRS. ALMA DORAN D/B/A DORAN NUT SALES COMPANY and BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL No. 240, AFL. *Case No. 30-CA-222. February 18, 1953*

Decision and Order

On September 5, 1952, Trial Examiner Howard Myers issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices in violation of Section 8 (a) (1) and (5) of the Act, 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 requested oral argument. Inasmuch as the record, in our opinion, adequately reflects the issues and the positions of the parties, this request is hereby denied.

The Board¹ 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 Respondent's exceptions, and the entire record in this case, and

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 Murdock and Peterson].