the Respondent for satisfaction. Cf. Boston Herald-Traveler Corp., 102 NLRB 627 (request for data, withdrawn during the course of the negotiations, cannot be made the basis of a charge of refusal to furnish; and reiteration of the incident in the charge is not a new demand).

It is found that by refusing to supply the Union with information as to the names, classification, wage rates, and seniority of employees in the appropriate unit, and notification of changes in their status, the Respondent refused to bargain collectively with the Union, thereby interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

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 Respondent 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 Respondent has refused to bargain with the Union by refusing it certain wage data, it will be recommended that, in order to effectuate the policies of the Act, the Respondent furnish the Union with the following information: (1) The name, classification, seniority, and wage rate of each employee in the appropriate unit; and (2) notification of any change in the status of such employees.

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

CONCLUSIONS OF LAW

1. Lodge 1021, International Association of Machinists, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.
2. All production and maintenance employees of Respondent employed at its New Britain plant, exclusive of guards, watchmen, office and clerical employees, rate setters, time setters, expediters, stock chasers, dispatchers, timekeepers, cafeteria employees, technical department employees consisting of engineers, draftsmen, designers, detailers, tracers, blueprint and photostat machine operators, professional employees, salesmen, and all supervisors as defined in Section 2 (11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.
3. At all times since October 28, 1948, the Union has been the exclusive representative for purposes of collective bargaining of all the employees in the aforesaid appropriate unit, within the meaning of Section 9 (a) of the Act.
4. By refusing to provide the Union with information as to (1) the name, classification, seniority, and wage rate of each employee in the appropriate unit; and (2) notification of any change in status of such employees, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and 8 (a) (1) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

STERLING FURNITURE COMPANY *and* CHARLES O. BARNES

CARPET, LINOLEUM & SOFT TILE WORKERS, LOCAL NO. 1235 *and* CHARLES O. BARNES. Cases Nos. 20-CA-350 and 20-CB-109. June 18, 1953

SUPPLEMENTAL DECISION, RECOMMENDATION, AND AMENDED ORDER

On April 27, 1951, the National Labor Relations Board issued a Decision and Order in these cases,[1] in which it found that

---

[1] 94 NLRB 32.

Sterling Furniture Company, herein called the Respondent Company, and Carpet, Linoleum & Soft Tile Workers, Local No. 1235, herein called the Respondent Union, had engaged in and were engaging in certain unfair labor practices affecting commerce, and ordered them to cease and desist therefrom and to take certain affirmative remedial action.

The Board found, inter alia, that the Respondent Company, a member of the Retail Furniture Association of California, herein called the Association, lent its support to the Respondent Union in recruiting and maintaining membership, in violation of Section 8 (a) (2) and (1) of the Act, by maintaining a contract containing an illegal union-security provision which the Association had negotiated and executed with the Respondent Union on behalf of its employer members, including the Respondent Company.[2] The Board also found that the Respondent Union violated Section 8 (b) (2) of the Act by maintaining and enforcing its illegal contract with respect to the Respondent Company. To remedy these unfair labor practices, the Board directed the Respondent Company to cease and desist from recognizing the Respondent Union or any successor thereto as the collective-bargaining representative of any of its employees unless and until the Respondent Union was certified by the Board. It further directed the Respondent Company and the Respondent Union to cease and desist from performing or giving effect to their contract until such time as the Respondent Union achieved certification. However, although the Association had, on its own motion, been permitted to intervene at the hearing, the Board's order did not require any remedial action by the Association because the Association was not named as a party in the charge or the complaint, and the complaint was not amended to include the Association as a party respondent.

The Board petitioned the United States Court of Appeals for the Ninth Circuit for enforcement of its order against the Respondent Company and the Respondent Union. On February 4, 1953, the court rendered its opinion in which it stated that "The obvious effect of the order [would be] to remove Sterling from the Association wide unit and thus to disrupt and dismember the unit." The court remanded the case to the Board, declaring that it "would not hesitate to decree enforcement of the order against Sterling if confined to a command to cease giving effect to the illegal union-security provisions, or to enforce it in its entirety against Sterling if the Association were included as well."

Pursuant to the remand by the United States Court of Appeals for the Ninth Circuit, the Board has reconsidered the entire record in this proceeding, and is convinced that under all the circumstances of these cases it would best effectuate the policies of the Act at this time not to enforce our order in its entirety against the Association, but to adopt the court's

[2] The Board further found that the Respondent Company violated Section 8 (a) (3) of the Act by discharging Barnes, the charging party, pursuant to this unlawful union-security provision

first alternative and confine our order to a direction that the Respondent Company cease giving effect to the illegal union-security provisions.

In remanding these cases to the Board, the court also expressed concern lest the scope of the order directed against the Respondent Union prevent it from executing union-security provisions, unlawful under the Act but permissible under State law, with employers not subject to the Act. Paragraph 2 (a) (1) of our order and notice directed the Respondent Union to cease and desist from:

> (1) Performing or giving effect to its contract of October 15, 1949 with Retail Furniture Association of California, San Francisco Unit, insofar as it affects employees of the Respondent Company, or to the clauses of any agreement with the Respondent Company, or any other employer, which requires employees to join, or maintain their membership in, the Respondent Union as a condition of employment, unless such agreement has been authorized as provided in the Act. (Emphasis supplied.)

In this connection, the court observed that:

> Insofar as this paragraph precludes the Union from giving effect to this or any invalid union-security clause in its relations with the Association, or any of its members, the paragraph is obviously appropriate. However, the language is so broad as to prohibit activity of the Union which may be entirely lawful. As the Union points out, the law of California does not prohibit union shop or closed shop arrangements. The Union says it has similar agreements with some 80 or 90 small establishments whose businesses do not affect interstate commerce. The prohibition against 'any agreement with any other employer' requiring membership in the Union as a condition of employment might well, as a practical matter, restrain the Union in respect of its lawful activities. . . . In borderline situations the Union can not know until the Board or this court has spoken whether its closed or union shop agreements are valid or invalid, so it is required to proceed more or less in terrorem or, as an alternative, to forego freedom of action which in good faith it deems itself entitled to take.

In our opinion, the Respondent Union need not be apprehensive that the scope of the order restrains it from executing union-security agreements with employers not engaged in interstate commerce. In 1951, after a prolonged study of cases in which the question of jurisdiction had been involved, the Board issued a series of unanimous decisions setting forth specific criteria designed to serve as guides for any interested person in determining whether or not the Board will assert

jurisdiction over a particular enterprise.[3] These guides are available to the Respondent Union whereby it can readily determine whether or not an employer with whom it desires to execute a union-security provision not sanctioned by the Act is one over which this Board would assert jurisdiction.

RECOMMENDATION

Upon the basis of this Supplemental Decision and the entire record in these cases, the National Labor Relations Board hereby respectfully recommends to the United States Court of of Appeals for the Ninth Circuit that the Amended Order and the related notice provisions be enforced as issued.

AMENDED ORDER

Upon the basis of the entire record in these cases, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. The Respondent Sterling Furniture Company, San Francisco, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Performing or giving effect to the clauses in the contract of October 15, 1949, between Retail Furniture Association of California, San Francisco Unit, of which the Respondent Company is a constituent member, and Carpet, Linoleum & Soft Tile Workers, Local No. 1235, covering the employees of the Respondent Company's San Francisco store, which require its employees to join, or maintain their membership in, the Respondent Union as a condition of employment, unless such agreement has been authorized as provided in Section 8 (a) (3) of the Act.

(b) Encouraging membership in the Respondent Union, or in any other labor organization, by discriminatorily discharging, refusing to reinstate, or hiring, or by discriminating in

[3] The various criteria are categorized in the following Board decisions: (1) W.S.B.R., Inc., 91 NLRB 630 (instrumentalities and channels of commerce, interstate or foreign); (2) Local Transit Lines, 91 NLRB 623 (public utility and transit systems); (3) The Borden Co., 91 NLRB 628 (establishments operating as an integral part of a multistate enterprise); (4) Stanislaus Implement and Hardware Co., 91 NLRB 618 (enterprises producing or handling goods destined for out-of-State shipment, or performing services outside the State in which the firm is located, valued at $25,000 a year); (5) Hollow Tree Lumber Co., 91 NLRB 635 (enterprises furnishing goods or services of $50,000 a year or more to concerns in categories 1, 2, or 4); (6) Federal Dairy, Inc., 91 NLRB 638 (enterprises with a direct inflow of goods or materials from out-of-State valued at $500,000 a year); (7) Dorn's House of Miracles, Inc., 91 NLRB 632 (enterprises with an indirect inflow of goods or materials valued at $1,000,000 a year); (8) The Rutledge Paper Products, Inc., 91 NLRB 625 (enterprises having such a combination of inflow or outflow of goods or services, coming within categories 4, 5, 6, or 7, that the percentages of each of these categories, in which there is activity, taken together add up to 100); (9) Westport Moving & Storage Co., 91 NLRB 902 (establishments substantially affecting the national defense)

regard to the hire or tenure of employment of, any employees of its San Francisco store because of their union membership of nonmembership in Carpet, Linoleum & Soft Tile Workers, Local No. 1235, or any other labor organization.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the Respondent Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of 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.

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

(a) Offer to Charles O. Barnes immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(b) Post at its store in San Francisco, California, copies of the notice attached hereto as Appendix A.[4] Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Respondent Company's representative, be posted by the Respondent Company immediately upon receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent Company to insure that said notices are not altered, defaced, or covered by any other material.

(c) Upon request make available to the Board or its agents, for examination and copying, all payroll records, social-security payment records, timecards, personnel records, and reports, and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Amended Order.

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

B. The Respondent Carpet, Linoleum & Soft Tile Workers, Local No. 1235, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Performing or giving effect to the clauses of its contract of October 15, 1949, with Retail Furniture Association of

---

[4] In the event that this Amended Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

California, San Francisco Unit, insofar as it affects employees of the Respondent Company, or the clauses of any agreement with the Respondent Company, or any other employer, which requires employees to join, or maintain their membership in, the Respondent Union as a condition of employment, unless such agreement has been authorized as provided in Section 8 (a) (3) of the Act.

(b) In any other manner causing or attempting to cause the Respondent Company, its officers, agents, successors, or assigns, or any other employer, to discriminate against any 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) Post at its offices and meeting hall in San Francisco, California, and wherever notices to its members are customarily posted, copies of the notice attached hereto and marked "Appendix B."[5] Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Respondent Union's official representative, be posted by it immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Director for the Twentieth Region signed copies of the notice attached hereto and marked "Appendix B" for posting, the Respondent Company willing, at the Respondent Company's store, for sixty (60) consecutive days, 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 duly signed by the Respondent Union's representatives, be forthwith returned to said Regional Director for such posting.

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

C. The Respondents Sterling Furniture Company, its officers, agents, successors, and assigns, and Carpet, Linoleum & Soft Tile Workers, Local No. 1235, its officers, representatives, agents, successors, and assigns, shall jointly and severally make whole Charles O. Barnes for any loss of pay he may have suffered because of the discrimination against him, in the manner set forth in section V of the Intermediate Report entitled "The Remedy."

Chairman Herzog and Member Styles took no part in the consideration of the above Supplemental Decision, Recommendation, and Amended Order.

---

[5] See footnote 4 supra.

APPENDIX A

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT perform or give effect to the clauses in the contract of October 15, 1949, between Retail Furniture Association of California, San Francisco Unit, of which this company is a constituent member, and Carpet, Linoleum & Soft Tile Workers, Local No. 1235, covering the employees of the Respondent Company's San Francisco store, which require its employees to join, or maintain their membership in, the Respondent Union as a condition of employment, unless such agreement has been authorized as provided in Section 8 (a) (3) of the Act.

WE WILL NOT encourage membership in the above-named union, or in any other labor organization, by discriminatorily discharging, refusing to reinstate, or hiring, or by discriminating in regard to the hire or tenure of employment of any employees of our San Francisco store because of their union membership or nonmembership in the above-named union, or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of 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 National Labor Relations Act.

WE WILL offer to Charles O. Barnes immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges, and jointly and severally with Carpet, Linoleum & Soft Tile Workers, Local No. 1235, make him whole for any loss of pay suffered as a result of the discrimination against him.

All our employees are free to become or remain members of the above-named union or any other labor organization, or to refrain from becoming or remaining members in good standing 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 National Labor Relations Act.

STERLING FURNITURE COMPANY,
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.

APPENDIX B

NOTICE

TO ALL MEMBERS OF CARPET, LINOLEUM & SOFT TILE WORKERS, LOCAL NO. 1235, AND TO STERLING FURNITURE COMPANY AND ITS EMPLOYEES IN ITS SAN FRANCISCO, CALIFORNIA, STORE:

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 perform or give effect to the clauses of our contract of October 15, 1949, with Retail Furniture Association of California, San Francisco Unit, insofar as it affects employees of the Sterling Furniture Company, or to the clauses of any agreement with the Sterling Furniture Company, or any other employer, which requires employees to join or maintain their membership in the union as a condition of employment, unless such agreement has been authorized as provided in the National Labor Relations Act.

WE WILL NOT in any other manner cause or attempt to cause Sterling Furniture Company, its officers, agents, successors, or assigns, or any other employer, to discriminate against any employee in violation of Section 8 (a) (3) of the National Labor Relations Act.

WE WILL, jointly and severally with Sterling Furniture Company, make Charles O. Barnes whole for any

loss of pay suffered because of the discrimination against him.

CARPET, LINOLEUM & SOFT TILE
WORKERS, LOCAL NO. 1235,
Labor Organization.

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.

THE ABSTRACT & TITLE CO.[1] *and* TITLE EXAMINERS UNION NO. 19496 (AFL), Petitioner. Case No. 8-RC-1938. June 18, 1953

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before John Vincek, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 [Members Houston, Murdock, and Peterson].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. Petitioner seeks to represent a unit of title examiners, escrow men, reviewers, and mappers, excluding all clerical and stenographic employees, bookkeepers, and supervisors.[2] The Employer agrees as to the appropriateness of the unit except that it urges that some 13 part-time examiners out of a total of 16 part-time and full-time examiners[3] are independent contractors and should be excluded.

---

[1] The Employer's name appears as amended at the hearing.

[2] The petition originally included court and tax searchers, but this was amended at the hearing to exclude these categories on the ground that no such classification was used by the Employer.

[3] There is no issue as to the inclusion of the 3 full-time examiners, whom both parties agree should be included.