

4. By refusing on November 13, 1952, and at all times thereafter, to bargain collectively with Local 804, Delivery and Warehouse Employees Union, AFL, as the exclusive representative of all its employees in the aforesaid unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By said acts, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. 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.]

APPENDIX A

NOTICE TO ALL EMPLOYEES

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 employees that:

WE WILL NOT engage in any acts in any manner interfering with the effects of Local 804, Delivery and Warehouse Employees Union, AFL, nor negotiate for or represent the employees in the bargaining unit described below.

WE WILL bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described below with respect to wages, rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All finishers, cabinetmakers, upholsterers, apprentice upholsterers, carpetlayers and stockmen, packers, craters, porters, and maintenance men employed at the Pearson Street and 38th Street warehouses, Long Island City, New York, and heretofore represented by Local 32K, Building Service Employees Union, excluding all other employees and supervisors as defined in the Act.

LUDWIG BAUMANN COMPANY,
Employer.

Dated By.....
(Representative) (Title)

The notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

NATIONAL GAS COMPANY and UNITED GAS, COKE AND CHEMICAL WORKERS, CIO, Case No. 14-CA-480. August 20, 1953

SUPPLEMENTAL DECISION

On May 27, 1952, the Board issued a Decision and Order in this case,¹ finding that the Respondent had engaged in and was engaging in certain unfair labor practices and directing the Respondent, among other things, upon request, to bargain collectively with United Gas, Coke and Chemical Workers, CIO,

199 NLRB 273.

106 NLRB No 136.

previously certified as the exclusive bargaining representative of the Respondent's employees in an appropriate unit with respect to rates of pay, wages, hours, and other conditions of employment.

The Respondent not having complied with this Decision and Order, the Board on November 14, 1952, petitioned the United States Court of Appeals for the Eighth Circuit for the enforcement thereof. Thereafter, on February 6, 1953, the Board petitioned the court to remand the case to the Board so that it could conduct a further hearing, make findings of fact as to the alleged continuing existence of Local 340, United Gas, Coke and Chemical Workers, CIO, and if necessary, modify or amend its Order.

On February 18, 1953, the court remanded the case to the Board for such supplemental proceeding and reporting thereof to the court.

On March 12, 1953, the Board ordered the record reopened and a further hearing held "for the purpose of adducing additional evidence and the issuance of a Supplemental Intermediate Report making findings of fact as to the continued existence of Local 340, United Gas, Coke and Chemical Workers, CIO., since the issuance of the complaint." Pursuant to this order, a hearing was held before Trial Examiner Arthur E. Reyman in St. Louis, Missouri, on April 20, 1953. The General Counsel, the Respondent, and the Union were represented by counsel and all were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

On June 15, 1953, Trial Examiner Reyman issued a Supplemental Intermediate Report, a copy of which is attached, finding that Local 340 "ceased to exist as a local union of United Gas, Coke and Chemical Workers, CIO, and as an organized body, and was not in existence after the issuance of the complaint herein on December 6, 1950." Thereafter, the Respondent filed its exceptions to the Supplemental Intermediate Report and a supporting brief.

The Board² has reviewed the rulings made by Trial Examiner Reyman at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Supplemental Intermediate Report, the exceptions and brief, and the entire record in the original and supplementary proceedings, and hereby adopts the findings, conclusions, and recommendation of the Trial Examiner made in the Supplemental Intermediate Report with the following additions, correction, and modifications.³

² Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

³ We correct the following typographical error in the Supplemental Intermediate Report. William Wynn, international representative of the Union, did not testify that he "had no contract with the Local Union"; Wynn did testify, however, that he had no "contact" with the Local Union after the beginning of the strike.

We agree with the Trial Examiner's conclusion that Local 340 has ceased to exist both as a local union and as an organized body and was not in existence after the issuance of the complaint herein on December 6, 1950. The Trial Examiner based his conclusion in this regard, inter alia, on the following findings of fact, detailed in the Supplemental Intermediate Report. The Local Union had no meetings since May 8, 1950, when the membership of the Local took a strike vote. The Local held its last election of officers in June 1949. Their term of office, in accordance with the Local's bylaws, expired in June 1950. Whatever funds the Local Union had in its treasury were disbursed during the strike, which continued from May 9 to July 10, 1950. Its only bank account was closed on August 19, 1950. No local union dues were collected or accounted for after the strike began, and the last per capita tax remitted by the Local Union to the International Union was for the month of April 1950. No minutes of any meeting were kept after the aforesaid meeting of May 8, 1950, and the Local Union's minutes as well as all other records have been lost.

In addition to the foregoing facts the record in the original proceeding, in our opinion, provides an illuminating explanation for the Local Union's untimely demise. Thus, it shows, as we found in our Decision, that the Respondent, in derogation of the International Union's status as the bargaining representative of the Respondent's employees, engaged in individual bargaining with its striking employees, urged them to abandon the Union and form their own unaffiliated organization, threatened to shut down the plant or not to reemploy the strikers unless they withdrew from the International Union, and, finally, refused to deal with the International Union on the alleged ground that it no longer represented a majority of the Respondent's employees. We also found that by the end of the strike on July 10, 1950, the International Union had, to all intent and purposes, ceased to function as the bargaining representative of the Respondent's employees. We are convinced, and we find, that the foregoing conduct of the Respondent, as well as its other unfair labor practices during the strike, not only undermined the loyalty of the employees to the International Union, but necessarily also their loyalty to their local organization.

The Respondent contends that the failure of the International Union to revoke the charter of Local 340 and take other affirmative action required by the constitution of the International Union indicates that the Local Union is not dead but merely "has not been operating." We find no merit in this contention because, as found by the Trial Examiner, for almost 3 years Local 340 has not been functioning as an organized body and no longer has any members or officers.⁴ We do not

⁴See Thomas L. Green Co., 103 NLRB 1023, where the Board found that a local union was defunct, although its charter had not been revoked; United Aircraft Corporation, 85 NLRB 209, where it was found that the local union was not in existence as a functioning labor organization despite the fact that its international union had issued, but held in abeyance, its charter.

believe that the August 10, 1951, letter from Appelbaum, the International's executive officer, to the International's secretary-treasurer, supports the Respondent's contention. While Appelbaum, writing about a year after the Local Union's disintegration, described Local 340 as "the local which has been not operating" and expressed his "hope to revive it some day," he also asked the secretary-treasurer to "erase Local 340 from [his] records" (emphasis supplied). Under the circumstances, Appelbaum's statement is, in our opinion, a recognition of the fact that Local 340 had ceased to exist.

The Board's records show that prior to its disintegration Local 340 was in compliance with the filing requirements of Section 9 (f), (g), and (h) of the Act. It was in compliance on April 30, 1948, when it was certified for the purpose of entering into a union-security agreement, and from May 19, 1950, to April 8, 1951. Thus, the Local Union's compliance had not lapsed at the time the International Union filed with the Board its original and amended charges and when the complaint and amended complaint issued on such charges on December 6, 1950, and January 23, 1951, respectively. As the International Union was also in compliance at such times, this proceeding was validly instituted. Thereafter, however, and before April 8, 1951, when the Local Union's compliance lapsed, the Local Union had ceased to exist as an organized body and hence any necessity or capacity for compliance with the filing requirements of the Act had ceased. No issue of "fronting" is present in this case.

Nor is there any merit in the Respondent's contention that the International Union is not a real party in interest and that therefore no bargaining order in favor of the International Union should issue. The history of collective bargaining at the Respondent's plants shows that since its certification on April 18, 1947, the International Union has been the bargaining agent for the Respondent's employees. Certification of Local 340 on April 30, 1948, to enter into a union-security agreement with the Respondent, did not supercede the certification of the International Union as the bargaining agent. After the certification of the Local Union, the International Union with the assistance of the Local Union's committee continued to function as such agent. The last contract with the Respondent was signed both by the representatives of the committee of the Local and by the representative of the International Union. All communications during bargaining negotiations which extended from May through July 1950 were addressed to, and received from, the International Union. Indeed, in its answer to the amended complaint, the Respondent admits that since April 18, 1947, and at all times after said date until on or about May 18, 1950, the International Union was the exclusive bargaining representative of the Respondent's employees. In view of the foregoing, we find that the International Union is the real party in interest. We further find that as Local 340

has ceased to exist, our original bargaining order is appropriate.⁵

Accordingly, upon the entire record and particularly in view of our finding that Local 340 was in compliance at the time the complaint and amended complaint issued in this case and that it ceased to exist as a local union and as an organized body before its compliance status lapsed, and as the International Union has been at all stages of this proceeding, and now is, in compliance, we reaffirm our bargaining order directing the Respondent to bargain with the International Union as the exclusive bargaining representative of its employees in the unit found to be appropriate.

⁵Cf. Lane Wells Company, 79 NLRB 252; General Armature Mfg. Co., 89 NLRB 654; Cuffman Lumber Company, Inc., 82 NLRB 296; Atlanta Metallic Casket Co., 91 NLRB 1225, 1237, enforcement denied on different grounds 205 F. 2d 931 (C. A. 5); see also E. A. Laboratories, 80 NLRB 625, enfd. 188 F. 2d 855 (C. A. 2), where the Board's power to order bargaining with the international union after its local union had ceased to exist as a result of revocation of its charter by the international union was upheld by the court. The court said that "the technical rules of agency . . . are not apposite" in Board cases involving the determination of employees' representation by unions, and that the Board is preeminently qualified to decide who is the proper representative of a given group of employees.

Supplemental Intermediate Report

After the filing of a charge and amended charges by United Gas, Coke and Chemical Workers, CIO, herein called the Union, the General Counsel of the National Labor Relations Board by the Regional Director for the Fourteenth Region issued a complaint on December 6, 1950, and an amended complaint on January 23, 1951, against National Gas Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Upon the amended complaint and the answer of the Respondent, a hearing was had before a duly designated Trial Examiner who thereafter on August 3, 1951, issued his Intermediate Report. The National Labor Relations Board, herein called the Board, on May 27, 1952, issued its Decision and Order, in which it found the Respondent in contravention of the sections of the Act mentioned above. The Board ordered the Respondent to cease and desist from those unfair labor practices set forth in its Order, and to take certain affirmative action specified therein. The Respondent not having complied with its Order, the Board on November 14, 1952, petitioned the United States Court of Appeals for the Eighth Circuit for enforcement thereof. Thereafter the court, on motion, remanded the case to the Board for the purpose of conducting supplemental proceedings on certain issues.¹

¹The order of the court of appeals, dated February 18, 1953, reads as follows:

In this matter counsel for respondent has filed a Motion for an order that evidence pertaining to certain issues be taken before the National Labor Relations Board, and counsel for petitioner has filed a Motion to remove this cause from the argument calendar and to remand it to the Board for the purpose of conducting supplemental proceedings on certain issues.

The Court being fully informed, this cause is hereby stricken from the argument calendar for March 12, 1953, and is remanded to the said Board for such supplemental proceedings.

Jurisdiction of this proceeding is retained by the Court for the purpose of reviewing, if necessary, whatever order the Board may finally enter after the supplemental proceeding it proposes to conduct and report thereof to this Court.

On March 12, 1953, the Board caused an Order to be entered, reopening the record and remanding the proceedings to the Regional Director for further hearing.²

Pursuant to notice, a hearing was held before the undersigned Trial Examiner at St. Louis, Missouri, on April 20, 1953. At this hearing, the Respondent and the General Counsel were represented by counsel, and the Union was represented by counsel and its international representative. Full opportunity was afforded to all parties to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the conclusion of the hearing, all parties were afforded an opportunity to present oral argument and submit briefs and proposed findings of fact.

Upon the entire record of the proceedings had before him on April 20, 1953, and on the testimony adduced at that hearing and upon his observation of the witnesses, the undersigned Trial Examiner makes the following:

FINDINGS OF FACT

Prior to May 8, 1950, the Respondent and Local 340 of United Gas, Coke and Chemical Workers, C.I.O. (comprised only employees of the Respondent) were engaged in collective bargaining, on that day, during the course of negotiations, final demands were presented to the Respondent on behalf of Local 340 and were rejected by the Respondent.³ The following day Local 340 and its members went out on strike.

A regular meeting of Local 340 (hereinafter sometimes called the Local Union) was held on May 8, 1950,⁴ and at that meeting, at which a strike vote was taken, minutes were recorded, all officers were present, and the meeting was conducted in accordance with constitution of the Union and the bylaws of the Local Union. That was the last formal meeting ever held by Local 340, and so far as can be determined was the last meeting of any kind held by the membership of Local 340. The officers of the Local Union present and in office at the time of that meeting had been elected during June of the prior year for a term of 1 year. No subsequent election of officers has been held.⁵

The strike ended on or about July 10, with some of the employees returning to work and other employees either being refused work or not applying for reinstatement to their former jobs.

At the time of the strike, the Local Union had in its treasury approximately \$250, most of which was used during the strike period for contributions to members of the Union on the picket line for individual use for the purchase of groceries and the payment of rent and like purposes. Other local unions of the International contributed for the same purposes; and

² The Order of the Board reads as follows:

On May 27, 1952, the Board issued a Decision and Order in the above-entitled proceeding. On February 18, 1953, the United States Court of Appeals for the Eighth Circuit granted the Board's motion to remand the case to the Board for the purpose of conducting supplementary proceedings to resolve the question of the continued existence of Local 340, United Gas, Coke and Chemical Workers, CIO, and to enable the Board to determine what, if any, changes should be made in the bargaining provisions of the Order, in the light of the facts found with respect to the continued existence of Local 340. The Board having duly considered the matter,

IT IS HEREBY ORDERED that the record in the above-entitled proceeding be reopened and that a further hearing be held before a duly designated Trial Examiner for the purpose of adducing additional evidence and the issuance of a Supplemental Intermediate Report making findings of fact as to the continued existence of Local 340, United Gas, Coke and Chemical Workers, CIO, since the issuance of the complaint, as directed in the remand of February 18, 1953; and

IT IS FURTHER ORDERED that the proceeding be remanded to the Regional Director for the Fourteenth Region for the purpose of the further hearing, and that the said Regional Director be, and he hereby is, authorized to issue notice thereof.

³ William Wynn, an international representative of the Union, conducted or led the negotiations for Local 340 and the Union.

⁴ All dates hereinafter mentioned are for the year 1950, unless otherwise specifically noted.

⁵ The constitution of the Union did not then permit the election of officers of local unions for a term to exceed 2 years; the bylaws of Local 340, in effect at the time pertinent hereto, provided that the "officers and executive board members shall serve for 1 year."

after the strike ended, certain unpaid obligations of Local 340 were paid through contributions by the Union and other local unions. No local union dues were collected or accounted for after the beginning of the strike. On August 10, the one and only bank account maintained by the Local Union was closed by the withdrawal by check presented for payment of \$38.47 from the bank, which left a residue of 50 cents for payment of bank service charges. No bank account has since been maintained by or for the Local Union.

The recording secretary of Local 340, who was in the office on May 8, testified that to his knowledge there had been no subsequent notice of meetings and no meetings of the Local had been held; that the minutes of meetings kept by him up to and including the May 8 meeting had been lost, and that no entry subsequent to that meeting had ever been made in the minute book. The vice president of Local 340, who was in office on May 8, testified to the same effect with respect to no meetings of the Local Union having been held after May 8, and also that he had made a very recent effort to get in touch with the former financial secretary who had charge of the financial records of the Local; that the financial secretary was reported to have recently removed to California, and that despite sincere effort on his part to locate the financial and other records of Local 340 he had been unable to do so.

The recording secretary further testified that the minute book kept by him had been lost; that the last time he remembered seeing it was about March 1952, when he was going through the records in his possession to determine if they were intact; and that he had received no request to turn over the records in his possession to the Union.

William Wynn, international representative of the Union who participated in negotiations with the Respondent and the "servicing" of Local 340, testified that he had had no contact with the Local Union or any of its members since the beginning of the strike, except that he had seen witnesses who had been members of the Local Union at the previous hearing in this case in the year 1951, and that a few days prior to April 20, 1953, he visited Sikeston, Missouri, where the Respondent is engaged in business, in a futile effort to locate the charter, seal, and records of Local 340. It appears that one Martin Wente, another international representative of the Union, during 1 or 2 of the first days of the strike, participated in the picketing of the Respondent's plant.

The Respondent contends that Local 340 is not nonexistent and that the most that can be claimed is that it is in a state of suspended animation. In support of its contention in this respect, the Respondent argues in brief that the constitution of the parent International Union provides that if a local union secedes or is disbanded, suspended, or expelled, all property of the local union shall revert in title to the international secretary-treasurer; that the constitution also provides that if a local union shall cease to function, the International Union shall transfer members in good standing into another local union; that the constitution provides further that a local union failing to meet its financial obligations to the International Union for 3 consecutive months shall be subject to suspension and supervision of the international president; that because the evidence or lack of evidence shows that no action was ever taken by Local 340 or its officers to return its property to the international secretary-treasurer, or any of its members in good standing ever were transferred into another local union, and because Local 340 has not been suspended by or subjected to the supervision of the international president, then the Local simply had not been operating and that no steps have been taken pursuant to the constitution to dissolve the Local Union.

Further, in support of its contention, the Respondent in its brief has referred to a letter dated August 10, 1951, directed to the international secretary-treasurer of the Union by an international executive board member, in which the following statement appears:

In regard to the bonding fee owed by Local #340, this is the local which has not been operating, but which we hope to revive some day, especially so since we received the N.L.R.B. decision giving our Union complete victory in calling on the Company to bargain with our Union and reinstate many of our members. For the time being, at least, will you please erase Local #340 from your records.⁶

The Trial Examiner rejects the proposition that Local 340 can be regarded as "in existence" merely because of existent provisions of the union constitution which in themselves provide

⁶At the time of the May 8 meeting, Local 340 had paid per capita tax to its parent International Union for the month of April 1950. In August of that year, the international president, acting under his constitutional powers, exonerated the Local from the payment of per capita tax for the months of May, June, July, August, and September, 1950. Local 340 thereafter never remitted, nor was exonerated from payment of, per capita tax.

only for affirmative action which has not been taken here. That the Union has not claimed or received the property of the Local Union, or that the Union did not transfer its members in good standing into another local union, or that the international president of the Union did not make the local union subject to suspension and supervision, proves nothing. Had any of these happenings taken place, its occurrence might have been persuasive on the question; however, none of them took place.

The preponderance of the evidence received shows, and the Trial Examiner finds, that the date of the last regular meeting of Local 340 was May 8; that there have been no meetings regularly called or otherwise, or any notice of meetings issued, or any local union records kept, after that date; that no payment of per capita tax has been remitted by Local 340 to the Union for any month subsequent to that for the month of April 1950; that no member of Local 340 has paid dues since prior to July 10; that there has been no election of officers of Local 340 since the officers who were serving on May 8 were elected, nor did any officer of Local 340 act as such in an official capacity subsequent to the closing of Local 340's bank account on August 10; and that no concerted action has been taken by members of Local 340 since the ending of the strike on July 10.

The rule that an unincorporated association, such as Local 340, will be regarded as dissolved if it abandons the purposes of its creation and ceases to exercise its functions, is well established.

The constitution of the Union (article VII) is quite specific in terms in providing for the issuance of charters to local unions, for action in the case of secession, disbanding, suspension, or expulsion of local unions, the regular holding of meetings of the membership of local unions, and the automatic suspension from membership of members 3 months "in arrears." It does not make provision for the continued legal existence of a local union which has failed to hold regular meetings, pay dues and per capita tax, and has refused or been unable to carry on the functions for which it was organized. Under the constitution of the Union, therefore, Local 340 has ceased to exist as a body having legal standing with the international organization.

The Respondent in its brief contends that Local 340 is a principal party in this proceeding and that the Union filed the charge in its behalf and raises the question of compliance by Local 340 with the provisions of Section 9 (f) of the Act. The issue is not one properly to be considered by the Trial Examiner under the Board's Order entered March 12, 1953, reopening the record and remanding the proceedings.

CONCLUDING FINDINGS

Local 340 continued in existence at least until the strike was terminated on or about July 10, 1950, and until a final withdrawal of its funds from bank on August 10, 1950. On the latter day, so far as its reason and purpose for existence was concerned, it has ceased to function, although technically it was in good standing with its parent International Union through the month of September 1950.

The Trial Examiner further finds that Local 340 ceased to exist as a local union of United Gas, Coke and Chemical Workers, CIO, and as an organized body, and was not in existence after the issuance of the complaint herein on December 6, 1950.

[Recommendations omitted from publication.]

BERNSON SILK MILLS, INC. and WILLIAM H. ANDERSON,
Petitioner and LOCAL 65, TEXTILE WORKERS UNION OF
AMERICA, CIO. Case No. 5-RD-89. August 20, 1953

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Louis S. Wallerstein, hearing officer. The hearing officer's rulings made