guards, professional employees, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBERS RODGERS and BEESON took no part in the consideration of the above Decision and Direction of Election.

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PUGH AND BARR, INC. *and* BENJAMIN S. BRAMER. *Case No. 6-CA-243. December 13, 1954*

## Supplemental Decision and Determination

On January 23, 1953, in a supplemental proceeding to determine the amount of back pay due Benjamin S. Bramer from the Respondent,[1] the Board issued a Decision and Determination finding the amount to be $5,381.40.[2] Upon the Board's motion to the United States Court of Appeals for the Fourth Circuit to enter a supplemental decree to make definite the amount of back pay due, the court remanded the case to the Board.[3] The court stated that "the awarding of so large a sum as back pay without the finding of special circumstances justifying it cannot be sustained."[4] The court also stated that the "Board seems to have reached the conclusion that it did on the basis that Bramer, having registered with the state unemployment agency, was not bound to make any further showing of diligence. We do not think that this is sufficient."

In accordance with the court's decree, the Board ordered a further hearing and the issue of what Bramer could have earned "if he had used due diligence to secure employment" was fully litigated. On June 22, 1954, Trial Examiner Albert P. Wheatley issued his Intermediate Report, finding upon the entire record that Bramer had made a reasonable effort to secure employment, and recommending that the same amount of back pay be found due, except for a deduction of an additional $81.75 which Bramer had earned in the 2-year period but had inadvertently failed to report with his other interim earnings.[5] The Trial Examiner further found that the circumstances outlined in his Intermediate Report constituted "special circumstances" justifying the large sum of $5,299.65 as back pay. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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[1] *See N. L. R. B* v. *Pugh and Barr, Inc*, 194 F. 2d 217 (C. A 4), enforcing the Board's Order that Bramer be reinstated with back pay.

[2] *Pugh and Barr, Inc.*, 102 NLRB 562.

[3] *N. L. R. B.* v. *Pugh and Barr, Inc.*, 207 F. 2d 409 (C. A. 4).

[4] The court noted that during 2 years of the time involved, Bramer had earned only $249 20.

[5] This $81.75, added to the $249.20 in net earnings, plus the amount of $68.00 which was offset by expenses, make total earnings of $398 95 during the 2-year period.

The Respondent also requested oral argument. This request is denied as the record and the Respondent's exceptions and brief adequately present the issues and the positions of the parties.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and the brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following corrections,[6] additions, and modifications:

1. In the former proceeding to determine the amount of back pay due Bramer, the Respondent had made no claim that Bramer had not exercised due diligence in seeking work. As a consequence, the only testimony in the earlier record about his efforts to obtain employment in the 2-year period (from June 16, 1949, when he was discriminatorily discharged, to July 1951, when he and his wife moved from their home in West Virginia to Ohio, where Bramer obtained more regular employment), was 13 lines of testimony, in which he described generally his "running around here all over the country trying to find a job."[7] Upon remand, however, the issue of due diligence to find work was fully litigated, in a 1,097-page record, and a different Trial Examiner has recommended the determination of virtually the same amount in back pay. Although appreciating how unusually small Bramer's earnings were during part of the time involved, we cannot do other than approve the Trial Examiner's determination because of the clear evidence of Bramer's diligence in seeking work and the special circumstances shown in this record.

With regard to his diligence in seeking work, the record reveals that in addition to registering for employment with the State Unemployment Agency (the West Virginia Department of Employment Security, herein called the State Employment Office), Bramer made frequent trips to look for work at various strip mines within a 20- or 30-mile radius of his home,[8] to several glass factories in that vicinity, a pottery plant, a carbon plant, a machine shop, and a tunnel construction job, as well as applying for work at the Laborers Union, and going

[6] The Trial Examiner stated that Bramer sought work by canvassing "friends and relatives" (plural), whereas the only relative mentioned in the record was his sister-in-law who worked in a nearby glass factory where he and his wife went looking for work. The Trial Examiner also stated that the coal company and the electric light company where Bramer worked in 1949 and 1950 employed him in Ohio and Pennsylvania. Their home offices were out of State, but Bramer went to work for them near his home. We hereby correct these errors, which do not affect the Trial Examiner's ultimate findings nor our concurrence therein

[7] This was in addition to testimony concerning his unemployment registration and his temporary jobs in that period of time.

[8] This was the customary procedure for securing strip mine jobs. One coal company superintendent testified, for example, that he did not take applications and ". . . I never hire a man the first time he comes around."

frequently to the State Employment Office to check on job openings.[9] During this time, before he moved to Ohio, he worked as a laborer at a strip coal mine for several days in 1949 and 1950 over a period of several months; used his team and wagon to haul water, tools, etc., in the hills for an electric light company at different times in 1950; and also worked a week in a neighboring county on a construction job for the school board, and left the State and worked on a construction job in Pittsburgh, Pennsylvania, for 2 weeks.

Bramer was a common laborer who previously had worked at strip coal mines,[10] glass factories, and the State Road Commission. During the 2-year period involved herein, he was 49–51 years of age. The record shows that several of the jobs for which he applied had lower age limits, and some of the Respondent's witnesses testified that they would prefer younger men.[11] The manager and deputy manager of the State Employment Office testified that employers generally want younger men for laborers (as distinguished from skilled workers); that a worker's chances of employment lessens after the age of 40 or 45; and that usually employers prefer laborers between 25 and 40 years of age.

We agree with the Trial Examiner that Bramer "exaggerated his efforts to obtain work" in claiming that he visited certain named employers 2 or 3 times a week during the entire time of his unemployment. Yet we find no basis for overruling the Trial Examiner's credibility findings as to Bramer, "despite these flaws in his testimony." We find more reliability in other parts of Bramer's testimony in which he estimated, upon direct examination, the number of times he visited particular employers.[12]

[9] The deputy manager in charge of unemployment compensation at the State Employment Office testified that they thoroughly check the unemployment forms on which the applicants list the names of the employers visited, and that Bramer would have been disqualified from receiving benefits if he had not actively sought employment and contacted employers It is noted that Bramer received unemployment compensation for parts of 1949 and 1950, and for only 2 weeks (at $11 a week) in 1951.

[10] He did not have the certificate required to work in pit mines.

[11] For example, contrary to the Respondent's contention that a former strip mine employer, Swaney, would probably have hired Bramer at the first opening in October 1949, Swaney testified that it was true that in hiring an oiler (Bramer's laborer classification when Bramer worked for him) he would do so with the expectation of having the oiler become an operator, and would want a man younger than 40. Swaney also testified that they did not have a policy of recalling former employees. Although at one point he testified that "As far as labor is concerned, we don't specify any age," at another point he testified that in hiring a "labor man I would say I would take him up to . . . 40 or 45"

[12] Under the section in his Intermediate Report entitled "Bramer's affirmative efforts to secure work," the Trial Examiner states that Bramer's testimony regarding his being referred to jobs by the State Employment Office was contradictory. Thus, he points out that in this hearing, Bramer testified that he was never referred by that office to any jobs, whereas he later testified in this hearing that "he had been referred" to the Republic Steel Corporation on May 11, 1951, and also testified in the earlier back-pay hearing that the State Employment Office "said they were hiring some people at Pittsburgh Plate. . . ." We need not pass on this matter, inasmuch as we agree with the Trial Examiner in generally crediting Bramer's testimony, but we do note that there may not be any contradiction here at all. Bramer may not have considered himself "referred" to a job at the glass company when he was merely told that they were doing some hiring, and he went

We have thoroughly considered and analyzed the testimony of witnesses called by the Respondent to disprove the fact, or the frequency, of Bramer's job applications. However, in no instance did the Respondent call, from any of the mines which Bramer claimed he frequently visited, all the persons who did the hiring, nor did the Respondent call as witnesses from the various plants the outer office personnel who would be contacted first by applicants looking for work. We agree with the Respondent, and the Trial Examiner, that Bramer did not visit these concerns 2 or 3 times every week but, like the Trial Examiner, we credit Bramer's testimony that he made repeated visits to such concerns, looking for work.

The record does not support the many purported inconsistencies which the Respondent claims appear in Bramer's testimony. As examples, the Respondent states in its brief that: (1) Bramer testified he "contacted for work a coal company which was not in existence" (whereas the mine was merely operating under a different name); (2) "he claimed to have contracted twice a week over a period of 2 years the Jarvisville Coal Company, which was shut down and not operating during most of the period" (whereas Bramer testified that he visited that often an unnamed coal company near Jarvisville; that it sold out to another company; and that he visited it both before and after the sale); (3) "he testified under oath that he could not read, but later did read on cross-examination" (whereas Bramer, who testified that he had gone to the sixth or seventh grade and was not a good reader, and who repeatedly testified that he had never read newspapers although he had seen newspapers and his wife sometimes bought one,[13] testified at one place about the difference between seeing a newspaper and reading one: "I can't read . . . ," but he thereafter clearly testified that he meant that he "didn't" read newspapers; and (4) "Bramer himself in the 1952 hearing testified that he made only one trip around to the strip mining jobs" (whereas Bramer did *not* so testify, but testified about a particular trip, which he often made).

2. In view of the above findings, the circumstances outlined in the Intermediate Report,[14] and particularly the Trial Examiner's findings

there, filed his application, but was never called. Also, Bramer was not referred by the State Employment Office to the Republic Steel job, but was instead hired, tentatively, by a company recruiter who had come there from Ohio and was using a desk in the State Employment Office to interview prospective employees. We further note that besides the low wages offered and the far distance from his home, Bramer also testified that he did not take the job because the recruiter told him that he would just be "taking a chance" at going to work when he got to the Ohio job, because he was older than the 45-year age limit.

[13] His wife confirmed the fact that Bramer never read a newspaper. However, she testified that she bought a paper "once in a while," and that she always checked the want ads to see if there was "anything" for Bramer or herself.

[14] However, we do not adopt the Trial Examiner's reasoning, under the section of the Intermediate Report entitled "Job Openings," for being unable to determine the maximum sum Bramer could have earned, because such considerations would be pertinent only if the Trial Examiner had not found, as he did, "that Bramer made a reasonable effort to secure employment."

that this area in West Virginia is generally a labor surplus area and unemployment there was high during 1949, 1950, and the spring of 1951, we are convinced that the Trial Examiner correctly concluded that Bramer's failure to earn more money than he did was not because of his lack of effort, and that there were "special circumstances" justifying the large sum of back pay.

[The Board determined that back pay is due Benjamin S. Bramer in the net amount of $5,299.65.]

MEMBER RODGERS took no part in the consideration of the above Supplemental Decision and Determination.

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LOCAL 182, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND ROCCO F. DEPERNO AND CLAYTON LACEY *and* PILOT FREIGHT CARRIERS, INC.
*Case No. 3–CD–9. December 13, 1954*

## Decision and Determination of Dispute

### STATEMENT OF THE CASE

This proceeding arises under Section 10 (k) of the Act, which provides that "whenever it is charged that any person has engaged in an unfair labor practice within the meaning of Section 8 (b) (4) (D) of the Act, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen. . . ."

On June 8, 1954, Pilot Freight Carriers, Inc., herein called Pilot, filed with the Regional Director for the Third Region a charge alleging that Local 182, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein called Local 182,[1] and Rocco F. DePerno and Clayton Lacey had engaged in and were engaging in certain activities proscribed by Section 8 (b) (4) (D) of the Act. It was alleged, in substance, that Local 182 and its agents, DePerno and Lacey, had induced and encouraged employees of Pilot and of James Doti, d/b/a Whitesboro Cartage Co., herein called Whitesboro, to engage in a strike or in a concerted refusal to perform certain work in the course of their employment, with an object of forcing Pilot to assign certain particular work to members of Local 182 rather than to Pilot's own employees.

Thereafter, pursuant to Section 10 (k) of the Act and Sections 102.71 and 102.72 of the Board's Rules and Regulations, the Regional Director investigated the charge, and provided for an appropriate

[1] The International body is sometimes referred to herein as the Teamsters.