

All employees are free to become, remain, or refrain from becoming or remaining, members of Upholsterers' International Union of North America, AFL-CIO, or any other labor organization.

NEW ENGLAND UPHOLSTERY CO., INC.,
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.

Morrison-Knudsen Company, Inc. and Denton R. Moore
International Hod Carriers, Building and Common Laborers
Union of America, Local 341, AFL-CIO and Denton R. Moore.
Cases Nos. 19-CA-1405 and 19-CB-450. July 31, 1958

DECISION AND ORDER REMANDING CASE

Hearing upon the consolidated complaint herein was held before Trial Examiner Howard Myers between September 9 and October 31, 1957. On September 13, 1957, at the close of the General Counsel's case, the Trial Examiner orally granted a motion of the Respondent Union, herein called the Union, to dismiss the consolidated complaint as to it. The complaint alleged, *inter alia*, that the Respondent Company, herein called the Company, and the Union had an unwritten agreement, arrangement, or practice requiring that applicants for jobs with the Employer be cleared by, and join, the Union as a condition of hire, and that such arrangement or practice violated Section 8 (a) (3) and (1) and 8 (b) (2) and (1) (A) of the Act.

The Trial Examiner found that the Company violated Section 8 (a) (3) of the Act by withholding job assignments from five prospective employees until they had joined the Union and obtained job clearances from it. He further found that by engaging in such "discriminatory hiring practice" the Company violated Section 8 (a) (1) of the Act. He recommended, however, that all other allegations of the complaint against the Company be dismissed, and, as noted above, at the completion of the General Counsel's case, dismissed the complaint as to the Union.

The General Counsel excepts, *inter alia*, to the dismissal of the complaint as to the Union, contending that the evidence adduced at the hearing established that the Union was a party to a closed-shop arrangement violative of Section 8 (b) (2) and (1) (A) of the Act, and the General Counsel requests the Board so to find upon the present record. In support of this contention, the General Counsel points to

the Company's practice, as found by the Trial Examiner, of requiring union clearance and membership of applicants for employment, plus testimony, not discussed by the Trial Examiner, to the effect that (1) the Company was "allowed" to specify the names of 50 percent of the employees to be dispatched by the Union; (2) the Company inquired as to whether particular job applicants were in good standing with the Union and accepted substitutes from the Union if such applicants were not in good standing; (3) on one occasion, a union job steward told a new employee that his first financial commitment was to pay his dues to the Union or he would be put off the job; and (4) on another occasion, the business agent of the Union told a prospective employee that he would be given a dispatch slip as soon as he completed his application for membership in the Union. This testimony stands uncontradicted in the record.

We find that the foregoing evidence was sufficient to establish a *prima facie* case of violation by the Respondent Union of Section 8 (b) (1) (A) and 8 (b) (2) of the Act through participation with the Respondent Company in an illegal closed-shop and hiring hall arrangement. Accordingly, we find that the Trial Examiner erred in dismissing the complaint as to the Union upon the record before him, and, we hereby set aside that ruling. The Board, however, is not prepared on the present record to determine, as the General Counsel urges, whether the Union was, in fact, a party to the illegal hiring arrangement alleged in the complaint, since, in view of the dismissal as to the Union at the completion of the General Counsel's case, the Union has not had an opportunity to present its defense. We shall therefore remand the case to the Trial Examiner for further proceedings consistent with this Decision and Order.

[The Board remanded the case to the Trial Examiner for further proceedings consistent with this Decision and Order Remanding Case, including such additional hearing as may be necessary and issuance of a Supplemental Intermediate Report, setting forth his findings of fact, conclusions of law, and recommendations with respect to the unfair labor practices by the Union alleged in the complaint and any modifications in the Intermediate Report of January 20, 1958, which may be required in view thereof.]

MEMBER JENKINS took no part in the consideration of the above Decision and Order Remanding Case.