

If a majority of employees in voting group (1) select the Teamsters, they will be deemed to have indicated their desire to constitute a separate appropriate unit, and the Regional Director is instructed to issue a certification of representatives to such labor organization for such group, which the Board, under these circumstances, finds to be an appropriate unit for the purposes of collective bargaining. However, if a majority in voting group (1) do not vote for the Teamsters, the ballots of the employees in such voting group will be pooled with those of the employees in voting group (2).¹³ If a majority of the employees in voting group (2) or in the pooled group, as the case may be, vote for the Laundry Workers, the Regional Director is instructed to issue a certification of representatives to such labor organization for such group, which the Board, in the circumstances, finds to be a unit appropriate for the purposes of collective bargaining. In all other events, the Regional Director is instructed to issue a certification of results of the election as appropriate in the circumstances.

[Text of Direction of Elections omitted from publication.]

¹³ If the votes are pooled, they are to be tallied in the following manner: Votes for the Teamsters shall be counted as valid votes, but neither for nor against the Laundry Workers. All other votes are to be accorded their face value.

American Gilsonite Company and United Steel Workers of America, AFL-CIO. *Case No. 20-CA-1296. January 20, 1959*

SUPPLEMENTAL DECISION

On October 24, 1958, the National Labor Relations Board issued its Decision and Order¹ in the above-entitled proceeding, finding, in agreement with the Trial Examiner, that the Respondent had not engaged in and was not engaging in the unfair labor practices alleged in the complaint. Accordingly, the Board dismissed the complaint.

On November 28, 1958, the Charging Party filed with the Board a motion for reconsideration of the Board's Decision and Order.² The Respondent filed a brief opposing the motion for reconsideration.

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 [Chairman Leedom and Members Bean and Fanning].

¹ 121 NLRB 1514.

² The Charging Party did not file exceptions to the Intermediate Report.

122 NLRB No. 127.

The Board has considered the motion for reconsideration and the entire record in this case, and hereby makes the following supplemental findings of fact and conclusions of law:

The Charging Party contends, *inter alia*, that the Board should find that the unilateral institution of aptitude tests for pump operator positions by the Respondent in March 1957 violated Section 8(a)(1) of the Act.³ The Charging Party also alleges that the institution of these tests was one of the reasons for the March 25, 1957, strike,⁴ and this was therefore an unfair labor practice strike.

However, we perceive no reason for modifying our finding in our Decision and Order herein, in agreement with the Trial Examiner, that the employees struck on March 25, not for the above reason alleged by the Charging Party, but solely because (a) among the 22 pump operators laid off by the Respondent on March 22, 1957, 5 had more seniority than some operators who were retained, and (b) a supervisor had stated to some employees that "It didn't do any good to file grievances since the Company only threw them in the wastebasket." We therefore found that the strike was not an unfair labor practice strike but an economic strike, and that, since it was in violation of the no-strike provision in the contract between the Respondent and the Union, the strike was unprotected by the Act.⁵ We adhere to that view.

Although we now find that the unilateral institution of the aptitude tests by the Respondent violated Section 8(a)(1) of the Act, in view of its isolated nature, as well as all the circumstances of this case, we believe that it would not effectuate the policies of the Act to issue a cease and desist order herein.⁶ Accordingly, we reaffirm our previous action herein dismissing the complaint.

³ The complaint alleged this to be a violation of Section 8(a)(1) and (3) of the Act. The Board found no violation of Section 8(a)(3) because the record showed no discrimination in the application of the aptitude tests. However, the Board inadvertently did not pass upon the Section 8(a)(1) aspect of this allegation. (Section 8(a)(5) was not alleged in the complaint.)

⁴ The various events herein are fully set forth in the Decision and Order and accompanying Intermediate Report.

⁵ As the other contentions of the Charging Party in its motion for reconsideration are either based on the premise that the March 25 strike was an unfair labor practice strike or were previously considered in our Decision and Order, we do not find it necessary to pass upon them. Moreover, the record is clear, and we find, that the five employees who were discharged on April 2, 1957, for not reporting back to work on March 25, after the strike had ended, were *not* continuing to engage in *concerted* activities, but rather decided not to go to work for reasons of their own. (See footnote 4 in our Decision and Order.) Accordingly, even if the March 25 strike was found to be an unfair labor practice strike, this would not affect our ultimate conclusions herein.

⁶ The record shows, as the Trial Examiner found, that after the Union had protested about the aptitude tests, the Respondent consulted with the Union concerning its grievances about this matter and entered into an arrangement concerning the tests satisfactory to the Union.