

ing in the construction industry (see vol. 46 LRR No. 13, pp. 138, *et seq.*), and though application of the *Moore Dry Dock* standards (92 NLRB 547, *supra*), accentuates the unrealities, the statute as presently amended grants no exception because of the special problems which confront that industry under Section 8(b)(4). Because of the definitive nature of the holdings of the Supreme Court, *supra*, Respondents obviously must look for relief to further legislative action. See vol. 46 LRR No. 13, *supra*.

I therefore conclude and find that by inducing and encouraging employees (including foremen) to strike and to refuse to perform services, and by threatening, coercing, and restraining Southern, with an object in both cases of forcing or requiring Southern to cease doing business with Abshire, Respondents have, since April 26, 1960, engaged in unfair labor practices proscribed by Section 8(b)(4)(i)(ii)(B) of the Act.⁸

IV. THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action which I find necessary to remedy and to remove the effects of the unfair labor practices and to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Respondents are labor organizations within the meaning of Section 2(5) of the Act.
2. Respondents have induced and encouraged individuals employed by Southern, and by other employers, to engage in a strike or a refusal in the course of their employment to perform any services, with an object of forcing or requiring Southern to cease doing business with Abshire, and have thereby violated Section 8(b)(4)(i)(B) of the Act.
3. Respondents have threatened, coerced, and restrained Southern with an object of forcing or requiring Southern to cease doing business with Abshire, and have thereby violated Section 8(b)(4)(ii)(B) of the Act.
4. The aforesaid unfair labor practices having occurred in connection with Southern's operations as set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and substantially affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

⁸ Though Respondents advance a further defense that the complaint was improperly extended to inducement of employees of other employers than Southern (contrary to the charges), that defense is summarily rejected on the basis of many Board and court decisions, including the two on which Respondents base their chief reliance, i.e., *National Licorice Company v. NLRB*, 309 U.S. 350, and *NLRB v. Fant Milling Company*, 360 U.S. 301. See particularly the language of the court at pp. 307-308 of the latter decision.

The Youngstown Sheet and Tube Company and United Steelworkers of America, AFL-CIO, Petitioner. *Case No. 8-R-1367.*
August 2, 1961

SUPPLEMENTAL DECISION AND ORDER AMENDING CERTIFICATION

Pursuant to a Board certification on June 27, 1944, United Steelworkers of America (now AFL-CIO), referred to as the Union, became the bargaining representative of a unit of "all clerical employees at the Employer's Campbell (including Struthers) and Brier Hill plants located at Youngstown, Ohio, including buyer clerks," but

excluding, *inter alia*, all employees at the Employer's general office building in Youngstown.¹ Thereafter, the parties entered into successive collective-bargaining agreements for this unit.

On April 18, 1960, the Employer filed a motion with the Board to clarify or amend the certification so as to exclude the purchasing department employees on the ground that they were now employed in its general office. On April 27, 1960, the Union filed its opposition to the Employer's motion and urged that the Board direct a hearing to determine the issues raised by the motion. On April 29, 1960, the Employer requested the Board to issue a show cause order why the motion should not be granted or, in the alternative, to have a hearing in the matter, and on May 4, 1960, the Union filed its opposition to the motion and requested that a hearing be held.

On August 11, 1960, the Board issued an order referring the proceeding to the Regional Director for the Eighth Region for the purpose of holding a hearing in the above matter. A hearing was thereafter held before W. R. Griesbach, hearing officer. Both parties appeared and participated in the hearing. 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 proceeding to a three-member panel [Chairman McCulloch and Members Rodgers and Leedom].

Upon the entire record, the Board finds the Employer is engaged in the manufacture of steel and other metal products in Ohio, Illinois, Pennsylvania, and West Virginia. Its operations are conducted through several administrative districts, of which the Youngstown district is one. Companywide operations are conducted from the general offices, which are located in Youngstown, Ohio.

As indicated above, the Petitioner was certified in 1944 for a unit of clerical employees at several of the Employer's plants of its Youngstown district. The unit description, however, excluded all clericals at the nearby general office building in Youngstown, but included the classification of buyer clerks in the purchasing department (now called purchasing clerks) whose status is the subject of this proceeding. The Employer had contended at the 1944 proceeding that purchasing clerks should be excluded on the ground that they were confidential employees. The Board, however, found that their duties were not confidential in nature and included them. At present, there are about 40 of these clerks. There are about 600 employees in the certified unit, and about 500 general office employees, all of whom are unrepresented.

In 1944, the purchasing department clericals were located at the Campbell works office building, but, unlike the other clericals in the unit, performed duties which concerned the Employer's companywide

¹ *The Youngstown Sheet and Tube Company*, 56 NLRB 559

operations. All other clericals in the unit were concerned only with Youngstown district operations.² Despite this dissimilarity in functions, the purchasing department had been located at the Campbell works office, rather than with the general office force, because there was no space for them at that time at the general office building.

Even though in the unit, the purchasing clerks have had separate departmental seniority and have not transferred to other clerical positions in the unit, but have been allowed to transfer to positions in the general office force. However, there have also been occasional transfers between the general office clericals and the unit clericals.

In 1958, the Employer completed a new general office building in Boardman Township, about 7 or 8 miles from the old general office building in Youngstown and from the Campbell works office building. It thereby alleviated the crowded conditions at the old office building and consolidated into one building all companywide operations. It transferred to this building management officials and clericals from the old general office building, sales and traffic personnel from the Chicago district, and the purchasing clerks from the Campbell works office building. The transfer did not affect the duties of the purchasing clerks and they are the only clericals represented by the Union at the new building.

The working conditions of the clericals, including the purchasing clerks, at the new general office building differ from the working conditions of the clericals in the certified unit in the following respects: they have separate hiring procedures, personnel records, supervision, pay periods, working hours, recreational programs, and medical facilities. The unit clericals participate in a noncontributory insurance program, while the general office clericals have a voluntary contributory program. However, all clericals have the same sick leave benefits and holiday, overtime, and premium pay.

After the transfer to the new general office building in 1958, the Employer proposed to the Union that the purchasing clerks be excluded from the unit because of the change in their location. The Union objected and filed a grievance which eventually led to arbitration. The arbitrator held that the Employer could not remove the purchasing clerks from the unit by a change in their physical location. Although the parties have negotiated a new agreement with respect to the certified unit, the Employer prior to the agreement had reserved the right to obtain a Board determination as to the continued inclusion of the purchasing clerks in the unit.

As the original decision indicates, the purchasing clerks (buyer clerks) were specifically mentioned in the unit description in overruling

² Although the distinction was not then being made, the Board, since 1944, has recognized that the differences in the duties and functions of district office clericals and clericals concerned with an employer's companywide operations is sufficient to exclude the one from a unit of the other. See *Swift & Company*, 119 NLRB 1556, 1558.

the Employer's contention that they were confidential employees. However, even assuming that their duties were a consideration in their specific inclusion, we do not believe that the Board intended to include them regardless of where they performed these functions. The physical location of employees is often a controlling factor in deciding their unit placement.³ We are satisfied that the physical location of the employees was the controlling circumstance by which the original scope and composition of the unit was determined, since only clericals at specific plant buildings were included, and the purchasing clerks were placed therein even though their duties were more closely related to those of the general office clericals than to the other unit clericals. It follows then that a change in their location destroys the basis for their initial placement in the unit and serves to sever whatever ties they formerly shared with the employees in the unit.

Accordingly, we shall amend the unit description by deleting therefrom the classification of "buyer clerks."

[The Board amended the certification heretofore issued in the above-captioned proceeding by specifically deleting, in the unit description, the classification of "buyer clerks."]

³ In proceedings similar to that here, the Board has reexamined unit determinations and has amended them so as to remove previously included employees because there has been a change in the location of the employees, even though the change has not affected their duties. See, e.g., *General Electric Company*, 123 NLRB 1193

District 15, United Mine Workers of America and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13

District 15, United Mine Workers of America and Edna Coal Company. *Cases Nos. 27-CC-65-1 and 27-CC-65-2. August 2, 1961*

DECISION AND ORDER

On March 13, 1961, Trial Examiner William E. Spencer issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that said complaint be dismissed as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief and the Respondent also filed exceptions to certain findings in the Intermediate Report and a brief in support of those exceptions and in support of the Trial Examiner's recommended order.