

several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent refused to bargain collectively with the Union on and after February 8, 1960, it will be recommended that, upon request, Respondent bargain collectively with that organization as the representative of its employees in the unit found herein to be appropriate for the purposes of collective bargaining.

In my opinion, the unfair labor practices committed by Respondent in the instant case are such as to indicate an attitude of opposition to the purposes of the Act generally. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act, thereby minimizing industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, I recommend that Respondent be ordered to cease and desist from infringing in any manner upon the rights guaranteed in Section 7 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. International Hod Carriers', Building and Common Laborers' Union of America, AFL-CIO, Local Union No. 512, is a labor organization within the meaning of Section 2(5) of the Act.

2. All truckdrivers, mechanics, operators, helpers, and all production and maintenance employees of Respondent employed at its St. Petersburg, Florida, operation, exclusive of office clerical employees, dispatchers, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

3. International Hod Carriers', Building and Common Laborers Union of America, AFL-CIO, Local Union No. 512, was on February 8, 1960, and at all times thereafter has been, the exclusive representative of all the employees in the above-described unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. By failing and refusing on and after February 8, 1960, to bargain with the Union as the exclusive representative of all the employees in the above appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent has violated 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.

7. Respondent did not discriminate against any of its employees as alleged in the amended consolidated complaint.

[Recommendations omitted from publication.]

The Grand Union Company and Joseph J. Shultz and Robert E. Gray, Party to the Contract. *Case No. 3-CA-1439 (formerly 2-CA-5660).* August 16, 1961

SUPPLEMENTAL DECISION AND AMENDED ORDER

On June 12, 1959, the Board issued its Decision and Order in this case¹ in which it found that the Respondent had engaged in certain conduct in violation of Section 8(a)(1) and (3) of the Act, adopting the ultimate conclusions of the Trial Examiner that the Act had been violated, but not his reasoning. Specifically the Board found that the

¹ 123 NLRB 1665.

132 NLRB No. 96.

Respondent was authorized under Section 8(a) (3) to enter into a union-security clause with Gray, the certified individual representative of its employees, except for the fact that Gray was not in compliance with the then effective Section 9(f), (g), and (h) of the Act. In reaching this conclusion the Board construed the words "labor organization" as defined in Section 2(5) of the Act and used in Section 8(a) (3) as including an individual certified as an employee representative.

The Trial Examiner, on the contrary, had found that Gray, the certified individual representative, was not a labor organization within the meaning of the 8(a) (3) proviso, and that, therefore, Respondent was unauthorized to enter into the union-security contract with Gray, apart from consideration of his compliance status.

Thereafter the case was considered by the United States Court of Appeals for the District of Columbia upon the Charging Party's petition to review and the Board's petition for enforcement. On September 15, 1960, the court handed down its opinion, holding that an "individual" was not encompassed within the meaning of the term "labor organization" in the proviso to Section 8(a) (3), thus agreeing with the Trial Examiner's resolution of the problem.² The court remanded the case to the Board for further proceedings consistent with its opinion. The Board did not seek certiorari.

In conformity with the court's opinion, which is now the law of the case, we find that Gray, a certified individual representative, is not a labor organization within the meaning of Section 2(5) and Section 8(a) (3) of the Act, and that the Respondent violated said Section 8(a) (3) and (1) by entering into a contract with him containing a union-security clause.

Accordingly, we hereby amend the Board's Order already issued herein by striking from paragraph 1(b) the latter portion thereof beginning with the words "unless Robert E. Gray shall have taken steps to comply . . ."; and we hereby amend the second paragraph of Appendix A, the notice to be posted by the Respondent, in similar manner. In all other respects we affirm the Board's said Order and notice.

² *Joseph J. Schultz (The Grand Union Co.) v. N.L.R.B.*, 284 F. 2d 254 (C.A.D.C.).

Spencer, White & Prentis, Inc. and Leonard T. Shover and John O. Mann. *Cases Nos. 25-CA-1244-1 and 25-CA-1244-2.*
August 16, 1961

DECISION AND ORDER

On March 31, 1961, Trial Examiner Leo F. Lightner issued his Intermediate Report in the above-entitled proceeding, finding that the Re-