

**Holland Custard & Ice Cream, Inc. and Chauffeurs and Teamsters Local Union No. 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.**  
*Case No. 25-CA-1355. November 21, 1961*

### DECISION AND ORDER

On June 30, 1961, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>1</sup>

### ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Holland Custard & Ice Cream, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Chauffeurs and Teamsters Local Union No. 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization of its employees, by discharging, laying off, reducing hours of employment, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form

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<sup>1</sup> We find without merit the Respondent's allegations of bias and prejudice on the part of the Trial Examiner. We are satisfied, on the basis of our scrutiny of the entire record, that he conducted the hearing fairly, that his credibility findings are not clearly erroneous, and that his factual findings, as well as his ultimate conclusions, are supported by the record. See *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd 188 F 2d 362 (CA 1)

labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities or to refrain from any or all such activities.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer employee Donald Blesch immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of the discrimination against him, in the manner set out in the section of the Intermediate Report entitled "The Remedy."

(b) Preserve and, upon request, make available to the National Labor Relations Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary for the determination of the amount of backpay due and the right of reinstatement under the terms of this Order.

(c) Post at its Holland, Indiana, plant, copies of the notice attached hereto marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Twenty-fifth Region, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith.

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<sup>2</sup>In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order"

## APPENDIX

### NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

**WE WILL NOT** discourage membership in Chauffeurs and Teamsters Local Union No. 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization of our employees, by discharging, laying off, reducing hours of employment, or in any other

manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities, or to refrain from any or all such activities.

WE WILL offer Donald Blesch immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of the discrimination against him.

HOLLAND CUSTARD & ICE CREAM, 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.

### INTERMEDIATE REPORT

#### STATEMENT OF THE CASE

A charge in the above-entitled case having been filed and served, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and an answer having been filed by the above-named Respondent, a hearing involving allegations of unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, was held in Jasper, Indiana, on May 25, 1961, before the duly designated Trial Examiner.

At the hearing the parties were represented and afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. A brief has been received from the Respondent.

Disposition of the Respondent's motion to dismiss, upon which ruling was reserved at the hearing, is made by the following findings, conclusions, and recommendations.

Upon the record thus made, and from the observation of the witnesses, the Trial Examiner makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

Holland Custard & Ice Cream, Inc., is an Indiana corporation with place of business at Holland, Indiana, where it is engaged in making, processing, and selling dairy products and other foods and drinks.

During the 12 months before issuance of the complaint the Respondent made, sold, and shipped from this plant products valued at more than \$50,000 to points outside Indiana. During the same period it purchased, transferred, and delivered to its Holland plant supplies, machinery, and other materials valued at more than \$50,000 from points outside Indiana.

The Respondent concedes, and it is found, that it is engaged in commerce within the meaning of the Act.

##### II. THE CHARGING UNION

Chauffeurs and Teamsters Local Union No. 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of the Act.

## III. THE UNFAIR LABOR PRACTICES

A. *Setting and issues*

The chief question requiring answer here is whether the Respondent violated the Act by depriving employee Donald Blesch, on and after February 18, 1961, of work which had been regularly assigned to him for some 3½ years before that date. The fact of such deprivation is in effect conceded. The legal issue arises from General Counsel's allegations that the reduction in employment constituted discrimination to discourage membership in the Charging Union and more specifically because Blesch had joined and assisted the Union and because a majority of the Respondent's eight drivers on February 17 had, at a Board-conducted election, chosen the Union as their bargaining agent.

Subsidiary issues include allegations of interference, restraint, and coercion of employees in the exercise of rights guaranteed by Section 7 of the Act.

B. *Events before the election*

At a representation hearing in Case No. 25-RC-1936 (not published in NLRB volumes), held in November 1960, the chief controversy between the Union and the Employer involved the same employee, Donald Blesch, who testified at the hearing. The Employer maintained that Blesch should not be included in the appropriate unit.

Briefly stated, Blesch, hired in 1956, for the first year and a half of employment had worked full time as an over-the-road driver. Upon a doctor's advice he then requested and was granted a "combination" job, working on the loading and receiving locations part of the time and serving as relief driver whenever needed. He continued on this combination job, receiving about 45 hours of work each week, until the day after the election. He signed a union card.

On February 12, a few days before the election, Blesch was informed by his brother, Derris, the company comptroller, that it "looked" as if he, Donald, would be "holding the bag" whichever way the election went, and that the Company figured his would be a "yes" vote. The comptroller also told him that if "they" could find out who voted "no" such drivers would receive company assistance in financing the purchase of tractors, because "if the Union got in they were going to lease hauling."

Two days before the election the Respondent's eight drivers attended a luncheon called by Vice President Henke, who had charge of them, and President Byron Caldemeyer. Credible testimony of several drivers establishes, and it is found, that at this meeting Caldemeyer: (1) Asked them why they wanted the Union; (2) told them they would benefit more by voting "no"; (3) told one driver, Smith, that he was getting old and if the Union was voted in he would be out of a job; (4) told them that if the Union won Donald Blesch would be allowed no more dockwork and would be restricted to relief and "over-load" driving; and (5) asked them to decide then to vote the Union "out."

The day after this meeting Caldemeyer and Henke picked up driver Simpson and went to the home of another employee, Daugherty, where Caldemeyer asked them and two other drivers present to vote "no" and told them they would benefit by doing so and possibly get more money. Caldemeyer repeated that Blesch would be restricted to relief driving if the Union was voted in.

C. *Action against Blesch*

As noted, the election was held on February 17. The Union won: 5 to 3. When Blesch returned from a "run" late that day he found a note on his timecard from his dock foreman, Ring, instructing him not to come in the next day unless called.

He was called in, however, to take out an "over-load." Upon his return he was informed by Ring that he would have no more work on the dock—he would only do relief and overload driving.

Since the day of the election Blesch has not been given any dockwork, and his customary workweek of 45 hours has been cut approximately in half.<sup>1</sup>

Caldemeyer did not, as a witness, dispute the fact that he had told Blesch and other employees, at the luncheon and elsewhere, that Blesch would be restricted to driving if the Union won. This fact detracts from any weight which might other-

<sup>1</sup> His testimony, undisputed, is to the effect that since February 17 he has worked from 18 to 29 hours weekly

wise be accorded to the official's claim, apparently made for the first time at the hearing, that because of a new conveyor system which went into operation at about the same time, Blesch was no longer needed at the dock.

Furthermore, the defense of no work available falls completely in view of the undisputed fact that a new employee, Powell, has been hired since the election who performs work in the receiving warehouse formerly performed by Blesch.

#### D. Summary conclusions

From the preponderance of credible evidence, a good part of which is either admitted or undisputed, the Trial Examiner concludes and finds that: (1) employee Donald Blesch has been discriminatorily deprived of rightful employment since the date of the Board election because of his own union adherence and because a majority of the employees selected the Union as their bargaining representative, and (2) by such discriminatory action and by the above-described threats of retaliatory measures and promises of benefit uttered by company officials Caldemeyer and Derris Blesch, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

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

It will be recommended that the Respondent offer Donald Blesch immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his rights and privileges, and make him whole for any loss of pay suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that he would normally have earned, absent the discrimination from February 18, 1961, to the date of the offer of reinstatement to his former position, less his net earnings during said period and in a manner consistent with Board policy set out in *F. W. Woolworth Company*, 90 NLRB, 289, and *Crossett Lumber Company*, 8 NLRB 440.

Since the violations of the Act which the Respondent committed are related to other unfair labor practices proscribed by the Act, and the danger of their commission in the future is reasonably to be anticipated from its past conduct, the preventive purposes of the Act may be thwarted unless the recommendations are co-extensive with the threat. To effectuate the policies of the Act, therefore, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed employees by the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

#### CONCLUSIONS OF LAW

1. Chauffeurs and Teamsters Local Union No. 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Donald Blesch, thereby discouraging membership in the above-named labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

3. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]