Brunswick Corporation [1] ***and*** **Frederick G. Barden**

Local Union 65, United Brotherhood of Carpenters and Joiners of America, AFL–CIO *and* Frederick G. Barden. *Cases Nos. 22–CA–510 and 22–CB–219. March 2, 1962*

ORDER

On April 20, 1961, a three-member panel of the Board issued a Decision and Order [2] in the above-entitled proceeding, and on April 24, 1961, a correction thereto. Thereafter, the full Board, acting on its own motion in the interest of clarification, reconsidered the decision of the panel, and on January 25, 1962, issued a Proposed Supplemental Decision and Order, attached hereto, as corrected on January 30, 1962, sustaining the original Decision and Order and making certain proposed supplemental findings. No exceptions having been filed to the Proposed Supplemental Decision and Order, as corrected, and the time for such filing having expired,

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its final Order herein the said Proposed Supplemental Decision and Order, as corrected.

[1] Formerly Brunswick-Balke-Collender Company.
[2] 131 NLRB 156.

Cases Nos. 22–CA–510 and 22–CB–219. January 25, 1962

PROPOSED SUPPLEMENTAL DECISION AND ORDER

On June 17, 1960, Trial Examiner John C. Fisher issued his Intermediate Report in the above-entitled proceeding, finding that Respondent Brunswick-Balke-Collender Company, hereinafter referred to as the Respondent Company, 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 (131 NLRB 156). He also found that Local Union 65, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, hereinafter referred to as the Respondent Union, did not commit the unfair labor practices alleged and recommended that the complaint be dismissed in its entirety as to it. Thereafter the Respondent Company and the General Counsel filed exceptions to the Intermediate Report together with supporting briefs, and the Respondent Union filed a brief in support of the Intermediate Report.

On April 20, 1961, a panel of the Board, exercising powers delegated to it by the Board pursuant to the provisions of Section 3(b) of the Act, issued its Decision and Order [1] finding that the Respondent

[1] 131 NLRB 156. Subsequently on April 24, 1961, the Board issued an order correcting Decision and Order.

Company and the Respondent Union had committed the unfair labor practices alleged in the complaint and ordering Respondents to cease and desist therefrom and to take certain affirmative action to remedy the effect of such unfair labor practices.

The Board acting on its own motion, in the interests of clarification, has decided to reconsider the decision of the panel.

The Board, having reconsidered the matter, sustains the original Decision and Order of the panel as noted herein, and, as a basis therefore, makes the following proposed supplemental findings:[2]

1. The complaint alleges that Respondent Union caused the Respondent Company to discharge Barden and the Respondent Company did discharge Barden from its Carteret, New Jersey, jobsite in violation of the Act.

The facts relating to Barden's discharge are as follows: Barden, a member of Camden Local 393 of the Carpenters, applied to Lesley Byrd, business agent of Respondent Union, in mid-July 1959, for a referral slip to Respondent Company's jobsite at Carteret, New Jersey. Two weeks later Byrd gave Barden a referral slip to the attention of Steward Neal Anderson at Carteret Lanes. Barden reported to Anderson, who entered his name in his union record book, gave him a work permit upon Barden's payment of $6.25, and assigned him to work which comprised primarily the laying of bowling alleys.

On Thursday, August 7, just before quitting time, Superintendent Paul Bangston ordered Barden to cease his carpentry work and to put away the electric cords, drills, and power equipment. The following morning, Steward Anderson, acting pursuant to instructions from Business Agent Byrd, called the carpenters together and told them: "This business about you people quitting early, you guys quitting early has got to stop. I am the shop steward in the shop. And when I blow the whistle in the morning, you start work; and when I blow the whistle at night you quit. And you don't quit before that." Barden, thinking the remarks were aimed specifically at him, spoke up and told Anderson that Bangston had ordered him to knock off early the day before to put some equipment away. Anderson then said to Barden, "You are a wise guy. Get out of here. You are fired. Here is your $6.25 back. Give me your working permit. I am firing you as a shop steward for Local 65." There followed a heated discussion between Anderson and Barden. Barden finally appealed to Foreman Fred, who said, "What can I do? I can't do anything. If you are fired, you're fired." After taking back Barden's work permit and returning

[2] Chairman McCulloch and Member Brown, who did not participate in the original panel decision, have considered the entire record in this proceeding, including the Intermediate Report, the exceptions, and the briefs. They have reviewed the rulings made by the Trial Examiner at the hearing and find that no prejudicial error was committed In agreement with the members of the panel, they affirm such rulings. Also, in agreement with the panel, they deny Respondent Company's request for oral argument as the record in these cases and the briefs of the parties adequately present the issues for decision

his $6.25, but before Barden left the premises, Anderson called Business Agent Byrd, who told him not to let Barden leave, and to put him back to work. Anderson did so, giving Barden back his work permit and receiving again the $6.25 payment therefor. Byrd came out to the jobsite in an effort to smooth things over, and told Barden he should not take exception to an old man who was only doing his job.

Barden worked the remainder of the day and on Saturday morning. He reported to work on Monday morning and was greeted by Anderson who said, "Paul Bangston will be in after awhile and make your check out. You're fired. I am getting rid of you. I told you I would." However, Bangston did not come to work that day. But on the next day, Tuesday, August 12, he called Barden into the office and said, "Look Fred, I have to get rid of you. I don't want to but we are behind schedule here. We are late and I cannot have any trouble here with Anderson or Les Byrd. I've got to get rid of you or they will shut the job down." Bangston volunteered to call up the business agent of the Hackensack Local, to which he belonged, to see if Barden could be put to work on a Brunswick project up there. Barden requested Bangston to get him a job on Brunswick's Edison project but Bangston refused because that job was in Byrd's district and there would be trouble there. Barden was then paid off and discharged from the Carteret job. As he left the premises, Anderson said to him, "Now get your stuff and get out of here. I don't want to see you back on this job again."

Later that day Bangston drove Barden over to the Somerville project of Respondent Company, where he started work the next day and worked until completion of the project.

Based on the foregoing, we find that Respondent Union violated Section 8(b)(2) and (1)(A), and Respondent Company violated Sections 8(a)(3) and (1) of the Act by the discharge of Barden from Carteret, New Jersey, jobsite on August 12, 1959.[3] It is clear that the discharge occurred as the direct result of pressures brought by Union Steward Neal Anderson on August 8, 11, and 12, 1959, and was made in order to avoid trouble with Respondent Union and to prevent a shutdown of the job which Respondent Company feared would occur if Barden stayed on the job. Anderson's attempted "firing" of Barden on Friday, August 8, was done specifically in his capacity as union steward, and was in furtherance of the discharge of his responsibility as steward, to maintain control over the starting and quitting times

[3] We find no merit in Respondent Company's claim that Barden was not discharged but was merely transferred. It is clear that Barden was discharged from the Carteret job, and was denied employment on other jobs within the jurisdiction of Local 65 Moreover, whether viewed as a discharge or a transfer for discriminatory reasons, we find that Respondent Company violated Section 8(a)(3) in this connection, for the reasons set forth below.

of employees on the project as he was instructed to do by Business Agent Byrd. Though Anderson later rescinded his action, at the instigation of Byrd, and put Barden back to work, it nowhere appears that Byrd repudiated or rescinded Anderson's authority to do what he thought necessary to maintain union discipline on the job. Indeed, it affirmatively appears that Byrd told Barden he should not take exception to Anderson's performance of his duty as steward. Consequently, as it is readily apparent that Anderson's actions on August 11 and 12, which resulted in the discharge of Barden, were but a continuation and outgrowth of the August 8 incident, and were further attempts on the part of Anderson to exert his authority as steward to enforce starting and quitting times and maintain union discipline, we find that Respondent Union is responsible for such actions. As such actions caused Respondent Company to discriminate against Barden because of his failure to perform obligations imposed by Respondent Union on its members and work permit holders, we find that Respondent Union violated Section 8(b)(2) and (1)(A) of the Act,[4] and Respondent Company's acquiescence therein violated Section 8(a)(3) and (1) of the Act.[5]

2. We further find, on the basis of Barden's credited testimony, that the Respondent Company again violated Sections 8(a)(3) and (1), and also violated Section 8(a)(4), on or about September 28, 1959, by its refusal to employ Barden at its jobsite in Englewood Cliffs, New Jersey, because of his continued refusal to withdraw his charges against the Respondent Union. On the basis of such testimony, it is clear that General Service Superintendent Young conditioned employment of Barden at the Englewood Cliffs job on Barden's withdrawal of his charges against Respondent Union, and that but for Barden's failure to withdraw his charges he would have been employed there on or about September 28, 1959. In view of this finding, we deem it unnecessary to pass upon whether Barden's discharge from the Bronx River job on Friday, September 25, was also a violation of the Act as found by the Trial Examiner.

[4] This case is factually distinguishable from *Daugherty Company, Inc.*, 112 NLRB 986; and *International Longshoremen's and Warehousemen's Union, Local No. 10, Independent, et al. (Pacific Maritime Association)*, 121 NLRB 938

[5] *The Radio Officers' Union of the Commercial Telegraphers Union, AFL (A. H. Bull Steamship Company)* v. *N.L.R.B.*, 347 U.S. 17. Barden's discharge under the circumstances of this case inherently encouraged Barden and other employees to accept the authority of the steward to enforce compliance with regulations imposed by the Respondent Union. Neither of the Respondents contend, nor does the record show, that Steward Anderson's enforcement of starting and quitting times was in accordance with the provisions of a contract or agreement whereby the Respondent Union was delegated such authority. Rather, as noted above, on this record it appears that Anderson was enforcing a union rule which the union members under his jurisdiction were obligated to follow. Cf. *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America* v. *N.L.R.B.*, 365 U.S. 667.

PROPOSED SUPPLEMENTAL ORDER

As the Remedy and Order of the original Decision and Order of the panel, as corrected, are not inconsistent with our findings herein, we hereby adopt them as part of this Proposed Supplemental Decision and Order, except that in paragraphs A, 2 (f), and B, 2 (f), the figure "20" shall be substituted for the figure "10." [6]

MEMBER RODGERS, concurring:

I concur in the result solely on the basis of the Board's original decision herein.

[6] The parties are hereby given 20 days from the date of this Order to file exceptions to this Proposed Supplemental Decision and Order, together with supporting briefs

Local 825, International Union of Operating Engineers, AFL-CIO [R. G. Maupai Co., Inc.] *and* Mechanical Contractors Association of New Jersey, Inc. *Case No. 22-CC-90. January 26, 1962*

DECISION AND ORDER

On January 23, 1961, Trial Examiner John F. Funke issued his Intermediate Report herein, finding that Respondent had not engaged in certain unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the Intermediate Report attached hereto. Thereafter, the General Counsel and the Charging Party filed exceptions to the Intermediate Report together with supporting briefs.

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 [Members Rodgers, Fanning, and Brown].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and finds merit in the exceptions of the General Counsel and the Charging Party.

The complaint alleged that the Respondent Union violated Section 8(b)(4)(i) and (ii)(B) of the Act by inducing and encouraging employees of Henry Ernst, Jr., and John Ochs, subcontractors of R. G. Maupai, Inc., to strike, and by refusing to refer men to work for Ernst and Ochs, all for the purpose of forcing Ernst and Ochs to cease doing business with Maupai, and to force Maupai to recognize the Respondent Union.

The Trial Examiner recommended that the complaint be dismissed in its entirety, because he found that Respondent was not responsible