

WE WILL NOT threaten any of our employees with discharges, layoffs, and/or the elimination of overtime work because or in the event the above-named labor organization should become their collective-bargaining representative.

WE WILL NOT threaten any of our employees with discharge in the event they continue to engage in activity in behalf of said labor organization.

All of our employees are free to become or remain members of said or any other labor organization or to refrain from becoming or remaining members thereof.

J. WEINGARTEN, 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.

Employees may communicate directly with the Board's Regional Office at 650 M and M Building, 1 Main Street, Houston, Texas, Telephone Number, Capitol 2-7201, Extension 041, if they have any question concerning this notice or compliance with its provisions.

Whitelight Products Division of White Metal Rolling and Stamping Corp. and United Electrical, Radio and Machine Workers of America, Local 218. Case No. 1-CA-3266. June 18, 1962

SUPPLEMENTAL DECISION AND ORDER

On June 27, 1961, the Board issued its Decision and Order in the above-entitled case in which it found that Whitelight Products Division of White Metal Rolling and Stamping Corp., herein called the Respondent, violated Section 8(a) (1), (3), and (5) of the Act.¹ The Board found, *inter alia*, that the Respondent laid off four employees because of union activities and not because of a machine breakdown which led to a production curtailment.

Thereafter, the Board's findings and conclusions were considered by the United States Court of Appeals for the First Circuit upon the Board's petition for enforcement of its order. On January 15, 1962, the court handed down its opinion, remanding so much of the case as related to the layoff of the four employees.² The court found that the Board's finding that production did not warrant any layoffs is not only "without support, but is totally contradicted." However, the court remanded the case to the Board so that it might consider "whether the layoffs were nevertheless an unfair labor practice for some other reasons."

The Board³ has reexamined the record in the light of the court's opinion and finds that the evidence establishes that the particular layoffs which occurred on August 18, 1960, were motivated by discrimina-

¹ 131 NLRB 1323.

² *N.L.R.B. v. Whitelight Products Division of White Rolling & Stamping Corporation*, 298 F. 2d 12, cert. denied 369 U.S. 887.

³ Pursuant to the provision 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 [Chairman McCulloch and Members Fanning and Brown].

tory considerations despite economic justification for some layoffs at this time. Respondent, through its plant manager, Records, testified that the employees were selected for layoff on a departmental seniority basis, i.e., that the least senior man in each department was laid off. A close examination of Records' testimony and the seniority list prepared from the Respondent's own records by Respondent's counsel reveals that this contention is not supported by the record.

Records testified that Bernard Smith was laid off from the welded ladder department into which he had been transferred the month before the events which required the layoff. Smith, who had been working for Respondent since April 18, 1960, was therefore transferred into the welded ladder department sometime between July 15 and 18, 1960. However, at least three other men in that department had less seniority: Delvin Shafer, a new employee, began working for Respondent in that particular department on July 19, 1960; Francis Pelton began working on August 14, 1960 (the very week that long-time employee Smith was laid off); and Wilfred LaDuke, who was partly in the welded ladder department and partly in the industrial ladder department, began working on August 4, 1960.

Clinton Pecor, who began working for Respondent on August 2, 1960, was laid off from the bolted ladder department. However, the record reveals that Records rehired another employee, Hitchcock, for that department on September 6, 1960, while the economic conditions which necessitated some layoff were still in existence. Hitchcock had originally been hired August 1, 1960, and left on August 15, 1960. We are of the opinion, upon the sum total of these facts, that economic necessity was not the reason for the layoff in the bolted ladder department.

Maurice Brodeur, who began working for Respondent on June 22, 1960, and was laid off from the machine shop, was admittedly not the least senior employee in that department. Respondent justifies this departure from seniority on the basis that the least senior employee was not much more than "an apprentice" or "errand boy."

On the basis of the foregoing, we find that the Respondent's own evidence disproves its contention that seniority on a departmental basis was the criterion which the Respondent used in determining which employees should be laid off. Considering that fact in the light of the Section 8(a) (1),⁴ (3), and (5) violations which the court has enforced, we find that Respondent chose three men because of their membership on the employees' committee and the fourth man because he was al-

⁴ We note, particularly, that Foreman Lemp told one employee, on the day following the layoff, that "I hate to fire anybody, but when I get the word from the bigger boss, I got to do it. You see what happened here yesterday" He also pointed out to the employee that there were "seven or eight people out on the street now that would vote for the Union."

ready a member of the particular union before he, and it, came to Respondent's plant.⁵

Accordingly, the Board reaffirms its original Order as qualified by the decision herein.

⁵ As mentioned by the court, if any one of these four men might have been laid off for economic reasons during the period of production curtailment, he is not entitled to full backpay beyond such time. However, this does not diminish the finding of discriminatory motivation in selection for layoff on August 18, 1960. The matter of limiting the amount of backpay because of such subsequent unavailability of a position for the particular discriminatee for a reason unconnected with the discrimination is a problem for compliance proceedings.

Mason Au & Magenheimer Confectionery Manufacturing Company, Inc. and William Neville and Local 30, 30A, 30B and 30C, International Union of Operating Engineers, AFL-CIO, Party in Interest. *Case No. 2-CA-7791-5. June 18, 1962*

SUPPLEMENTAL DECISION AND ORDER

On June 6, 1961, a hearing was held before Trial Examiner C. W. Whittemore in a consolidated proceeding¹ which included the above-entitled case. At the hearing, the Trial Examiner granted Respondent's motion to dismiss on the ground that the averments in the complaint failed to allege a cause of action under Section 8(a)(2) of the Act. On January 15, 1962, the Board issued its Decision and Order in this consolidated proceeding finding that the allegations of the complaints, if proven, may be sufficient to sustain a finding of a violation of Section 8(a)(2) of the Act. The Board also ordered that the cases be severed and remanded to the Regional Director for the Second Region for the purpose of arranging separate hearings in the previously consolidated cases.²

On January 25, 1962, the General Counsel issued an amended complaint in the above-entitled case, again alleging that Respondent, by and through its chief engineer, John J. Moran, was participating in the internal affairs of Locals 30, 30A, 30B, and 30C, International Union of Operating Engineers, AFL-CIO, and that Respondent's conduct constituted a violation of Section 8(a)(1) and (2) of the Act. On April 4 and 5, 1962, a hearing was held before Trial Examiner Owsley Vose. At the conclusion of the presentation of General Counsel's case, the Trial Examiner granted Respondent's motion to dismiss on the ground that the General Counsel had failed to establish a *prima facie* case. Thereafter, the General Counsel petitioned

¹ The other parties named as Respondents in this consolidated proceeding included Banner Yarn Dyeing Corporation, National Gypsum Company, Jos. Schlitz Brewing Company, Stahl-Meyer, Inc., and Rockwood Chocolate Co., Inc.

² 135 NLRB 298.