WE WILL NOT discourage membership in American Bakery and Confectionery Workers Local Union No. 173, American Bakery and Confectionery Workers International Union, AFL–CIO, and in General Drivers, Chauffeurs and Helpers, Local Union No. 886, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization of our employees, by discriminating in regard to the hire or tenure of their employment or any term or condition of their employment.

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

WE WILL offer to Murriel D. Jennings and Jimmy Capps immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered as a result of our discrimination against them.

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

MEAD'S BAKERY, INC.,
Employer.

Dated_____ By_____
(President)

_____
(General Manager of Lawton plant)

NOTE.—We will notify any of the above-named employees presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, Room 2093—Federal Center, 300 West Vickery, Fort Worth 4, Texas, Telephone Number, Edison 5–5341, Extension 284, if they have any question concerning this notice or compliance with its provisions.

Florida All-Bound Box Company *and* Local Union 2653, United Brotherhood of Carpenters and Joiners of America, AFL–CIO.

Case No. 12–CA–2243. August 15, 1962

DECISION AND ORDER

On May 31, 1962, Trial Examiner Reeves R. Hilton 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 the complaint be dismissed in its entirety, as set forth in the attached Intermediate Report. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

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 [Chairman McCulloch and Members Leedom and Brown].

138 NLRB No. 18.

The Board has reviewed the rulings made by 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 General Counsel's exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications set forth below.[1]

[The Board dismissed the complaint.]

[1] We do not adopt that portion of the Trial Examiner's concluding findings to the effect that statements made by Plant Superintendent Boyd prior to the 6-month period preceding the filing and service of the charges, indicating the Respondent's opposition to union organization generally, did not shed any light on Boyd's refusal to reinstate or reemploy Walters and Scott within the 10(b) period. The Board considers evidence concerning such statements made prior to the 6-month period as they may shed light on the motivation of conduct engaged in within the 6-month period. *Superior Maintenance Company,* 133 NLRB 746, footnote 3. We have, therefore, considered such evidence in this case. We nevertheless agree with the Trial Examiner that the General Counsel has not established by a preponderance of the evidence that the Respondent failed or refused to reinstate or reemploy Walters and Scott for reasons violative of the Act.

We also do not adopt the Trial Examiner's further concluding finding that "a violation of Section 8(a)(4) must be established by more compelling evidence that [sic] the bare inclusion of a person's name as a discriminatee in a charge, especially when, as here, the charge turns out to be baseless." The purport of this statement is not clear. We agree, however, with the Trial Examiner that the Respondent did not violate Section 8(a)(4) of the Act, but do so in reliance upon the Trial Examiner's credibility resolutions, which we adopt

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon a charge duly filed on January 8, 1962 (as later amended), by Local Union 2653, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, herein called the Union, the General Counsel of the National Labor Relations Board, through the Regional Director for the Twelfth Region (Tampa, Florida), issued a complaint dated February 23, 1962, alleging that Florida All-Bound Box Company, herein called the Respondent or the Company, has engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (4) of the National Labor Relations Act, as amended by the Labor-Management Reporting and Disclosure Act of 1959, herein called the Act. The answer of the Respondent admits certain allegations of the complaint but denies the commission of any unfair labor practices. Pursuant to notice, a hearing was held before Trial Examiner Reeves R. Hilton at Tampa, Florida, on April 18, 1962. The parties were represented by counsel and were afforded opportunity to adduce evidence on the issues herein, to present oral argument, and to file briefs. About May 11, 1962, I received a brief from counsel for the Respondent which I have considered fully.

Upon the entire record in the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE COMPANY'S BUSINESS

The Company, a Florida corporation, maintains its office and place of business at Auburndale, Florida, where it is engaged in the manufacture, sale, and distribution of wire-bound fruit and vegetable shipping containers. During the 12 months preceding the issuance of the complaint, the Company sold and shipped finished products valued in excess of $50,000 to points outside the State of Florida. I find the Company is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization as defined in the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The issues*

The complaint alleges that on and after July 17, 1961,[1] the Company refused to reinstate and/or rehire six laid-off employees, including Carolyn Walters and Bertie Scott. At the outset of the hearing the General Counsel moved to amend his complaint by deleting the names of four of the discriminatees and alleging that from about July 17, 1961, to April 12, 1962, the Company refused to reinstate and/or rehire Walters and Scott in violation of Section 8(a)(1), (3), and (4) of the Act. Without objection, I granted the motion. At the same time I granted the Company's motion to amend its answer to deny the allegations of the amended complaint. There is no allegation or contention that the Company engaged in any independent acts or conduct in violation of Section 8(a)(1), so the only question presented is a factual one, namely, whether the Company unlawfully denied employment to the two discriminatees from about July 17, 1961, to April 12, 1962.

B. *Background of the case*

The evidence touching upon organizational activities comes from employee Johnny Hughes who stated that during February he assisted the Union's efforts to organize the plant by passing out cards to employees. During this period Hughes had one conversation with Jack Boyd, plant superintendent, in the course of which Boyd asked how the Union was coming along, that he had heard Hughes was passing out cards, and that the Union might get him into trouble.

Boyd was aware of some union activity about that time and told Hughes that while he could pass out cards on his own time, he could not do so on company time.

Boyd further stated that during February the Company was operating five of its six box-making machines, but due to slack business conditions it shut down one machine about February 17, and since then it has operated with only four machines. This resulted in the layoff of 12 or 13 employees; 9 who were actually engaged in running the machine and 3 or 4 who were employed on jobs dependent upon its operation. Boyd announced the coming layoff to the workers and advised the employees scheduled for layoff, as well as other employees, that if they could obtain employment elsewhere they should accept it. According to Boyd the Company has recalled only two of the laid-off employees, Mary Driggers and Violet Oravetz, around July, and offered reemployment to Carl Stallard, which he declined because he had secured another job.

The parties stipulated that on May 2, the Union filed a charge (Case No. 12–CA–1995) alleging that 13 named individuals, including Walters and Scott and other employees, had been discriminatorily terminated and/or laid off about February 17 and thereafter refused employment. The charge was withdrawn by the Union on June 2.

C. *The discrimination cases*

1. Carolyn Walters

Walters worked off and on for the Company commencing about 1944 (she did not work at all from August 1946 to May 1951) and in February she was employed at a unitizer. In the course of her employment Walters was laid off during the summer months, which is the Company's seasonal slack period. Walters signed a union card in February and on February 16 Boyd stated she was being laid off. The following July, Walters telephoned Boyd to inquire about work and Boyd replied he could not use her at that time. In September, Walters went to the plant and told Boyd she would like to return to work because she owed money to the company credit union which she wanted to repay. According to Walters, Boyd refused her request for the reason that her name was included in the "Labor Board papers," or the charge. Walters said if her name was included she did not put it in there and Boyd stated he was not arguing the point, her name was included. Walters, seemingly, made no further inquiry of Boyd and was recalled to work about April 11, 1962.

2. Bertie Scott

Scott worked for the Company continuously, except for seasonal layoffs, from about 1953 until February 17. Prior to the latter date she was employed as a board layer and signed a union card in the early part of February. About February 17, Boyd told her she was being laid off and when Scott asked if she would be rehired

[1] All dates refer to 1961 unless otherwise stated

Boyd replied she would be reemployed when work picked up. The following June, Scott called Boyd about returning to work and he said he could not use her at that time. Scott was recalled to work April 12, 1962.

Henry Scott stated that in September he asked Boyd if he was going to recall his wife and Boyd answered he had changed his mind since her layoff, that he was not reemploying her. When Scott asked why he had changed his mind, Boyd said her name was on the "Labor Board paper" along with the rest of them and he was not putting her back to work.

Other Testimony Adduced by the General Counsel

Mary Driggers was employed as a board layer and at times worked with Walters and Scott. Driggers was laid off in February, recalled in June, and quit her employment the following December. In February someone gave Driggers a union card, which she later returned unsigned. Sometime during the period of her layoff, February to June, she went to the plant to see Boyd because she felt she had "betrayed" her coworkers in that she had probably led them to believe she was for the Union when in fact she was "confused" regarding organization. Plainly, Driggers had no recollection as to the approximate date of her visit to the plant and had only a hazy remembrance of her conversation with Boyd. However, with some prodding and leading by the General Counsel she stated she voluntarily gave Boyd the name of eight employees, including Walters and Scott, whom she had heard had signed up for the union.[2] Admittedly, Boyd made no comment upon receiving this information and did not make any notation of the names given him. Driggers stated she concluded the conversation by apologizing for being involved in the Union and she believed she requested Boyd to put her back to work. Driggers further stated she and Violet Oravetz, who was named a discriminatee in the old charge, were recalled to work at the same time.

Ernest Comer, Boyd's brother-in-law, added more background to the case. Comer related that in February, Boyd mentioned the Union was attempting to organize the plant and Comer, who did not sign a card or participate in organizational efforts, stated he was neutral, that he was not pushing for the Union or talking for the Company. Boyd remarked he was not threatening Comer's job, but he had better start talking for the Company for if the Union came in none of them would have jobs since Richard Miller, one of the stockholders, had stated he would not operate under the Union. Comer also related an earlier conversation with Boyd which occurred in 1959, when Boyd visited Comer on his farm in Tennessee. On that occasion Boyd said he, personally, had no objection to a good union in the plant, but not the Teamsters, and that Miller had declared he would not operate under a union. Comer was still working for the Company.

Constance Dupree worked off and on for the Company since 1947, and apparently her last employment ended around July 1960. Dupree was reemployed about July 17 as regular end stocker but she performed other jobs as needed including board laying and unitizing. She was still employed at the time of the hearing.

Lucille Purvis worked off and on since 1943 and quit her employment about October 7, 1960. During June or July, Purvis called Boyd on two occasions to ask for work and Boyd promised her a job whenever he had an opening for her. Purvis was reemployed about July 17, and since then, without any regular job assignment, she has worked on various jobs including board laying and unitizing.

The Company's Case

Boyd said Walters was employed as a unitizer and in July, after her layoff, she came to the plant to ask for work, and Boyd stated he had no job for her. Later, in September, she again spoke to Boyd at the plant about returning to work and Boyd told her he had no opening for her. Walters stated she needed work so she could repay a loan to the credit union. She also stated she like the Company and thought well of Boyd. Boyd thereupon commented if she thought so well of him why did she file a charge against him and she answered she knew knothing of the charge. Boyd said he did not know whether Walters was a member of the Union or if she had participated in any union activities. As set forth above, Walters was reemployed as a unitizer about April 12, 1962.

Boyd said Scott was employed as a board layer and sometime after her layoff she telephoned to inquire if her seniority would be affected by accepting another job and Boyd told her no. He also informed her that it seemed unlikely the crew on the

[2] The other names were Thelma, Ernest, and Tommy Ferman, Hughes, Clayton, and Pinky Lawrence. Driggers admitted all these individuals are still employed by the Company

shutdown machine would be recalled. Boyd also testified that during 1960 or 1961, Scott had refused to work as a utility employee and said she would quit rather than perform jobs other than board laying. Seemingly, from the General Counsel's cross-examination of Boyd, Scott's physical condition, as a result of major surgery in 1960, had something to do with her refusing to perform other jobs such as end stocker. Boyd stated that while the jobs of board layer and stocker are different they are interchangeable as to workers and there is not much difference in the jobs insofar as weight lifting is concerned.[3] Since Scott performed but one job and could not be used as a utility employee Boyd had no available opening for her until her recall on April 12, 1962. Boyd did not know whether Scott was a member of the Union or engaged in activities in its behalf.

Boyd stated that in September Scott's husband asked when his wife would be reemployed and he replied he did not have an available or suitable job for her. Scott said his wife would like to return to work because she like the Company and thought well of Boyd. Thereupon, Boyd queried if she thought so much of him why did she have a labor charge against him. Scott said he had no knowledge of any such charge.

Boyd denied Miller ever stated the Company would not operate under a union and further denied he ever told Comer that Miller had made such a statement.

Boyd recalled Driggers spoke to him sometime between February and June, but he could not remember the substance of their talk, nor could he remember Driggers giving him the names of employees who had signed union cards.

Boyd was aware of the fact that Oravetz was named in the old charge when he recalled her in July. Boyd also stated Dupree was recalled because she could perform different jobs. He was not questioned concerning the recall of Purvis.

Concluding Findings

The basic issue presented is whether the Company had available jobs in the period July 17, 1961, to April 12, 1962, which Walters and Scott were qualified to perform, but discriminatorily refused to reinstate or rehire them in these positions.

The record shows that Walters and Scott merely signed union cards in February 1961, and were laid off on February 17, along with other employees, when the Company, for legitimate business reasons, shut down certain of its manufacturing operations. On May 2, the Union filed charges alleging the layoff to be discriminatory, named 13 employees as discriminatees, and then withdrew the charge on June 2. Thereafter, on January 8, 1962, another charge was filed which resulted in the issuance of the present complaint alleging the illegal refusal to reinstate six employees on and after July 17, 1961. The complaint as amended at the hearing is now limited to the denial of reemployment to Walters and Scott in the period July 17, 1961, to April 12, 1962. Obviously this period was selected for the reason that the Company reemployed Dupree and Purvis on the earlier date while Walters and Scott were not reemployed until the latter date.

In brief, the General Counsel relies upon background evidence, the old charge and certain statements made by Boyd to Walters and Henry Scott to sustain the alleged violations of the Act.

The background evidence touches upon two or three remarks supposedly made by Boyd to Hughes and Comer indicating the Company was opposed to organization generally. These statements were made more than 6 months prior to the filing and service of the charge herein and I fail to see how they shed any light on Boyd's treatment of Walters and Scott within the Section 10(b) period. Driggers' testimony concerns a conversation she had with Boyd sometime between February and June 1961, which wound up with her voluntarily giving Boyd the names of eight employees she believed had signed up for the Union. Boyd remembered Driggers talking to him but had no recollection of the subject discussed or her giving him the names of employees who had signed union cards. Apart from the fact the conversation took place more than 6 months prior to the filing and service of the charge, her testimony is so garbled, rambling, and confusing as to be entitled to no consideration whatever.

There is no question Walters and Scott did not file the old charge, nor did they enlist the aid of the Union in that respect or have anything to do with the preparation, initiation, or processing thereof. In my opinion a violation of Section 8(a)(4) must be established by more compelling evidence that the bare inclusion of a person's name as a discriminatee in a charge, especially when, as here, the charge turns out to be baseless.[4] Certainly, Walters and Scott acquired no special status as a

[3] An end weighs about a pound and a board a matter of ounces

[4] Cf. *Esgro, Inc*, 135 NLRB 285; *Adams Dairy, Inc*, 120 NLRB 177; *Peerless Products, Inc.*, 120 NLRB 1008, footnote 3.

result of being named in the charge and about the only purpose served by the old charge was to give notice that they, together with other persons, were union members or active in its behalf.

There remains for consideration the separate, but similar, conversations Walters and Henry Scott had with Boyd during September 1961. The substance of these conversations, as related by Walters and Scott, is that Boyd refused to reemploy Walters or Bertie Scott because their names appeared in the old charge. On the other hand Boyd testified he told Walters and Scott he had no jobs available and when they started lauding the Company and himself, Boyd queried if they felt that way why did they file charges against him. Walters and Scott thereupon opined their unawareness or ignorance of the contents of the charge. I was not favorably impressed by the testimony of Walters and Henry Scott for it struck me they were simply trying to bolster the case. Moreover, it seems highly improbable that Boyd would inform Walters and Bertie Scott in June and July that he could not reemploy them because he had no openings, as they conceded, and in September base his refusal to reemploy them because their names appeared in the charge. I, therefore, accept and credit the testimony of Boyd and find he did not make the statements attributed to him by Walters and Henry Scott. Further, I attach no significance to Boyd's queries addressed to Walters and Scott concerning the filing of the charge for, if not invited and appropriate under the circumstances, they were harmless.[5]

Boyd testified that Walters and Scott were employed exclusively as unitizer and board layer, respectively, and the Company had no available jobs in these categories during the period in question. It is true, of course, the Company reemployed Dupree and Purvis about July 17, but they were employed as general utility workers, a position which neither Walters nor Scott were qualified to fill. Walters and Scott did not deny or challenge Boyd's testimony in their direct examination or as rebuttal witnesses. Consequently, Boyd's testimony stands uncontradicted and I accept it.

Accordingly, I find the Company did not discriminatorily refuse to reemploy or rehire Walters and Scott in violation of Section 8(a)(3), (4), and (1) of the Act.[6]

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

CONCLUSIONS OF LAW

1. The operations of the Respondent occur in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent in failing to reemploy Carolyn Walters and Bertie Scott from July 17, 1961, to April 12, 1962, has not engaged in unfair labor practices as alleged in the complaint as amended within the meaning of Section 8(a)(3), (4), and (1) of the Act.

RECOMMENDATION

Upon the basis of the foregoing findings of fact and conclusions of Law, I recommend that the complaint be dismissed.

[5] *Whitin Machine Works*, 32 NLRB 1123, 1129.

[6] *N L R B.* v. *Cambria Clay Products Company*, 215 F 2d 48, 56 (C A. 6); *N L R B.* v. *Textile Machine Works, Inc*, 214 F. 2d 929, 934 (C.A 3); *Croscill Curtain Company and Durham Drapery Company, Inc*, 130 NLRB 1465; *Western Lace & Line Co, d/b/a Western Fishing Lines Company*, 103 NLRB 1408, 1464–1466. See also, *Adams Dairy, Inc., supra.*

The Sweetlake Land and Oil Company, Inc.[1] *and* Rice Workers Local 300, Amalgamated Meat Cutters & Butcher Workmen of N.A., AFL–CIO. *Case No. 15–RC–2500. August 15, 1962*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before William W. Fox,

[1] The name of the Employer appears as amended at the hearing.