

WE WILL, upon request, bargain collectively with the aforesaid labor organization as the exclusive representative of the employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

SAM BELZ UPHOLSTERED PRODUCTS COMPANY, 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, Seventh Floor Falls Building, 22 North Front Street, Memphis, Tennessee, Telephone Number Jackson 7-5451, if they have any question concerning this notice or compliance with its provisions.

Colony Materials, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Local No. 492.
Case No. 28-CA-677 (formerly 33-CA-677). September 5, 1962

SUPPLEMENTAL DECISION AND AMENDED ORDER

On December 19, 1961, the Board¹ issued a Decision and Order² herein, finding that the Respondent had discriminated against certain strikers by refusing to accept their unconditional offers to return to work. Thereafter, on January 19, 1962, the Respondent filed a motion for reconsideration to reopen the record to take further evidence as to the cause of the strike, inasmuch as the Trial Examiner and the parties erroneously assumed, without litigating the matter, that the Board, in a prior decision involving this Respondent,³ had determined that the strike was an unfair labor practice strike. By order dated February 28, 1962, the Board remanded instant case to Trial Examiner Wallace E. Royster for a further hearing on this matter.

On June 11, 1962, the Trial Examiner issued the attached Supplemental Intermediate Report. Thereafter, the Respondent filed exceptions to the Supplemental Intermediate Report and a supporting brief.

¹ Consisting of Members Fanning and Brown, with Member Rodgers concurring with the result reached.

² 134 NLRB 1347.

³ *Colony Materials, Inc.*, 130 NLRB 105

138 NLRB No. 53.

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 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 Supplemental Intermediate Report, the exceptions and supporting brief,⁴ and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

IT IS HEREBY ORDERED that the Board's Order in the original Decision and Order in this case be, and it hereby is, amended by striking from subparagraph (a) of paragraph numbered 1 the words "unreplaced strikers," and substituting in lieu thereof the words "unfair labor practice strikers."

IT IS HEREBY FURTHER ORDERED that the notice required to be posted by the Respondent, attached as the Appendix to the Board's original Decision and Order in this case, be, and it hereby is, amended by striking the words "unreplaced strikers" from the sentence thereof beginning "WE WILL NOT" and substituting in lieu thereof the words "unfair labor practice strikers."⁵

⁴ The Respondent's request for oral argument is denied as, in the opinion of the Board, the record, including the exceptions and the supporting brief, adequately presents the contentions and the positions of the parties.

⁵ Said notice is likewise hereby modified by adding the following immediately below the signature at the bottom of the notice: "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."

SUPPLEMENTAL INTERMEDIATE REPORT AND RECOMMENDATION

After a Board Order had issued in this matter on December 19, 1961,¹ upon motion of the Respondent, the Board on February 28, 1962, directed a further hearing before Trial Examiner Wallace E. Royster to take evidence on the following issues: (1) Was the strike an unfair labor practice strike, and (2) if not, had the strikers been replaced at the time they applied for reinstatement.

Pursuant to due notice, a further hearing was held before me in Santa Fe, New Mexico, on April 3, 1962, on these issues. All parties were represented by counsel.

In a Decision and Order in a prior case² involving the Respondent, the Board on February 10, 1961, in affirming its Trial Examiner, found that the Union on April 1 and 6, 1960, "explicitly and unequivocally requested recognition" of the Respondent and that the Respondent in violation of the Act refused to extend it. In consequence of this finding I have given no consideration to testimony adduced at the instant hearing on that point.

At the further hearing in this matter, Roger Wallace, a representative of the Union, testified that on April 11, 1960, at a meeting attended by employees of the Respondent and by employees of Respondent's predecessor, Kenneth Pike, a discussion took place concerning Respondent's refusal to bargain with the Union and

¹ 134 NLRB 1347.

² *Colony Materials, Inc.*, 130 NLRB 105.

its refusal to hire certain individuals who had been in the employ of Pike. Because of these considerations, according to Wallace, a strike resolution was proposed and adopted. The next morning, April 12, a picket line was placed near Respondent's premises and a number of its employees engaged in a strike. The pickets carried signs stating that the Respondent was "Unfair, refuses to bargain with employees' representative, Teamsters Local 492." F. R. Childers, also a representative of the Union, testified to the same effect as Wallace.

Philip Naumberg, Respondent's president, testified that on the day that the strike began he made no attempt to discover its cause and that he did not remember the legend on the picket signs.

I fully credit the testimony of Wallace and that of Childers concerning the union meeting of April 11, and find that the men voted to strike to force the Respondent to extend recognition to the Union and to bargain with it as well as to bring about the hiring of former employees of Pike. Thus, as one of the causes of the strike was Respondent's refusal to extend recognition to and to bargain with the Union, as this refusal has been found by the Board to be unlawful and in derogation of rights secured to employees by Section 7 of the Act, it follows that the strike was caused in part at least by Respondent's unfair labor practices. I find that the strike beginning April 12, 1960, was an unfair labor practice strike from its inception.³ I therefore do not reach the question of replacement of the unfair labor practice strikers.

RECOMMENDATION

I recommend that the Board adopt the foregoing findings and that it in consideration thereof amend its Decision and Order of December 19, 1961, to reflect the fact that the strike was an unfair labor practice strike and in all other respects to reaffirm that decision.

³ *N.L.R.B. v. Birmingham Publishing Company*, 262 F. 2d 2 (C.A. 5).

Drivers and Chauffeurs, Local Union No. 816, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Montgomery Ward and Co., Incorporated. *Case No. 2-CD-178. September 5, 1962*

ORDER QUASHING NOTICE OF HEARING

This is a proceeding under Section 10(k) of the Act following a charge filed September 3, 1959, by Montgomery Ward and Co., Incorporated, herein called Montgomery Ward, alleging a violation of Section 8(b)(4)(D) by Drivers and Chauffeurs, Local Union No. 816, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 816 or the Respondent. Specifically, the charge alleged that Local 816 had induced and encouraged employees of Montgomery Ward and of Sidel Truck Leasing Corporation, herein called Sidel, to engage in a strike for the purpose of forcing Sidel to assign certain work to members of Local 816 rather than to employees of Sidel, who were members of Teamsters Local 138, herein called Local 138. A duly scheduled hearing was held before Oscar Geltman, hearing officer, on February 3 and 24, 1960, at New York City, where Montgomery Ward and Local 816 appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing upon the issues.