Wrought Originals, Inc. *and* Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.
Case No. 2–CA–8336. November 30, 1962

DECISION AND ORDER

On July 2, 1962, Trial Examiner William J. Brown 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 attached Intermediate Report. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report with briefs in support thereof.

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 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 Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following amplifications and modifications.

In agreement with the Trial Examiner, we find that the employees' strike of June 16, 1961, was in protest of Respondent's refusal to accord recognition to Local 810 [1] as their bargaining representative. In the unique circumstances of this case, we find that the existence of an unexpired contract between Respondent and Local 517 [2] did not provide Respondent with the obligation or the justification for rejection of Local 810's recognition demand. The contract between Respondent and Local 517 was due to terminate on June 27, 1961, and Local 517 had sent Respondent a letter April 24, 1961, notifying Respondent of its desire to conduct negotiations. No negotiations were ever held. Moreover Goldstein, Local 517's president, is credited to the effect that in May he informed Respondent of Local 810's organizational efforts, and stated that if Local 810 obtained a majority of the employees, Local 517 would withdraw. The record further reveals that Goldstein also testified that he thereafter had two telephone conversations with either Ribakove or Cohen, the managers of Respondent. During the first conversation Goldstein, having been told that the Local 810 people were present, testified that he replied, "I told you if Local 810 has the majority of the people, we are withdrawing our interest." The sec-

[1] Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, herein called Local 810

[2] Local 517, International Production, Service and Sales Employees Union, herein called Local 517

ond conversation took place during the strike at which time Goldstein testified that he told the Respondent that there was nothing he would do, that "we have no further interest in it." Since Goldstein is a credited witness, and this testimony is consistent with the other credited testimony, we credit it. Under these circumstances we find that Local 517 had effectively disclaimed all rights to represent Respondent's employees and that there was no conflicting claims for recognition and indeed Respondent had been so informed by the only other union which might have made such a claim.

Moreover, we find that Respondent's conduct demonstrates that it did not have any good-faith doubt as to Local 810's majority status. The credited testimony evidences Respondent's hostility to Local 810 in the conversation with Goldstein, even before the recognition demand was made by Local 810. In addition, employee Perez, who had been shop steward for Local 517, testified that Ribakove flatly told him that if Local 810 came in he would have to close the factory. Respondent continually stalled Local 810's representatives, stating that the matter of recognition was in the hands of its attorney, but refused to divulge the attorney's identity. Accordingly, we find that the employees struck in protest of an unlawful refusal to bargain.[3] Therefore, they had the status of unfair labor practice strikers *ab initio* and did not lose their status as employees under Section 8(d), or their protected status, merely because the strike started during the last 60-day period of Respondent's contract with Local 517, or because that contract contained a no-strike clause.[4]

ORDER

The Board adopts the Recommended Order of the Trial Examiner.[5]

[3] The fact that the complaint alleges a refusal to bargain from and after July 28, the day after Local 810's certification, can in no way excuse Respondent's earlier refusal to bargain or defeat the employees' right to take appropriate action with respect to such refusal; the cause of the strike was fully litigated, and as the Trial Examiner found, in effect, it was caused by Respondent's adamant refusal to recognize Local 810 as the employees' representative.

[4] Even assuming the contract continued to be effective notwithstanding Local 517's abandonment of its representative status, it is clear that the limitations on employee action normally flowing from the provisions of Section 8(d) and from no-strike clauses do not apply in the case of an unfair labor practice strike such as the one involved herein. *Mastro Plastics Corp., and French-American Reeds Mfg. Co, Inc.* v *N L R B*, 350 U S. 270.

[5] Local 810's telegram to Respondent which contained an unconditional offer to return to work and had been sent on March 16, 1962, was received on March 19, 1962. Accordingly, we herein modify the finding and the provision in the Order and the notice to reflect March 19, 1962, as the date of the offer

The Order is further modified to provide that interest at the rate of 6 percent per annum shall be added to the backpay to be computed in the manner set forth in *Isis Plumbing & Heating Co*, 138 NLRB 716

The Appendix attached to the Intermediate Report is hereby modified by adding the following immediately below the signature in the notice:

> 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.

The Appendix is further modified by deleting the words "60 days from the date hereof" in the penultimate paragraph of said notice and inserting in its place the words "60 consecutive days from the date of posting. . ."

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding under Section 10(b) of the National Labor Relations Act, as amended, hereinafter called the Act, had its origin in a charge filed December 11, 1961, by Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, hereinafter called the Union or Local 810. On January 25, 1962, the General Counsel, by the Regional Director of the National Labor Relations Board for the Second Region, issued the complaint herein. It alleged that Wrought Originals, Inc., hereinafter called Wrought or Respondent, engaged in unfair labor practices defined in Section 8(a)(1), (3), and (5) of the Act by interrogation of and threats to employees, by discriminatorily discharging employees, and by refusing to bargain with the Union as the duly authorized collective-bargaining representative of Wrought's employees. Respondent's answer disclaims knowledge as to the current representative status of the Union and denies the commission of the unfair labor practices alleged.

The hearing was held March 19 through 22, 1962, at New York, New York, before Trial Examiner William J. Brown; all parties were represented and afforded full opportunity to present evidence and argument on the issues. In the course of the hearing the allegations of the complaint respecting interrogation of employees were dismissed. Subsequent to the hearing briefs were filed for the General Counsel and the Respondent and they have been fully considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

It appears from the pleadings and evidence herein that Wrought is a corporation organized under the laws of the State of New York, with its principal office and place of business at 195 Wilson Avenue, Brooklyn, and engaged in the manufacture, sale, and distribution of wire display racks and related products During the year preceding issuance of the complaint, a representative period, Respondent manufactured and shipped in interstate commerce to States other than the State of New York products valued in excess of $50,000. It appears that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that assertion of the Board's jurisdiction is warranted.

II. THE LABOR ORGANIZATION INVOLVED

I find, in accordance with the allegations and admissions of the pleadings, that Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Introduction to the issues*

For at least 5 years preceding the summer of 1961 Respondent was engaged at its Wilson Avenue plant in the manufacture and sale of display products principally for the drug and liquor trade Its work force at all material times consisted of nine nonsupervisory employees and a foreman. The management of Respondent is in the hands of President Louis Cohen and Lawrence Ribakove, secretary-treasurer. Cohen's responsibilities are principally in the field of sales. Ribakove has concern with the area of production. The two officer's wives are the sole stockholders. Working directly under Ribakove and in immediate charge of production is Respondent's foreman, Charles Henderson.

Respondent's gross sales figure has shown a steady increase over the years and for the year preceding June 16, 1961, amounted to approximately $300,000 Respondent's operations consist of the design and production of display stands which are made on order for the particular customer. There is no inventory of finished goods.

At all material times Respondent has engaged in some measure of subcontracting and the undisputed evidence indicates that since June 16, 1961, it has done virtually no manufacturing.

General Counsel's Exhibit No. 8 is a list of subcontractors to whom Wrought delegated the function of manufacturing or processing in whole or in part the orders received by it in the period June 16, 1960, through June 16. 1961. There are 20

subcontractors on this list. The major subcontractors, with the dollar amount of their invoices for the period in question appear to be: Abbot-Wire, $18,893.64; Interstate Wire, $20,057.85; Jiminez Wire, $29,055.87; and King's Plating, $23,545.52. The greatest part of Abbot's dollar invoices are related to its production of a display item known as the "ferris wheel" which appears to be a creation of Wrought but which was at all times manufactured entirely by Abbot for the account of Wrought. King's Plating's invoice reflects subcontracting of electroplating, a process which is not performed by Wrought in its plant. The 16 remaining subcontractors represent invoices ranging from $7,092.83 in the case of Lansky Die Cutting and $6,216.65 in the case of A & T Tool down to $80 in the case of Templet. Lansky Die Cutting performs diecutting of cardboard, an operation not performed by Wrought. A & T Tool performs wood operations not performed in Respondent's plant. Of the remaining subcontractors appearing on the list only one, Reliable Pipe and Nipple, performs an operation (tubing and pipe work) which Wrought is equipped to perform, and Ribakove conceded that this operation was normally let out to a subcontractor. In the period in question Reliable's invoices totaled $515.07.

It appears from the evidence and I find that in the year preceding June 16, 1961, the subcontracting by Respondent of operations it was equipped to do and customarily did perform, was limited to Interstate and Jiminez. Since concededly Respondent's sales are holding up (and, possibly, improving), it is clear that Respondent has subcontracted to Interstate and Jiminez virtually all the manufacturing work it formerly performed, the sole exception being a limited amount of sample making and so-called short runs. This change in the nature of Respondent's operations from production to subcontracting is reflected by the fact that Ribakove now spends 20 hours a week between Interstate and Jiminez. Billings by Interstate to Wrought have quadrupled and in view of the fact that Wrought in December 1961 commenced supplying wire to Interstate, receiving credit for its cost, it is plain that Interstate's share of Wrought's production has more than quadrupled.

In May 1961, Wrought was party to a collective-bargaining agreement with Local 517, International Production, Service and Sales Employees Union. This agreement, dated June 22, 1959, provided that it should be effective for a term expiring June 27, 1961, automatically renewable for a period of 1 year unless notice of a desire to change the terms and conditions were given by either party 60 days prior to the expiration date. The agreement was signed by Ribakove for Wrought and Philip Goldstein, president of Local 517 By letter dated April 24, 1961, Local 517 notified Wrought of its desire for a meeting to conduct negotiations. No negotiations were ever undertaken and early in May, Goldstein alerted Ribakove to the possibility that Local 810 might succeed in signing a majority of employees in which event Local 517 would bow out. Thereafter Isidore Perez, the shop steward for Local 517, also advised Ribakove of the possibility of Local 810 succeeding to representative status.

Toward the latter part of May or early June, Local 810, having succeeded in signing a majority of the employees of Wrought,[1] demanded recognition. The details in this regard are set forth more fully below but it suffices to say by way of introduction that recognition was denied. Ultimately, following an election held July 18, Local 810 was certified and formally requested bargaining on July 28. Respondent has admittedly never bargained with Local 810.

In the meantime, on the morning of June 16, Respondent's employees went on strike following advice from Local 810 that the Respondent's officials refused to discuss terms and conditions of employment. A few days after the strike, on June 20, Wrought sent to each of its employees a telegram reading, "Despite your walkout, your job is open. If you decide to return to work call Joseph Yanklewitz, Evergreen 47033, Wrought Originals, Inc." With the sole exception hereinafter noted none of the employees of Wrought ever returned to work and Wrought continued its operations via the subcontracting method. The sole exception was Jose Gomez, who alone of Respondent's nine production employees had refused to sign a card for Local 810 and who, after some interim employment with Interstate Wire, was rehired by Respondent in November 1961 as a samplemaker and for short-run production.

On March 16, 1962, Local 810 sent a wire to Wrought reading, "Your employees are still available for work. We again request that you call them without delay." It was stipulated by the General Counsel that Ribakove if questioned concerning receipt of this telegram would testify that he had no knowledge of it prior to the hearing in the instant case.

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[1] The evidence is clear that all employees except Jose Gomez signed cards for Local 810 in a bar on May 22, 1961, in the presence of a representative of Local 517.

The General Counsel contends that the changeover from production to subcontracting was motivated by Wrought's hostility to and refusal to deal with Local 810 and that the displacement of employees amounted to a discharge in reprisal for their selection of Local 810 as their bargaining agent. General Counsel further contends that Wrought's admitted refusal to meet with Local 810 on terms and conditions of employment was violative of Section 8(a)(5) both before and after Local 810's certification on July 27, 1961, but since the complaint alleges a violation only after July 28, 1961, the discussion of refusal to bargain herein is limited to the period following certification.

The Respondent's basic position is that Local 810 induced its employees to strike in violation of the no-strike clause of the Local 517 agreement and that it thereupon exercised its managerial prerogative of changing over to a subcontracting method of operations.[2] Respondent further asserts that when its striking employees refused to respond to its June 20 telegram they lost their status as employees and it was under no duty to meet with Local 810 as their representative.[3]

B. *The threat to close the Wilson Avenue Plant*

The complaint alleges that on or about July 17 and 18 and various other dates during June, July, and August, 1961, Respondent, by Jose Gomez at the instance and in the presence of Ribakove, directed employees to refrain from supporting Local 810 and threatened them with a permanent closing of its plant and other reprisals if they supported Local 810.

With respect to this area of the case the General Counsel's evidence is centered around the contents of a discussion between Ribakove on the one hand and the available employees on the other. The latter were assembled in front of employee Juan Solano's house. There is a conflict in the evidence as to the date of this discussion, the identity of the Respondent's spokesman, and what was said on this occasion.

For the General Counsel, Evaristo Solano testified that on Friday following the election (which was held Tuesday, July 18) about 3 o'clock in the afternoon Ribakove addressed the employees, through Jose Gomez as interpreter, and gave them the message that he would give them the work back but he did not want any union and he would give them a raise. Solano added that in the course of the talk on that occasion Ribakove said that if the union matter could not be settled he would have to close down the plant and that the decision was theirs and he would not be hurt because he had two factories and plenty of work.

Also for the General Counsel, Isidore Gomez testified that he was present at the meeting in front of Juan Solano's house; that it occurred about 2 or 3 days before the election He corroborated Evaristo Solano's testimony that Ribakove and Gomez acted in concert on that occasion and generally confirmed Evaristo's account of what was said, specifically attributing to Ribakove (through Gomez) that Ribakove wanted to know if the employees would work without the Union and that if they did they would be given a raise. Gomez also attributed to Ribakove the statement that he did not care if he closed up the place.

For the Respondent, Ribakove placed the time of the conversation in front of Juan Solano's home as just prior to the election. According to Ribakove, William DeLeon, an independent trucker who does trucking and chauffeuring for Wrought and others, told him that the men had been told that Wrought had signed a contract with Local 810 and they wanted to find out the facts in this regard. According to Ribakove he instructed DeLeon to set up an appointment to discuss this with the men and he requested DeLeon to accompany him as an interpreter. Ribakove told the men through DeLeon that he had not signed a contract with Local 810 and that if they wanted to find out who was lying in this regard they should ask Local 810 representatives in front of Ribakove at the polling place on the time of the forthcoming election whether a contract had been signed. Ribakove denied that he ever requested Jose Gomez to talk to or threaten the workers or voice objections to Local 810 Gomez also denied that he ever urged other employees to refrain from supporting Local 810 and denied that Ribakove ever asked him to do this. He conceded that he on one occasion told DeLeon that Local 810 had signed a contract with Wrought and testified that the other boys had told him of this.

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[2] In this regard Respondent relies on *Phillips* v *Burlington Industries, Inc (Peerless Woolen Mills, Div of Burlington Industries)*, 49 LRRM 2144 (D C N. Ga)

[3] Respondent cites *Raleigh Water Heater Mfg Co , Inc* , 136 NLRB 76, which does not control here because of the absence of any unprotected form of concerted activity such as a slowdown of the type involved in that case

Except as to the date of this discussion I credit Evaristo Solano who impressed me as the most trustworthy of those called as witnesses on this matter.[4] Others, including Ribakove, placed the meeting as occurring shortly before the election and in view of the inherent probability that a meeting of this type would precede the election I find that it occurred a day or two before the election. As to the contents of the talk I credit Evaristo Solano and Isidoro Gomez who attributed to Ribakove (through Jose Gomez as interpreter) the statements that he would give them their jobs back with a raise in pay if they gave up Local 810, but would shut down permanently if they did not. The threat to shut down unless union affiliation was rejected clearly amounted to an unfair labor practice under Section 8(a)(1). *Hugh Major Truck Service,* 129 NLRB 322.

C. *The discriminatory discharges*

The complaint alleges that Respondent engaged in unfair labor practices within the scope of Section 8(a)(3) of the Act by terminating the employment of and refusing to reinstate employees Santos Gomez Crespo, Pablo Irizarry Rivera, Emilio Nieves, Celestino Perez, Isidoro Perez, Isidoro Gomez Perez, Evaristo Solano, and Juan Solano. These eight employees had been employed by Wrought for some years prior to June 16, 1961. Together with Jose Gomez they constituted Respondent's entire force of nonsupervisory, nonclerical employees.

The eight employees in question have not worked for Wrought since the morning of June 16, 1961. The General Counsel's position is that on that date they engaged in a strike in protest against the employer's unfair labor practices and that they were constructively discharged when, immediately following the election of July 18, 1961, Respondent announced that its production operations had terminated and commenced the subcontracting of the business it formerly performed. The evidence is quite plain and recital of the facts will set forth the events giving rise to the legal issues herein.

It appears from the credited testimony of Philip Goldstein, president of Local 517, that following the sending of the letter of April 24 referring to negotiations for a new contract he visited Wrought's plant about May 1 for discussions with employees and while there met either Ribakove or Cohen who raised the question as to how much of an increase Local 517 expected. Goldstein said that 517's demands would be submitted later. A week or so later Goldstein again visited the plant and told Wrought's officials that he understood the employees were interested in Local 810 and that if a majority signed for it, 517 would withdraw. According to Goldstein at that time either Ribakove or Cohen said they wanted no part of Local 810. About the same time Isidoro Perez, who had been shop steward for Local 517 and its predecessors for some 4 years, talked to Ribakove about the change in allegiance of the employees from Local 517 to Local 810. Although there was initially some inexactness in Perez' recollection as to the date of this conversation, it does appear that he clearly placed it finally as having occurred on May 21 the date before a majority of employees actually affixed their signatures to designation cards for Local 810.

According to Perez' testimony, Ribakove flatly said that if Local 810 came in he would have to close the doors of the factory. Ribakove for his part, although first testifying that his first knowledge of any change in affiliation of the employees occurred in early June 1961, finally refused to deny that he was aware of Local 810's interest in May. In any event it is clear from the credited testimony of Local 810's representative, Kanuka, that he visited Ribakove on May 25 and asked talks for a successor contract. Respondent never questioned Local 810's majority in the several talks Kanuka and Mikalinas, business agent of Local 810, had with Ribakove and Cohen.

On June 16 Mikalinas appeared at Respondent's plant early in the morning. According to Ribakove's account of the events of that morning, when he appeared to open the plant Mikalinas and two other representatives of Local 810 came into Respondent's office with all the employees. Ribakove said that they insisted on immediate discussions looking toward a new contract and that he repeated on that occasion his previous assertion that Local 517 represented the men. At that time, as appears from the testimony of all the witnesses, the men left the premises and went on strike.[5] On June 20 Respondent's attorney, Yanklewitz, sent a wire to the strikers (the eight named in the complaint plus Jose Gomez) reading, "Despite your walkout, your

[4] Evaristo Solano's inaccuracy as to the date appears to me to be one of many discrepancies attributable to the language barrier.

[5] Local 810's representatives assured the men it would stand back of them and furnish picket signs.

job is open. If you decide to return to work call Joseph Yanklewitz Evergreen 47033. Wrought Originals Inc."

On June 27 Wrought's contract with Local 517 expired and on the same date Local 810 filed its representation petition. A hearing on the petition, Case No. 2–RC–11458 (not published in NLRB volumes), was held July 7 at which Local 810 and the employer were represented. That hearing was adjourned to permit notification of the proceedings to Local 517. In the course of the hearing Attorney Mandlebaum for Wrought stated:

> I want to make another thing very, very clear. As at the time of the cessation of employment, irrespective of the cause, as to claim of lockout on one side and the claim of walkout on the other, there has been a discontinuance of an operation, this particular operation, and the overall business. And while I'm talking about an election here, I don't want any implied impression that there is going to be a resumption of the operation after the election. I want the union before they give me the consent, to understand that. And my only purpose in consenting to an election is to go into this question as to the origin of the cards. But I don't want *per se* an implied or direct commitment to be assured from my consenting to an election that we are resuming operations. . . .
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> I want it definitely understood that you understand that by my asking for and agreeing to a consent election, that there is no promise, implied or direct, that there will be a resumption of operation by this employer.

At the resumption of the hearing on July 12, 1961, following proof of notification to Local 517, Wrought and Local 810 entered into a stipulation for a consent and that recognized as eligible voters the nine employees referred to above consisting of the eight named herein as discriminatees plus Jose Gomez. In the course of this resumed hearing Mandlebaum, attorney for Wrought, again stated:

> It is understood so far as the employer is concerned, that his consent to the election as specified shall not be deemed as undertaking agreement or obligation on his part, direct or implied, to resume business at or subsequent to the election.

The election was held July 18, 1961. It resulted in a vote in favor of Local 810 by a 6-to-1 margin. Certification of Local 810 followed on July 27, 1961.

The record indicates and I find that by consenting to the election Respondent was merely engaged in a process of biding time to see if by chance Local 810 should be defeated. Immediately upon the revelation of the results of the election, according to the credited testimony of Isidoro Gomez, Ribakove said that the voting was finished and he was going to close down the place. At that time Jose Gomez taunted his fellow employees with the statement that although the boss was closing the factory he would still be working. Ribakove did not deny the statement attributed to him by Isidoro Gomez. There is no economic justification furnished by Respondent for the changeover, although the convincing indicia of discriminatory animus presented by the General Counsel's witnesses clearly sufficed to transfer to Respondent the risk of nonpersuasion on this issue.

It thus appears that whereas Respondent's production halt was initially due to the strike commencing June 16, resumption of operations was forestalled from and after July 18 by Respondent's opposition to Local 810. The date on which subcontracting in heavy volume commenced as a substitute for direct manufacturing is uncertain from the record. This however goes to the matter of the remedy appropriate in the circumstances and is discussed below.

I find and conclude that Respondent's change in operations from manufacture to subcontracting was discriminatorily motivated and since it directly affected the tenure of employment amounted to an unfair labor practice within the scope of Section 8(a)(3) of the Act. Respondent's reliance on *Phillips* v. *Burlington Industries, supra,* is misplaced. In addition to procedural differences, the cases are factually different in view of the abundant evidence of the employer's good faith, in the *Burlington* case, of yielding to compelling economic considerations. The instant case far from containing evidence of economic justification for the changeover instead warrants the inference that Wrought willingly incurred economic injury, through idleness of its facilities, rather than deal with Local 810.

The wire of June 20 referring to the fact that the employee's jobs were open was a mere tactical maneuver. Since it contained no assurance that the unlawful refusal to bargain would be remedied the strikers were justified in ignoring it. Nor did the strikers lose their status as employees by virtue of the existence of the no-strike clause since the strike was called against unfair labor practices of their employer. *Wagner Iron Works, a corporation,* 104 NLRB 445.

D. *The refusal to bargain*

The complaint alleges a refusal to bargain from and after July 28, 1961. As recounted above, pursuant to an election held on July 18, Local 810 was certified July 27, 1961. By letter dated July 28, Local 810 requesting bargaining. No reply was ever sent by Wrought to this written request for bargaining. Local 810's president Silverman, did on two occasions meet with Wrought's Attorney Mandlebaum. The first meeting occurred shortly after the sending of the first letter. In the course of that conversation Mandlebaum attempted to persuade Local 810 to forget its interest in Wrought's plant because of its small size. He stated that Wrought was going to close down and would get its work out some way. The second meeting held 10 days later resulted in Mandlebaum's explanation that Wrought was going to farm some of the work out and get along somehow without recognizing the Union.

As indicated above Respondent has engaged in sample making and so-called short-run manufacture in its plant; for this purpose it recalled Jose Gomez and paid him at a rate higher than that he had been earning on the date of the strike It appears that he did, in addition to short-run work, sample making of the type previously performed by the Foreman Henderson, this in effect amounting to the creation of a new job within the bargaining unit. There was no discussion with Local 810 as to the reinstitution of short-run manufacture or the creation of the new position of sample making.

Respondent's defense to the charge of refusal to bargain is based on the theory that Local 810 induced a breach of the no-strike clause of the agreement with Local 517. Admittedly the strike occurred during the period covered by the Local 517 agreement. There is no doubt however but that the cause of the strike was Respondent's adamant refusal to recognize Local 810 to the point where it refused to enter into discussions concerning an agreement even when it understood the agreement was to be effective for the period following the expiration of the Local 517 contract [6] The refusal of Respondent to meet and negotiate with Local 810 following the certification of that Union does not even have the colorable pretense applicable to Respondent's refusal to meet on June 16. At the time of Local 810's certification, the Local 517 agreement had passed away. Although at that time Respondent was in a state of suspended production it had not, and had not to the date of the hearing, sold or disposed of its plant or production facilities.

The record clearly indicates a refusal to meet with Local 810 after its certification and pursuant to a written request for bargaining. This refusal persisted through to the present and included failure to notify Local 810 of the limited resumption of operations when Jose Gomez was recalled in November 1961. Respondent's defense that it had no obligation to bargain with Local 810 since the latter induced the June 16 strike is insufficient as a matter of law.

The record is clear and I find that Respondent's refusal to bargain with Local 810 at all times since its certification and demand for bargaining on July 28, 1961, has been an unfair labor practice within the scope of Section 8(a)(5) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of 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

In view of my finding that Respondent has engaged in unfair labor practices, I shall recommend that it cease and desist therefrom and take such affirmative action as appears necessary and appropriate to effectuate the policies of the Act In view of my finding that Respondent's changeover from direct manufacture to subcontracting was discriminatorily motivated and amounted to a constructive discharge of production employees, this being the type of unfair practice that goes to the very core of the purpose and policies of the Act, I shall recommend the issuance of a cease-and-desist order of sufficient breadth to deter unfair labor practices of all kinds In view of the finding of refusal to bargain with a certified representative of its employees, I shall recommend immediate bargaining.

The remedial relief to be afforded with respect to the employees who have been away from work since their strike commencing June 16, 1961, presents certain prob-

[6] Ribakove conceded that he clearly understood Local 810 was seeking a successor, not a replacement, contract.

lems. The General Counsel in his brief has requested that Respondent be ordered to resume full production and reinstate the eight employees named in the complaint. He contends that they are entitled to backpay from the date their unconditional offer to return to work was refused and contends that such an offer was made by the March 16, 1962, telegram referred to above. Finally the General Counsel urges that backpay should include interest at a rate of 6 percent.

I have found, as indicated above, that Respondent changed from manufacture to subcontracting for discriminatory reasons because of the action of his employees in selecting Local 810 as the bargaining agent and as a means of refusing to meet with Local 810. The record herein indicates that Respondent's volume of business has been at least as good following the strike of June 16 as it was prior to that time. Respondent has not disposed of its production facilities. In these circumstances, clearly resumption of manufacture and offer of reinstatement would be the only appropriate method of remedying Respondent's unfair labor practice. *Town & Country Manufacturing Company, Inc., and Town & Country Sales Company, Inc.,* 136 NLRB 1022.

With respect to backpay, as pointed out above, the General Counsel contends that Local 810 telegram of March 16, 1962, was a sufficient demand for reinstatement. The March 16 telegram states that Wrought's employees are still available for work and requests that they be recalled without delay. The evidence indicates and I find that this telegram was delivered to Wrought on March 16. The parties stipulated that Ribakove, if recalled to the stand, would deny having seen or heard of the March 16 telegram prior to the time of the hearing. The evidence clearly indicates and I find that the March 16 telegram was delivered to Wrought Originals; the possibility that it never came to the personal attention of Ribakove appears to be indicated by the record. The striking employees did all they could, however, and the failure of communication to Ribakove is not destructive of their right to backpay from that date. I shall recommend that they be made whole for the loss of earnings suffered by Respondent's discrimination against them by the payment of backpay from March 16, 1962, to the date of a bona fide offer of reinstatement. Backpay shall be computed in the manner set forth in *F. W. Woolworth Company,* 90 NLRB 289.[7]

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

CONCLUSIONS OF LAW

1. Wrought Originals, Inc., is engaged 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. By threatening employees with the closing of its plant as a reprisal for their participation and activities in support of the Union looking toward collective bargaining and other mutual aid and protection, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. By refusing since July 28, 1961, to bargain collectively with Local 810 as the exclusive representative of its employees in the unit found appropriate in the election conducted on July 18, 1961, Respondent has engaged in and is engaging in unfair labor practices within the scope of Section 8(a)(5) of the Act
5. By changing its operations from a manufacturing to a subcontracting basis as a reprisal against its employees because of their participation and activities on behalf of Local 810 looking toward collective bargaining and by refusing to reinstate such employees from and after their unconditional offer to return to work on March 16, 1962, Respondent has engaged in and is engaging in unfair labor practices within the scope of Section 8(a)(3) of the Act.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondent, Wrought Originals, Inc , its officers, agents, successors, and assigns, shall:

1 Cease and desist from:

(a) Threatening employees with the closing of its plant as a reprisal for their activities on behalf of or representation by Local 810.

[7] With respect to the General Counsel's request that interest be included see *Gaylord Discount Stores of Delaware, Inc , Gay Apparel Corporation,* 137 NLRB 557

(b) In any other manner interfering with, restraining, or coercing 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 other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities, except in accordance with the provisions of Section 8(a)(3) of the Act, as amended.

(c) Discouraging membership in Local 810, or in any other labor organization of its employees, by discharging or in any other manner discriminating in regard to their hire or tenure or any term or condition of employment.

(d) Refusing to bargain collectively with the above-named Union as the exclusive representative of its employees in the following appropriate unit:

All production and maintenance employees, excluding office clerical, professional employees, watchmen, guards, and supervisors as defined in the Act.

2. Take the following affirmative action which is found to be necessary and appropriate to effectuate the policies of the Act:

(a) Take reasonable and businesslike steps to resume its manufacturing operations on a scale comparable or equivalent to those conducted by Respondent in the period prior to June 16, 1961.

(b) Offer reinstatement to their former or substantially equivalent jobs, as available, to the following employees: Santos Gomez Crespo, Pablo Irizarry Rivera, Emilio Nieves, Celestino Perez, Isidoro Perez, Isidoro Gomez Perez, Evaristo Solano, and Juan Solano, and make them whole for any loss of pay suffered by reason of the discrimination against them from the date of their unconditional offer to return to employment of Respondent on March 16, 1962, to the date of an offer of reinstatement, in accordance with the procedure set forth in the section above entitled "The Remedy."

(c) Bargain collectively upon request with Local 810 as the exclusive bargaining representatives of its employees and if understanding be reached embody such understanding in a signed and written agreement.

(d) Preserve and, upon request, make available to the 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 to determine the amounts of backpay due under the terms of this Recommended Order.

(e) Post at its plant on Wilson Avenue, Brooklyn, New York, copies of the attached notice marked "Appendix."[8] Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by Respondent's representatives, be posted immediately upon receipt thereof, and be maintained for it for 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 these notices are not altered, defaced, or covered by an other material.

(f) Notify the Regional Director for the Second Region, in writing, within 20 days from the date of this report, what steps the Respondent has taken to comply herewith.[9]

[8] In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

[9] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers, by discharging or discriminating against them in regard to their hire or tenure of employment.

WE WILL NOT threaten our employees with discharge or shutdown of our plant as a reprisal for their activities on behalf of Local 810.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights under the National Labor Relations Act, as amended.

WE WILL take reasonable and businesslike steps to resume manufacturing operations on a scale equivalent to those conducted prior to June 16, 1961.

WE WILL offer reinstatement to their former or equivalent jobs to the following employees and make them whole for any loss of pay from March 16, 1962, to the date of our offer of reinstatement less intermediate earnings:

Santos Gomez Crespo	Isidoro Perez
Pablo Irizarry Rivera	Isidoro Gomez Perez
Emilio Nieves	Evaristo Solano
Celestino Perez	Juan Solano

WE WILL bargain upon request with Local 810 with respect to the unit of all production and maintenance employees at our Wilson Avenue plant, excluding office clericals, professional employees, watchmen, guards, and supervisors as defined in the Act.

WROUGHT ORIGINALS, 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, 745 Fifth Avenue, New York, New York, Telephone Number, Plaza 1–5500, if they have questions concerning this notice or compliance with its provisions.

Cumberland Farms Dairy Products, Inc. ***and*** **Milk Drivers, Salesmen and Inside Dairy Workers, Local 536, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** *Case No. 1–CA–3820. November 30, 1962*

DECISION AND ORDER

On September 28, 1962, Trial Examiner Louis Libbin 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 attached Intermediate Report. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended that these allegations be dismissed. Thereafter, the Respondent filed exceptions to the Intermediate Report 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 [Chairman McCulloch and Members Leedom 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 Inter-