

We would find, therefore, that the circumstances that most of these store owners and operators are members of the same family and operate in their family name, and have availed themselves of opportunities to reduce their costs and improve their competitive position in such areas as advertising, purchasing, and insurance, do not constitute them a single employer, nor justify forcing them to bargain together, without their agreement or consent, and without any bargaining history on such a basis. Accordingly, as these owners and operators are no more than separate and independent small businessmen, who, because of family ties are enjoying mutual advantages unrelated to labor relations, we would find that they may not be joined together for collective-bargaining purposes, and we would, therefore, dismiss the petitions.

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**American Art Clay Company, Inc. and Henderson Gregory; Fount Gregory; Armond Gregory; Joe Songer; Lonnie Starnes; Carl Forsyth.** *Case No. 25-CA-1646. May 15, 1963*

#### DECISION AND ORDER

On February 26, 1963, Trial Examiner Louis Libbin issued his Intermediate Report in the above-entitled proceeding, finding that Respondent has 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 filed exceptions to the Intermediate Report and a supporting brief. The General Counsel filed exceptions solely to the Trial Examiner's ruling at the hearing dismissing the allegation in the complaint which alleged a violation of Section 8(a)(3), 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 Rodgers and Leedom].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed.<sup>1</sup> 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<sup>2</sup> of the Trial Examiner.

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<sup>1</sup> We find it unnecessary to decide whether Respondent's conduct was also violative of Section 8(a)(3) of the Act inasmuch as the remedy necessary to effectuate the policies of the Act would be identical in either case. *Latex Industries, Incorporated*, 132 NLRB 1.

<sup>2</sup> For the reasons stated in the dissenting opinion in *Isis Plumbing & Heating Co.*, 138 NLRB 716, Members Rodgers and Leedom are convinced that the award of interest in this case exceeds the Board's remedial authority. While adhering to such view, for the purposes of this decision they are acceding to the majority Board policy of granting interest on moneys due.

## ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.<sup>3</sup>

<sup>3</sup>The notice appended to the Intermediate Report is hereby amended by deleting the note immediately below the signature line and substituting the following: "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 and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces."

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

## STATEMENT OF THE CASE

Upon charges filed on September 21, 1962, by six-named individuals, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for the Twenty-fifth Region (Indianapolis, Indiana), issued his complaint, dated November 1, 1962, against American Art Clay Company, Inc., herein called the Respondent. With respect to the unfair labor practices, the complaint as subsequently amended alleges, in substance, that: (1) Respondent discharged and refused to reinstate certain named employees because they engaged in a strike or other protected concerted activities for their mutual aid and protection; (2) Respondent has required these same employees, as a condition of rehire, recall, and/or employment, to fill out applications for employment as new employees and has rehired some of them as new employees; and (3) by the foregoing conduct Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act. In its duly filed answer, the Respondent denied the unfair labor practice allegations.

Pursuant to due notice, a hearing was held before Trial Examiner Louis Libbin at Indianapolis, Indiana, on December 5 and 6, 1962. The General Counsel and the Respondent were represented at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally, and to file briefs. At the close of the General Counsel's case, I granted Respondent's motion to dismiss paragraph 9 of the complaint which alleged that Respondent violated Section 8(a)(3) of the Act. The Respondent's motion to dismiss the remainder of the complaint, made at the close of the hearing and upon which I reserved ruling, is hereby denied in accordance with the findings and conclusions hereinafter made. On January 8, 1963, the General Counsel and the Respondent filed briefs which I have fully considered.

Upon the entire record<sup>1</sup> in the case, and from my observation of the witnesses, I make the following:

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENT

American Art Clay Company, Inc. is an Indiana corporation with its place of business at Indianapolis, Indiana, where it is engaged in the manufacture of school supplies, including kilns, crayons, chalk, and finger paints. During the 12 months preceding the issuance of the complaint, a representative period, Respondent manufactured, sold, and shipped finished products, valued in excess of \$50,000, from its Indianapolis plant to points located outside the State of Indiana. Upon the above-admitted facts, I find, as Respondent admits in its answer, that Respondent is engaged in commerce within the meaning of the Act.

## II. THE CHARGING PARTIES

The charge in this proceeding was filed by six of Respondent's employees, Henderson Gregory, Fount Gregory, Armond Gregory, Joe Songer, Lonnie Starnes, and Carl Forsyth. These plus 23 other employees, constituting Respondent's entire kiln department, engaged in a strike or concerted walkout on September 20, 1962,

<sup>1</sup> I hereby note and correct the following obvious errors in the typewritten transcript of the testimony: On page 17, line 6, the word "can" is corrected to read "cannot"; on page 18, line 7, the word "them" is corrected to read "him."

and were discharged and refused reinstatement because of such conduct. Subsequently, all were reemployed except five of the charging parties and six of the other employees.

### III. THE UNFAIR LABOR PRACTICES

Respondent concedes that on September 20, 1962, it discharged the entire complement of the kiln department, consisting of 29 employees, because on that day they engaged in a strike or concerted walkout. Respondent further correctly observes in its brief that the only main issues in the case are (1) the factual one as to the reason for the walkout, and (2) the legal one as to whether the employees were engaging in a protected concerted activity within the meaning of Section 7 of the Act.

#### A. Sequence of events<sup>2</sup>

##### 1. Supervision and production in the kiln department prior to September 20, 1962

Bud Stuard had been the foreman directly over the kiln department for about 15 years prior to September 1962. There was no assistant foreman in the kiln department during that period. It was Stuard's practice to issue instructions to the employees in regard to the production of kilns by posting a chart on the wall once a month, which would inform the employees of the kind and number of kilns on which they should work. Stuard and Assistant Superintendent Sheads kept the chart up to date by adding further information to its daily or weekly, as the occasion required. In other respects, Stuard exercised very little supervision over the employees, making no particular effort to ascertain whether they were working in accordance with the specific instructions and information contained on the chart, but left them pretty much on their own. Thus, Joe Songer, employed as a welder for about 3½ years, credibly testified that he looked at the chart and "pretty well planned my own work," that Stuard left me "pretty much alone," that he produced enough not only to keep up with what was called for in the chart but, in addition, also produced for stock and "was probably a month ahead" in his work. Henderson Gregory, employed for over 4 years, credibly testified that Stuard "very seldom ever bothered me." Armond Gregory, employed for over 2 years, credibly testified that he was slow in painting because he had not been on that work very long, that he would ask Henderson Gregory for help on many occasions, and that Henderson always helped him.

About September 1, 1962, Jacob Schell was hired as an assistant foreman to Bud Stuard, who at that time was absent from work because of illness. The employees of the kiln department were informed as a group that Schell had been hired as Stuard's assistant. After a week of training by Sheads, Plant Superintendent Smither informed Schell that during the continued absence of Stuard, Schell should exercise the supervisory authority of the foreman in the kiln department. Schell felt that production was being retarded because the employees were working on kilns without sufficient regard to priority requirements. He thereupon introduced several changes into the department, mostly in operational procedures, such as the method for instructing the employees concerning the kind and number of kilns on which to work, and also exercised closer supervision over the men and their work by following up to see whether they were producing in accordance with his instructions. Instead of posting instructions and information on a chart and then leaving the men to work on their own, as had been Stuard's practice, Schell at first told the employees verbally what specific kilns to produce and to fill the oldest orders before building kilns for stock. He then devised the practice of writing his instructions on small cards and handing a card to each employee each morning. Schell admitted that "practically everybody objected" to his methods and that the general comment was that "Bud [Stuard] doesn't do it that way."

Foreman Stuard returned to work on Monday, September 17, and was informed by management that Schell had been hired as his assistant. Stuard indicated that he would prefer to have Schell continue to exercise the authority of the foreman until Stuard caught up with what had been going on in the department in his absence. Schell thereupon continued his prior practices and tried to get the men to work on kilns in accordance with the instructions which he issued to each man on the little cards he gave them each morning. Schell admitted that he was not very successful in his efforts that week.

<sup>2</sup> Unless otherwise indicated, the factual findings are based on credible testimony which is either uncontradicted or admitted.

The record discloses that employee resentment was generated by the abrupt above-described changes instituted by Schell, by the manner in which he was issuing specific and individual instructions to each employee, and by his conduct in following up to see if they were carrying out his written instructions. This resentment resolved itself into a feeling, whether warranted or not, that the employees were being "pushed" to put out more production for the same pay. Thus, Henderson Gregory testified that Schell "was pushing us harder than Bud Stuard was," that he "was pushing us ever since he had been assistant foreman," that "he was pushing us too hard for the same amount of money," and that "I don't mind being pushed if they paid the right amount of money." Armond Gregory testified that Schell "put a stop" to letting Henderson Gregory help him with the painting, that on one occasion Schell came over and told Armond that "you got to get them out," that Schell then grabbed the spray gun out of his hand and "painted three or four," and that Superintendent Smither came along later and told Armond that he would have "to do them over." Joe Songer testified that during the few days that he was assigned to kiln work after Schell was hired, Schell would visit Songer at various times and tell "me to put this out and to put that out and there were so many kilns going out and would I drop this and get this."

Assistant Superintendent Sheads admitted that September is Respondent's biggest peak period, that production in the kiln department "improved under Jacob Schell from what it was under Bud Stuard," and that "we are always after more production."

## 2. Employee reactions on morning of September 20 to rumors of permanent changes in foremen

On Thursday morning, September 20, 1962, Smither and Sheads decided to make Schell the regular foreman over the kiln department in place of Stuard and to put Stuard in charge of the wheel department where only a few employees worked. This change in foreman was explained to Stuard and Schell between 9 and 9:30 that morning.

Although no official announcement of the change had yet been made to the employees, rumor of management's intended action in this respect spread among the employees almost immediately. Before the commencement of the coffee break at 10:05 a.m., Henderson Gregory and a few other employees began informing the employees in the kiln department about the rumor that their old foreman, Bud Stuard, had been demoted to foreman of the wheel department with Schell replacing him as the foreman of the kiln department, and that the boys were planning to walk out on account of this change. Each employee who was approached in this manner replied that he would join them if everyone else did. During the 10-minute coffee break, Joe Songer and a group of employees talked about the contemplated walkout over the change in foremen and also about some of their working conditions. Dissatisfaction was voiced about management's practice of keeping lions caged on the premises indoors right next to where they were working and the offensive odors from the cages,<sup>3</sup> about the unclean drinking fountain, about the trouble with the sewer lines in the restroom, and about the unsatisfactory guards on the saws. When the men had returned to work at the end of the coffee break, Songer went over to Bill Covey's workplace and spoke to him and to a group of other employees working in the immediate area. Songer expressed concern over the propriety of walking out on account of a change in foremen, and expressed the view that they should take time out and meet on the parking lot to think this thing through further. Covey reminded Songer that they had the ball rolling about a year ago to get a union started but that it died away when they did not keep after it, and pointed out that "we are still working for the same peanuts we were a year ago." Songer concurred and suggested that the employees meet during the noon hour on the parking lot to discuss their situation and conditions. The understanding was that they would then approach Sheads at 1 p.m. about their working conditions and the rumored change in foremen. The group was in agreement. Songer also told the group to pass the word around to the other employees not to walk out until they talked it over at noon. Not all the employees, however, were warned or informed of this latest position.<sup>4</sup>

<sup>3</sup> Respondent's president, Philpott, kept lions caged on the premises as a hobby. Assistant Superintendent Sheads admitted that the animals were kept indoors immediately adjacent to the kiln department for about 2 months prior to September 20, and that employees had complained to him about the odor from the animal cages.

<sup>4</sup> The findings in this paragraph are based on a synthesis of the testimony of witnesses for the General Counsel and for Respondent.

### 3. Meeting called by Assistant Superintendent Sheads before noon on September 20

The lunch period at Respondent's plant was from 12 to 1 p.m. About 11:50 on the morning of September 20, Assistant Superintendent Sheads called a meeting of the kiln department employees in front of the foreman's office.

Sheads announced to the men that Schell had been put in as foreman of the kiln department and that Stuard was put in charge of the wheel department. He then stated that he wanted all of them to cooperate with Schell in getting out the required amount of work. At that point Songer interrupted by stating that if this change of foremen was being made because Schell was getting more production than Stuard had gotten, then they did not feel it was fair and they wanted more money for more production. Sheads replied that the Company felt that the change was for the "betterment" of the employees and the Company. Songer thereupon stated that if that is the way it was going to be, the men were going to walk out. Sheads then told Songer that if he did not think he would like Schell and be able to get along with the company policies, the front door was open for him to take. Songer replied that he had no reason to dislike Schell as an individual, that he needed his job, and that he was speaking not only for himself but for the entire kiln department, as a group. At that point, several individuals in the group spoke up and said, "That's right, we are with Joe."<sup>5</sup> Sheads retorted that in that case the front door was open for all those who did not want to work. Sheads then walked down the hall toward the front office, and the men started to punch out for lunch.<sup>6</sup>

### 4. Discharge of kiln department employees on Thursday, September 20

As the employees began punching out for lunch, they agreed to meet in the parking lot as soon as they finished eating. The men gathered in a group in the parking lot about 12:45 and remained there beyond the 1 p.m. starting time, discussing their situation and planning their next move.

About 1 p.m., Sheads went to the kiln department; saw that no employees were there; and reported that fact to Superintendent Smither. Both men then went to the back door and observed the kiln department employees assembled in the center of the adjoining parking lot. Sheads reported the matter to Philpott, Respondent's president. Also present at that time were Smither and Bond Sandoe, an officer of the Company. Philpott wanted to know where the employees were and why they had walked out. Sheads replied that the men were congregated in the parking lot and that, as far as he could tell, they walked out because of the change of foremen.<sup>7</sup> After some further discussion, Philpott decided to discharge all the employees who had walked out, and directed that their checks be prepared. This meeting was held about 1:15 or 1:20 p.m.

Sheads then pulled all the timecards of the kiln department employees, while Smither ordered the payroll department to prepare the termination checks. These checks were ready for the men that same afternoon. Respondent concedes in its brief that all 29 men of the kiln department were discharged that day, September 20, 1962.<sup>8</sup>

### 5. Meeting of employees in parking lot

As previously noted, the kiln department employees met in a group in the parking lot about 12:45 p.m., in accordance with their previous arrangement. They talked

<sup>5</sup> Sheads admitted that at this point he understood that Songer was speaking on behalf of the group as their spokesman.

<sup>6</sup> The findings in this paragraph are based on a composite of the mutually consistent testimony of Songer, Sheads, and Schell. For example, on cross-examination, Sheads testified that Songer said that if the change was due to the fact that the new foreman had gotten out more production, "then it's not fair. We want more money for more production." On redirect examination, Sheads again testified that Songer said that if the change in foremen "is due to production then we want more money. We don't feel that it's fair and we want more money." Jacob Schell also testified on cross-examination that Songer stated that "if Bud was being replaced by me [Schell] and Bud was being moved to the so-called wheel department, that he didn't feel that it was fair and something to the effect that I [Schell] wanted more production and something that if that's what the company wanted, well, why then they wanted more money."

<sup>7</sup> On cross-examination, Sheads twice testified that he could not recall whether he mentioned anything about the men wanting more money. None of the other men who were present at this meeting were called as witnesses.

<sup>8</sup> It is conceded that Foremen Stuard and Schell were supervisors within the meaning of the Act.

about working conditions and wages. It was decided to wait until 1:45 p.m. for a company representative to approach them to go back to work and that no one would go back for less than 25 cents an hour raise. They also discussed plans in the event no company representative approached them or in the event the Company refused to agree to their wage request. It was decided to send a group to the State Division of Labor to seek information and guidance, while the others waited in the parking lot. About 1:45 p.m. Sheads and Songer went out to the parking lot and stood about 150 feet from where the employees were assembled. Sheads admitted that by that time the Company had already discharged the employees.

A group of six employees, including Joe Songer, went to the State Division of Labor, where they told a representative "the story in general, as to what had happened," also mentioning the unsafe and unsanitary working conditions. Upon their return to the parking lot about 2 hours later, Joe Songer reported to those employees who were still waiting that they were to report to work the next morning and that the State Division of Labor would call the Company to straighten out the unsafe and unsanitary working conditions. The group agreed to report for work the next morning.

#### 6. Refusal to reinstate employees upon application on Friday, September 21

The next morning, Friday, September 21, the kiln department employees assembled in the parking lot about 10 or 15 minutes before the 8 a.m. starting time. The group went into the plant, prepared to go to work. When they saw that their timecards were not in the rack, they went to the personnel office. Joe Songer and a few men went inside the office, while the others remained outside, with the office door open. Songer told Superintendent Smither that the State Division of Labor had told them to go back to work and that they were all reporting for work. Smither replied that the men no longer had any jobs and that they should pick up their checks which were waiting for them. Songer reported Smither's statements to the remaining employees waiting outside the office. All agreed not to accept their checks at that time.

The men assembled again on the parking lot to consider their next move. Songer telephoned the State Division of Labor and related what had happened. He then reported back to the men that he had been advised to go to the National Labor Relations Board. A group of six employees, including Songer, went to the Board's Regional Office where they related what had occurred and filed the unfair labor practice charges in the instant case. They returned to the parking lot where the remaining employees were waiting and reported what had happened. Pursuant to the advice received in the Board's Regional Office, the employees returned to the personnel office and picked up their terminal checks.

#### 7. Treatment of applicants as new employees

On Monday morning, September 24, most of the kiln department employees again reported to the plant for work because Sheads had told two employees the preceding Friday that "they could come back in Monday morning" and these employees had relayed this message to other employees. Smither and Sheads told the group that they would all have to fill out new applications like new employees. They then gave the men employment applications which they filled out and returned. Smither and Sheads then told some of the applicants to punch in, and either gave them their timecards or told them their timecards were in the rack. Smither and Sheads told the remaining applicants that they would look over their applications and call them if they were needed. Sheads admitted that the men were treated as new employees.

Charles Miller and Buel Miller, who were not in the group which applied on Monday morning, went to the plant on Thursday morning, September 27, to see about getting their jobs back. The same procedure was followed. Smither interviewed them; had them fill out new applications; and told them that they would be notified if anything opened up.

A total of 24 kiln department employees filled out new applications for employment during the week commencing September 24 in the above-described manner. Of this number, 18 were reemployed during that week. The remaining six, and the five who never submitted new written applications as new employees, have never been reemployed.

#### B. *The factual issue as to the cause of the walkout*

The facts set forth in the preceding section lead me to the following conclusions as to the cause of the walkout of the kiln department employees on Thursday afternoon, September 20, 1962:

By that date, Schell had been their acting foreman for about 3 weeks. During that period, employees had resented the new methods employed by Schell to improve production and the closer supervision over the employees exercised by him. Thus, Schell admitted that "practically everybody objected" to his methods. Some employees also felt, whether justifiably or not is irrelevant, that Schell was constantly "pushing" them harder than their old foreman, Stuard, to get more work out. They resented being made to produce more without being paid more. Significantly, both Sheads and Schell admitted that production did increase under Schell's supervision.

When rumor of the intended change of foremen spread through the department on the morning of September 20, some employees regarded the transfer of Stuard to the wheel department as a demotion, and began talking to other employees about walking out in protest against such action. During the morning coffee break, some employees also voiced dissatisfaction with certain working conditions which they regarded as unsanitary and unsafe. Before final action on a walkout had been crystallized that morning, a small group of employees, sparked by Joe Songer, felt that further discussion of their situation and working conditions was necessary before engaging in a walkout. One of the employees in the group pointed out that "we are still working for the same peanuts we were a year ago." A decision was reached to meet with the remaining kiln department employees in the parking lot during the lunch hour for further discussion, with the understanding that they would then be able to approach Assistant Superintendent Sheads, when work resumed at 1 p.m., with something definite concerning their working conditions and the rumor of the intended change in foremen.

However, in the idiomatic expression of employee Henderson Gregory, Sheads "beat" them to it by calling a meeting of the employees at 10 minute to 12 and making an official announcement of the change in foremen. Thus, their hand was forced at that time, and they were required to take a stand immediately. As Joe Songer credibly testified, "At this particular time we had been caught by Jim Sheads before we were ready to approach him at 1 o'clock before our plans had been completed and at that particular time" when he mentioned about "more work and so forth . . . I felt that this was the proper time that something should be said." When Sheads requested the employees to cooperate with Schell to get more work out, that was the cue for Songer to speak up on behalf of the entire group. Songer thereupon interrupted Sheads to point out that if Schell had been made foreman of the kiln department to get out more production, then it was not fair because the employees were entitled to get more money for more production. Ignoring Songer's claim, Sheads retorted that if Songer did not like Schell and the Company's policies, he could leave through the front door. Songer, however, emphasized that he was speaking on behalf of the entire group and indicated that if their claim was to be ignored they would all walk out. Others in the group spoke up and verified that Songer had their support and was speaking for the group. When Sheads not only failed to pay any attention to their grievance that they should be paid more money for more production, but also made it clear that all of them could leave if they did not want to work on the Company's terms, the group assembled in the parking lot to formulate their plans, agreeing not to return to work unless they received a 25-cent an hour wage increase.

I am convinced and find that: (1) the change in foremen created the initial impetus for a walkout; (2) the employees regarded the replacement of Stuard by Schell not only as a demotion for Stuard but also as having a direct bearing on their work output because Schell would require them to increase their production; (3) the employees as a group, acting through Songer as their spokesman, were claiming that it was unfair to get more production out of them without paying them more money; and (4) the immediate cause of the walkout was Sheads' conduct in completely ignoring and refusing to pay any attention to their claim while at the same time making it clear that they could all leave if they did not like to work on the Company's terms. I therefore find that in failing to return to work at the end of the lunch period that day, the employees were engaging in a concerted activity over terms and conditions of employment for their mutual aid and protection.

*C. The legal issue as to whether the walkout was a protected activity under the Act*

Respondent contends that the employees were engaging in an unprotected activity when they concertedly withheld their services at the end of the lunch period because, according to Respondent, the employees had walked out in protest against a change

in supervision. The latest pronouncement by the Board on this question appears in *Dobbs Houses, Inc.*, 135 NLRB 885. There, the Board stated:

. . . under well established precedent, concerted action by employees to protest an employer's selection or termination of a supervisory employee is not automatically removed from the protection of the Act. Each case must turn on its own facts. Where, as here, such facts establish that the identity and capability of the supervisor involved has a direct impact on the employees' own job interests and on their performance of the work they are hired to do, they are legitimately concerned with his identity. [Citations in footnote.] Therefore, strike or other concerted action which evidences the employees' concern is no less protected than any other strike which employees may undertake in pursuit of a mutual interest in the improvement of their conditions of employment . . . .

Respondent is in agreement with the principles enunciated in the *Dobbs* decision but contends that in the instant case the change in supervision had no direct impact on the employees' job security or work performance and that therefore their conduct was unprotected. As my previous factual findings demonstrate, there is no merit to Respondent's contention. It was the change in supervision which was directly responsible for the increased production concerning which the employees were complaining and for which they were seeking more money in their noon meeting with Sheads. It seems clear to me that if the Respondent had given the employees a wage increase to compensate them for increasing their production, they would not have protested the change in supervision by withholding their services. Conversely, it is equally apparent that there would have been no concerted protest or walkout if the supervision had not been changed because in that event the employees would not have felt that they were being pushed to increase production and would not have claimed that they were entitled to more money on that ground. Thus, as previously found, while the chain of events culminating in the strike or walkout was set in motion by the change in supervision, the strike or walkout itself was over terms and conditions of employment for the mutual aid and protection of the employees. I therefore find that the employees were engaging in a protected economic strike or concerted activity within the meaning of Section 7 of the Act.

#### D. Concluding findings

As previously found, Respondent admittedly discharged all 29 employees of the kiln department on September 20, 1962, and refused to reinstate them when they applied the following morning, because they engaged in a strike or concerted walkout at the end of the lunch period on September 20. I have also found that the employees were at that time engaging in a protected concerted activity within the meaning of Section 7 of the Act. I find no merit in Respondent's contention that its discharge of the employees was not violative of the Act allegedly because President Philpott reasonably believed that the employees were protesting management's action in changing supervisors. "The protection of Section 7 which guarantees to employees concerted action is not dependent on Respondent's good faith belief that such action was undertaken for reasons of no legitimate concern to the employees." Therefore, "neither the fact that the Respondent was justified" in making the change in supervision "nor its belief that it was therefore also justified in discharging the employees protesting its action, has any relevance to the issue here presented." *Dobbs Houses, Inc.*, *supra*, footnote 9. In any event, the facts, as previously found, demonstrate that immediately prior to the walkout, Assistant Superintendent Sheads was made aware by the assembled group of their claim for more money for the increased production which would result from the change in foremen and of their intention to walk out if their claim was ignored. This was an unorganized group of employees, acting almost spontaneously and without the benefit of a labor organization or of experienced representatives. They may not be deprived of the protection of the Act merely because they may not have articulated and presented their demand to remedy what they regarded as an objectionable condition in a more specific and formal manner.<sup>9</sup> Nor is it any valid defense to Respondent's action that Sheads may not have mentioned the employees' wage claim when he reported the walkout to President Philpott. "To rule otherwise would provide a simple means for evading the Act by a division of corporate personnel function."<sup>10</sup>

<sup>9</sup> *NLRB v. Washington Aluminum Company, Inc.*, 370 U.S. 9, 14; *NLRB v. Marydale Products Company, Inc.*, 311 F.2d 890 (C.A. 5)

<sup>10</sup> *Allegheny Pepsi-Cola Bottling Company v. NLRB*, 312 F.2d 529 (C.A. 3) See also *NLRB v. Transport Clearings, Inc.*, 311 F.2d 519 (C.A. 5)

I find that by discharging the striking employees and refusing to reinstate them upon application because they engaged in a protected concerted activity, Respondent interfered with, restrained, and coerced them in the exercise of rights guaranteed by Section 7 of the Act, thereby violating Section 8(a)(1) of the Act.<sup>11</sup> For the same reasons, I also find that Respondent's further conduct during the week commencing September 24, in requiring the strikers to submit new applications like new employees and in treating them as new employees, constitutes additional violations of Section 8(a)(1) of the Act.<sup>12</sup>

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

Having found that Respondent engaged in certain conduct violative of Section 8(a)(1) of the Act, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully discharged and refused to reinstate the employees who engaged in a protected concerted activity on September 20, 1962,<sup>13</sup> I will recommend that Respondent offer the 11 employees who have not been reinstated<sup>14</sup> immediate and full reinstatement to their former or substantially equivalent position, without prejudice to their seniority and other rights and privileges, and restore to the remaining 18 employees who have been reemployed<sup>15</sup> whatever seniority and other rights and privileges, if any, that they may have lost. I will further recommend that Respondent make whole all employees who were unlawfully terminated for any loss of earnings they may have suffered as a result of their termination, by payment to each of a sum of money equal to that which each normally would have earned as wages from the date of their application on September 21, 1962, to the date of Respondent's offer of reinstatement, in the case of the 11 employees who have not been reinstated, and to the date of reinstatement, in the case of the remaining 18 employees who have been reemployed, less net earnings, with backpay to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, 291-294. 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.

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

#### CONCLUSIONS OF LAW

1. By discharging and refusing to reinstate employees because they engaged in a protected concerted activity for their mutual aid and protection, by treating said employees as new applicants and requiring them to fill out new applications for employment, and by reemploying some of said employees as new employees, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

2. 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 Respondent, American Art Clay Company, Inc., Indianapolis, Indiana, its officers, agents, successors, and assigns, shall:

<sup>11</sup> See, e.g., *Dobbs Houses, Inc*, *supra*; *Plastics Industrial Products, Inc*, 139 NLRB 1066

<sup>12</sup> See, e.g., *Philanz Oldsmobile, Inc*, 137 NLRB 867; *Fitzgerald Mills Corporation*, 133 NLRB 877, 886-887, enfd 313 F. 2d 260 (C.A. 2)

<sup>13</sup> These employees are listed in paragraph No 1 of General Counsel's Exhibit No 2

<sup>14</sup> These employees are listed in paragraphs Nos. 3 and 4 of General Counsel's Exhibit No 2.

<sup>15</sup> These employees, together with their dates of reemployment, are listed in paragraph No 2 of General Counsel's Exhibit No. 2

## 1. Cease and desist from:

(a) Interfering with, restraining, or coercing employees in the exercise of their right to engage in concerted activities for their mutual aid and protection by discharging or refusing to reinstate employees, by treating them as new applicants and requiring them to fill out new applications for employment, by reemploying them as new employees, or by discriminating in any other manner in regard to their hire, tenure of employment, or any term or condition of employment.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to engage in, or to refrain from engaging in, any or all the activities specified in Section 7 of the Act.

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

(a) Offer to the following 11 employees immediate and full reinstatement to their former or substantially equivalent position, without prejudice to their seniority and other rights and privileges:

Armond Gregory	Buel Miller	James Riley
Henderson Gregory	Henry Kinkead	Steve Burk
Fount Gregory	Joe Songer	William Dickerson
Charles Miller	Carl Forsyth	

(b) Restore to the 18 employees who have been reemployed whatever seniority and other rights and privileges, if any, that they may have lost.

(c) Make whole all 29 employees mentioned in the preceding paragraphs for any loss of pay they may have suffered, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(d) Preserve and, upon request, make available for the Board and 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 amount of backpay due under the terms of this Order.

(e) Post at its plant in Indianapolis, Indiana, copies of the attached notice marked "Appendix A."<sup>16</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of 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 said notices are not altered, defaced, or covered by any other material.

(f) Notify said Regional Director, in writing, within 20 days from the date of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply herewith.<sup>17</sup>

<sup>16</sup> If this Recommended Order is adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is 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."

<sup>17</sup> If this Recommended Order is 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 A

## NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order 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 interfere with, restrain, or coerce employees in the exercise of their rights to engage in concerted activities for their mutual aid and protection by discharging or refusing to reinstate employees, by treating them as new applicants and requiring them to fill out new applications for employment, by reemploying them as new employees, or by discriminating in any other manner in regard to their hire, tenure of employment, or any term or condition of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights to engage in, or refrain from engaging in, any or all the activities specified in Section 7 of the Act.

WE WILL offer to the following 11 employees immediate and full reinstatement to their former or substantially equivalent position, without prejudice to their seniority and other rights and privileges:

Armond Gregory  
Henderson Gregory  
Fount Gregory  
Charles Miller  
Buel Miller

Henry Kinkead  
Joe Songer  
Carl Forsyth  
James Riley  
Steve Burk

William Dickerson

WE WILL restore to the 18 employees who have been reemployed whatever seniority and other rights and privileges, if any, that they may have lost.

WE WILL make whole all 29 employees mentioned in the preceding paragraphs for any loss of pay suffered as a result of their discharge.

AMERICAN ART CLAY COMPANY, INC.,  
Employer.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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, 614 ISTA Center, 150 West Market Street, Indianapolis 4, Indiana, 46204, Telephone No. Melrose 3-8921, if they have any question concerning this notice or compliance with its provisions.

Instrument Division, Rockwell Register Corporation and Lodge  
790, International Association of Machinists, AFL-CIO. *Case*  
*No. 16-CA-1716. May 15, 1963*

### DECISION AND ORDER

On February 18, 1963, Trial Examiner Phil W. Saunders issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the alleged unfair labor practices and recommending that the complaint herein be dismissed in its entirety, as set forth in the attached Intermediate Report. Thereafter, the Charging Party 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 Rodgers and Fanning].

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 brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]