

WE WILL bargain collectively in good faith with Local 64, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, hours of employment, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed contract. The bargaining unit is.

All truckdrivers and helpers employed at our Providence, Rhode Island terminal, excluding all other employees, office clerical employees, dispatchers, guards, and supervisors as defined in the Act.

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

PATRICK F. IZZI D/B/A PAT IZZI TRUCKING COMPANY,
Employer.

Dated_____ By_____ (Representative) (Title)

NOTE—We will notify the above-named employees if 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

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, Boston Five Cents Savings Bank Building, 24 School Street, Boston, Massachusetts, Telephone No. 523-8100, if they have any questions concerning this notice or compliance with its provisions.

Continental Can Company, Inc. and Mickey Greco

United Papermakers and Paper Workers, AFL-CIO and Mickey Greco. Cases Nos. 22-CA-728 and 22-CB-301. November 27, 1964

SUPPLEMENTAL DECISION AND ORDER

On April 17, 1962, the Board, by a duly designated panel (Chairman McCulloch, and Members Rodgers and Leedom), issued a Decision and Order in this case (136 NLRB 1135), attaching the Trial Examiner's Intermediate Report and adopting his evidentiary findings, but (with Chairman McCulloch dissenting) not his conclusions that the Respondents thereby violated Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2) of the Act. The Board therefore dismissed the complaints.

On April 22, 1964, the United States Court of Appeals for the Third Circuit filed its Opinion (331 F. 2d. 165), holding that the evidentiary findings compelled the conclusion that the discharges were discriminatorily motivated, and remanding the case to the Board for further proceedings in conformity with the Opinion.

Thereafter, the Charging Party and the Respondents filed statements of position and briefs.

Pursuant to the remand, the Board has reconsidered the case, and hereby vacates its original Order and now adopts not only the find-
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ings, but also the conclusions and attached Recommended Order and Appendixes A and B of Trial Examiner Reeves R. Hilton.¹

Respondent Company requests that the Board's remedial order, with particular respect to backpay, should in any event exclude the period during which it relied on the Board's original Decision dismissing the case. We hereby deny that request for the reasons expressed by us in our Supplemental Decision in *Kohler Co.*, 148 NLRB 1434. Although we there tolled the backpay of some 60 discriminatorily discharged strikers from the date of their applications for reinstatement to the date of the court remand, we did so only because of "unique circumstances," and noted that we were "guided particularly by the fact that the employees' [strikers] offer to return to work was made a few days after issuance of the Board's original decision," which found them disqualified for reinstatement. No unusual circumstances appear here. Rather, the Respondents' discriminatory actions were taken entirely on their own volition, and not at all in reliance upon any Board decision. Backpay shall be computed in the same manner as indicated in the *Kohler* decision cited above, including interest.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order, the Order recommended by the Trial Examiner, and orders that the Respondents, their officers, agents, representatives, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order with the following modifications:

1. Add to paragraph A.2(a): "and notify the above-named employees if 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."

2. Add to paragraph A.2(b) and B.2(b): "as modified herein."

3. Amend paragraph A.2(g) and B.2(f) to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith."

¹ The Union renews its earlier motion to the Board, not ruled on in the original Decision, for leave to adduce additional evidence. Although having intervened in the court proceeding brought by the Charging Party in an effort to reverse the Board's original dismissal of the case, the Union did not persuade the court of any reversible error in the Board's refusal to grant the motion. To the contrary, the court's opinion approves the evidentiary findings made by the Board. In addition, the alleged additional evidence sought to be adduced, which was offered to discredit one of the General Counsel's many witnesses (Russo), in no event would require different ultimate findings, which have ample support in the credited testimony of other witnesses. Accordingly, the renewed motion is hereby denied.

4. Amend Appendix A and Appendix B by substituting the words "a Decision and Order" for the words "the Recommended Order of a Trial Examiner" and by adding the following provision at the bottom thereof:

"Employees may communicate directly with the Board's Regional Office, 614 National Newark Building, 744 Broad Street, Newark, New Jersey, Telephone No. Market 4-6151, if they have any question concerning this notice or compliance with its provisions."

The first sentence below the signature line in Appendixes A and B is amended to read: "This notice must remain posted for 60 days from the date of posting"

In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

5. Further amend Appendix A by adding the following:

"NOTE.—We will notify the employees named below if 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."

6. Further amend Appendix B by adding the following:

"NOTE.—We will notify the employees named below if presently serving in the Armed Forces of the United States that we have withdrawn our objection to their employment and that we have no objection to their reinstatement and employment, 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."

MEMBER LEEDOM took no part in the consideration of the above Decision and Order.

RECOMMENDED ORDER*

On the basis of the foregoing findings of fact and conclusions of law, I recommend that:

A. Respondent Continental Can Company, Inc., Carteret, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging employees because they have protested the manner in which union officers conducted the affairs of the Union and/or Local 790, or otherwise engaged in concerted union activities.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by any agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

* As appeared in the original Trial Examiner's Decision.

2. Take the following affirmative action which I find will effectuate the policies of the Act.

(a) Offer to Leon Boguszewski, Joseph DeCicco, James Greco, Mickey Greco, Wolodymyr Jakovenko, and Richard Romanski immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

(b) Jointly and severally with the Respondent Union make whole Leon Boguszewski, Joseph DeCicco, James Greco, Mickey Greco, Wolodymyr Jakovenko, and Richard Romanski for any loss of pay they may have suffered by reason of the discrimination against them in the manner set forth in the section entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze and compute the amount of backpay and the rights of employment under the terms of this Recommended Order.

(d) Post as its principal office and at the plant it operates in Carteret, New Jersey, copies of the attached notice marked "Appendix A."¹⁴ Copies of said notice, to be furnished by the Regional Director for Region 22, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof, and be maintained for at least 60 consecutive days thereafter, in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken by the Respondent Company to insure that said notices are not altered, defaced, or covered by any other material.

(e) Post at the same places and under the same conditions as set forth in (d) above, as soon as they are forwarded by the Regional Director, copies of the attached notice marked "Appendix B."

(f) Mail to the Regional Director for the Region 22 signed copies of said attached notice marked "Appendix A" for posting by the Respondent Union at its business office and meeting hall in Carteret, New Jersey, in places where notices to members are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being signed as provided above, be forthwith returned to the Regional Director for such posting.

(g) Notify the Regional Director for Region 22, in writing, within 20 days from the date of receipt of this Intermediate Report, what steps it has taken to comply herewith.¹⁵

B. Respondent United Papermakers and Paperworkers, AFL-CIO, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from.

(a) Causing or attempting to cause Continental Can Company, Inc., its officers, agents, successors, or assigns, to discharge employees for protesting the manner in which union officers conduct its affairs or otherwise engaging in concerted union activities in violation of Section 8(a)(3) of the Act.

(b) In any like or other manner, restraining or coercing employees of the said Company or any employee member of the Respondent Union in the exercise of rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Notify the Company, in writing, that it withdraws all objections to the employment of Leon Boguszewski, Joseph DeCicco, James Greco, Mickey Greco, Wolodymyr Jakovenko, and Richard Romanski, with copies to each of these individuals, and that it requests the Company to offer them immediate and full reinstatement to their former or substantially equivalent positions.

¹⁴In the event that this Recommended Order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "a Recommended Order 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 "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

¹⁵In 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."

(b) Jointly and severally with the Respondent Company make whole Leon Boguszewski, Joseph DeCicco, James Greco, Mickey Greco, Wolodymyr Jakovenko, and Richard Romanski for any loss of pay they may have suffered by reason of the discrimination against them in the manner set forth in the section entitled "The Remedy"

(c) Post at its business office and meeting hall in Carteret, New Jersey, and all other places where notices to members of the Respondent Union are customarily posted, copies of the attached notice marked "Appendix B" ¹⁶ Copies of said notice, to be furnished by the Regional Director for Region 22, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof, and be maintained for at least 60 consecutive days thereafter, in conspicuous places, including all places where notices to the members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that the said notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in (c), above, as soon as forwarded by the Regional Director, copies of the attached notice marked "Appendix A."

(e) Mail to the Regional Director for Region 22 signed copies of said attached notice marked "Appendix B" for posting by the Respondent Company at its principal office and at the plant it operates in Carteret, New Jersey, where notices to its employees are customarily posted

(f) Notify the Regional Director for Region 22, in writing, within 20 days from the date of receipt of this Intermediate Report, what steps it has taken to comply herewith.¹⁷

It is further recommended that unless the respective Respondents shall, within 20 days from the receipt of this Intermediate Report and Recommended Order, notify said Regional Director, in writing, that they will comply with the foregoing Recommended Order, the National Labor Relations Board issue an order requiring them, or either of them, as the case may be, to take the aforesaid action.

¹⁶ See footnote 14, *supra*

¹⁷ See footnote 15, *supra*.

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 discharge employees because they have protested the manner in which union officers conducted the affairs of the Union and/or Local 790, or otherwise engaged in concerted union activities, or in any other manner discriminate against them in regard to hire or tenure of employment or any term or condition of employment, except to the extent permitted by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay they may have suffered as a result of the discrimination against them:

Leon Boguszewski	James Greco	Wolodymyr Jakovenko
Joseph DeCicco	Mickey Greco	Richard Romanski

CONTINENTAL CAN COMPANY, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

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

APPENDIX B

NOTICE TO ALL MEMBERS OF UNITED PAPERMAKERS AND PAPERWORKERS, AFL-CIO, AND ITS LOCAL 790, AND TO ALL EMPLOYEES OF CONTINENTAL CAN COMPANY, INC.

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 you that:

WE WILL NOT in any manner cause or attempt to cause Continental Can Company, Inc., to discharge employees because they have protested the manner in which union officers conducted the affairs of the Union and/or Local 790, or otherwise engaged in concerted union activities, or to discriminate against its employees in any manner in regard to their hire or tenure of employment, except to the extent permitted by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL NOT in any other manner restrain or coerce employees of Continental Can Company, Inc., or any other employee member of this Union, in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization, as a condition of employment, as authorized by Section 8(a)(3) of the Act, as amended by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL notify, in writing, Continental Can Company, Inc., and the employees named below, that we have withdrawn our objection to their employment and that we have no objection to their reinstatement and employment:

Leon Boguszewski	James Greco	Wolodymyr Jakovenko
Joseph DeCicco	Mickey Greco	Richard Romanski

WE WILL make whole the above-named employees for any loss of pay they may have suffered as a result of the discrimination against them.

UNITED PAPERMAKERS AND PAPERWORKERS, AFL-CIO,
Labor Organization.

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.

Great Lakes District, Seafarers' International Union of North America, AFL-CIO [Tomlinson Fleet Corporation] and Wilbur D. Kilfoyle. *Case No. 8-CB-757. November 27, 1964*

DECISION AND ORDER

On June 15, 1964, Trial Examiner Sidney Sherman issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in unfair labor practices as alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel and the Respondent filed exceptions to the Trial Examiner's Decision and supporting briefs.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial