

Wagner Lincoln Mercury, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 377

Al Wagner Motor Sales, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 377. *Cases Nos. 8-CA-3467 and 8-CA-3468. November 24, 1964*

DECISION AND ORDER

On September 3, 1964, Trial Examiner Frederick U. Reel issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondents had not engaged in other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the General Counsel filed exceptions to the Decision 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 Fanning and Jenkins].

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 Examiner's Decision, the exceptions and the brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that Respondents Wagner Lincoln Mercury, Inc., and Al Wagner Motor Sales, Inc., Youngstown, Ohio, their officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

These consolidated cases, heard before Trial Examiner Frederick U. Reel at Youngstown, Ohio, on May 18-19, 1964,¹ pursuant to charges filed the preceding March 31 and a complaint issued April 16, present questions as to whether Respondents in an effort to thwart the organizational efforts of their employees engaged in various acts

¹ All dates herein refer to 1964 except where otherwise noted.

of illegal interference, restraint, and coercion, and discharged several employees for union activity. Upon the entire record, and after due consideration of the briefs filed by General Counsel and Respondents, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS, AND THE LABOR ORGANIZATION INVOLVED

Both Respondents are Ohio corporations, each of which is engaged in Youngstown in selling and servicing new and used automobiles, and each of which is engaged in commerce within the meaning of Section 2(6) and (7) of the Act to an extent which more than meets the Board's jurisdictional standards. Al Wagner is president of both corporations, but is particularly active at Respondent Al Wagner Motor Sales, Inc., herein called Motor Sales. The general manager at Wagner Lincoln Mercury, Inc., herein called Lincoln Mercury, is William Heim, who is in the process of purchasing that business from Wagner, and is in charge of its operations. The Charging Party, herein called the Union, is a labor organization within the meaning of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Violations alleged at Motor Sales*

1. Interference, restraint, and coercion

Economic difficulties which Wagner was experiencing in the latter part of 1963 led him to take certain economy measures, including an announcement to the employees at Motor Sales that he was going to eliminate paid vacations. Resultant employee dissatisfaction and unrest led to a meeting of Motor Sales employees with Wagner early in 1964. At this meeting, called at the employees' desire, the men discussed working conditions, and one of their number, Bill Smith, observed to Wagner that the men needed a union. Wagner replied that he would shut the doors before he would let a union come in. Notwithstanding this threat, and notwithstanding a slight increase in compensation which Wagner granted shortly after this meeting, the employees, after further discussions among themselves, decided to seek union representation. After an abortive effort to interest another union in organizing them, they turned to the union here in question, and an organizing drive commenced covering the employees of both Respondents as well as of a third automobile dealership, separately incorporated, but, like both Respondents, owned by Wagner. Union representatives called on Wagner on February 7 to advise him that they represented his employees at the three locations. A few days prior thereto, however, Wagner in a conversation with employee Martin Snyder told Snyder that the Union was coming in, that "he wasn't going to cater to a lot of nonsense," that he was "too old to handle anything in such a situation like that," and that he was "going to get rid of the place."

A few days after the Union's request for recognition, Wagner discussed the Union with employee McBride, observing that he did not think McBride had the money to pay union dues, and therefore believed McBride had not joined the Union. (McBride, who had joined, presented a discreet silence.) Wagner added that he might lay McBride off "for a week or two because he didn't know which way this thing was going to go."

About the same time Wagner asked employee Clarke where the latter's union button was, and why Clarke "didn't have a red banner on the street parading up and down in front of the building?" In the same conversation Wagner observed that he had already closed the trim shop and contemplated closing other unprofitable departments.

Following the layoffs or discharges discussed below, the employees at Motor Sales went on strike. In the course of the strike Wagner approached employee Clarke, who was on the picket line, in an effort to ascertain what Clarke "had against" Wagner. When Clarke mentioned two respects in which he thought Wagner had treated him shabbily, Wagner suggested that Clarke return to work, stating: "We will see what we can do about it. I think we could get this straightened out." Clarke, however, declined to return while his fellow employees were still picketing. Some days later a number of employees abandoned the strike and returned to work. In explaining to some of the returning employees why the strike had failed, Wagner remarked that a day or two before he had telephoned one of the strikers on whose house he held the "land contract" and had told the employee that Wagner "wasn't telling him which way to go" but that the employee had 24 hours in which to make up his mind to return to work, after which Wagner would send him a "legal notice."

2. The discharges or layoffs

General Counsel alleges that Motor Sales unlawfully discriminated against four employees, Martin Snyder, Lloyd Moncrief, Dominic Piscitani, and Steve Kwiecinski.

The facts with respect to the discharge or layoff of each of these may be summarized as follows:

Snyder was the only employee in the trim shop, where he was engaged in repairing car roofs and upholstering new and used cars. As noted above, Wagner discussed the impending union drive with Snyder early in February. A few days later Wagner told Snyder that Snyder was to be laid off as Wagner was going to get rid of the trim shop. Snyder's last day of work was Saturday, February 8, although he was notified of his impending layoff the day before. In fact, when the union representatives called on Wagner on February 7 to request recognition, Wagner advised them that he was laying Snyder off that day. Since Snyder's departure, Wagner has employed a woman 2 or 3 days a week to work in the trim shop.

Moncrief, Piscitani, and Kwiecinski were all laid off on Tuesday, February 11, in the middle of the pay period. Moncrief was the junior employee in the parts department. In midafternoon of February 11, Wagner apprised him of the layoff, stating that because business was slow, Moncrief would be laid off for 2 or 3 weeks. He has not been recalled, and has not been replaced.

Piscitani and Kwiecinski were employed in the body shop at the time of their layoff on February 11; Kwiecinski, who has since been recalled to work or rehired, did not testify. According to Piscitani, Wagner spoke to Kwiecinski in the morning of February 11 and then, coming to Piscitani, stated, "I am telling you the same thing I'm telling Steve. I am closing off the body shop. I hope you get a better job someplace else, or you can get a red flag and parade in front of the building." At the time of the hearing, 3 months after these events, Kwiecinski had recently been reemployed, and at least two other men were also employed in the body shop. Between February 11 and the hearing, according to Wagner's testimony, he had as many as four men working in the body shop.

In explanation of the layoffs or discharges Wagner testified that business conditions had been leading him to retrench for some time, that the services of some office employees and of certain supervisory personnel had already been dispensed with, and that his actions in February were a continuation of this policy. More specifically with respect to Snyder, Wagner testified that he had insufficient work to keep Snyder busy, and with respect to Moncrief that a decision had been reached before Christmas to let go the junior man in the parts department. As to the body shop, Wagner's testimony is somewhat inconsistent with the brief subsequently filed in his behalf. The latter states that "The company decided to close down its body shop because it could not be operated at a profit," and the men "were therefore discharged." According to Wagner, however, he merely laid off the body shop men for want of work, and he would have taken Kwiecinski back the very next morning when some work came in but the men were already on strike. Wagner testified that he had asked Kwiecinski to return to work the same day Kwiecinski was laid off.

Although the strike which began February 12 in protest of the layoffs was unsuccessful, at least one Motor Sales employee, John Smith, still considered himself on strike at the time of the hearing.

B. Violations alleged at Lincoln Mercury

Late in January or early in February, Wagner alerted Heim to the possibility that the Union might be organizing the Lincoln Mercury employees. On the evening of February 4, in the course of discussing other matters with employee Edward Rogers, Heim inquired as to the extent of employee interest in the Union, and Rogers expressed doubt that Heim's employees were interested. The next day, however, Rogers signed a union card. On the afternoon of February 5, Heim stated to Rogers, "I hear that seven members of this place joined the Teamsters Union. And that you are one of them. If I find out that that is true, you won't work one more day."

On February 7 Wagner called Heim to advise him of the Union's claim to represent the employees at Motor Sales, and to inquire about the extent of union interest at Lincoln Mercury. At Wagner's suggestion, Heim decided to call a meeting of his employees to ascertain their views. A few minutes after Heim notified the employees of the impending meeting, he received a telephone call from a union representative advising him that they wanted to attend the meeting. Realizing that the Union must have learned of the meeting from one of the employees, and believing (quite correctly) that the information reached the Union by a telephone call from the telephone located in the body shop where Rogers was at work, Heim went to the area where Rogers worked and found him in the washroom, preparing for the meeting. Heim grabbed Rogers by the shoulders, and starting hitting him, screaming the while: "You lied to me, you lied to me," and swearing at Rogers. Rogers extricated himself from Heim's grasp and replied to Heim's invective in kind, although admitting his union membership. Heim as he left the room warned Rogers he "had better watch [his] step from

now on," and particularly to observe the shop hours of 8 a.m. to 5 p.m. Later that morning Service Manager Barone relieved Rogers of his key to the shop and told him his "new working hours are 8 to 5."

The next morning Rogers noticed that the telephone he had used to call the Union had been disconnected from the wall. Heim spoke to him that day for about half an hour, trying, without success, to persuade Rogers to abandon the Union. The following Tuesday, February 11, Heim discharged Rogers, explaining that the body shop was unprofitable and was being abolished. Heim admitted on the witness stand that Rogers' union activity had "something to do with" his discharge.

Earlier that same Tuesday, Heim had discharged William Weems, his parts man. Heim had called Weems to the office late in the preceding week to inquire if Weems was a member of the Union. When Weems replied in the affirmative, Heim attempted to persuade him to change his mind. That conversation terminated with Heim's telling Weems to think the matter over and let Heim know at the beginning of the following week. On Monday, February 10, Heim approached Weems at the parts counter and asked if Weems had made up his mind. Weems replied that he wanted to be in the Union. According to Weems' testimony (which I credit; the earlier events of February 10 are testified to by both Heim and Weems), the conversation continued as follows:

He asked me why I wanted to screw his family. I told him that that was ridiculous. I have no feelings towards his family. It is business. He told me not to screw up. He said, "This was a warning."

The next day Heim discharged Weems.

The episode immediately precipitating the discharge arose when Heim noticed early in the morning that a certain advertising sign (the "monthly special") was not in position. He inquired of Weems, who replied that the service manager had directed its removal. Heim told Weems that it was the latter's responsibility to see that the sign was up, and directed him to post it. (Weems stated on the witness stand, in a manner which convinced me of the truth of his testimony, that he had never theretofore put up the monthly special sign and had never been told it was part of his job to do so.) Weems was in the act of complying with Heim's directive, but according to Heim was displaying a "sulky attitude." Heim admonished him for his "sour face." According to Weems, Heim said "to smile or he would fire me" and asked whether Weems wanted to be fired right then or that night. Weems testified that he replied, "Now is as good a time as any," and Heim discharged him on the spot. According to Heim, Weems said: "If you don't like what I am doing, why don't you fire me," and Heim did. At that time, according to Heim, Weems said that Heim would be sorry, to which Heim replied, "If you are referring to the union activity, Bill, I have no thought about this whatsoever." As a witness, however, Heim admitted that Weems' union membership "could have been" one of the things in Heim's mind, although the discharge was accomplished "on the spur of the moment."

In further explanation of the discharge of Rogers, Heim testified that he was dissatisfied with Rogers' longstanding practice of coming in late in the morning and working late at night, and also that the body shop had been unprofitable for some time (a condition Heim attributed in part to faults of Rogers) so that Heim had decided a week before the discharge to close it. Confronted with a large newspaper advertisement on behalf of Lincoln Mercury which had appeared on Sunday, February 9, and which, *inter alia*, extolled the work of Rogers and the body shop services offered by Lincoln Mercury, Heim explained that the material for the advertisement had been prepared some time before. As to Weems, Heim complained that Weems had failed to set up a certain inventory control system as Heim had directed, that he was slack in preparing parts to be returned to the manufacturer, and that he had worked excessive overtime, unreasonably padding his income.

C. Concluding findings

On the facts found above,² there can be little doubt that both Respondents engaged in interference, restraint, and coercion violative of Section 8(a)(1) of the Act. In this category, I include Wagner's threats to close if a union came in, his interrogation

²To some extent those findings depend on the resolution of conflicting testimony. I have in several instances rejected denials of Wagner and Heim and credited employee testimony to the contrary. These credibility resolutions rest on admissions of Wagner and Heim, inconsistencies between their testimony and their affidavits, the demeanor of the witnesses, and (particularly in the case of Heim, who assaulted Rogers and admitted losing his temper at Weems) the consistency between the employee testimony and the avowed or openly displayed attitude of management.

of employees as to their union membership, his suggestion to Clarke that benefits might attend Clarke's abandonment of the strike, and his threat to foreclose on a land contract if the employee-debtor exercised his Section 7 right to strike. Similarly, Heim's threats to, and interrogation of, Weems and Rogers, detailed above, infringed Section 7 rights in violation of Section 8(a) (1).

With respect to the discharges, there can be little doubt that union activity was one factor at the very least, in the discharges of Weems and Rogers. *N.L.R.B. v. Jamestown Sterling Corp.*, 211 F. 2d 725, 726 (C.A. 2). Indeed Heim admitted as much in both instances, somewhat more grudgingly in Weems' case. Heim's extreme irritation at Rogers' union activity manifestly weighed far more heavily in the decision to discharge him midway in the pay period than Heim's irritation over Rogers' work hours or other practices Heim had accepted for many months. I do not credit Heim's statement that he had made up his mind a week earlier to close the body shop. This would be inconsistent with a precipitate midweek discharge, is hopelessly at odds with the advertisement run only 2 days earlier (after the alleged decision to discontinue), and is unsupported by corroborative testimony as Respondent failed to call as a witness the service manager to whom the alleged decision to close was allegedly communicated. Cf. *N.L.R.B. v. Sam Wallick, et al. d/b/a Wallick and Schwalon Company*, 198 F. 2d 477, 483 (C.A. 3). Similarly as to Weems, the Company's alleged dissatisfaction with his wages and with his lack of progress in the inventory matters played at most a minor role in his discharge, which according to Heim was unpremeditated. We are left with the question whether the discharge should be attributed to a loss of temper arising out of the sign incident, or whether Weems' open support of the Union after Heim had tried to talk him out of it was a factor in the episode. Even Heim could not fully deny that the union matter was in his mind, as indeed is all but self-evident in view of the timing of the affair. To be sure, Weems' union membership conferred no immunity against discharge for cause, or, for that matter, for discharge arising out of whim, irritation, or mistake. But the statute confers immunity against discharge for union activity. The timing of the discharge (the morning after Weems revealed his determination to stay in the Union, and only a few days after Heim had learned of the union activity and indicated deep resentment thereof) coupled with the fact that Weems was at worst "sulky" and was complying with Heim's directions, leads me to find that Heim's union animus played a major role in his discharge of Weems.

A far closer question is presented by the discharge of Snyder. Although there is some evidence that Wagner was disturbed by the reports of union activity, there is also evidence that the work in the trim shop was insufficient to warrant Snyder's retention, and the direction to discharge him antedated the first interview between Wagner and the union representatives. Although Wagner in his earlier discussion with Snyder had intimated that advent of the Union would cause a curtailment or abandonment of operations, I find that General Counsel failed to carry his burden of proof as to Snyder. I therefore recommend dismissal of the complaint as to him.

Moncrief, Piscitani, and Kwiecinski were separated from the payroll on Tuesday, February 11, the same day that Heim discharged Rogers and Weems. As to Moncrief, Wagner claimed that a decision to discharge him was made the preceding December. But if that be true, why was he kept on the payroll until the middle of the first pay period in February, and then discharged, without advance warning, on the second work day after the Union requested recognition. As to Piscitani and Kwiecinski, Wagner claimed they were laid off for insufficient work (his counsel now claims they were discharged because of a permanent closedown of the body shop). But Wagner's statement that they could "get a red flag and parade in front of the building" goes far to suggest that organizational activity was prominent in Wagner's mind at the time. In this connection it should be noted that Wagner had parried the Union's recognition request on February 7, and that he was scheduled to meet again with the Union and its counsel that week. Wagner would not be the first employer who tried to nip union organization by discharging employees. To be sure, there is no evidence that Wagner knew Moncrief, Piscitani, and Kwiecinski were in the Union; the union spokesman had claimed to represent approximately 90 percent of the people in his conversation with Wagner on February 7. On the other hand, Wagner was plainly speculating as to which of his employees had joined; so much is established by his conversation with McBride in which Wagner opined, wrongly, that McBride had not joined, and also observed that layoffs might ensue until Wagner could tell "which way this thing was going to go."

The various cases cited by General Counsel and the Company contribute little to resolution of the question in this case. Unlike the Sixth Circuit's *Mahon, Adkins,*

and *Lassing* cases cited by the Company,³ we have here "evidence of antiunion sentiment and animosity" (quoting from *N.L.R.B. v. E. S. Kingsford, d/b/a Kingsford Motor Car Co.*, 313 F. 2d 826, 831 (C.A. 6), another case cited by Respondent). And unlike *Kingsford* we have no closing of the body shop as claimed in counsel's brief; on the contrary the body shop was at full strength by the time of the hearing and Wagner had been operating the body shop with replacements even during the strike which followed the day after these discharges. On the other hand, *Forest Dodge, Inc.*, 145 NLRB 1463, cited by General Counsel is distinguishable in that here the discharges effected a true economy, and—even more important—the record there established that the employer knew that all the employees had joined the union, and his action was unquestionably the direct result of that knowledge.

The proper test, in my view, is that enunciated by the Second Circuit in *N.L.R.B. v. Savoy Laundry, Inc.*, 327 F. 2d 370, 371, where the court observed that the "crucial factor is not whether the business reasons cited by [the employer] were good or bad, but whether they were honestly invoked and were, in fact, the cause of the [discharge]." And later in the opinion the court emphasized (327 F. 2d at 372): "We are not saying that the economic reasons offered by an employer must meet the approval of a governmental agency . . . or even that these economic justifications must be economically sound. Rather, we are saying merely that these economic considerations must be honestly invoked, and that an employer may not attempt to disguise an antiunion motive by speaking the language of economic necessity."

In the instant case I am persuaded that while Wagner was undergoing financial difficulties and was retrenching (cf. *Snyder's* case, which I would dismiss), the timing of the discharges or layoffs on February 11 and his statements at that time reflect that antiunion motives played a part in his actions. Cf. *Jamestown Sterling, supra*, 211 F. 2d at 726. Accordingly, I find the discharge of Moncrief and the discharge or layoff of Piscitani and Kwiecinski violative of Section 8(a)(3) and (1) of the Act.

The instant case is not unlike *N.L.R.B. v. Ellis and Watts Products, Inc.*, 297 F. 2d 576, 577, where the Sixth Circuit rejected an employer's contention "that the layoffs were made on account of economic reasons, i.e., its poor financial condition." The court noted that "this would be justification for the layoffs if it were the real reason," but observed (in language applicable here) that "the employer did not take such action until after the union had requested a meeting with it" and that "the union had authorization cards signed by about 95 percent of the employees and the employer was advised of this fact." In *Ellis and Watts*, the court admonished the Board that in considering backpay due employees "the Board should take into account the probable duration of their employment which the financial condition and business of the employer would have justified if the layoffs had not been made." This aspect of the instant case is discussed in "The Remedy," *infra*.

Finally, the strike on February 12 was plainly in protest of the discharges at Wagner's two corporations. The discharges, or at the very least some of them, were unfair labor practices and the strikers therefore are entitled to reinstatement on application.

III. THE REMEDY

The widespread violations of the Act and the strong antipathy which Respondents have exhibited to the employees' efforts to organize call for a broad cease-and-desist order. Affirmatively, I shall recommend that Rogers, Weems, and Piscitani be reinstated with backpay. Kwiecinski has been reinstated, and moreover was offered employment the day following his layoff, when, however, he became an unfair labor practice striker. He is therefore entitled to backpay only for the period between the time he abandoned the strike and applied for reinstatement, and the time he was rehired. Moncrief's case poses a difficult problem (cf. *Ellis and Watts, supra*), for he has not been replaced and it appears that Motor Sales has no present need of the services of another parts clerk. I shall therefore recommend that he be placed on a preferential hiring list, and also that he be given backpay for the time between his discharge on February 11 and the time he would have been laid off for nondiscriminatory reasons. This latter date may be determined in compliance negotiations or, if necessary, in formal backpay proceedings. See *N.L.R.B. v. Cambria Clay Products Co.*, 215 F. 2d 48, 56 (C.A. 6). As the strike was an unfair labor practice strike, I shall recommend that any employees still on strike be reinstated upon their application and in the event of a failure to reinstate them they shall receive backpay com-

³ *N.L.R.B. v. The R. C. Mahon Company*, 269 F. 2d 44; *N.L.R.B. v. Adkins Transfer Company, Inc.*, 226 F. 2d 324; *N.L.R.B. v. J. M. Lassing et al. d/b/a Consumers Gasoline Stations*, 284 F. 2d 781, cert. denied 366 U.S. 909.

mencing 5 days after their application for reinstatement. Finally, I shall recommend the posting of appropriate notices and other provisions designed to implement the backpay remedy. All backpay due hereunder shall be computed in accordance with the formulas set forth in *F. W. Woolworth Co.*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

CONCLUSIONS OF LAW

1. Respondents Lincoln Mercury and Motor Sales, by interrogating their employees as to their union membership and by threatening them with reprisal for union activity, have engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.

2. On February 11, 1964, Respondent Lincoln Mercury by discharging Edward Rogers and William Weems, and Respondent Motor Sales by discharging Lloyd Moncrief and by discharging or laying off Dominic Piscitani and Steve Kwiecinski, engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Accordingly, on the basis of the foregoing findings and conclusions and on the entire record, I recommend, pursuant to Section 10(c) of the Act, that Respondent Wagner Lincoln Mercury, Inc., and Respondent Al Wagner Motor Sales, Inc., and their respective officers, agents, successors, and assigns, shall:

1. Cease and desist from.

(a) Discriminating against any employee for having engaged in activity on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 377

(b) Interrogating or threatening employees with respect to their union activities, or in any other manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act

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

(a) Offer to reinstate William Weems, Edward Rogers, and Dominic Piscitani to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, place Lloyd Moncrief on a preferential hiring list and offer him employment in the parts department at Al Wagner Motor Sales, Inc., when the first vacancy occurs in that department, and make whole Weems, Rogers, Moncrief, Piscitani, and Steve Kwiecinski, in the manner described in the portion of the Trial Examiner's Decision entitled "The Remedy," for any loss of earnings suffered by reason of the discrimination against them.⁴

(b) Notify any of the above-described employees who are serving in the Armed Forces of the United States of their right to full reinstatement or, in the case of Lloyd Moncrief, of his right to preferential hiring, 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.

(c) Upon application, reinstatement to their former or substantially equivalent positions any employees who went on strike on February 12, 1964, and who have remained on strike since that date, and in the event of failure to do so within 5 days after their respective applications, make them whole in the manner set forth in the section entitled "The Remedy" of the Trial Examiner's Decision.

(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 analyze the amount of backpay due under the terms hereof.

(e) Post at their respective premises in Youngstown, Ohio, copies of the attached appropriate notices marked "Appendix A" and "Appendix B," respectively.⁵ Copies

⁴ The provisions of this Recommended Order relative to Weems and Rogers apply only to Wagner Lincoln Mercury, Inc., its officers, agents, successors, and assigns. The provisions of this Recommended Order relative to Moncrief, Piscitani, and Kwiecinski apply only to Al Wagner Motor Sales, Inc., its officers, agents, successors, and assigns

⁵ In the event that this Recommended Order is adopted by the Board, the words "as ordered by" shall be substituted for "as recommended by a Trial Examiner of" in the notices. 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 of" shall be inserted immediately following "as ordered by".

of the appropriate notice, to be furnished by the Regional Director for Region 8, shall, after being duly signed by Albert Wagner in the case of Al Wagner Motor Sales, Inc., and by both Albert Wagner and William Heim in the case of Wagner Lincoln Mercury, Inc., be posted immediately upon receipt thereof, and be maintained 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 by each Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Each Respondent shall notify the Regional Director for Region 8, in writing, within 20 days from the date of the receipt of this Decision, what steps it has taken to comply herewith.⁶

⁶ In the event that 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

As recommended by a Trial Examiner of the National Labor Relations Board, we are posting this notice to inform our employees of the rights guaranteed them in the National Labor Relations Act:

WE WILL offer Edward Rogers and William Weems their former jobs and pay them for wages they lost since February 11, 1964.

ALL OUR EMPLOYEES have the right to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 377 or any other union

WE WILL NOT question them as to whether they support a union, or threaten them or discharge them for doing so, or interfere with them in any way because of their union activity

WAGNER LINCOLN MERCURY, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

(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 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, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio, Telephone No. Main 1-4465, if they have any questions concerning this notice or compliance with its provisions.

APPENDIX B

NOTICE TO ALL EMPLOYEES

As recommended by a Trial Examiner of the National Labor Relations Board, we are posting this notice to inform our employees of the rights guaranteed them in the National Labor Relations Act:

WE WILL offer Dominic Piscitani his former job and pay him for wages he has lost since February 11, 1964.

WE WILL offer Lloyd Moncrief the first available job in the parts department, and pay him for any wages he lost between February 11, 1964, and the date he would have been laid off in the normal course of business.

WE WILL pay Steve Kwiecinski for any wages he lost between the date he applied for work after going on strike and the date he returned to work.

ANY EMPLOYEE who has been on strike since February 12, 1964, will be reinstated upon his application.

ALL OUR EMPLOYEES have the right to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 377,

or any other union. WE WILL NOT question them as to whether they support a union, or threaten them or discharge them for doing so, or interfere with them in any way because of their union activity.

AL WAGNER MOTOR SALES, INC.,
Employer.

Dated----- By-----
(Representative) (Title)

NOTE.—We will notify Piscitani and Moncrief if presently serving in the Armed Forces of the United States of their right to full reinstatement, or preferential hiring, respectively, 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, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio, Telephone No. Main 1-4465, if they have any questions concerning this notice or compliance with its provisions.

International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 53 and Reilly-Benton Company, Inc.
Case No. 15-CC-204. November 25, 1964

DECISION AND ORDER

On July 15, 1964, Trial Examiner James F. Foley issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices alleged in the complaint and recommending that it cease and desist therefrom, and take certain affirmative action as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a brief in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Jenkins].

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 entire record in this case, including the Trial Examiner's Decision, the exceptions, and the brief, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order the Order recommended by the Trial Examiner, and orders that the Respondent, International Association of Heat and Frost Insulators and Asbestos