

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 222 (Utah Sand and Gravel Products Corporation) and James Howard Dickinson. *Case No. 27-CB-250. January 21, 1965*

DECISION AND ORDER

On October 12, 1964, Trial Examiner James T. Barker issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

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

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 Trial Examiner's Decision, the Respondent's exceptions and 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 Order recommended by the Trial Examiner and orders that the Respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 222, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed on October 14, 1963, by James Howard Dickinson, an individual, the Regional Director of the National Labor Relations Board for Region 27, on March 31, 1964, issued a complaint and notice of hearing designating International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 222, as Respondent, and alleging violations of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, hereinafter called the Act. Pursuant to notice, a hearing was held before Trial Examiner James T. Barker on May 20, 1964, at Salt Lake City, Utah. All parties were represented at the hearing and were afforded full opportunity to be heard, to introduce relevant evidence, to present oral argument, and to file briefs with me. The parties waived oral argument and on June 23 filed briefs with me.

Upon consideration of the entire record and the briefs of the parties, and upon my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF UTAH SAND AND GRAVEL PRODUCTS CORPORATION

Utah Sand and Gravel Products Corporation is, and has been at all times material herein, a Utah corporation engaged in the manufacture, sale, and distribution of concrete and other related products at its plant in Salt Lake City, Utah, where in maintains its principal office and place of business.

During the year preceding the issuance of the complaint herein, Utah Sand and Gravel Products Corporation, in the course and conduct of its business operations, manufactured, sold, and distributed at its Salt Lake City, Utah, plant, products and materials valued in excess of \$100,000, of which products and materials valued in excess of \$50,000, were sold to Weyer Construction Co., Inc., Okland Construction Co., Inc., and Mark B. Garff, Ryberg & Garff Construction Co., each of which enterprises annually purchases and causes to be shipped directly from points and places located outside the State of Utah, to points and places located within the State of Utah, goods and materials valued in excess of \$50,000.

Upon these admitted facts, I find that Utah Sand and Gravel Products Corporation at all times material has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 222, is admitted to be a labor organization within the meaning of the Act, and I so find.

III. THE UNFAIR LABOR PRACTICES

The complaint alleges that commencing on or about August 7, 1963, and until on or about December 19, 1963, the Respondent, acting by and through its officer and agent, Fullmer H. Latter, attempted to cause and did cause the Utah Sand and Gravel Products Corporation, hereinafter called Utah, to discriminate against James Howard Dickinson, an employee of Utah, by changing his job position and the terms of his employment. It is the contention of the General Counsel that the Respondent engaged in this conduct as retribution against Dickinson for having performed work for Utah at a time when Respondent was engaged in strike activity against Utah.

The Respondent, on the other hand, contends that the complaint should be dismissed because the General Counsel failed to establish that the Respondent caused or attempted to cause Utah to take any action affecting the terms of Dickinson's employment. In this connection Respondent concedes that a request was made of Utah by Fullmer Latter, its secretary-treasurer, to change Dickinson's job assignment. However it contends that Latter acted only as a conduit for the transmission to Utah of employee sentiments as expressed through an employee committee; that the employee committee was and is a separate, distinct, and independent entity from the Respondent; and that Utah eventually acquiesced in and adopted a solution offered by an individual who had no agency relationship to or representative capacity with Respondent, but rather who had served during collective-bargaining negotiations which had contemporaneously transpired as a mediator between Respondent and Utah.

A. Prefatory Facts

During the period July 9 to August 7, 1963,¹ the Respondent engaged in strike activity against Utah. During the strike only a few employees worked at the plant. James Howard Dickinson was one of them.

Dickinson was initially employed by Utah on April 3, 1962. He commenced work as a truckdriver and held this job until the latter part of August 1962 when he accepted an assignment as a batch plant operator, which position he held until the strike commenced on July 9. Dickinson did not work in Utah's employ during the first week of the strike, but returned the second week and worked during the remaining period of the strike at his assignment as a batch plant operator.²

¹ All dates, unless otherwise specified, relate to 1963.

² The foregoing is based on a composite of the credited testimony of Dickinson, Jacobson, and Flandro.

B. *The August 7 meeting*

During July and early August, Utah was engaged in collective-bargaining negotiations with representatives of Local 3 of the Operating Engineers, and with representatives of the Respondent. Utah's employees who were members of the Operating Engineers did not participate in the strike which had transpired in July and August, as found above. On August 7, at a Salt Lake City motel, representatives of the Respondent, the Operating Engineers, and Utah met in collective-bargaining negotiations. Present at the meeting representing the Respondent were Fullmer Latter, secretary-treasurer of Respondent, and Scott Haslam, business representative of Local 222. Ralph Jacketta, a ready-mix truckdriver in the employ of Utah, and Wendell Payne, a truckdriver, and, like Jacketta, a member of Respondent, also were in attendance in the capacity of an employee bargaining committee representing the Teamster employees of Utah. Al Clem and Paul Edgecomb represented the Operating Engineers while Allan Flandro, executive vice president and general manager of Utah, and Ezra Knowlton, vice president of Utah, were in attendance representing Utah. This meeting was devoted to resolving the economic issues of the collective-bargaining agreement which was and had been under negotiations. The meeting produced a meeting of the minds on the economic issues and a lengthy stipulation was dictated to a secretary who prepared the stipulation in typewritten form. After minor errors were corrected and initialed by the parties, they executed the stipulation.³

C. *Dickinson's termination demanded*

While the stipulation was being prepared by the secretary, Flandro and Knowlton, the representatives of Utah, remained in the negotiating room, while the representatives of the Respondent, the Operating Engineers, and the two members of the employee bargaining committee, Jacketta and Payne, retired to the adjoining hall or corridor where the union representatives had caucused during the negotiations that had preceded. At this juncture, Jacketta and Payne asked Latter what decision had been made with respect to the "strikebreakers" who had worked at the plant during the strike. Jacketta and Payne stated to Latter that the employees were "not going back to work, unless these strikebreakers are not there." They further said, "We are just not going to work with them." Dickinson was singled out for special emphasis by the employee representatives, they asserting that "we especially don't want to work with him." At the request of Jacketta and Payne, Latter, accompanied by Jacketta, Payne, and Al Clem of the Operating Engineers, went back into the meeting room and spoke with Flandro and Knowlton.⁴ Latter informed Flandro and Knowlton of the employee opposition to working with the "strikebreakers" and further informed them that he expected the Company to terminate the services of the "strikebreakers." Flandro, speaking for Utah, was adamant in asserting that the Company would not terminate the individuals who had worked during the strike. Whereupon Latter and those associated with him left the room.

D. *Dickinson's reassignment arranged*

Subsequently, following a brief lapse of time, Al Clem spoke further with Flandro and Knowlton in the meeting room. Clem asked Flandro and Knowlton if they would be agreeable to an arrangement whereby the drivers would be placed on assignments "away from" regular drivers and Dickinson would be removed from his job as a batch plant operator and given work where he would not come in direct contact with members of the Respondent. Flandro and Knowlton consulted together and agreed to the arrangement.

Clem thereupon left the room and following a discussion with Latter, Haslam, Jacketta, and Payne concerning the compromised solution to which Flandro and Knowlton had agreed, subsequently returned in the presence of Latter, Haslam, Jacketta, and Payne. Latter orally reviewed the terms of the proposed arrangement, specifically referring to Dickinson by name and reiterating his understanding that under the arrangement Dickinson would be removed from the batch plant operator's

³ The foregoing is based upon a composite of the credited testimony of Flandro, Latter, Knowlton, and Haslam.

⁴ The findings with respect to the discussion concerning the status of the "strikebreakers" is based on the credited testimony of Latter and Jacketta, as supported by that of Haslam and Payne.

position and given an assignment which did not involve direct contact with members of the Respondent.⁵

There is testimony, which I credit, that the strike against Utah had engendered animosity and bitterness on the part of Respondent's members toward Utah and that incidents arising in conjunction with the strike had led to the arrest of rank-and-file members of Respondent.

E. Dickinson meets with officials of Utah

As a consequence of the foregoing, Flandro and Knowlton as well as Orson Jacobson, personnel manager of Utah, Concrete Plant Superintendent Willmore, and other representatives of Utah, met with Dickinson on August 8. Flandro, as spokesman, explained to him that, pursuant to an agreement between the Company and Respondent, he would have to be removed from his position as a batch plant operator and that he would be given another assignment in the operations. Flandro further informed him that this was necessitated by the Respondent's insistence that he be disassociated from those portions of the Company's operations which involved utilization of Respondent's members. Dickinson was informed that his hourly rate of pay would remain the same and that the Company would endeavor to find a "permanent job" for him, but that, in the interim, he would be given a variety of jobs.

F. Dickinson reassigned

The following workday Dickinson was assigned as an equipment operator at which position he worked for a few days. He was then assigned to a repair crew. The duties which he performed occasionally required him to enter the batch plant and to assist the dispatchers with the dispatching of trucks carrying ready-mixed concrete. After members of the Respondent through Business Representative Haslam lodged complaints predicated principally upon their objection that in fulfillment of his dispatching assignments he was giving directions by way of hand signals to driver-members of the Respondent, Dickinson was transferred to a job at Kearns, Utah, operating a lowboy and loader.

In the capacity of a batch plant operator Dickinson received a substantial amount of overtime work whereas in positions in which he worked after August 8, until he was restored to his batch plant operator's position on December 19, Dickinson did not receive overtime work.⁶

G. The August 13 work stoppage

At approximately 9 a.m. on August 13, a work stoppage occurred in the North plant ready-mix yard at Utah's Kearns operation. The work stoppage lasted approximately 90 minutes. At approximately 9 a.m. on August 13 the employees in the North plant ready-mix yard began milling around and ceased performing their work. At approximately the time the employees ceased their work Scott Haslam, business representative of Local 222, arrived on the scene. Haslam and Superintendent Willmore entered the office of Personnel Manager Jacobson, and Haslam informed Jacobson that he had shut down the plant. Jacobson inquired as to the reason for this action and Haslam stated that the Company had not lived up to the arrangement that had just been negotiated and stressed that Dickinson's operation of the lowboy was a reason for the shutdown. Thereupon Jacobson telephonically contacted Blaine Thomas, superintendent in the ready-mix office, to ascertain whether, as Haslam had stated, the operation had been shut down. Thomas answered, "Yes, we are shut down. Scott Haslam shut us down."

Haslam then went to the office of General Manager Flandro and informed him that he, Haslam, had shut down the operation and asserted that the reason for the shutdown

⁵ The foregoing findings are predicated upon the credited testimony of Flandro and Knowlton which in ultimate aspects is supported by Latter's testimony on cross-examination. To the extent that Latter's testimony on direct examination is inconsistent with the findings of fact above made with respect to these conferences I reject it, for it impressed me as being frequently and purposefully self-serving and in response to questions leading in nature. To the extent the testimony of Haslam, Jacketta, and Payne is inconsistent with that of Flandro and Knowlton, and insofar as it relates to the discussions that occurred between the officials of Utah, on the one hand, and Latter and Clem, on the other, regarding Dickinson's reassignment, I do not credit it as it is sketchy and cast in conclusory, unspecific terms.

⁶ The foregoing is predicated upon a composite of the testimony of Flandro, Knowlton, Dickinson, and Jacobson.

was Dickinson's driving of the lowboy. Flandro advised Haslam to get in touch with Latter, asserting that he did not believe that Haslam realized the significance of his action, and he further urged Haslam to contact Latter immediately in order to get the matter settled.

H. Work stoppage resolved—Dickinson's duties delimited

Soon thereafter Flandro, Knowlton, Jacobson, and Willmore met with Latter and Haslam. At the meeting Latter informed the company officials that they had not lived up to the agreement that had been reached in the final negotiations, and, specifically, Latter objected to the use of Dickinson as a lowboy driver at the Kearns operation. A discussion ensued, the Company asserting that Dickinson's assignment to the lowboy conformed with past practices of "many years" standing. The Company further took the position that by assigning Dickinson to the lowboy it was complying to the parties' agreement of August 7, relating to the assignment of Dickinson. In this respect it was contended that in operating the lowboy Dickinson would be "put a long ways away from any other drivers and that there would be no direct contact with the drivers." There was further discussion relating to an alternative assignment for Dickinson. During this phase of the discussion Latter objected to Dickinson being assigned to a batch plant operator's position. At the termination of the discussion Latter gave consent to the assignment of Dickinson to the dispatch office. Latter's consent to this assignment was upon the condition that Dickinson be authorized to answer customers' telephone calls but on the concomitant condition that in the performance of his dispatch office duties he would "disassociate himself from the Teamsters's jobs." The work stoppage ended upon the termination of the conference.⁷

I. Post August 13 objections

Personnel Manager Jacobson credibly testified that several times after August 13, Scott Haslam contacted him by telephone and complained that in performing his dispatch office duties Dickinson had spoken directly with drivers, or had conversed with them over the radio, or had given instructive hand signals to them from the dispatch office. Haslam requested that the appropriate company officials responsible for Dickinson's actions be notified and that the actions specified be ceased. Additionally, Jacobson credibly testified he received similar complaints from Haslam concerning conduct of other employees who had worked for the Company during the strike.⁸

The foregoing is predicated upon the credited testimony of Orson Jacobson and Allan Flandro. I have also considered the testimony of Scott Haslam and Wendell Payne in connection with this series of events, and to the extent that their testimony is consistent with the finding above, which I make, that the employees ceased work at a time very proximate to Haslam's arrival at the Kearns North plant ready-mix yard, I credit it. However, to the extent that their testimony denies that Dickinson's operation of a lowboy was a causative factor of the work stoppage, I reject it.

Further, to the extent that Haslam's testimony is inconsistent with that of Jacobson and Flandro concerning subsequent meetings attended by Latter with officials of Utah, I reject it. Not only am I unable to indulge the assumption that Jacobson and Flandro would manufacture these incidents out of the whole cloth, but the accuracy of their recollection concerning the *subject matter* of the incidents to which they respectively testified is supported by unrefuted testimony of James Howard Dickinson and of Orson Jacobson to the effect that immediately following the Kearns work stoppage Dickinson ceased operating the lowboy and was transferred to dispatch office duties. It is most unlikely that this transfer was made *in vacuo*. Moreover, in the light of the fact that only one workday had elapsed during which the newly ratified agreement had been in effect, and considering further the fact, as found, that the work stoppage occurred in the early working hours of the second day, I am unable to conclude that such considerations as lunchtime, breaktime, and starting hours were significant factors in the work stoppage.

Finally, I find it unnecessary to resolve the apparent conflict in the testimony of Haslam and Jacobson as to whether the work stoppage occurred prior to or after Haslam's appearance at the Kearns work stoppage site. In either event—whether a spontaneous act of the employees or a Union-ordered stoppage—so far as this proceeding is concerned, the significance lies in the support given the employee position by Latter and Haslam and the extent of the objections leveled by them against Dickinson's performance of work duties both at the Kearns site and in the batch plant.

⁸ I have also considered Haslam's testimony with respect to the foregoing. Although sketchy and to some extent equivocal, it is not at variance with Jacobson's.

Conclusions

The Board has held that Section 8(b)(1)(A) and (2) of the Act are violated when a labor organization causes or attempts to cause an employer to modify the employment status of an employee because that employee has refused to support a union-called strike.⁹

The evidence of record establishes that Dickinson was transferred from his batch plant operator's job to assignments which provided him with less opportunity for overtime work and compensation, anticipated and actual, than did his batch plant assignment because he had performed work in the employ of Utah while Respondent was engaged in a strike against Utah.

The determinative issue, then, is whether, as the General Counsel alleges, Dickinson's transfer was caused by Respondent, or whether, as Respondent contends, Dickinson's transfer resulted from a voluntary and efficacious decision by the employer, solely for the purpose of contributing to, if not insuring, a restoration of harmonious and tranquil employer-employee relations following a long and bitter strike.

The mere request of a labor organization that an employer engage in conduct violative of Section 8(a)(3) of the Act amounts only to an attempt to persuade and is not violative of Section 8(b)(2) of the Act.¹⁰ However, a threat to exert economic pressure to achieve a discriminatory modification in the tenure, terms, or conditions of employment of an employee does constitute an attempt to cause discrimination within the meaning of Section 8(b)(2).¹¹

Credited evidence of record establishes to my satisfaction that not until after the terms of the collective-bargaining stipulation had been dictated and were in the process of preparation in final form was the question broached of job retention by Dickinson and the eight or nine drivers who worked in Utah's employ during the strike period. Additionally, the evidence supports the conclusion, which I make, that the issue was first raised by the members of the employee committee, Jacketta and Payne, and did not emanate with Secretary Latter. However, the proof of record amply establishes that Latter at the behest of the employee committee transmitted to officials of Utah the equivalent of an ultimatum to replace Dickinson and the drivers who had become *persona non grata* to the employees by reason of their having worked behind the picket line, and that this ultimatum was supported by an implied threat of a strike by Respondent's members if their ultimatum was not accepted. By his own testimony, Latter establishes that he made no effort during his initial meeting with Flandro and Knowlton to explicate his position with respect to the employee ultimatum, or to in any manner suggest that an attempt at restraint would be undertaken by him, or by Respondent's officialdom, if, in the absence of a modification in the employment status of Dickinson and the drivers, the employees were to manifest an intention to carry out their strike threat, or actually did so. To this extent, Latter, Respondent's secretary-treasurer, implied his support of the employee ultimatum.

Significantly, Respondent's overt role did not terminate with the transmission to management of the employee ultimatum. Rather, after Al Clem of the Operating Engineers had intervened as a mediator and a compromise had been struck, Latter painstakingly defined the terms of the compromise. In light of Clem's role, and Respondent's assertion that it was not a party to the agreement, Latter's actions were either redundant of Clem's accomplishments, or they were purposefully taken. That Latter's further conference with management following Clem's intervention was intended by him to be meaningful is revealed by the specificity with which he discussed Dickinson's future employment status and by his reiteration of the requirement that Dickinson be removed from his batch plant assignment. Thus, the conclusion reasonably to be drawn from the foregoing is that by his participation Latter intended and did convey to management that the condition for removal of the earlier communicated strike threat was Dickinson's transfer from his batch plant job and that this demand was not just a barren wish of a recalcitrant employee group to be lightly considered by management, but was an employee demand which commanded the full

⁹ *Warehouse & Distribution Workers' Union Local 207 of the International Longshoremen's and Warehousemen's Union (Waterway Terminals Corporation)*, 118 NLRB 342, 347; see also *The Radio Officers' Union of the Commercial Telegraphers Union, AFL (A. H. Bull Steamship Company) v. N.L.R.B.*, 347 U.S. 17; *American Bakery and Confectionery Workers International Union, AFL-CIO, Local No. 173 (Continental Baking Company, Inc.)*, 128 NLRB 937, 939.

¹⁰ *Denver Building and Construction Trades Council; International Union of Operating Engineers, Local No. 9 (Henry Shore)*, 90 NLRB 1768, enfd. 192 F. 2d 577 (C.A. 10).

¹¹ *Sub Grade Engineering Company*, 93 NLRB 406, *Northwestern Montana District Council of Carpenters' Unions and United Brotherhood of Carpenters and Joiners of America, Local Union No. 911, AFL-CIO (Glacier Park Company)*, 126 NLRB 889, 897-898.

support of Respondent. Considering Latter's activities at the two conferences aforesaid with Flandro and Knowlton, I reject Respondent's contention that in discussing Dickinson's transfer Latter was serving as a mere conduit. Rather, I find that by virtue of the involvement of Latter in the manner delineated Respondent was in reality and fact constructively demanding under veiled threat of strike action that the Company transfer Dickinson from his batch plant job.

Thus, I am of the opinion that the admixture of blandness and specificity which Latter on August 7 displayed with respect to Dickinson's employment, is but a nuance, without decisional distinction, of the "no responsibility" disclaimer which the Union employed in *Local 11, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO (Cooper and Craib, Inc.)*, 144 NLRB 373, relied upon herein by the General Counsel. There the Board found to constitute a threat of unlawful conduct a letter asserting that a named nonunion member did not "belong on the job" and if the "company continues to employ this man our union is not responsible for the actions of its members."¹²

But Respondent's involvement in Dickinson's transfer, and its causative role, is further amplified by the tenacity with which it, through its agents Haslam and Latter, policed the agreement which led to Dickinson's transfer. Haslam's telephone calls both before and after August 13 objecting to Dickinson's actual or alleged contact with Respondent members, had, of course, an inhibitory effect upon management's freedom of choice in assigning Dickinson, and this inhibition was especially true with reference to the batch plant assignment.

The limitations through fear of a strike action placed upon Utah with respect to Dickinson were manifested unequivocally through the occurrences that surrounded the August 13 work stoppage at Kearns. There, Haslam left no doubt that the assignment of Dickinson was the paramount, consuming concern of the Respondent; and in his discussions devoted to a resolution of the work stoppage, Secretary-Treasurer Latter undertook again not only to define the limitations which Respondent was imposing upon Utah's use of Dickinson as an employee but specifically voiced his objections to Dickinson's being assigned to the batch plant.

It is significant that neither Haslam nor Latter endeavored on August 13 to order the employees to cease the work stoppage; it is also significant that Latter continued during the work stoppage conference with management to vigorously impose the same limitations upon management's freedom to assign Dickinson as had been imposed prior to work stoppage.

The clear inference to be drawn by Utah's management from this was that the sanction of Respondent's officials was being brought to bear in support of the employees' demands, and that management must weigh this factor in any decision it might reach with respect to the future assignment of Dickinson.

In light of the foregoing, and in the circumstances of this case, considering the Respondent's responsibility for the demands which were interposed upon Utah and which actually resulted in a transfer of Dickinson to a job which deprived him of overtime work and compensation, and considering further the reason for said demands—admittedly because he performed services in the employ of Utah during the month-long strike of the Respondent against Utah—I find that Respondent violated 8(b)(1)(A) and (2) of the Act by causing and attempting to cause Utah in a manner violative of of Section 8(a)(3) of the Act to transfer Dickinson from his batch plant operator's assignment to less desirable assignments.¹³

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 Utah Sand and Gravel Products Corporation, 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.

¹² See also *Local Union No. 49, affiliated with International Union of Operating Engineers, AFL-CIO (Associated General Contractors of Minnesota, Inc.)*, 129 NLRB 399, 400, which the Board in *Local 11* cites in support of the foregoing finding.

¹³ See *United Packinghouse Workers of America, Local 276, C.I.O. (Pfaelzer Bros., Inc.)* 114 NLRB 1279; *Local 11, Bricklayers, Masons and Plasterers International Union of America, AFL-CIO (Cooper and Craib, Inc.)*, *supra*; see also *Local 138, International Union of Operating Engineers, AFL-CIO, etc. (Nassau and Suffolk Contractors' Association, Inc. and its members)*, 123 NLRB 1393, 1403.

V. THE REMEDY

It having been found that the Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) and (2) of the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It having been found that the Respondent unlawfully caused James Howard Dickinson to be transferred on August 8, 1963, from his batch plant assignment to other assignments in the employ of Utah Sand and Gravel Products Corporation, and it having further been found that Dickinson was not again reassigned to his former position as a batch plant operator until December 19, 1963, I shall recommend that Respondent notify Utah Sand and Gravel Products Corporation in writing that it has no objection to Dickinson's continued employment in his batch plant job and that it simultaneously serve a copy of such notice on Dickinson. I shall further recommend that James Howard Dickinson be made whole for any loss of earnings he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to that which he normally would have earned in the employ of Utah Sand and Gravel Products Corporation, absent his discriminatory transfer, less his net earnings during the period from August 8 to December 19, 1963. Such net back-pay shall be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, together with interest computed at the rate of 6 percent per annum as provided in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

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

CONCLUSIONS OF LAW

1. Utah Sand and Gravel Products Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. At all times material herein Fullmer H. Latter and Scott Haslam were agents of the Respondent within the meaning of Sections 2(13) and 8(b) of the Act.
4. By attempting to cause, and causing, Utah Sand and Gravel Products Corporation to transfer James Howard Dickinson from his batch plant assignment to other job assignments in the employ of Utah for discriminatory reasons, in violation of Section 8(a)(3) of the Act, the Respondent has violated Section 8(b)(1)(A) and 8(b)(2) of the Act.
5. The aforesaid unfair labor practices affect 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, it is recommended that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 222, its agents, officers, and representatives, shall:

1. Cease and desist from:
 - (a) Causing or attempting to cause Utah Sand and Gravel Products Corporation to discriminate against James Howard Dickinson or any other employee in violation of Section 8(a)(3) of the Act.
 - (b) In any other manner restraining or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.
2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:
 - (a) Make whole James Howard Dickinson for any loss of earnings he may have suffered because of the discrimination against him, in the manner set forth in the section in this Decision entitled "The Remedy."
 - (b) Notify Utah Sand and Gravel Products Corporation immediately, in writing, that it has no objection to the continued employment of James Howard Dickinson in his batch plant job, and simultaneously serve a copy of such notice upon James Howard Dickinson.
 - (c) Post at its office and meeting hall in Salt Lake City, Utah, copies of the attached notice marked "Appendix."¹⁴ Copies of such notice, to be furnished by the Regional

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

Director for Region 27, shall, after being duly signed by an authorized representative of the Respondent, be posted 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 its members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Promptly mail to the Regional Director for Region 27, copies of the Appendix for posting, the Utah Sand and Gravel Products Corporation willing, at its Salt Lake City, Utah, plant, and at its operations at Kearns, Utah.

(e) Notify the Regional Director for Region 27, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent has taken to comply herewith.¹⁵

¹⁵ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL MEMBERS OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION No. 222

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

WE WILL NOT cause or attempt to cause Utah Sand and Gravel Products Corporation to discriminate against James Howard Dickinson, or any other employee, in violation of Section 8(a)(3) of the Labor Management Relations Act.

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

WE WILL make James Howard Dickinson whole for any loss of pay he may have suffered as a result of the discrimination against him.

WE WILL notify Utah Sand and Gravel Products Corporation, in writing, that we have no objection to the employment of James Howard Dickinson as a batch plant operator and we will similarly and simultaneously serve a copy of such notice upon James Howard Dickinson.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA, LOCAL UNION No. 222,

Labor Organization.

Dated _____ By _____
(Representative) (Title)

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, 609 Railway Exchange Building, 17th and Champa Streets, Denver, Colorado, Telephone No. 297-3551, if they have any questions concerning this notice or compliance with its provisions.

Lewis Roberts, Inc. and Printing Specialties & Paper Products
Union No. 447, I.P.P. & A.U., AFL-CIO. Case No. 2-CA-9927.
January 21, 1965

DECISION AND ORDER

On October 14, 1964, Trial Examiner David London issued his Decision in the above-entitled case, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain