

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, Room 2023, Federal Office Building, 550 Main Street, Cincinnati, Ohio, Telephone No. 381-2200, if they have any question concerning this notice or compliance with its provisions.

Building Service Employees International Union, Local No. 105
[Industrial Janitorial Service, Inc.] and Charles R. Johnson.
Case No. 27-CC-126. April 5, 1965

DECISION AND ORDER

On July 7, 1964, Trial Examiner Howard Myers 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, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members 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 Trial Examiner's Decision, the exceptions, the brief, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions,¹ and recommendations with the following modification.

Like the Trial Examiner, we find that the Respondent picketed at the Denver U.S. National Bank, the purpose being to threaten, coerce, or restrain the Bank with an object of forcing or requiring it to cease doing business with Industrial Janitorial Service, Inc., and that the Respondent thereby violated Section 8(b)(4)(ii)(B) of the Act.

We do not agree with the Trial Examiner, however, that the cessation of work by Denver city policemen, who were employed on a part-time basis by the Bank as guards, evidences, in the circumstances herein, inducement or encouragement of these employees to engage in a strike or a refusal to perform services for the Bank. The

¹The Trial Examiner concluded that the Respondent was responsible for the picketing and handbilling herein. We agree. In addition to the "admissions" of such responsibility by the attorney for the Respondent at the hearing, which form the basis for the Trial Examiner's conclusion on this point (see 9 Wigmore, *Evidence* § 596 (3d ed.)), we note that the handbills specifically named the Respondent as being responsible therefor and that these handbills were often distributed by the pickets themselves.

record demonstrates that the policemen-guards ceased working at the Bank only when they were ordered to do so by the Denver police captain in charge of the department's labor relations and that the captain took this action in accordance with the department's rules and regulations. These rules and regulations provide that no member of the police department may be employed at any place at which there is a labor dispute. We find, therefore, that the policemen-guards ceased working at the Bank in order to comply with the department's rules and regulations applicable to labor disputes and not because of inducement or encouragement by the Respondent. Accordingly, and inasmuch as the record fails to demonstrate that any other employees of the Bank were induced or encouraged by the Respondent to engage in a work stoppage, we conclude that the Respondent did not violate Section 8(b) (4) (i) (B) of the Act; and we shall dismiss the complaint insofar as it pertains thereto.

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 Respondent, Building Service Employees International Union, Local No. 105, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order with the following modification.

The following is substituted for subparagraph 1(a) of the Trial Examiner's Recommended Order:

Threatening, coercing, or restraining Denver U.S. National Bank, or any other person engaged in commerce or in any industry affecting commerce, where an object thereof is to force or require Denver U.S. National Bank, or any other person, to cease doing business with Industrial Janitorial Service, Inc.

IT IS HEREBY FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violations not found herein.²

² The first indented paragraph of the notice beginning with the words "WE WILL NOT" is, accordingly, deleted.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge duly filed on March 2, 1964,¹ by Charles R. Johnson,² the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel³ and the Board, through the Regional Director for Region 27 (Denver, Colorado), issued a complaint, dated March 27, against Building Service Employees

¹ Unless otherwise noted, all dates herein mentioned refer to 1964.

² Johnson filed the charge for, and on behalf of, Industrial Janitorial Service, Inc.

³ This term specifically includes counsel for the General Counsel appearing at the hearing.

International Union, Local No. 105, herein called Respondent, alleging that Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

Copies of the charge, the complaint, and the notice of hearing were duly served upon Respondent, and copies of the complaint and the notice of hearing were duly served upon Johnson.

Specifically, the complaint alleges that: (1) from on or about March 2 until on or about March 12, Respondent caused to be picketed the premises of the Denver U.S. National Bank, herein called the Bank, which is located in Denver, Colorado, at times when Industrial Janitorial Service, Inc., herein called Janitorial Service, was not engaged in its normal business operations at the Bank; and (2) the object of said picketing was to force and require the Bank to cease doing business with Janitorial Service.

On April 3, Respondent duly filed an answer denying the commission of the unfair practices alleged.

Pursuant to due notice, a hearing was held on May 14, at Denver, Colorado, before Trial Examiner Howard Myers. The General Counsel and Respondent were represented by counsel; Janitorial Service by its president. Full and complete opportunity was afforded the parties to be heard, to examine and cross-examine witnesses, to present evidence pertinent to the issues, to argue orally on the record at the conclusion of the taking of the evidence, and to file briefs on or before June 3. Briefs have been received from the General Counsel and from Counsel for Respondent which have been carefully considered.⁴

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

FINDINGS OF FACT

I. THE BANK'S BUSINESS OPERATIONS

The Bank is engaged at Denver, Colorado, in commercial and general banking business. It is, and at all times material was, a member of the Federal Reserve System and of the Federal Deposit Insurance Corporation. During the year immediately preceding the issuance of the complaint herein, the Bank's assets exceeded \$10 million; at the time of the hearing, its assets exceeded \$390 million. During 1963, the Bank's net income, before taxes, amounted to slightly more than \$4 million. At all times material the Bank had on deposit in banking institutions located outside the State of Colorado more than \$7 million.

Upon the basis of the foregoing facts, it is found, in line with established Board authority, that the Bank is engaged in, and during all times material was engaged in, business affecting commerce, within the meaning of Section 2(6) and (7) of the Act and that its business operations meet the standards fixed by the Board for the assertion of jurisdiction.

II. THE LABOR ORGANIZATION INVOLVED

Respondent is, and at all times material was, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The undisputed pertinent facts*⁵

Pursuant to a written contract by and between the Bank and Janitorial Service, the latter commenced its janitorial services at the Bank's premises on October 31, 1963.

Commencing on February 26, 1964, and continuing each weekday until the following March 12, Respondent distributed handbills at the Bank's premises. The handbills read, in part, as follows:

Members of Building Service Employees Local Union No. 105 have no dispute with any person, firm, or corporation other than Industrial Janitorial Service, Inc.

⁴ At the conclusion of the examination of Kenneth Veasman, Respondent's counsel moved to strike Veasman's testimony on the ground that it was "incompetent and hearsay." Decision thereon was reserved. The motion is hereby denied.

⁵ Respondent called no witnesses. It rested its case at the conclusion of the General Counsel's case-in-chief.

On March 2, Respondent supplemented its handbilling activities by not only picketing the various entrances of the Bank, but the pickets extended their activities beyond the limits of the Bank's premises in that they walked "in the paths of the cars coming out of the [Bank's] driveways and they were extending themselves on to Broadway down to the Mile High Center Building, also on the Lincoln Street side the pickets were walking and presenting the handbills to cars approaching the bank. And these pickets on the Lincoln Street side extended themselves completely to the corner of 17th and Lincoln, which is considerably beyond the U.S. National Bank premises."

The legend on the signs carried by the pickets read substantially as follows:

Industrial Janitor [sic] Service, Inc. refuses to pay its employees a living wage.

The Bank had an arrangement with the Denver police department whereby it would hire two or three off-duty police officers 2 or 3 days a week to direct traffic at its motor bank building. The Bank paid these policemen at an hourly rate and, while they were working at the Bank, said officers were under the direct supervision of the Bank's head guard.

During the latter part of the first week of March, Melvin B. Janowitz, a Denver city police captain in charge of the police department's Labor Relations Bureau, instructed the Denver police officers, who were then working at the Bank directing traffic, that they could no longer work there "as long as there was a labor strife [sic] going on at the bank." On March 6, the policemen discontinued their off-duty Bank jobs.

The 15 or 17 employees of the Janitorial Service performed their cleaning operations at the Bank from 6:15 p.m. until 10 p.m., Monday through Thursday, and from 1 p.m. to 5 p.m. on Sundays. Their direct supervisor, Michale Lauer, and his superior, Janitorial Service's president, Charles R. Johnson, never visited the Bank in performance of the aforementioned contract on any workday prior to 6 p.m.

The majority of the Bank's employees report for work between 7 and 8 o'clock in the morning and they quit work between 4 p.m. and 6 p.m.

Respondent's handbilling and picketing occurred between the hours of 10 a.m. and 3 p.m.

At the time of the above-referred-to handbilling and picketing, Janitorial Service's offices were located at 1177 Champa Street, Denver, and at the time of the hearing they were located at 2476 West 2d Avenue, Denver, each location being quite a distance from the Bank's premises.

At no time did Respondent handbill or picket Janitorial Service's offices or at any place where Janitorial Service's employees were actually working. In fact, Respondent made no effort to contact Janitorial Service or any of its employees.

B. Concluding findings

Section 8(b)(4)(i) and (ii)(B) of the Act provides, in relevant part, that it shall be an unfair labor practice for a labor organization or its agents:

- * * * * *
- (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or
 - (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

- * * * * *
- (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person. . . .

The statutory provisions thus make unlawful union pressure which has as an object the forcing of or requiring one employer to cease doing business with another.

Section 8(b)(4), however, has been consistently interpreted by the Board, with judicial approval, as not embracing all conduct that literally falls within its proscriptions.⁶ It is therefore necessary to consider, in a case such as the instant one, whether

⁶ E.g., *Local 761, International Union of Electrical, Radio and Machine Workers (General Electric Company) v. N.L.R.B.*, 366 U.S. 667.

the employer, who is allegedly being coerced, or whose employees are allegedly being induced or encouraged to cease work, is legitimately subject to union pressure as a "primary" employer.

Here the record as a whole clearly establishes, and I find, that, in furtherance of its dispute with Janitorial Service over the purported substandard wages paid by it, Respondent has "coerced and restrained" the Bank (secondary employer), with "an object" of forcing the Bank to cease doing business with Janitorial Service thereby violating Section 8(b)(4)(i) and (ii)(B) of the Act. This finding is supported by the following activities of Respondent: (1) Picketing at the Bank's premises only at times when the employees of Janitorial Service (primary employer) were not performing services on said premises; (2) limiting the picketing to times only when the employees of Janitorial Service were not performing services at the Bank; (3) limiting the picketing when most of the Bank's employees were in attendance but when the employees of Janitorial Service were not present and no work by Janitorial Service was being performed; and (4) making no effort to ascertain whether Janitorial Service or its employees were engaging in Janitorial Service's normal operations when it commenced and later continued its picketing. Furthermore, undisputed credible testimony establishes that certain individuals employed by the Bank were induced to leave the Bank's employ because of Respondent's unlawful conduct. This finding becomes inescapable when consideration is given to the fact that the Denver police officers working part time for the Bank and being paid by it withheld their services because of the picketing.

I have carefully considered the various defenses raised by Respondent at the hearing and in its brief and find each to be without merit or substance.⁷

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, it is recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
2. Janitorial Service is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
3. The Bank is engaged in commerce or in an industry affecting commerce, within the meaning of Sections 2(6) and (7) and 8(b)(4) or the Act.
4. By threatening, restraining, or coercing a person in an industry affecting commerce with an object of forcing him to cease doing business with another person, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

⁷ In its brief Respondent argued that the complaint should be dismissed because, among other reasons, the General Counsel failed to prove that Respondent conducted the hand-billing and picketing. At the hearing, however, Respondent's counsel requested "the General Counsel to admit that all the information contained in the leaflets, and the placards displayed by the union, was truthful" In addition, in an effort to introduce evidence to the effect that Janitorial Service paid substandard wages and that its employees worked under less advantageous conditions than the conditions generally prevailing in the janitorial industry in Denver, Respondent's counsel stated in his offer of proof, "All the information that has been given by the Union, by the Respondent in this case, all the publicity has been truthful and accurate, and in accord with the fact [sic], we offer to prove that." In view of such admissions I find that it was not incumbent upon, nor necessary for, the General Counsel to introduce direct evidence linking Respondent with the picketing.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is hereby ordered that Respondent, Building Service Employees International Union, Local No. 105, its officers, representatives, and agents, shall:

1. Cease and desist from engaging in, or inducing or encouraging individuals employed by Denver U.S. National Bank, or employees of any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or in a refusal in the course of their employment to force or require Denver U.S. National Bank to cease doing business with Industrial Janitorial Service, Inc.

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

(a) Post in Respondent's business offices and meeting halls in Denver, Colorado, copies of the attached notice marked "Appendix."⁸ Copies of said notice, to be furnished by the Regional Director for Region 27, Denver, Colorado, shall, after being duly signed by an official of Respondent, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notice is not altered, defaced, or covered by any other material.

(b) Furnish or mail to the Regional Director for Region 27 signed copies of said notice for posting by Industrial Janitorial Service, Inc., if willing, in places where notices to its employees are customarily posted. Copies of said notice to be furnished by the aforesaid Regional Director shall, after being signed by an official of Respondent, be forthwith returned to the Regional Director for disposition by him.

(c) Notify the aforesaid Regional Director, in writing, within 20 days from the receipt of this Decision, what steps it has taken to comply herewith.⁹

It is further recommended that unless Respondent shall, within 20 days from the date of receipt of this Decision, notify the aforesaid Regional Director, in writing, that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the aforesaid action.

⁸ In the event that this Recommended Order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the 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."

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

APPENDIX

NOTICE TO ALL MEMBERS OF BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 105

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, we hereby notify you that:

WE WILL NOT engage in or induce or encourage the employees of Denver U.S. National Bank, or the employees of any other person, to engage in a strike or in a refusal in the course of their employment to perform any service for their respective employers where an object thereof is to force Denver U.S. National Bank, or any other person, to cease doing business with Industrial Janitorial Service, Inc.

WE WILL NOT threaten, coerce, or restrain Denver U.S. National Bank, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force Denver U.S. National Bank, or any other person, to cease doing business with Industrial Janitorial Service, Inc.

BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 105,

Labor Organization.

Dated _____ By _____
 (Representative) (Title)

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Employees may communicate directly with the Board's Regional Office, 609 Railway Exchange Bldg., 17th and Champa Streets, Denver, Colorado, Telephone No. 534-3161, if they have any questions concerning this notice or compliance with its provisions.

Murray Ohio Manufacturing Company and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL-CIO. *Cases Nos. 26-CA-955 and 26-CA-955-2. April 5, 1965*

SUPPLEMENTAL DECISION AND ORDER

On November 14, 1961, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding,¹ finding, *inter alia*, that the Respondent had unlawfully discriminated against Clyde B. Richardson and William H. Miller and ordering that they be reinstated to their former or substantially equivalent positions and made whole for any loss of earnings resulting from the discrimination against them. Thereafter, the Board's Order was enforced in full by the United States Court of Appeals for the Sixth Circuit.²

On May 26, 1964, the Regional Director for Region 26 issued and served upon the parties a backpay specification and notice of hearing. On June 11, 1964, the Respondent filed an answer to the backpay specification. On June 17, the Regional Director issued and served on the parties an amendment to said specification and on June 30 the Respondent filed a supplemental answer and answer to amended backpay specification. Upon appropriate notice, a hearing was held before Trial Examiner George L. Powell, for the purpose of determining the amounts of backpay due the claimants. On December 9, 1964, the Trial Examiner issued his attached Supplemental Decision, in which he found that the claimants were entitled to specific amounts of backpay. Thereafter, the Respondent and the Charging Party filed exceptions to the Trial Examiner's Supplemental Decision, and the Respondent also filed 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 Brown 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 entire record in this case, including the Supplemental Decision, and

¹ 134 NLRB 141.

² *N.L.R.B. v. Murray Ohio Manufacturing Co.*, 326 F. 2d 509, 516.