

term or condition of employment, except to the extent permitted by the proviso to Section 8(a)(3) of the Act, as modified by the Labor-Management and Disclosure Act of 1959.

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

WE WILL jointly and severally with Milk Drivers' Union, Local 753, International Brotherhood of Teamsters Chauffeurs, Warehousemen & Helpers of America, make whole Al Cantu for loss of pay suffered as a result of discrimination against him.

WE WILL reinstate Al Cantu to his former position without prejudice to his seniority or other rights and privileges he previously enjoyed.

J. ZIAK & SONS, INC.,
Employer.

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, 881 U.S. Courthouse and Federal Office Building, 219 South Dearborn Street, Chicago, Illinois, Telephone No. 828-7572, if they have any questions concerning this notice or compliance with its provisions.

Mole Oldsmobile, Inc. and Local 868, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind. *Case No. 29-CA-41 (formerly Case No. 2-CA-9675). May 5, 1965*

DECISION AND ORDER

On August 14, 1964, Trial Examiner John F. Funke issued his Decision in the above-entitled proceeding, finding that 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 and the General Counsel filed exceptions as the Trial Examiner's Decision and supporting briefs.

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 [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 Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner except as modified herein.²

¹ In adopting the Trial Examiner's conclusion that Respondent violated Section 8(a)(5) of the Act, we rely additionally on the fact, as supported by the record, that Respondent is a successor to Murray Oldsmobile, Inc. See *Rohlik, Inc.*, 145 NLRB 1236, *Witham Buck, Inc.*, 139 NLRB 1209.

² The Respondent's request for oral argument is hereby denied as the record, including the exceptions and briefs, adequately presents the issues and the positions of the parties.

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 Respondent, Mole Oldsmobile, Inc., its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, with the following modification:

Add the following as paragraph 2(b), the present paragraph 2(b) and those subsequent thereto being consecutively relettered:

"(b) Notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed November 7, 1963,¹ by Local 868, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind, herein called Local 868, against Mole Oldsmobile, herein called Mole Oldsmobile, or the Respondent, the General Counsel issued a complaint alleging that Respondent committed unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act.

The answer of the Respondent denied the commission of unfair labor practices. This proceeding, with the General Counsel and the Respondent represented, was heard before Trial Examiner John F. Funke at New York, New York, on May 25, 1964, and at the conclusion of the hearing the General Counsel engaged in oral argument. The parties indicated that they would not file briefs.²

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

Respondent maintains a place of business at Amityville, Long Island, New York, where it is engaged in the sale and distribution of new and used automobiles. During a representative year the Respondent derives an income in excess of \$500,000 from its operations. Respondent has, in a representative year, purchased automobiles valued in excess of \$50,000 which were shipped to it from places outside the State of New York.

Respondent is an employer engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 868 is a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The facts*

Prior to November 21, 1963,³ the business, now operated by Respondent, was operated by Murray Ross and was known as Murray Oldsmobile. On or about October 4 an agreement was entered into for the purchase and sale of Murray Olds-

¹ A first amended charge was filed November 27, 1963, and a second amended charge was filed April 8, 1964.

² All motions upon which decision was reserved at the hearing are disposed of in accordance with the findings and conclusions of this Decision.

³ Unless otherwise stated all dates refer to 1963.

mobile to George E. Mole, Jr., contingent upon the approval of General Motors. On November 21 the sale of the business assets of Murray Oldsmobile was consummated and the real property was leased to Respondent.

Prior to the consummation of the sale a petition for an election among the sales personnel was filed by Local 868 with the National Labor Relations Board in Case No. 2-RC-12979 and on October 25 Local 868 was designated as collective-bargaining agent by the three employees in the unit. (Dale, Witherspoon, and Anson)

Leonard Shifrin, business agent for Local 868, testified that sometime in November he called the attorney for Murray Oldsmobile for a bargaining meeting and was told by the attorney that Murray was being sold but the attorney (identified as Seltzer) agreed to meet with Shifrin on November 20. Shifrin went to the agency on November 20 and first met Murray Ross who told him the business was being sold. Later he met Seltzer who told him he would have to negotiate with the new owner, Mole. About 4 p.m. Mole appeared at the agency and Shifrin made an appointment to meet with him on Friday, November 22. The next day, however, Shifrin was informed by his office that the salesmen had called to tell Shifrin they had been discharged that day, Thursday, November 21, and would meet him at the agency on Friday morning. Shifrin met the men and then met with Mole who told him that he had no union problems and that Shifrin's problems were with Murray Oldsmobile.⁴ Shifrin then talked to Ozias Kaufman, Mole's attorney, who advised Shifrin to file a charge with the National Labor Relations Board. Shifrin told the salesmen there was nothing to do but establish a picket line. Raymond Garson, sales manager for Murray Oldsmobile, testified that he was asked to continue as sales manager for the Respondent and did continue as manager for a period of time. He was hired by Mole on November 21 immediately after the closing of the sale. At approximately the same time the three salesmen, Andy Anson, Joe Dale, and Joe Witherspoon, were notified by Murray Ross that they were discharged. They were not rehired by Mole. Garson testified that some time after the election of October 25 he had a conversation with the salesmen in which he tried, unsuccessfully, to induce them to quit Local 868 and that he reported this conversation to Mole who told him he would "fight them"⁵

George Mole testified that prior to the sale of Murray Oldsmobile to the Respondent he had learned that Amalgamated Local Union No. 355 represented the mechanics and that he had agreed with Ross that he would assume the contract between Amalgamated and Murray Oldsmobile.⁶ At this time he also knew that Murray Oldsmobile was obligated to bargain with Local 868 although he did not know that Local 868 had been certified by the Board.⁷ As a condition to the purchase of the business and with full knowledge of the situation he reached agreement with Ross that Ross would discharge the salesmen while at the same time he would accept the contract with Amalgamated.⁸ One of Mole's given reasons for discontinuing the employment of the salesmen was that he wished to employ salesmen who had worked for him 5 years previously at another agency. While Mole stated that he wished to establish an "image of integrity" for the agency he nevertheless admitted on cross-examination that he retained Garson in his employ as sales manager despite the fact he knew that Garson had a bad reputation in the automobile sales industry at the time he hired him. (There is no evidence that Anson, Dale, and Witherspoon did not enjoy reputations as honest and competent salesmen.) Mole also admitted that a motivation for discharging the salesmen was the fact that he would not "be troubled or bothered by union activity."

⁴ At the time Mole disavowed any responsibility for bargaining with Local 868 he had already agreed with Ross to assume the contract between Murray Oldsmobile and Amalgamated Local Union No 355 which covered the mechanics employed by Murray Oldsmobile (General Counsel's Exhibit No 3.)

⁵ While Mole denied that he told Garson that he wanted no part of Local 868, he did not deny this statement.

⁶ Mole testified that before the formal closing of sale he had a meeting with Talco, president of Amalgamated Local 355, and Ross in which it was indicated to him that he might have labor trouble if he did not assume the contract. (Talco has been referred to in a prior Board proceeding involving an automobile agency on Long Island. See *Branch Motors, Inc*, 129 NLRB 906, 909)

⁷ Mole admitted receiving a telegram from Local 868 some time after the closing of sale stating that it represented a majority of the employees and requesting an appointment for the purpose of negotiating a contract.

⁸ Despite the efforts of his counsel (and I am not suggesting they were improper) to have Mole retreat from this admission I find that this was made a condition of the sale.

Anson and Witherspoon testified that they were paid off on November 21 by Murray Ross and told they were discharged. The next day they returned to the agency with Shifrin who went inside for about 45 minutes, returned and told them there was nothing to do but picket.⁹ Witherspoon also testified that at a negotiating meeting held on November 16 Murray Ross' attorney told them that the business was being sold and that they would have to deal with the new owner.

On facts which I find are largely uncontroverted, I make the following findings:

(1) Local 868 was certified as the exclusive bargaining representative on November 4 in a unit deemed appropriate for the purposes of collective bargaining under Section 8(a)(5) of the Act. This unit was:

All new and used car salesmen employed at the Amityville plant, exclusive of all office clerical employees, shop and parts employees, watchmen, guards and all supervisors, as defined in the Act.¹⁰

(2) Local 868 by a telegram dated November 21 made a proper request for "an appointment for the purpose of negotiating a collective bargaining agreement."¹¹

(3) On November 22 Mole told Business Agent Shifrin of Local 868 that he would not engage in collective bargaining.

(4) Respondent, acting through Murray Ross, discharged employees Andy Anson, Joe Dale, and Joe Witherspoon at or immediately prior to the closing of the sale on November 21¹² because they were members of Local 868 and refused to continue their employment with Mole Oldsmobile because of such membership.

(5) On November 21 and at the time of the closing of the sale, Local 868 represented a majority of the employees in the unit certified by the National Labor Relations Board as appropriate for the purposes of collective bargaining and the certification of the Board issued November 4 was still in full force and effect.

In view of these findings of fact I find it unnecessary to dispose of the successorship issue so ably argued by the General Counsel. Since I find that the discharges of Anson, Dale, and Witherspoon were made by Ross acting as agent for Mole Oldsmobile, Inc., and that the purpose of the discharge was to destroy the majority representation of Local 868 in an appropriate unit, I find the discharges violated Section 8(a)(3) and (1) of the Act. Since had it not been for these unlawful discharges, Respondent would have been obligated to bargain with Local 868 as the exclusive representative of its employees, I find its refusal a violation of Section 8(a)(5) and (1) of the Act.

IV. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It shall be recommended that Respondent offer full and immediate reinstatement to their former position as salesmen to Andy Anson, Joe Dale, and Joe Witherspoon without prejudice to their seniority and other rights and privileges and make them whole for any loss of pay they may have suffered in accordance with the *Woolworth*¹³ formula and with interest according to *Isis*.¹⁴

It shall also be recommended that Respondent, upon request, bargain collectively with Local 868 as the exclusive representative of the employees in the unit found appropriate herein with respect to wages, rates of pay, hours, and other terms and conditions of employment.

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

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of the Act.
2. Local 868 is a labor organization within the meaning of the Act.
3. By refusing to bargain with Local 868 as the exclusive representative of its employees in the unit found appropriate herein the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

⁹ It was stipulated that had Dale been called he would have testified to the same effect.

¹⁰ So stipulated at the hearing. (General Counsel's Exhibit No. 2.)

¹¹ Respondent's Exhibit No. 1.

¹² I find it unnecessary to consider the niceties of the transfer of title where the evidence so clearly establishes that Ross and Mole acted in concert to violate the Act.

¹³ *F. W. Woolworth Company*, 90 NLRB 289.

¹⁴ *Isis Plumbing & Heating Co.*, 138 NLRB 716.

4. By discriminating against Andy Anson, Joe Dale, and Joe Witherspoon in regard to their hire and tenure of employment to discourage union membership Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law and upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is hereby ordered that the Respondent, Mole Oldsmobile, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discriminating against Andy Anson, Joe Dale, and Joe Witherspoon in regard to their hire and tenure of employment to discourage membership in Local 868 or any other labor organization.

(b) Refusing to bargain collectively with Local 868 as the exclusive bargaining representative of all of its employees in the previously described appropriate unit.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

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

(a) Offer to Andy Anson, Joe Dale, and Joe Witherspoon immediate and full reinstatement to their former positions as salesmen for the agency formerly known as Murray Oldsmobile, Inc., and now known as Mole Oldsmobile, Inc., without prejudice to their seniority and other rights and privileges and make each of them whole for any loss of pay he may have suffered by reason of Respondent's discrimination against him as set forth in the section of this Decision entitled "The Remedy."

(b) Upon request, bargain collectively with Local 868 as the exclusive bargaining representative of all its employees in the previously described appropriate unit.

(c) Preserve and, upon request, make available to the National Labor Relations Board or its agents, for examination and copying, all records necessary for the computation of the amount of backpay due under these Recommendations.

(d) Post at its Amityville, Long Island, place of business copies of the attached notice marked "Appendix."¹⁵ Copies of said notice, to be furnished by the Regional Director for Region 2, shall, after being duly signed by Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by other material.

(e) Notify the Regional Director for Region 2, in writing, within 20 days from the receipt of this Decision and Recommended Order, what steps have been taken to comply herewith.¹⁶

¹⁵ If this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice will be further amended by the substitution of the words "a Decree of the United States Court of Appeals, Enforcing an Order" for the words "a Decision and Order"

¹⁶ If this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the Regional Director for Region 2, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith"

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage membership in Local 868, International Brotherhood of Teamsters, Warehousemen and Helpers of America, Ind., or in any other labor organization, by discharging or refusing to hire them or in any other manner discriminating against them or any other employee in regard to tenure of employment.

WE WILL offer Andy Anson, Joe Dale, and Joe Witherspoon immediate and full reinstatement to their former positions as salesmen without prejudice to their seniority and other rights and privileges and make each of them whole for any loss of pay he may have suffered by reason of our discrimination against him.

WE WILL NOT refuse to bargain collectively with Local 868, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., as the exclusive representative of our employees in a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment. The appropriate unit is:

All new and used car salesmen employed at the Amityville plant, exclusive of all office clerical employees, shop and parts employees, watchmen, guards, and all supervisors, as defined by the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as authorized in Section 8(a)(3) of the Act.

All our employees are free to become, remain, or to refrain from becoming or remaining, members of the above-named union or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8(a)(3) of the Act, as amended.

MOLE OLDSMOBILE, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

NOTE.—We will notify the above-named employees if presently serving in the Armed Forces of the United States of their rights to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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

Employees may communicate directly with the Board's Regional Office, 745 Fifth Avenue, New York, New York, Telephone No. Plaza 1-5500, if they have any questions concerning this notice or compliance with its provisions.

Associated Beer Depots, Inc. and Chauffeurs, Teamsters and Helpers "General" Union, Local 200, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case No. 30-CA-62 (formerly 13-CA-6399). May 5, 1965

DECISION AND ORDER

On February 17, 1965, Trial Examiner John P. von Rohr 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 Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief, and the Charging Party filed an answering brief.