

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

Billy B Boothe
Henry E. Layne
Jack Childress

James Waddell
Granville Stevens
Kenneth Anders

James A. Creed
Scotty Lambert
James Childress

JEWELL SMOKELESS COAL CORPORATION,
Employer.

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

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

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

Employees may communicate directly with the Board's Regional Office, Sixth Floor, 707 North Calvert Street, Baltimore, Maryland, Telephone No. 752-8460, Extension 2100, if they have any question concerning this notice or compliance with its provisions.

Locals 138, 138A, 138B, International Union of Operating Engineers, AFL-CIO and Cafasso Lathing & Plastering, Inc. and Stewart M. Muller Construction Co., Inc., and Building Trades Employers Association of Long Island, Inc. and Contracting Plasterers Association of Queens, Nassau and Suffolk Counties, Inc. (Cafasso Lathing & Plastering, Inc.) and Contracting Plasterers Association of Queens, Nassau and Suffolk Counties, Inc. (Cuddihy & Huebner, Inc.). Cases Nos. 29-CD-1 (formerly 2-CD-293), 29-CD-1-2 (formerly 2-CD-293-2), 29-CD-1-3 (formerly 2-CD-293-3), and 29-CD-3 (formerly 2-CD-302. July 15, 1965

DECISION AND ORDER

Upon charges filed by Cafasso Lathing & Plastering, Inc., herein called Cafasso, Stewart M. Muller Construction Co., Inc., and Building Trades Employers Association of Long Island, Inc., herein respectively called Muller and BTEA, and by Contracting Plasterers Association of Queens, Nassau and Suffolk Counties, Inc., herein called Long Island Plasterers, in behalf of Cafasso and Cuddihy & Huebner, Inc., herein called Cuddihy, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 2, issued a complaint on December 16, 1964, against Locals 138, 138A, 138B, International Union of Operating Engineers, AFL-CIO, herein called the Respondent or Local 138, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(b) (4) (i) and (ii) (D) of the National Labor Relations Act, as amended. In substance, the complaint alleges that the Respondent

has violated the Act by engaging in picketing and other conduct with an object of forcing or requiring Cafasso and Cuddihy to assign the operation of plaster mixing machines and the plaster pumps used for piping and propelling of wet plaster, to employees represented by the Respondent, rather than to employees represented by Plasterers' Helpers Local 759, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO, herein called Local 759. The Respondent filed an answer to the complaint, denying the commission of any unfair labor practices.

On April 26, 1965, the parties entered into a stipulation submitting the proceeding directly to the Board for the issuance of findings of fact, conclusions of law, and a Decision and Order, the parties having waived a hearing before a Trial Examiner and the issuance of a Trial Examiner's Decision. It was agreed that the entire record in this case shall consist of: the transcript of testimony before the United States District Court, Eastern District of New York, Case No. 64-C-606, in connection with a petition for injunction filed by the General Counsel under Section 10(1) of the Act; the transcript of testimony, with certain excepted portions, and exhibits in the prior Section 10(k) proceeding;¹ and the formal papers in the instant proceeding. On May 5, 1965, the Board issued an order approving the stipulation and transferred this proceeding to the Board. Thereafter, briefs were filed by the Respondent² and the Charging Parties.

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

Upon the entire record in this case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYERS

Cafasso and Cuddihy are contractors engaged in performing lathing and plastering services in the building and construction industry in the Long Island, New York, area. These employers are members of the Long Island Plasterers, an association of employers which bargains for, and executes labor agreements on behalf of, its members. During 1963, the combined purchases of goods and materials made by members of the Long Island Plasterers and shipped to them from points outside the State of New York exceeded \$100,000 in value. We find

¹ On October 26, 1964, in a proceeding pursuant to Section 10(k), the Board issued its Decision and Determination of Dispute (149 NLRB 156), in which it concluded that laborers employed by Cafasso and Cuddihy, who are represented by Local 759, were entitled to perform the disputed work.

² The Respondent requested that its brief filed in the prior proceeding be considered as its brief herein. To the extent that Respondent's resubmission of this brief may be taken as a request for reconsideration of the Board's determination in the prior proceeding, such request plainly lacks merit and is hereby denied.

that Cafasso and Cuddihy are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

We find that the Respondent and Local 759 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

In connection with the construction of a school building in Amityville, Suffolk County, New York, Muller, the general contractor, subcontracted the plastering work to Cafasso. Cafasso started to work on this project in February 1964. Cafasso employs laborers who operate plaster mixers and pumps that are used to propel wet plaster from outside a building to the interior of upper stories where the plaster is applied to walls by other employees also employed by Cafasso. Local 759 and Cafasso have a collective-bargaining contract covering the work performed by the laborers. Cafasso has no such agreement with the Respondent.

In March 1964, James S. Duffy, a business representative of the Respondent, came to the jobsite and requested Cafasso to hire an operating engineer to perform the work being done by Cafasso's laborer. Cafasso refused, and Duffy told him that a work stoppage would result unless Cafasso hired an operating engineer. Duffy made a similar threat to Muller, the general contractor. Muller then suggested to Cafasso that he hire an operating engineer to avoid a work stoppage on the project, but the latter refused to do so. A day or two later, the Respondent picketed the project for about 2 weeks, during which period various union members employed at the site ceased work.

Rosoff Brothers and Foster-Neuman Contracting Company, herein jointly called Rosoff-Foster, are general contractors engaged in a joint venture in the construction of college dormitories in Stony Brook, Suffolk County, New York. Rosoff-Foster subcontracted the plastering work for this project to Cuddihy. Like Cafasso, Cuddihy employs laborers to operate the plaster machinery and has a collective-bargaining contract with Local 759, but no agreement with the Respondent.

On or about May 18, 1964, John Gunning, a business representative of the Respondent, advised Howard Huebner, an official of Cuddihy, that the Stony Brook job would be picketed unless an operating engineer was assigned to Cuddihy's plaster machinery. This statement by Gunning was made in the presence of Rosoff-Foster's construction superintendent. The record also shows that Gunning, on the day before, communicated a similar threat to Elliot Foster, an official of

Rosoff-Foster. To avoid picketing by the Respondent, and at the suggestion of Rosoff-Foster's construction superintendent, Cuddihy did not use the machinery for about 10 or 12 days. During this period the laborers employed by Cuddihy used hand equipment to deliver wet plaster to the interior of the buildings under construction.³

As alleged in the complaint, the record in this proceeding clearly shows that the Respondent's picketing activities at the Amityville project induced or encouraged employees of Cafasso, Muller, and other employers to engage in a work stoppage; that the Respondent threatened Cafasso and Muller with a work stoppage at that project; and that it threatened Cuddihy and Rosoff-Foster with a work stoppage at the Stony Brook project, in all instances with an object of forcing or requiring Cafasso or Cuddihy to assign certain work to employees represented by the Respondent, rather than to employees respectively employed by Cafasso or Cuddihy. The Respondent's conduct at the Amityville project is proscribed by Section 8(b)(4)(i) and (ii)(D) of the Act, and the Respondent's threat to Cuddihy and Rosoff-Foster at the Stony Brook project is unlawful under Section 8(b)(4)(ii)(D). Accordingly, we find that the Respondent violated the foregoing provisions of the Act by engaging in the above specified conduct.⁴

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 the companies herein involved, 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 the Respondent violated Section 8(b)(4)(i) and (ii)(D) of the Act, we shall order it to cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

The Respondent has refused to comply with the Board's Decision and Determination of Dispute. The record also shows that the type of work in dispute has been a continuing source of controversy between the Respondent and plastering contractors other than Cafasso and Cuddihy in the Long Island area, within the Respondent's geographical jurisdiction. We shall issue the broad cease-and-desist order called for in these circumstances.

³ Cuddihy resumed using the plaster machinery after a charge was filed in Case No 29-CD-3 (formerly Case No 2-CD-302) and an injunction was issued by the U S district court against the Respondent

⁴ See *Local 69, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (Bellezza Company, Inc.)*, 152 NLRB 1465

CONCLUSIONS OF LAW

1. Cafasso and Cuddihy are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent and Local 759 are labor organizations within the meaning of Section 2(5) of the Act.

3. By engaging in picketing activities at the Amityville jobsite and by its threats to picket directed at Cafasso, Muller, Cuddihy, and Rosoff-Foster; all with an object to force or require Cafasso or Cuddihy to assign the operation of plaster mixing machines and plaster pumps used for piping and propelling of wet plaster, to employees represented by the Respondent, rather than to employees represented by Local 759, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

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

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Locals 138, 138A, 138B, International Union of Operating Engineers, AFL-CIO, Long Island, New York, its officers, agents, and representatives, shall:

1. Cease and desist from engaging in, or inducing or encouraging individuals employed by Cafasso Lathing & Plastering, Inc., Stewart M. Muller Construction Co., Inc., or any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on materials, or to perform any service; and from threatening, coercing, or restraining the aforesaid employers, Cuddihy & Huebner, Inc., Rosoff-Foster, or any other person; where an object in either case is to force or require Cafasso, Cuddihy, or any other person to assign the operation of plaster mixing machines and plaster pumps used for piping and propelling wet plaster to employees represented by the Respondent, rather than to employees represented by Plasterers' Helpers Local 759, International Hod Carriers, Building and Common Laborers of America, AFL-CIO.

2. Take the following affirmative action which the Board finds will effectuate the purposes of the Act:

(a) Post at the business offices and meeting halls of the Respondent, Long Island, New York, copies of the attached notice marked "Appendix."⁵ Copies of said notice, to be furnished by the Regional Director

⁵ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order".

for Region 29, shall, after being duly signed by an authorized representative of the Respondent, be posted immediately upon receipt thereof, and be maintained at the various aforesaid places for 60 consecutive days thereafter, in conspicuous places, including all places where notices to their respective members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(b) Sign and mail copies of said notice to the Regional Director for Region 29 for posting by Cafasso, Muller, Cuddihy, and Rosoff-Foster, these companies willing, at all locations where notices to their employees are customarily posted.

(c) Notify the Regional Director for Region 29, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

APPENDIX

TO ALL OUR MEMBERS AND ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the purposes of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT engage in, or induce or encourage individuals employed by Cafasso Lathing & Plastering, Inc., Stewart M. Muller Construction Co., Inc., or any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on materials, or to perform any services; or threaten, coerce, or restrain the aforesaid employers, Cuddihy & Huebner, Inc., Rosoff-Foster, or any other person; where an object in either case is to force or require Cafasso, Cuddihy, or any other person to assign the operation of plaster mixing machines and plaster pumps used for piping and propelling of wet plaster to employees represented by this Union, rather than to employees represented by Plasterers' Helpers Local 472, International Hod Carriers, Building and Common Laborers of America, AFL-CIO.

LOCALS 138, 138A, 138B, INTERNATIONAL UNION OF
OPERATING ENGINEERS, AFL-CIO,

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, Fourth Floor, 16 Court Street, Brooklyn, New York, Telephone No. 596-5386, if they have any questions concerning this notice or compliance with its provisions.

Public Service Company of New Mexico and Paul W. Stein. *Case No. 28-CA-1097. July 15, 1965*

DECISION AND ORDER

On March 16, 1965, Trial Examiner E. Don Wilson issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practice alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the Charging Party 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 Zagoria].

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 Charging Party's exceptions and brief, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner,¹ but only to the extent consistent herewith.

The Trial Examiner found, and we agree, that Stein, the Charging Party, was a supervisor within the meaning of the Act. We further agree that the Respondent did not violate the Act by discharging Stein in the circumstances of this case. In reaching this conclusion, we rely solely on the fact that Stein was a supervisor and that he was discharged because of insubordination and bad relations with Garrison, his own superior.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its

¹ The Charging Party has excepted to the credibility findings made by the Trial Examiner. It is the Board's established policy, however, not to overrule a Trial Examiner's resolutions with respect to credibility unless, as is not the case here, the preponderance of all the relevant evidence convinces us that the resolutions were incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enf'd. 188 F. 2d 362 (C.A. 3).

The Charging Party also contends that the Trial Examiner's Decision was based upon bias and prejudice and moved that the case be remanded for rehearing. Upon our review of the entire record, however, we find that these contentions are without merit, and, accordingly, deny the motion for rehearing.