

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.

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 327 Logan Building, 500 Union Street, Seattle, Washington, Telephone No. 682-4553.

#### APPENDIX C

##### NOTICE TO ALL MEMBERS OF BRICKLAYERS AND MASONS LOCAL UNION No. 3 AND TO ALL EMPLOYEES OF ELMER L. JOHNSON MASONRY CONSTRUCTION, INC.

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, as amended, we hereby notify you that.

WE WILL NOT induce or encourage individuals employed by Elmer L. Johnson Masonry Construction, Inc., or any other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to use or handle any material or to perform any services where an object thereof is to force or require their employer to cease doing business with Purvis-Fedco, Inc.

WE WILL NOT threaten, coerce, or restrain Elmer L. Johnson Masonry Construction, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require said employer to cease doing business with Purvis-Fedco, Inc.

BRICKLAYERS AND MASONS LOCAL UNION No. 3,  
*Labor Organization.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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**Tony R. Santangelo, an Individual Proprietor d/b/a Santangelo & Co. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 452. Case No. 27-CA-1750. September 27, 1965**

#### DECISION AND ORDER

On June 14, 1965, Trial Examiner Ramey Donovan 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 he cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to 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 Jenkins and Zagoria].

154 NLRB No. 138.

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,<sup>1</sup> 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 National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that the Respondent, Tony R. Santangelo, An Individual Proprietor d/b/a Santangelo & Co., Denver, Colorado, his officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

<sup>1</sup> The General Counsel's motion to strike Respondent's exceptions and brief is denied.

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

The charge of unfair labor practices in this case was filed by the above-named Union on January 13, 1965. The complaint issued under date of February 23, 1965. In issue were the jurisdiction of the Board and conduct alleged to be in violation of Section 8(a)(1) and (5) of the Act. With all parties represented, the hearing was held before Trial Examiner Ramey Donovan in Denver, Colorado, on May 4, 1965.

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

#### FINDINGS OF FACT

##### I. RESPONDENT'S BUSINESS

Respondent is an individual proprietor who engages in the wholesale fruit and vegetable business in Denver, Colorado, as Santangelo & Co. In addition to the proprietor, Tony Santangelo, the personnel of the Company consists of three driver-warehousemen, Elizalde, Sisneros, and Del Real, plus a bookkeeper and a foreman.

On an annual basis, Respondent purchases fruit and vegetables in an amount of at least \$200,000, principally from carlot wholesalers in Colorado. Substantially all, or at least 95 percent, of the fruit and vegetables secured from the carlot wholesalers, originate outside Colorado. The carlot wholesalers order their produce directly from the out-of-State producers or suppliers, or in some cases, from the out-of-State supplier's local representative;<sup>1</sup> the carlot wholesalers also order through, commission brokers.<sup>2</sup> Respondent additionally, from September 1963, to September 1964, supplied \$7,000 worth of produce to the Lowry Air Force Base commissary, and, from September 1964 to the time of the hearing, had supplied \$12,000 worth of produce to the same facility.

It is found that Respondent's operations bring it within the jurisdictional standards of the Act and within the Board's jurisdictional criteria. We also find that the Union is a labor organization within the meaning of the Act.

##### II. THE ALLEGED UNFAIR LABOR PRACTICES

In January 1965, the Union began organizational efforts among all the employees working for companies in the wholesale market area where Respondent's place of

<sup>1</sup> For instances, Sunkist Oranges has a representative in Colorado as does United Fruit Company (bananas).

<sup>2</sup> Some specific annual purchases by Respondent from carlot wholesalers are: Federal Fruit and Produce, \$39,000; Famularo and Sons, \$25,501; Pacific Fruit and Produce Co., \$6,969; Mile High Fruit and Vegetable Company, \$12,000; Palmer and Sons, \$14,120.

business was located. Evidently as a result of such activity, the warehousemen-truckdrivers of Respondent had talked among themselves for several days or a week in early January about joining the Union. According to Elizolde, one of the Respondent's employees, "we all decided that [joining the Union] was the only way to make any money. . . ."<sup>3</sup>

On Thursday, January 7, 1965, Elizolde and Del Real were on a lunch or coffee break and were seated in a restaurant located in the wholesale market area. At the next table was Elizolde's brother-in-law, Evanglista, who was a warehouseman and part-time salesman for the Denver Tomato Company, a concern in the area. Evanglista had evidently signed up with the Union himself and had talked to other employees about signing cards.<sup>4</sup> As Elizolde and Del Real were sitting at their table, Elizolde turned around and asked Evanglista, at the next table, if he had the union cards. Evanglista passed several cards to Elizolde. Elizolde then remarked that "the only way we would probably get a raise was to join the Union" and Del Real said, "yes." Evanglista spoke briefly about union wages and union benefits. Elizolde and Del Real thereupon each filled out and signed a union card and returned it to Evanglista.<sup>5</sup>

After receiving the signed cards from Elizolde and Del Real, Evanglista remarked that only one more card was needed. Evanglista saw Sisneros in the restaurant on the same day, January 7, and told him that Elizolde and Del Real had signed union cards. Evanglista then asked Sisneros to sign a card and the latter did so.<sup>6</sup>

We find that, on and after January 7, 1965, the Union represented all Respondent's production employees in an appropriate unit. The said appropriate unit consisting of all Respondent's employees, exclusive of office clerical employees, salesmen, guards, professional employees, and supervisors as defined in the Act.

On January 8, 1965, Friday, two representatives of the Union, Jones and Sutton, came to Respondent's office in the morning. They spoke with Respondent, Santangelo, identified themselves, and informed him that they represented his employees. At the same time, Jones and Sutton, or one of them, handed Santangelo a letter and either the original signed cards of the employees or photostatic copies thereof. The letter, addressed to Respondent from the Union, in substance, stated that Respondent's employees had designated the Union to represent them regarding conditions of employment, and the appropriate unit was described; "proof" of the Union's majority status was stated to be attached to the letter (the signed cards or photostats of the signed cards); a meeting was requested on January 11 for the purpose of negotiating wages, hours, and other conditions of employment. Santangelo's only response was that his employees had said nothing to him about signing up for the Union but he stated that he would respond in a few days to the Union's request for negotiations.<sup>7</sup>

Some time later on January 8, probably in the afternoon, after the Union representatives had left, Elizolde came to Respondent's office for his paycheck since Friday was payday. Present in the office were Santangelo, Del Real, Sisneros, and Elizolde. The latter testified credibly that Santangelo asked the employees if they had signed the union cards and they said they had. Santangelo referred to a period in his past when he was driving a truck and was considering joining the Union. He evidently said that he had decided not to join.<sup>8</sup> The proprietor, Santangelo, on January 8 remarked that he could put meters in his trucks and this would entail the employees' operating on a stricter schedule; he also spoke critically about employee garnishments

<sup>3</sup> Elizolde was not certain whether or not Sisneros had participated in these early discussions but Elizolde and Del Real were participants. Elizolde was 20 years old and Del Real was 21. Both had been driving trucks since they were 17. Sisneros was 32 years old.

<sup>4</sup> He testified: "I talked to all of them. We all did, everyone in the market did."

<sup>5</sup> The card read: "I authorize Local 452 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America to represent me as my collective bargaining agent" with spaces for name of company; kind of work performed by signer; wage rate; address; phone number, and signature.

<sup>6</sup> It is not clear whether Sisneros was entering or leaving the restaurant when he had the conversation with Evanglista. Sisneros testified that he "was drinking a few beers" but does not claim to have been intoxicated or otherwise unaware of what he was doing. Evanglista states that his conversation with Sisneros occurred during a regular break period in the working day.

<sup>7</sup> Sutton testified that he had handed the signed cards to Santangelo and, after the latter looked at them, Sutton then took back the cards.

<sup>8</sup> Santangelo testified that he never joined the Union but at one time had considered the possibility.

and lateness<sup>9</sup> and about accidents.<sup>10</sup> Santangelo also informed the employees that they would receive a raise in pay.<sup>11</sup> Santangelo advised the men to think it over about the Union. Thereupon, on the same occasion, in the presence of Santangelo, according to Elizalde, ". . . we more or less came to an agreement that we wouldn't join the Union because, well, he [Santangelo] didn't want us to." The three employees then walked across the street where the union office was located for the purpose of taking back their cards. The union office was closed, however, and at no subsequent time did any of the employees contact the Union or make any effort to retrieve their cards.<sup>12</sup>

Apparently Sisneros later spoke to Santangelo about the best way to get out of the Union. Santangelo advised him to see Attorney Gross.<sup>13</sup> Mrs. Gross was Respondent's attorney who represented the Company in the instant proceeding. Sisneros went to see Attorney Gross and she instructed him to bring Del Real to her office also.<sup>14</sup> Sisneros and Del Real then went to the office of Attorney Gross. According to Del Real, the attorney discussed with him why he had signed the union card. He stated that he had done so because he had not wished to be the only one who did not sign.<sup>15</sup> Del Real and Sisneros then signed a statement on a letter that, according to Del Real, had already been typed when he had first arrived at the attorney's office.<sup>16</sup>

With respect to the wage increase which was promised by Santangelo to the employee on January 8, following the visit of the union representatives to the Com-

<sup>9</sup> Elizalde had been involved in four garnishments and apparently he or the others had been late on occasions

<sup>10</sup> In cross-examining Del Real, Respondent's counsel asked:

Q. How many accidents have you had?

A. Three

Q. And Tony [Santangelo] talked to you about it, as to whether he should keep you or not?

A. Yes.

<sup>11</sup> The pay increase became effective January 29.

<sup>12</sup> Regarding the walk across the street to the union office Elizalde was asked:

Q. When did you decide that you would go across the street?

A. When we got our checks that night.

Q. That all happened at the same time?

A. This was all within an hour, an hour and fifteen minutes.

\* \* \* \* \*

Q. Were any reasons given by the men?

A. Why they wanted them [the cards] back?

Q. Right.

A. No, it was just he [Santangelo] talked to us for a while, and we said we'd see about getting them back.

<sup>13</sup> Sisneros had worked for Respondent from about 1958-61. During that period, he had occasion to require legal services and had been referred to Attorney Gross by someone in Respondent's company. Sisneros returned to Respondent's employ in 1964

<sup>14</sup> Sisneros states that he had decided that he did not want the Union and had told Del Real that he wished to get out of the Union. Del Real said that he also wanted to get back his card. When Sisneros spoke with Attorney Gross he had advised her that Del Real also wanted to get out of the Union.

<sup>15</sup> The exact date of the conferences between the attorney and Del Real and Sisneros is not fixed. But it was subsequent to the events of January 8, previously described, including the meeting in the company office with Santangelo, and no later than the following Tuesday, January 12. Neither Sisneros nor Del Real, at the time of the May 1965 hearing, had been billed for any of these January legal services.

<sup>16</sup> The letter was dated January 12 and was addressed to the Union and signed by Attorney Gross. The letter stated that Sisneros and Del Real did not want union representation and had requested Attorney Gross to advise the Union that their cards, signed on January 7, were cancelled and withdrawn. The letter explained that the two employees had signed because neither had wished to stand in the way of union representation, each believing at the time that the other wanted the Union. In conclusion, the letter declined to meet with the Union. At the bottom of the letter were the words: "We agree with the statements made on our behalf in the above letter," followed by the signatures of Sisneros and Del Real.

pany, Santangelo testified that he had told the employees on that occasion that they were all due for a raise after 6-month service with the Company. Santangelo gave no testimony that any employee had ever been advised of this 6-month policy and none of the employee witnesses testified to awareness of such a policy.<sup>17</sup> Indeed, Santangelo testified that "without them [the employees] knowing it" he had already decided to raise them to \$2 an hour but, on January 8, when discussing the matter of a wage increase with the employees, they had said that others were receiving \$2.05. He thereupon agreed to the latter figure and it became effective January 29<sup>18</sup>. The raise apparently amounted to 55 cents an hour. Even the allegedly contemplated raise to \$2 an hour would have amounted to a 50-cent increase. While Respondent may have given some thought to a wage increase before January 8, I find it unlikely that, but for the advent of the union organizational effort and the signing of union cards by the three employees, the substantial raise of January 29 would have been given. I also find the evidence of a 6-month policy of wage increases to be unconvincing. If there was such a policy, it would have been normal and in the interest of both the employer and the employees for the employer to have made known such a policy well in advance of the end of the 6-month period. Moreover, the 6-month period of all these employees did not coincide although the raise pursuant to such alleged policy was made simultaneously.

We find that on and since January 8, 1965, the Union represented a majority of the employees in an appropriate unit. There was no fraud, misrepresentation, or coercion involved in the signing of the union cards on January 7. Respondent did not entertain a good-faith doubt of the Union's majority but utilized the period subsequent to the Union's request for bargaining in order to undermine the Union's majority status.<sup>19</sup> The afterthoughts and subjective thinking or *ex post facto* sentiments of some employees cannot negate the effect of their designation of the Union as their bargaining agent nor excuse Respondent's refusal to fulfill its duty under the statute, particularly since the evidence establishes that it was Respondent who gave the impetus to any change of union sentiment among its employees.

It is found that since January 8, 1965, Respondent has refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act. We find that the questioning, on January 8, of employees about whether they had signed union cards was in a context of thinly veiled coercion since it was directly indicated and implied that stricter and more adverse working conditions could or would result if the employees persisted in their union adherence. Under all the circumstances, the promise and granting of a wage increase had as its purpose and effect the granting of a material benefit in return for the employee's abandonment of the Union. The circumstances of the attempted withdrawal of the employees from the Union, sponsored and assisted by Respondent, likewise constituted illegal interference with the rights guaranteed to employees under the Act. All the foregoing conduct is found to be in violation of Section 8(a)(1) of the Act.

#### IV. THE REMEDY

The customary remedial action for the type of unfair labor practices found herein is recommended, namely, that Respondent cease its unfair labor practices and, upon request, bargain with the Union as the collective-bargaining agent of its employees in the appropriate unit and, if agreement is reached, embody it in a signed contract.

#### CONCLUSIONS OF LAW

1. By refusing to recognize and to bargain with the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

2. By interfering with and restraining its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

<sup>17</sup> Elizalde testified that when, on January 8, Santangelo promised the employees a raise, he gave no explanation.

<sup>18</sup> All three employees received the raise at the same time. Sisneros had been working since June or July 1964 and was in Respondent's employ several weeks before Elizalde. Del Real had commenced work in August 1964.

<sup>19</sup> *N.L.R.B. v. Trifitt of California, Inc.*, 211 F. 2d 206, 209 (C.A. 9); *Joy Silk Mills, Inc. v. N.L.R.B.*, 185 F. 2d 732, 741 (C.A.D.C.), cert. denied 341 U.S. 914.

## RECOMMENDED ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that Tony R. Santangelo, an individual proprietor, d/b/a Santangelo & Co., his officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing his employees in the exercise of their rights under Section 7 of the Act by promising or giving rewards or detriments to the employees for the purpose of interfering with their union activities or by interrogating employees in a coercive context with respect to their union activities.

(b) In any like or related manner, interfering with, restraining, or coercing his employees in the exercise of their right to self-organization, to form, join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 452 or any other 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 any or all such activities, except as affected by a contract requiring union membership as a condition of employment.

(c) Refusing to recognize and to bargain collectively with the aforementioned Local No. 452 of the Teamsters Union.

2. Take the following affirmative action to effectuate the policies of the Act and to remedy the unfair labor practices:

(a) Upon request, bargain collectively with Local No. 452 of the Teamsters Union as the collective-bargaining agent of the employees in the appropriate unit and if agreement is reached embody the agreement in a signed contract. The appropriate unit is:

All employees of Respondent employed at its places of business in Denver, Colorado, excluding office clericals, salesmen, guards, professional employees, and supervisors as defined in the Act.

(b) Post at his place of business in Denver, Colorado, copies of the attached notice marked "Appendix."<sup>20</sup> Copies of such notice, to be furnished by the Regional Director for Region 27 of the Board, shall, after being duly signed by an authorized representative of Respondent, be posted immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by other material.

(c) Notify the said Regional Director, in writing, within 20 days from receipt of this Decision, what steps Respondent has taken to comply therewith.<sup>21</sup>

<sup>20</sup> 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 this Order is enforced by a decree of a United States Court of Appeals, the notice shall be further amended by substituting for the words "a Decision and Order," the words, "a Decree of the United States Court of Appeals, Enforcing an Order"

<sup>21</sup> If this Recommended Order is adopted by the Board, this provision shall be modified to read, "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith"

## APPENDIX

## 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, as amended, we hereby notify our employees that.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of their rights under the law to be represented by Local No. 452 of the Teamsters Union or by any other union and to join Local No. 452 or any other union.

WE WILL NOT promise or give rewards or detriments or coercively question our employees for the purpose of interfering with their rights to join unions of their own choosing

Our employees are free to join or assist Local No. 452 of the Teamsters Union or any other union and to bargain collectively through a union or to refrain from any and all such activity except as affected by a negotiated contract that by its terms requires membership in a union.

Upon request, we will bargain collectively with Local No. 452 of the Teamsters Union as the collective bargaining agent for our employees in the appropriate unit. The appropriate unit is:

All our employees employed at our place of business in Denver, Colorado, excluding office clericals, salesmen, guards, professional employees, and supervisors as defined in the law.

TONY R. SANTANGELO, D/B/A SANTANGELO & Co.,  
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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 609 Railway Exchange Building, 17th and Champa Streets, Denver, Colorado, Telephone No. 534-4151, Extension 513.

**Petropoulos Brothers Appliances, Inc. and Retail, Wholesale and Department Store Union, AFL-CIO.** Cases Nos. 13-CA-6869 and 13-RC-10450. September 27, 1965

DECISION AND ORDER

On July 2, 1965, Trial Examiner C. W. Whittemore 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that those allegations be dismissed. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief; and the General Counsel filed cross-exceptions and a supporting brief.

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 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 exceptions, cross-exceptions, briefs, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the modifications noted below.

1. We agree with the Trial Examiner that the Respondent interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act, by interrogating employee Drake as to his