

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their right to self-organization; to form, join, or assist any union; to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

WE WILL, upon request, bargain collectively with International Union of Operating Engineers, Local 826, AFL-CIO, as the exclusive bargaining representative of our employees in the unit described above with respect to wages, hours, and other working conditions, and will put in a signed agreement any understanding reached.

WE WILL offer to Tommie Lee Johnson, Bobby Ray O'Neal, Frank James O'Neal, and Herbert Smothers immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges.

WE WILL make whole the above-named persons and Eulas Ricks for any loss of pay they may have suffered because of the discrimination against them.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of the above-named or any other union.

CORROSION COATING COMPANY OF WEST TEXAS, INC.,
Employer.

Dated_____ By_____ (Representative) (Title)

NOTE.—We will notify any of the above-named employees 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, 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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Sixth Floor, Meacham Building, 110 West Fifth Street, Fort Worth, Texas, Telephone No. 335-4211, Extension 2145.

Plasterers' Local Union No. 739, Plasterers' Local Union No. 838, Plasterers' Local Union No. 343, and Plasterers' Local Union No. 2 [Arnold M. Hansen, Inc.] and Jones and Jones, Inc.; Progressive Plastering & Lathing Contractors' Association and Plasterers' Local Union No. 194, Plasterers' Local Union No. 400, Plasterers' Local Union No. 489, and Contracting Plasterers Association of Southern California, Inc., Parties to the Contract. Case No. 31-CB-9 (formerly Case No. 21-CB-2377). March 17, 1966

DECISION AND ORDER

On September 10, 1965, Trial Examiner Eugene K. Kennedy issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondents filed exceptions to the Trial Examiner's Decision, and the General Counsel filed a brief in answer to exceptions and in support of the Trial Examiner's Decision.

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 Fanning and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and the brief, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, except to the extent modified.¹

[The Board adopted the Trial Examiner's Recommended Order.]

¹ In asserting jurisdiction we note that the record shows that the \$74,000 inflow to Hansen, Inc., and his subcontractors relied upon by the Trial Examiner is made up as follows: Approximately \$10,000 of inflow to Hansen, Inc., during the relevant year, plus approximately \$64,000 of inflow to subcontractors for subcontracts with Hansen, Inc., during the relevant year.

In further support of the Trial Examiner's conclusion that the Respondents had knowledge of the membership of Hansen, Inc., in Progressive Plasterers Association, we note General Counsel's Exhibit 7, a letter of February 28, 1964, from Hansen, Inc., to Respondent Local 739, specifically advising the Local of this membership, in addition to the admission of the Respondents, adverted to by the Trial Examiner, that the Respondent Locals were acting in concert at all times material herein.

As the Trial Examiner's conclusion of law No. 7 was obviously inadvertent, we do not adopt it.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

The complaint alleges violations of Section 8(b)(1)(A) and (B) and 8(b)(3)¹ of the National Labor Relations Act, as amended, herein called the Act. The conduct of the Respondent local unions, which is claimed to be unlawful by the General Counsel, involves the requirement of posting a performance bond and making payments into a trade industry promotion fund, and the coercion of Hansen, Inc., with respect to its selection of a collective-bargaining representative.

Upon consideration of the entire record, including observation of the witnesses, I make the following findings of fact:

FINDINGS OF FACT

I. JURISDICTION

Hansen, Inc., is a corporation engaged in plastering work in the construction industry in southern California. It does plastering work for general contractors and also, in turn, subcontracts part of its work for which it has contracted with the general contractor.

Arnold Hansen, doing business as an individual, suspended operations in August 1963. Approximately in the first part of 1964, Arnold Hansen formed a corporation and commenced doing business under the name of Hansen, Inc. Arnold Hansen was the manager and owner of Hansen, Inc.

For the period of February 1964 to February 1965 Hansen, Inc., did a gross volume of business in excess of \$500,000. Hansen's subcontractors, for the same period, purchased materials approximating \$74,000 which originated outside the State of California. In *Operative Plasterers & Cement Masons', International Association Local # 2, AFL-CIO (Arnold M. Hansen)*, 149 NLRB 1264, Arnold Hansen was the charging party. In that case, jurisdiction was found on the basis of including the out-of-State purchases by Hansen's subcontractors. In the *Arnold Hansen* case, the

¹ Charges in this matter were filed on August 19, 1964, and an amended charge was filed on February 8, 1965. The complaint issued February 26, 1965

subcontractors were working at sites involved in the dispute. The \$74,000 figure here is composed principally of materials that were used at sites not directly involved in the dispute.²

II. THE LABOR ORGANIZATIONS INVOLVED

Plasterers' Local Union Nos. 739, 843, 343, and 2, herein referred to as Respondents or Local Unions, are labor organizations within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

As previously noted prior to the events involved herein, Hansen, acting in his individual capacity, was the charging party in a case involving Plasterers' Locals 2 and 300. For the purposes of this Decision, the first case involving Hansen will be called the *Arnold Hansen* case and the instant case will be *Hansen, Inc.* In the present case, Hansen, Inc., is a charging party and Plasterers' Locals 2, 739, 838, and 343 are the Respondents. In the *Arnold Hansen* case, the National Labor Relations Board, herein called the Board, issued an order which required, among other acts, that Plasterers' Locals 2 and 300 cease from requiring Hansen to execute a contract including a provision for a performance bond. The events in *Arnold Hansen* occurred in 1962 while the events in the case at hand occurred in 1964.

B. The appropriate unit

As alleged in the complaint and admitted in the answer, at all times material herein Respondents and their affiliated locals have acted in concert as, and have been, the exclusive bargaining representative for the unit of the plastering craft employees of Hansen, Inc., employed in construction work in Los Angeles and Orange Counties and such unit is appropriate for the purpose of collective bargaining.

C. The allegations of the complaint and the issues

The complaint alleges that on February 26, 1964, Hansen, Inc., was engaged in construction work at two locations within the jurisdiction of Local 739 and that Respondent Local 739 requested that Hansen, Inc., sign the 1962-65 contract and also provide a performance bond. Hansen had previously been a party to the 1962-65 contract with Respondents, acting in his individual capacity. Hansen refused to execute a new contract or provide a performance bond on February 28, 1964. Local 739 called on the plastering employees of Hansen, Inc., to quit their work and engage in a strike at the two jobsites within the jurisdiction of Respondent Local 739. The employees went on strike on February 28, 1964, in order to satisfy the demands of Local 739, Hansen, Inc., provided a performance bond under protest.

Although denying the Respondents' answer with respect to these obligations, the evidence establishes without contradiction the allegations of the complaint with reference to the events of February 1964.

The complaint further alleges and the answer admits that in August 1964 Hansen, Inc., was engaged in construction at four locations which were respectively within the territorial jurisdiction of Locals 739, 838, 343, and 2. These projects were struck on August 17, 19, and 20 in order to compel payment by Hansen, Inc., into a trade promotion fund and an apprenticeship fund. Hansen, Inc., paid these funds under protest on August 21, 1964.

² The amount of materials originating outside the State of California used on the jobsite of the February 1964 dispute approximated \$2,000.

In connection with the August 1964 events, the total dollar value of materials used by subcontractors on Hansen's jobsites which originated outside the State of California totaled approximately \$19,000. The logical inclusion of the dollar volume of the subcontractors of Hansen is justified by viewing Hansen as the principal contractor responsible for the contracts he undertakes to carry out. Whether Hansen bought the materials or his subcontractors bought them, there would be no difference in the impact on commerce occasioned by Hansen undertaking a construction contract.

The criteria of *Stemons Mailing Service*, 122 NLRB 81, is met by the inclusion of the subcontractors' purchases of materials originating outside the State of California. It is not considered significant that in the prior case involving Hansen the jobsites where the materials were used all were involved in the dispute. Accordingly, it is found Hansen, Inc., is engaged in a business affecting commerce within the meaning of the Act.

The issues presented here are whether Respondent Local 739, by striking to compel Hansen, Inc., to post a performance bond, violated Section 8(b)(3) of the Act.³ Also in issue is whether the strike by Locals 739, 838, 343, and 2 to compel Hansen, Inc., to pay into a trade promotion fund violates Section 8(b)(3). Finally, there is in issue an allegation of the complaint that Respondents violated Section 8(b)(1)(B)⁴ because Respondent Locals knew of the selection by Hansen, Inc., of the Progressive Plastering & Lathing Contractors' Association, herein called Progressive Plasterers Association, as its bargaining agent and, notwithstanding this by striking, caused Hansen, Inc., to select another association as its bargaining representative. Neither the pleadings nor the proof directly support any finding that Hansen, Inc., was represented by the Progressive Plasterers Association nor is there any direct proof that Respondents knew of such membership.

D. Discussion and concluding findings

1. The *alter ego* question

Hansen, Inc., continued the same type of business that Hansen, an individual, was engaged in. Hansen testified that it was a family corporation and that he was the responsible managing individual connected with it. For this reason, Hansen's characterization of his corporation as an *alter ego* of the business which he operated as an individual correctly reflects the nature of Hansen, Inc.⁵ Official notice is here taken by the Board's Order in the *Arnold Hansen* case, *supra*, which established that Hansen was coerced into executing an agreement with provisions containing non-mandatory subjects of collective bargaining, including the requirement of posting a performance bond and paying into a trade promotion fund. This establishes that Hansen did not voluntarily agree to these contractual provisions in the 1962-65 agreement to which he became a signatory.

Taking this view of the matter, it is immaterial whether or not Hansen, Inc., is an *alter ego* of Hansen, doing business as an individual. This is so because the posting of the performance bond and payments into the trade promotion fund are not requirements which Hansen, Inc., is contractually bound to meet whether or not Hansen, Inc., be regarded as a new business entity or as an *alter ego* of Hansen, the individual.

2. The February 1964 events

As previously noted, Hansen, Inc., was struck by Local 739 to obtain a newly executed contract and a new performance bond. The requirement of executing a new contract was not pressed by Local 739, but the requirement of the new performance bond was insisted upon.

It is established that a performance bond is not a mandatory subject of collective bargaining. The reason that a strike following a demand for a performance bond is a violation of Section 8(b)(3) of the Act is spelled out by the Board in *Carpenters District Council of Detroit, et al. (Excello Dry Wall Co.)*, 145 NLRB 663, 665, quoting from *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 294, A.F. of L. (Henry V. Rabouin, doing business as Conway's Express)*, 87 NLRB 972, 979: "It is true that the Union's insistence upon a bond in the circumstances of this case was not wholly unreasonable and that it was not, so far as the record shows, designed to frustrate the settlement of the strike. However, the Union's good faith . . . is not decisive of the issue. It is the *tendency* of such proposals to 'delay or impede or otherwise to circumscribe the bargaining process,' which renders them improper."

³ "Sec 8(b) It shall be an unfair labor practice for a labor organization or its agents— (3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a)."

⁴ "Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents— (1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective-bargaining or the adjustment of grievances."

⁵ It appears that if the *alter ego* concept is accepted compliance proceedings could have been brought against Local 2, inasmuch as in the *Arnold Hansen* case there was a Board Order requiring Respondents, including Local 2, to cease and desist from insisting upon a performance bond or a requirement that Hansen pay into a trade promotion fund.

Respondents' attorney, Miller, in a telephone conversation with Hansen, agreed that Hansen, Inc., was an *alter ego* of the individually run business and dropped the demand that Local 739 execute a new contract.

Therefore, it is found that by insisting upon a performance bond after Hansen, Inc., refused to post one and then striking to obtain one, Respondents violated Section 8(b)(3) of the Act.⁶

3. The August 1964 events

The strike by Respondents in August 1964 was for the purpose of compelling Hansen, Inc., to make payments into the apprenticeship and trade promotion funds. Hansen made these payments under protest. Payment into a trade promotion fund is not a mandatory subject of collective bargaining. Respondents' striking after Hansen refused to make the trade promotion payments is a violation of 8(b)(3). *Arnold Hansen, Inc., supra*, and *Detroit Resilient Floor Decorators Local Union No. 2265, of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Mill Floor Covering, Inc.)*, 136 NLRB 769.

4. The question of forcing Hansen, Inc., to select a bargaining representative not of his choice

This allegation of the complaint is predicated on the assertion that Hansen, Inc., was a member of the Progressive Plasterers Association and that Respondents had knowledge of this. As previously indicated, there is no direct proof of this in the record. There is, however, contained in the Board's decision involving Hansen in the *Arnold Hansen* case, *supra*, a finding that Respondent knew Hansen was represented by the Progressive Plasterers Association and nevertheless each Respondent in that case insisted on Hansen entering into a contract through a different representative. Here, Respondent Local 2 is the only one of four Respondents a party to the prior *Arnold Hansen* case. There is, therefore, no basis for finding that Respondent Locals 739, 838, and 343 ever had direct knowledge of Hansen, Inc., or Hansen, an individual, being represented by the Progressive Plasterers Association. However, the complaint alleges and the answer admits that Respondent Locals and affiliated locals acted in concert.

This suggests an attenuated theory by which this allegation of the complaint could arguably be sustained. The various plasterers locals herein involved were signatories to the 1962-65 agreement. Respondent Local 2 was a respondent in the prior case involving Arnold Hansen, an individual, and would be chargeable with the knowledge that at one time (1962) Hansen had selected the Progressive Plasterers Association as his representative. Then by calling into play the presumption that a condition or fact continues to exist unless shown to the contrary,⁷ Respondent Local 2, in this case, would be chargeable with the knowledge that Hansen, Inc., or Hansen⁸ has had as its bargaining representative the Progressive Plasterers Association. This being so, since Local 2 was acting in concert with the other respondent locals, such locals are chargeable with the knowledge of Local 2. Assuming this, all Respondents, by bypassing Progressive Plasterers Association and requiring Hansen, Inc., to deal with another employers' representative, violated Section 8(b)(1)(B).

Although the above finding is not free from doubt, in the whole context of events it seems a reasonable result to find that all of the Respondents had knowledge of Respondent's membership in the Progressive Plasterers Association and that Respondents violated Section 8(b)(1)(B).

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 operations of Hansen, Inc., described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

⁶ Although Local 739 was the direct instrument of causing this violation, it is noted that the complaint alleges and the answer admits that "at all times material herein Respondents and their affiliated locals have acted in concert." In view of this, there is warrant for finding that all Respondents are chargeable for all of the unfair labor practices alleged in the complaint.

⁷ *N.L.R.B. v National Motor Bearing Company*, 105 F. 2d 652, 660 (C.A. 9), "Consequently the familiar rule that a state of affairs once shown to exist is presumed to continue to exist until the contrary is shown is applicable."

⁸ This finding turns on the *alter ego* nature of Hansen, Inc.

V. THE REMEDY

Having found that Respondents violated Section 8(b)(3) by insisting upon the posting of a performance bond and payment into a trade promotion fund by Hansen, Inc., it is recommended that Respondent Locals cease and desist from insisting on these items. In order to restore the parties to the *status quo ante*, it is recommended that Respondents be ordered to return any sums of money paid by Hansen, Inc., for a bond or into the trade promotion fund. Such payment shall bear interest of 6 percent.

It will be recommended, also, that Respondents cease and desist from causing Hansen, Inc., to deal with a bargaining representative not of its choice.

Since the pleadings establish that Respondent Locals are acting in concert, the action of Local 739 in February 1964 is also attributable to the Respondent Locals 2, 838, and 343 and the recommended order shall be directed to all Respondents in connection with remedying the unfair labor practices cited in the complaint.

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

CONCLUSIONS OF LAW

1. Hansen, Inc., is, and has been at all material times, an employer within the meaning of the Act, and is, and has been at all material times, engaged in interstate commerce and in operations affecting commerce within the meaning of the Act.

2. Respondent Locals 739, 838, 343, and 2 are, and have been at all material times, labor organizations within the meaning of the Act.

3. At all material times herein, Respondents and their affiliated locals have acted in concert as, and have been, the exclusive bargaining representative for the unit of the plastering craft employees of Hansen, Inc.

4. Progressive Plasterers Association has been Hansen, Inc.'s, representative for the purposes of collective bargaining at all times material to the issues in this proceeding.

5. By insisting upon Hansen, Inc.'s, payment into the trade promotion fund and by insisting on the posting of a performance bond by Hansen, Inc., Respondents have violated Section 8(b)(3) of the Act.

6. By causing Hansen to deal with Contracting Plasterers Association of Southern California, Inc., rather than Progressive Plastering & Lathing Contractors' Association, Respondents have violated Section 8(b)(1)(B) of the Act.

7. By restraining and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, as found above, Respondents have engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

RECOMMENDED ORDER

Upon the entire record in this case and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that Respondent Locals 739, 838, 343, and 2, their officers, agents, and representatives, shall:

1. Cease and desist from refusing to bargain with Hansen, Inc., by insisting on Hansen, Inc., posting a performance bond, making payments into a trade promotion fund, or refusing to recognize or deal with Hansen, Inc.'s, designated collective-bargaining representative.

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

(a) Return, or cause to be returned, all moneys Hansen, Inc., has paid into the trade promotion fund or paid in connection with the posting of a bond as required by Respondents.

(b) Post in conspicuous places in Respondent's business offices, meeting halls, and all places where notices to members are usually posted, copies of the attached notice marked "Appendix." Copies of said notice, to be furnished by the Regional Director for Region 31, shall, after being duly signed by authorized representatives of Respondents, be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in such conspicuous places. Reasonable steps shall be taken by the said Local 2 to insure that said notices are not altered, defaced, or covered by any other material.⁹

⁹ In the event that 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. In the additional event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

(c) Forthwith mail notices of said notice to the said Regional Director after said copies have been signed as provided above for posting by Hansen, Inc., if he so agrees, at places where he customarily posts notices to individuals in his employ.

(d) Notify the said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps Respondents have taken to comply therewith.¹⁰

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

APPENDIX

NOTICE TO ALL MEMBERS

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 require that Hansen, Inc., post a performance bond or make payments into the trade promotion fund unless voluntarily agreed to by Hansen, Inc.

WE WILL NOT require Hansen, Inc., to deal with any representative other than one of his own choosing.

PLASTERERS' LOCAL UNION No. 739,
Labor Organization.

Dated _____ By _____
(Representative) (Title)

PLASTERERS' LOCAL UNION No. 838,
Labor Organization.

Dated _____ By _____
(Representative) (Title)

PLASTERERS' LOCAL UNION No. 343,
Labor Organization.

Dated _____ By _____
(Representative) (Title)

PLASTERERS' LOCAL UNION No. 2,
Labor Organization.

Dated _____ By _____
(Representative) (Title)

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

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Seventeenth Floor, U.S. Post Office and Courthouse, 312 North Spring Street, Los Angeles, California, Telephone No. 688-5840.

Muscle Shoals Rubber Company and United Glass and Ceramic Workers of North America, AFL-CIO, CLC. *Cases Nos. 10-CA-5970 and 10-CA-6066, March 18, 1966*

DECISION AND ORDER

On October 29, 1965, Trial Examiner W. Edwin Youngblood 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 Exam-