

fore recommend that the Respondent be ordered to cease and desist from in any manner infringing on the rights guaranteed to its employees by Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2 of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By discharging Enereco Lamberti, Warren Mair, Anthony Pugh, and William Roth the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) 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.

[Recommended Order omitted from publication.]

Cone Brothers Contracting Company and Local 925, International Union of Operating Engineers, AFL-CIO

Tampa Sand & Material Company and Teamsters, Chauffeurs, Helpers Local Union No. 79, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America

Cone Brothers Contracting Company, Tampa Sand & Material Company, and Florida Prestressed Concrete Co., Inc. and Local 925, International Union of Operating Engineers, AFL-CIO

Cone Brothers Contracting Company and John P. Siers

Cone Brothers Contracting Company and/or Tampa Sand & Material Company, and/or Florida Prestressed Concrete Co., Inc. and Robert Alvarez. *Cases 12-CA-1493, 1477, 1492, 1674, 1687, and 1767. November 10, 1966*

SECOND SUPPLEMENTAL DECISION AND ORDER

On April 20, 1966, the National Labor Relations Board issued its Supplemental Decision and Order in this case, adopting, with modifications not relevant here, the Trial Examiner's Decision in backpay proceeding.¹ Subsequently, the General Counsel filed a motion for reconsideration of the backpay award therein to Woodrow Wilson.

The General Counsel's backpay specifications, consistent with the Board's Order, had alleged that Respondent Tampa Sand's backpay liability for discriminatees Woodrow Wilson, Otho Mathis, and Wyman Davis began on May 26, 1960, the date of their unlawful discharge.² The Trial Examiner, while computing the backpay of Mathis and Davis from that date, computed Wilson's backpay from June 12,

¹ 158 NLRB 186.

² 135 NLRB 108.

1961, 5 days after his request for reinstatement. The General Counsel, in his motion for reconsideration, asserted that this was inadvertent error and that Wilson should also have been awarded backpay from May 26, 1960, in the amount of \$2,191.55, as claimed in the backpay specifications. The General Counsel had excepted to the Trial Examiner's "failure to recommend net backpay for all claimants as set forth in the backpay specifications."

Respondent filed an opposition to the General Counsel's motion in which it argued that reconsideration was not justified in the circumstances. Alternatively, it requested permission to file a brief on the merits of the backpay award sought by the General Counsel.

On July 27, 1966, the Board issued a notice to show cause why the Board "should not amend its Supplemental Decision and Order to provide backpay for Woodrow Wilson, computed from May 26, 1960, in the amount of \$2,191.55, as requested by the General Counsel." On August 5, 1966, Respondent filed a brief in response to the notice to show cause.

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 Brown].

The Board has considered the General Counsel's motion, Respondent's opposition and brief, and the record in the matter, and hereby makes the following findings and conclusions:

Respondent argues that Wilson was in effect a striker who was not entitled to backpay until after his request for reinstatement. However, in our initial Decision in this case we held that Respondent had unlawfully discriminated against Wilson on May 26, 1960, and ordered that he be awarded backpay from that date. 135 NLRB 108, 109, 111. Our order was enforced by the Court of Appeals for the Fifth Circuit [317 F.2d 3]. Respondent has offered nothing in the present proceeding which would warrant altering this base point for computing Wilson's backpay or for terminating Respondent's backpay liability prior to its June 13, 1961, reinstatement of Wilson.

Respondent also contends that union payments to Wilson during the strike should be offset against Wilson's gross backpay. However, Respondent, whose burden it is, has not established that these payments were wages which should properly be deducted from Wilson's gross backpay.

Respondent and the General Counsel do not agree on the computation of Wilson's backpay for the second quarter of 1961. Our appraisal of the record leads us to conclude that Wilson's net backpay for this quarter amounts to \$266.28, computed on the basis of a 5-day

workweek, with 10.2 such weeks at \$78.61 per week between April 1 and June 13, 1961, less \$535.54 interim earnings.

As indicated, we find merit in the General Counsel's motion for reconsideration and, in accord with the computations above, conclude that Woodrow Wilson is entitled to backpay in the amount of \$2,144.74, with interest at the rate of 6 percent per annum from the date of the Trial Examiner's Supplemental Decision. We shall make the necessary correction to effectuate this award.

ORDER

The tabulation in the Appendix to the Trial Examiner's Decision in backpay proceeding is hereby corrected in accord with the computations indicated above to show backpay indebtedness to Woodrow Wilson in the amount of \$2,144.74.

**Schill Steel Products, Inc. and United Steelworkers of America,
AFL-CIO.** *Case 23-CA-2276. November 14, 1966*

DECISION AND ORDER

On June 8, 1966, Trial Examiner William W. Kapell 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. Thereafter, the Respondent filed "Exceptions and Objections" to the Trial Examiner's Decision 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 [Chairman McCulloch and Members Brown and Zagoria].

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Trial Examiner's Decision, the exceptions, and the brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the extent consistent herewith.

In May 1962, United Steelworkers of America, AFL-CIO, herein called the Union, began organizing the Respondent's employees, and on August 31, 1962, was certified by the Board as their exclusive representative for the purposes of collective bargaining.¹ Thereafter, on

¹ Case 23-RC-1917, not published in NLRB volumes.