

American Art Industries, Inc. and General Sales Drivers and Allied Employees, Local Union No. 198, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 12-CA-3697 (1-2)

March 20, 1968

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND ZAGORIA

On December 18, 1967, Trial Examiner Thomas N. Kessel issued his Decision in the above-entitled case, 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 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.

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 brief, and the entire record in the case, and hereby adopts the findings,¹ 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 adopts as its Order the Recommendations of the Trial Examiner, as modified below, and hereby orders that the Respondent, American Art Industries, Inc., Miami, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order as herein modified.

1. Amend subparagraph (a) of paragraph 2 of the Trial Examiner's Recommendations by inserting between the words "positions" and "and" the phrase "without prejudice to their seniority or other rights and privileges. . . ."

2. Insert a new subparagraph (c) of paragraph 2 of the Trial Examiner's Recommendations, to read as follows, and reletter present subparagraphs (c) and (d), as "(d)" and "(e)."

"(c) 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, as amended, after discharge from the Armed Forces."

¹ The Respondent excepts to the credibility resolutions made by the Trial Examiner. It is the Board's established policy not to overrule a Trial Examiner's resolutions as to the credibility unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. Such a conclusion is not warranted here. *standard Dry Wall Products, Inc.*, 91 NLRB 544, enf'd 188 f 2d 362 (C A 3)

The Respondent also contends that the Trial Examiner was biased against it, but our examination of the record reveals no basis for this contention.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

THOMAS N. KESSEL, Trial Examiner: Upon charges filed November 28 and 29, 1966, by General Sales Drivers and Allied Employees, Local Union No. 198, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, against American Art Industries, Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for Region 12, issued his complaint dated February 8, 1967. The complaint alleges the Respondent's violation of Section 8(a)(1), (3), and (4) of the Act. The Respondent's answer filed thereto denies the statutory violations alleged. Pursuant to notice a hearing was held before me at Miami, Florida, on March 27, 1967. All parties were represented by counsel. The Respondent was also represented by its president.

Pursuant to the General Counsel's motion at the hearing I ruled that my decision in the instant case would be deferred until the Board issued its decision in *American Art Industries, Inc.*, Case 12-CA-3577 (1-2),¹ and that I would notice and be bound in the instant case by the Board's findings in its decision to the extent that such findings are relevant to an issue herein. I further ruled that the instant record would be kept open until issuance of the Board's decision at which time I would order the parties to show cause why the record should not be closed. Following issuance of the Board's decision I sent the parties the foregoing order dated August 15, 1967, instructing them to file their responses with me on or before August 25. No responses having been received by that date I issued an order dated August 28, 1967, notifying the parties that the proceedings in Case 12-CA-3577 (1-2), including the Board's decision, would be judicially

¹ Now reported at 166 NLRB No 109

noticed herein and that the hearing in the present case was closed. The parties were given until September 25, 1967, to file briefs. The General Counsel has filed a brief which has been considered.

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

FINDINGS OF FACT

I. THE BOARD'S ASSERTION OF JURISDICTION IN THE CASE

The complaint alleges that the Respondent is a Florida corporation with its principal office and place of business in Miami, Florida, where it is engaged in the manufacture, sale, and distribution of art work, paintings, pictures, sculptures, and related products, and that in the operation of its business it annually sells and ships products valued in excess of \$50,000 directly to customers located outside the State of Florida. The Respondent's answer admits these allegations but denies that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. On the basis of the foregoing admitted facts the Board found in Case 12-CA-3577 (1-2) that the Respondent is engaged in commerce within the meaning of the Act and I accordingly make such finding here. I further find that the Act's purposes will be effectuated by the Board's assertion of jurisdiction in this case over the Respondent's operations.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization admitting the Respondent's employees to membership.

III. THE UNFAIR LABOR PRACTICES

The complaint alleges the Respondent's unlawful discharge of employees Horacio Trujillo and J. D. Mosely on November 23 and 29, 1966, respectively, because each had testified for the General Counsel against the Respondent in Case 12-CA-35773(1-2), and because of their activities in behalf of the Union. The first of said reasons is basis for the complaint allegation that the Respondent had violated Section 8(a)(4) of the Act, and the second is basis for the allegation that Section 8(a)(3) had been violated. The Respondent defends the terminations of these employees on the ground that it had no work for them. In Trujillo's case, the Respondent further explains that his termination was necessitated by his inability to comprehend work directions in English.

The following findings, relevant to the instant case, were made by the Board in Case 12-CA-3577(1-2). In July 1966 directly after the Union began its campaign to organize the Respondent's employees, the Respondent counter-campaigned by unlawfully interrogating employees con-

cerning their union activities, by threatening them with reprisals, and by promising them improved working conditions. This conduct was found violative of Section 8(a)(1) of the Act. The Board further found that the Respondent had unlawfully discharged four employees in violation of Section 8(a)(3) of the Act because of their activities in behalf of the Union, and that one of these employees was the J. D. Mosely who in the instant case was again allegedly discharged for his union activities and because he had testified against the Respondent. Finally, the Board found that the Respondent had violated Section 8(a)(5) of the Act by its unlawful refusal to recognize and to bargain with the Union. The facts of the instant case are evaluated and construed in the light of the aforestated Board findings and conclusions. See *E. V. Prentice Machine Works, Inc.*, 120 NLRB 1691, 1692, fn. 2.

On July 20, 1966, as previously found by the Board, the Respondent's employees went on strike to protest the Respondent's unfair labor practices. Following an exchange of letters between counsel for the Union and the Respondent, reinstatement was offered on November 7, 1966, by the Respondent to 36 strikers, including the four discriminatorily discharged employees. By arrangement between counsel, all these employees were given until November 14 to report to work. None, except Trujillo and Mosely chose to return to work.

Mosely reported on November 15, 1966, and worked until Friday, November 18. On Monday, November 21, he appeared at the hearing in Case 12-CA-35779 (1-2) pursuant to subpoena from the General Counsel. He testified as a General Counsel's witness on November 23 and again on November 28. When he reported for work on November 29 he discovered that his timecard had been removed from its accustomed place. He thereupon spoke about the missing card to Evelyn Wagner, President Theodore Foster's secretary, who directed him to await Foster's arrival. The latter arrived at the plant at 8:30 a.m. and, according to Mosely, merely glanced angrily at him. Mosely heard Wagner tell Foster that he was ready to start work but did not hear Foster's reply. Foster left at 9 a.m. without having spoken to Mosely. A half hour or so later Wagner informed Mosely that they were still looking for work for him. Later she advised there was nothing for him and promised to call him in a few weeks if there was need for him. The call never came.

Mosely had worked for the Respondent for about 3 years before his discharge in 1966. He claimed that in all that time he had been laid off only once and this was on an occasion when the whole plant was shut down for about 4 days. As previously found by the Trial Examiner and the Board, Mosely was the only employee who operated the large machines in the carpentry department for making tables. While employed by the Respondent his principal duty had been to operate a machine which

cuts masonite to form tabletops. Estimates of the number of tabletops which this machine can produce hourly if operated at maximum speed ranged from 200, according to Mosely, to 300 according to President Foster. While Mosely testified that 65 percent of his time was spent on operating that machine, he further indicated that it is too difficult properly to make such estimate as his duties in the course of the day changed frequently and there was no consistency to his time spent producing tabletops. His other activities consisted of assembling tables, operating a machine which smooths the edges of tables with formica tops, a process he called "routing," and such other work as he was ordered to perform by his shop foreman. For example, on the third day following his return on November 15, 1966, Mosely cut designs on picture frames.

Mosely observed, when he returned to work on November 15, that the inventory of tabletops was down to about 200 to 300. When he had last worked for the Respondent in July 1966, there had been an inventory of 500 to 600 tabletops. He denied that upon resuming work on November 15 he had been told there would be only 3 days' work for him.

Trujillo had worked for the Respondent from March 1963 until he went on strike in July 1966. He returned to work on November 16 pursuant to the Respondent's reinstatement offer and worked until November 18, 1966. Having been subpoenaed by the General Counsel to testify in Case 12-CA-3577(1-2), Trujillo appeared at the hearing in that case on November 21 and 22. He testified for the General Counsel on the latter date. He reported for work at his usual starting time on November 23 and was instructed to await the arrival of President Foster who, when he came to the plant, told Trujillo to leave and to return to work on Monday, November 28. Trujillo reported on that date and was again told to await President Foster's arrival. The latter did not speak to him when he came to the plant but Trujillo was informed by Foster's secretary, Evelyn Wagner, that there was no work for him and that he was not to return to the plant until called. He has not been called.

Trujillo's job for the Respondent had been to paint picture frames with a spray gun using various colors as directed. He also spray painted tables, pictures, and figures. About 75 percent of his time, however, had been spent painting picture frames. Trujillo cannot read English. Nor can he comprehend spoken English excepted to a limited degree. During his several years' employment by the Respondent he had generally been instructed verbally in Spanish by a woman, Edna Trujillo, whom he had regarded as the head of his department. When he returned to work in November 1966, she was no longer employed by the Respondent. Nor was there anyone else in the plant who could com-

municate with him in Spanish. Despite his language difficulties, Trujillo insisted that he effectively had received work instructions in the past from others who could not communicate to him in Spanish. He testified he had frequently received such instructions in English from President Foster's son, Richard, and from Foster's wife. They had instructed him that he was to paint with certain colors by writing the word white, black, blue, red, or yellow on a slip of paper which was stapled to a piece of wood. This he could comprehend. He denied that he had ever received written instructions to paint in variations from these basic colors. If a special shade was desired the mixed paint would be brought to him in a can, or he would prepare the mixture by matching it with a sample sent to him. He maintains that he had never during his more than 3 years' employment had been told by Mrs. Foster or by Richard Foster that he had failed to carry out their instructions properly. He denied that in his 3 days' employment after his return on November 16 that he had committed errors which necessitated any repainting. On each of these days he had been informed by Richard Foster of the work he was to do including the colors he was to use. Trujillo claimed he understood his orders without difficulty and had proceeded with his work without receiving complaints about his performance. Upon his return to work in November 1966, Trujillo had observed that there were two women and a man doing spray painting work similar to that which he had done. These were new employees who had been hired after he had gone on strike in July.

President Foster denied that Mosely's appearance in Case 12-CA-3577(1-2) as a witness for the General Counsel or his union activities, as to which he admitted knowledge, motivated his layoff. He insisted the sole reason for this action was lack of work. He disclaimed resentment toward the employees who had testified against the Respondent, nor, he said, had he glanced angrily at Mosely when he returned to work after he had testified. He disagreed with Mosely that he had during his entire employment been laid off just once. He declared that neither Mosely nor Trujillo should have been reemployed at all in November 1966. He had done so, he testified, despite lack of need for them, because of his attorney's insistence. He asserted that he should have ignored his attorney. To employ Mosely and Trujillo necessitated making work for them. They were laid off after but a few days' work following their reinstatement because "the work they were doing we already had a sufficiency of. They ran the stock up to a point where it was no longer economically feasible to carry them." Since their departure no one, assertedly, has been employed to do their work. The Respondent's sales, according to Foster, are down 25 percent from the previous year and at the moment no new tabletops are being produced. At one point Foster

claimed a present inventory of 5,000 to 6,000 table tops, although he could not in later testimony state exactly how much was piled up by Mosely in the few days he worked after his November reinstatement.

Concerning Trujillo, Foster related that his inability to understand English directions made impossible his continued employment. Moreover, new devices installed by the Respondent after the July 1966 strike have eliminated "certain jobs" which had "a bearing on some of this spraying" which Trujillo used to perform. Foster testified he would have endeavored to find other work for Trujillo except for his language handicap. He acknowledged that three employees had been hired to do spray painting after the strike and that they were retained despite Trujillo's layoff. Foster explained that these persons spray paint products which Trujillo could not paint adequately. This was so because to teach him to do this work required communication with him in Spanish and no person with the ability to speak that language is now employed by the Respondent. He stated that Trujillo had been given an opportunity to do the new work but was unable to perform satisfactorily. In the few days he worked he made many errors because he used the wrong colors and improper amounts.

Foster acknowledged that when the November 7, 1966, offer of reinstatement was made to the 36 strikers the Respondent actually had need for half of them who could have been put to work within a day to a week. As to the remaining 18, his intention had been to absorb them in the work force "as fast as we could feed them in." He testified that at the time the offer was made the Respondent employed 50 employees. Thus, by Foster's own calculations the Respondent would have employed 68 employees immediately after the November 7 reinstatement offer had 18 strikers requested reinstatement, and the remaining 18 would have been fed into the force as needed. Foster qualified this testimony by insistence this would not have been an "economical" move. The Respondent's books and records show that in the week ending November 21, 1966, the Respondent employed 53 employees, that on November 28 this figure had been reduced by layoffs to 48, further reduced by December 5 to 45 by other layoffs, and finally on December 21, 1966, had been brought down to 41.

I am persuaded that the record preponderates in favor of findings that the terminations of both Mosely and Trujillo were unlawfully motivated because they had testified for the General Counsel in Case 12-CA-3577(1-2). Mosely's known union activities and Trujillo's union sympathies, whatever they may have been, might have contributed to their terminations. I have not concerned myself with these factors, however, because the remedy herein recommended is sufficiently supported by

the findings of violation of Section 8(a)(4) of the Act without regard to whether Section 8(a)(3) has also been violated. Moreover, there is already an outstanding Board finding of violation of Section 8(a)(3) in Case 12-CA-3577(1-2) to which the addition of another such finding in the present case would be merely cumulative.

In reaching the aforesaid findings of Section 8(a)(4) violation, I have been influenced by the following:

(a) The timing of the terminations. Both Mosely and Trujillo were notified of their terminations directly upon returning to work after their absences to testify in Case 12-CA-3577(1-2). In neither case had there been any indication that these actions were pending. Nor had either been given any reason to believe that his tenure following reinstatement was to last just the few days which elapsed before they testified. Nothing was said, as I find from the credited testimony, that Trujillo was being reinstated on trial because there was no Spanish speaking person to transmit instructions to him, and nothing was said to Mosely that there was little or no need for his services. Thus, the precipitate termination notification to each after he had testified reflects a newly made decision which I am satisfied was occasioned by the circumstance of their testimony against the Respondent at the unfair labor practice hearing in Case 12-CA-3577(1-2).

(b) The Respondent's explanations for the terminations are unpersuasive. President Foster's assertions that Mosely and Trujillo were reinstated on the advice of counsel and in opposition to his own judgement is unimpressive. Respondent's counsel is a well-known specialist in the field of labor law and must be aware, as I am satisfied he is, that if the Respondent had no work for these employees there was no legal obligation to make unnecessary work for them in order to reinstate them. Any backpay liability which the Respondent might have incurred because of previous discriminatory discharges or because of the right of strikers to reinstatement upon request would have been mitigated by the simple fact that the Respondent had no work for them.² I cannot suppose that Foster would have reacted in silence to his counsel's advice had it been regarded as bad as he claimed. Nor do I suppose that counsel thereupon would not have explained the Respondent's legal right not to employ persons for whom it had no work. Actually, I do not believe Foster had taken such a dim view of counsel's advice as he clearly acknowledged that when the offer of reinstatement was made to 36 strikers he had present need for 18 of them, over and above his existing work force, and that he intended to absorb the remaining 18 as soon as possible. It strains belief to find that when only Mosely and Trujillo, of this entire group, decided to return to work that there should not have been work for them. One

² *N L R B v Mastro Plastics Corp*, 354 F 2d 170, 176

would have reasonably expected that at the very least each would have been told, when he returned, of the uncertainties of his continued employment. But, as shown, not a word to this effect was spoken until after each had given his testimony against the Respondent. I am satisfied Foster reinstated them because the Respondent had need for their services.

I do not credit President Foster's claim of an inventory of thousands of tabletops at the time of Mosely's layoff. My impression was that he was inventive and capable of exaggeration to make a point in the course of his testimony. I credit Mosely's contradicting testimony which impressed me more favorably than that there were but 200 or 300 tabletops on hand when he returned. Moreover, Foster's insistence that no one has been hired to do Mosely's work since his last departure does not convince me that the several machines which he had operated are at a standstill. Foster did not make this claim and it is not reasonable to believe that all this machinery remains idle. In this connection it should again be recalled that the Board had found in Case 12-CA-3577(1-2) that Mosely "was the only employee who operated the large machines in the carpentry department for making tables." There is no indication in the record that the Respondent has eliminated from its business operations the manufacture and sale of tables.

I further credit Trujillo's denial that fault had ever been found, during his tenure of several years before the July 1966 strike or in the few days he worked in November 1966 following his reinstatement, with his ability to comprehend and follow the simple directions given to him in English. Granted his proven illiteracy, he still showed his ability to comprehend enough simple directions to enable him to work without complaint. Neither Foster's wife nor his son, Richard, from whom Trujillo had received directions in the past, testified in opposition to his account of work satisfactorily done for them. Nor did Richard Foster appear as a witness to contradict Trujillo's claim that his work in November 1966 had been performed without fault. Only President Foster, who made no showing of personal knowledge of Trujillo's job performance, claims that he could not or did not properly perform his duties. Accordingly, I find that Trujillo was not terminated for his inability to satisfactorily comprehend instructions or to adequately perform his work.

As to the fact that some of the work that Trujillo had done before the strike is now performed by a mechanical device, it is not certain from the record that all his former work has been eliminated by such device. Foster acknowledged that there are times when manual operations of the sort Trujillo did still must be performed manually. Moreover, it is not clear that all the work done by the three spray painters recently employed by the Respondent does not entail some work, for example paint-

ing tabletops, which Trujillo can perform. I am mindful that the Respondent is not legally compelled to employ anyone incapable of working to its satisfaction. I find, however, that the Respondent did not terminate Trujillo's services because of such incapability. It does not follow that if Trujillo's language difficulties prove an insurmountable barrier to his performance of other duties required by the Respondent that his future employment is legally compelled. On this record, however, I am satisfied that his most recent termination was unlawfully motivated by the fact of his testimony against the Respondent in a Board proceeding.

(c) The Respondent has shown a predisposition to commit unfair labor practices. I must, as I have, take into account, in finding an unlawful motivation for the terminations of Mosely and Trujillo, the Respondent's extensive unfair labor practices found by the Board to have been committed in Case 12-CA-3577(1-2). I note here, as the Trial Examiner said in that case with the Board's approval, "... the serious nature of the unfair labor practices which the Respondent has committed, [show] an utter disregard for the policies of the Act." Such finding is the predicate for the Board's assumption that the commission of other unfair labor practices by the Respondent may reasonably be anticipated, thereby necessitating the broad cease-and-desist order entered by the Board in Case 12-CA-3577(1-2).

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 its operations described in section I, above, have a close, intimate, and substantial relationship 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 has engaged in certain unfair labor practices violative of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I have found that the Respondent terminated the employment of J. D. Mosely on November 29, 1966, and of Horacio Trujillo on November 23, 1966, in violation of Section 8(a)(4) and (1) of the Act. I shall therefore recommend that the Respondent be ordered to offer immediate and full reinstatement to these employees to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges as employees and to make them whole for any losses which they may have suffered because of their unlawful ter-

minations by payment to them of such sums of money as they normally would have earned as wages absent their terminations. Backpay shall be computed from the aforesaid dates of termination to the dates of the Respondent's offer of reinstatement in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, with interest at the rate of 6 percent per annum.

Because the unfair labor practices found to have been committed by the Respondent strike at the heart of the Act, and because of the extensive unfair labor practices recently committed by the Respondent (*American Art Industries, Inc.*, 166 NLRB 943), the commission of other unfair labor practices by the Respondent may reasonably be anticipated. I shall therefore recommend the issuance of a broad cease-and-desist order.

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. American Art Industries, Inc., is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. General Sales Drivers and Allied Employees, Local Union No. 198, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By terminating the employment of employees because they had testified in a National Labor Relations Board proceeding the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(4) 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.

5. Because there is no necessity therefor, no finding has herein been made that the Respondent has violated Section 8(a)(3) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in this proceeding, I recommend that American Art Industries, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from the following:

(a) Terminating the employment of employees because they have testified in a National Labor Relations Board proceeding.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist General Sales Drivers and Allied Employees, Local Union No. 198, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, 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 engaging in such activities as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act.

(a) Offer J. D. Mosely and Horacio Trujillo full reinstatement to their former or substantially equivalent positions and make them whole for any loss of earnings suffered as a result of their unlawful terminations in the manner described in the section above entitled "The Remedy."

(b) Post at its plant in Miami, Florida, copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 12, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 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 any other material.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Recommended Order.

(d) Notify the Regional Director for Region 12, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.⁴

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations 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 discharge our employees

³ In the event that these recommendations are 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 further 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 Ap-

peals Enforcing an Order" shall be substituted for the words "a Decision and Order."

⁴ In the event that these recommendations are 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 Respondent has taken to comply herewith."

because they have testified against us in a National Labor Relations Board case.

WE WILL offer immediate and full reinstatement to J. D. Mosely and Horacio Trujillo 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 resulting from their discharge by us because they testified in a National Labor Relations Board case.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their rights under the National Labor Relations Act.

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, 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, Room 826, Federal Office Building, 51 S.W. First Avenue, Miami, Florida 33130, Telephone 350-5391.