

Warehousemen's Union Local 17, International Longshoremen's & Warehousemen's Union and Los Angeles By-Products Co. Case 20-CB-1727

May 26, 1970

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND BROWN

On June 13, 1968, the Board issued a Decision and Order in the above-entitled case, finding that the Respondent had violated Section 8(b)(3) of the Act by its refusal to sign a collective-bargaining agreement which it had reached with the Company. The Board ordered the Respondent to sign the agreement.¹

The Respondent did not comply and, on September 30, 1968, the General Counsel petitioned the United States Court of Appeals for the Ninth Circuit for enforcement of the Board's Order. On November 4, 1968, the Respondent and the Company executed a collective-bargaining agreement other than the one specified in the Board's Order. On December 2, 1968, the Respondent, relying on the new contract, moved the Ninth Circuit to dismiss the petition for enforcement as moot or, in the alternative, to remand the case to the Board pursuant to Section 10(e) of the Act for the purpose of taking additional evidence concerning changed circumstances after the Board's Order; i.e., the execution of the contract on November 4. The General Counsel filed a motion concurring in the request to remand the case to the Board for the taking of further evidence. On December 18, 1968, the court found that "circumstances have arisen after issuance of the Board's order which may affect the propriety of enforcing said order", and granted the motion to remand the case to the Board for the taking of additional evidence.

On January 22, 1969, the General Counsel moved the Board to reopen the proceeding for the purpose of taking additional evidence and on February 11, 1969, the Respondent filed a response opposing the motion. On June 11, 1969, the Board ordered that the record be reopened and a hearing held before a Trial Examiner to consider the changed circumstances and their effect, if any, on the Board's Order. Pursuant to said Order, a hearing was held in Sacramento, California, on August 28, 1969, before Trial Examiner Robert L. Piper.

On November 26, 1969, the Trial Examiner issued his Supplemental Decision, attached hereto, in which he found that the Respondent had engaged in further unlawful refusals to bargain, and recommended that the Board reaffirm with certain modifications its prior Order herein. Thereafter, the Respondent filed exceptions to the Trial Examiner's Supplemental Decision together with a supporting brief; the General Counsel filed a brief in support of the Trial Examiner's Supplemental 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.

The Board has reviewed the ruling 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 Supplemental Decision and the entire record in this case, including the exceptions and briefs, and hereby adopts the findings, conclusions,² and recommendations of the Trial Examiner.

ORDER

Pursuant to the provisions of Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby reaffirms, as herein modified, its Order heretofore entered in this proceeding on July 13, 1968, and orders that the Respondent, Warehousemen's Union Local 17, International Longshoremen's & Warehousemen's Union, Sacramento and Los Angeles, California, its officers, agents, and representatives, shall take the action set forth in said Order, as so modified:

1. Substitute for paragraph 1, the following:

"1. Cease and desist from:

"(a) Refusing to execute the collective-bargaining agreement submitted to it through Thompson by Menebroker on August 11, 1967;

"(b) In any manner enforcing or giving effect to the agreement of November 4, 1968;

"(c) In any manner violative of Section 8(b)(3) of the Act, requiring Los Angeles By-Products Co., during the term of any existing agreement, to enter into a contract different from said existing agreement."

2. Add the following to paragraph 2, relettering the remaining subparagraphs accordingly:

"(b) Immediately rescind the agreement of November 4, 1968;

"(c) Make said Company whole for any financial expenditures made pursuant to the November 4, 1968, agreement, which it would not have been obligated to make under the agreement submitted for signature on August 11, 1967."

3. Add the following as indented paragraphs in the Notice:³

WE WILL immediately rescind the agreement which we unlawfully required the Company to enter into on November 4, 1968.

² In the view that we take of this case, it is not necessary to pass on the Trial Examiner's assumptions *arguendo* relating to the legal consequences had the November 4 agreement been entered into voluntarily or if it had been found to constitute "full compliance" with our Order.

³ In the event that this Order is enforced by a judgment of a United States Court of Appeals, the words in the Notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

WE WILL make the Company whole for any financial expenditures made pursuant to the November 4, 1968, agreement, which it would not have been obligated to make under the agreement submitted to us on August 11, 1967.

TRIAL EXAMINER'S SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

ROBERT L. PIPER, Trial Examiner: On June 13, 1968,¹ the National Labor Relations Board issued its Decision and Order,² finding that the Union had refused to bargain with the Company in violation of Section 8(b)(3) of the Act by refusing to sign the written contract agreed to by the parties on July 10, 1967, and thereafter submitted to the Union by the Company on August 11, 1967, and ordered the Union to execute such written contract. The Board also found that a written contract submitted to the Company by the Union on July 21, 1967, did not correctly set forth the agreement of the parties reached July 10, 1967. On June 20 the Company again submitted to the Union the written contract which the Board had ordered it to sign but the Union then and thereafter continued to refuse to sign said contract. On September 10 the Company's production employees, all members of the Union, engaged in a strike and thereafter refused to work.

On September 30 the Board filed a petition for enforcement of its Order with the Court of Appeals for the Ninth Circuit, and on October 7 petitioned said Court for a temporary injunction restraining the strike, which latter petition the Court denied on or about October 29. On November 4 the parties entered into a written contract, substantially different from that which the Board had ordered the Union to sign, and on November 5 the Company's employees returned to work. On December 2 the Union moved to dismiss the Board's petition for enforcement as moot because of the execution of the contract November 4, or alternatively to remand the case to the Board pursuant to Section 10(e) of the Act, for the purpose of taking additional evidence concerning the changed circumstances after the Board's Order, i.e. the execution of the contract November 4. The Board joined in the Union's motion for remand. On December 18 the Court denied the Union's motion to dismiss and granted its motion to remand for the taking of additional evidence, finding that "circumstances have arisen after issuance of the Board's order which may affect the propriety of enforcing said order."

On January 22, 1969, the General Counsel moved the Board to reopen the proceeding for the purpose of taking additional evidence and on February 11, 1969, the Union filed a response opposing said motion. On June 11, 1969, the Board ordered that the record in this proceeding be "reopened and that a full hearing be held before a duly designated Trial Examiner for the purpose of receiving evidence relating to the changed

circumstances after the Board's Order and to consider the effect, if any, of such circumstances upon the Board's Order," and thereafter to file a Supplemental Decision containing findings of fact, conclusions of law, and recommendations. Thereafter, pursuant to said Order and a notice of hearing by the Regional Director for Region 20, hearing was held by the Trial Examiner in Sacramento, California, on August 28, 1969.

Both parties were represented by counsel and afforded all rights of due process. At the opening of the hearing, the Union's motion to quash a *subpoena duces tecum* issued by the General Counsel was denied and the Union was ordered to produce the subpoenaed documents. The Union refused to produce such documents. After the close of the hearing, the Union's motion of September 5, 1969, to reopen the record for the purpose of offering in evidence certain documents, consisting of a portion of those subpoenaed by the General Counsel, was denied, no good cause therefor having been shown.³ The General Counsel and the Union filed briefs. The General Counsel's unopposed motion to correct the official transcript of proceedings was granted. Upon the entire record in the case and from my observation of the witnesses, I make the following findings, conclusions, and recommendations:

A. The Issues

As evidenced by the remands of the Court and the Board, the basic issues are whether there were any changed circumstances after the issuance of the Board's Order, and what effect, if any, such changed circumstances should have on the Board's Order. The changed circumstances after the Board's Order are of course the strike and the written contract signed by the parties November 4. Patent subsidiary issues are whether such contract was entered into voluntarily or as a result of the economic coercion of the strike and whether the Union was responsible for or caused the strike.

B. Chronology of Events

As found by the Board in its Decision and Order, the parties reached agreement as to a contract on July 10, 1967, the written contract submitted by the Union to the Company on July 21, 1967, was not such agreement, the written contract submitted by the Company to the Union on August 11, 1967, was the actual agreement of the parties, and the Union refused to sign such latter agreement. Because of a national copper strike commencing in September of 1967 shortly after the Union's refusal to execute the contract, the Company's operations and employment declined substantially until the termination of the strike in May of 1968 and no particular problems arose because of the Union's refusal to sign the contract. On June 13 the Board ordered the Union to sign the contract submitted by

³ The proffered documents, consisting of the Union's constitution and certain minutes of meetings, would merely tend to establish, as hereinafter found, that the Union did not by official action authorize the strike.

¹ All dates hereinafter refer to 1968 unless otherwise indicated

² 171 NLRB No. 166 (1968)

the Company August 11, 1967, and on June 20 the Company again submitted to the Union written copies of the contract which the Board had ordered the Union to execute, and the Union again refused and continued to refuse to execute such contract.

The Company's principal operation and processing plant was at Antelope, California, and its manager was Ben Litchfield. The Company's principal office was located in Los Angeles, and Litchfield was under the immediate supervision of John N. Mitchell, the Company's vice president. Frank Thompson was the Union's secretary and principal official. The union shop steward at Antelope was Vernon Wallis.⁴ Wayne Menebroker, an attorney for the Sacramento Valley Employers' Council of which the Company was a member, represented the Company in collective bargaining with the Union in 1967 and thereafter.

During June the Company recalled all of its employees laid off during the copper strike and as a result the absence of a written contract led to problems, particularly with respect to employee complaints and grievances concerning their terms and conditions of employment, the principal one concerning the employees' seniority rights as a result of their layoff of more than 6 months and its resultant effect on their vacation rights. Because of the Union's failure to sign the contract as ordered by the Board, there was no available grievance or arbitration procedure for the disposition of these differences. The record establishes that the employees' primary concern was the lack of a signed contract. During June and July, Litchfield and Wallis had several discussions concerning employee grievances, which according to Wallis were always settled satisfactorily.

Sometime during the first half of August, Thompson, who was the Union's principal bargaining representative and had been such when the agreement was reached July 10, 1967, called Litchfield to request the Company to meet and "bargain" concerning a contract, and requested that Menebroker, the Company's attorney who had negotiated the 1967 contract, be excluded from such meeting. Litchfield replied that such a meeting would serve no purpose because they had already agreed to a contract which the Board had ordered the Union to sign, but on Thompson's continued insistence agreed to contact Mitchell concerning such a meeting. Litchfield contacted Mitchell, who told him that any meeting would have to be set up through Menebroker. About a week later Thompson again called Litchfield concerning the proposed meeting, whereupon Litchfield informed him of Mitchell's statement concerning Menebroker. Thompson replied that he would get in touch with Menebroker. On August 21 Thompson called Menebroker and said that he had spoken to Litchfield who had informed him that Menebroker was still representing the Company. Thompson said that he wanted to set up a meeting to straighten out some differences on the contract and discuss some grievances. Menebroker replied that as far as he was concerned the Company already had

a contract but if Thompson wanted to discuss some grievances Menebroker would try to set up a meeting.

The parties met on August 29. Thompson, Wallis, and two other employees represented the Union and Mitchell, Litchfield, and Menebroker represented the Company. Thompson asked the Company to sign the contract which the Union had submitted July 21, 1967, offering another copy of it. Menebroker replied that the parties had a contract, as the Board had decided. Thompson replied that no third party was going to tell the Union what to do. The parties then discussed several of the employees' grievances, including the question of interpretation of the seniority rights of employees who had been laid off for more than 6 months, which in turn had a bearing upon their vacation rights, as covered both in the prior contract between the parties and the one which the Board had ordered the Union to sign. They also discussed a problem of smoke at the plant and a personnel problem concerning one of the Company's supervisors. Toward the close of the meeting, Menebroker informed Thompson that the Company's position was that it already had a contract and that it was right on the seniority question, but that they would submit the Union's proposals to the Company's top officials and let the Union know the Company's final position by the following Friday, September 6.

Litchfield called Thompson on the morning of September 6 and said that he had spoken to the Company's officials and they would like 2 or 3 more days to give the Union an answer. Thompson replied that he had been promised a yes or no answer that day as to whether the Company would sign the contract submitted by the Union, and that he had to have an answer that day. Litchfield said that he would call the Company in Los Angeles and call Thompson back that afternoon. Litchfield called Thompson that afternoon and said that he had talked to Mitchell and the Company wanted to get ahold of Menebroker before it made a decision and could not reach him until Monday. Thompson suggested that they call Menebroker's office and talk to his associate. Litchfield replied that they had tried that, whereupon Thompson stated, "it is out of my hands now, we will see." Wallis, the shop steward, also spoke to Litchfield on September 6 concerning the Company's promised reply.

On September 9 Wallis again spoke to Litchfield who replied that he had spoken to the Company's officials and that they would like another week or two to formulate an answer. Wallis replied that he would inform the employees and that it was up to them. Wallis then conveyed this information to the rest of the 19 to 22 employees at the Antelope plant. About noon September 9 Menebroker called Thompson, said that he had talked with Mitchell, and requested the Union to give the Company an additional 2 weeks to answer with respect to the Union's proposed contract. Thompson replied that the Company had had enough time. According to Wallis, near the conclusion of the workday the men informed him that starting the next day they would no longer work. Wallis conceded that all of the employees including himself said that they would not work without

⁴ Incorrectly spelled "Wallace" in the transcript

a signed contract, and that that was the only reason for the strike. After quitting time Wallis called Thompson, told him that the men were going to walk off the job and report to the union hiring hall the following morning, and asked him to inform the employees at the Company's subsidiary sorting operations in Martinez, Milpitas, San Leandro, and Sacramento of the strike. There were approximately four production workers at each of the sorting operations. On the morning of September 10, none of the Company's employees at its Antelope plant and its Sacramento, San Leandro, and Martinez operations reported for work, and they remained out on strike until November 5. Only the four production workers at the Milpitas operation showed up, which operation was subsequently closed because it could not continue with the Antelope plant shut down. No union official, including Wallis, informed the Company that the employees were going to strike.

According to Wallis, he called Thompson and informed him that the men were planning to strike the following day and Thompson asked him to try to persuade the men not to walk off the job. In this respect I do not credit Wallis. Thompson did not testify. Wallis admitted that he did not call Thompson September 9 until after quitting time, at which time the men had already decided to strike the following day. Wallis called Thompson again later that evening and asked him to inform the employees at the Company's sorting operations of the strike. All of the employees from the Antelope plant and a number of those from the sorting operations were present at the union hall the following morning at 7 a. m., and were dispatched to other jobs that day by the Union.

On the morning of September 10 Thompson called Claudus Fred Watkins, a member of the Union and the Company's foreman of its San Leandro and Milpitas sorting operations, and informed him that all of the employees had decided to shut the job down until the contract was signed. In response to Watkins' inquiry, Thompson replied that "it was not a strike." Thompson tried to get Watkins to join the strike. When Watkins replied that he could not afford to work through the hiring hall a day or so at a time, Thompson replied that he would get Watkins a steady job if he would come to Sacramento. Watkins refused to join the strike and advised Thompson that he was going to continue working for the Company. Thompson asked Watkins to have the employees under him call Thompson and he would try to secure them employment through a union agent in Oakland. Thompson did secure employment in Oakland that same day for the employees under Watkins. Later that day Watkins called Litchfield, told him of Watkins' conversation with Thompson concerning the employees not working until the contract was signed, and asked Litchfield if he could continue working. Litchfield told Watkins that he could, and he did so.

On September 30 the Board filed its petition for enforcement with the Court of Appeals. On October 7 the Board petitioned the Court for a temporary injunction restraining the strike, which petition was denied on or about October 29. On November 1, having learned

of said denial, the Company requested Menebroker to notify Thompson that it would sign the contract requested by the Union and to arrange a meeting for that purpose. On November 4 the Company and the Union met. The Company agreed to sign the contract submitted by the Union July 21, 1967, and found by the Board not to be the agreement of the parties, with certain modifications set forth in a simultaneous letter of understanding. The contract signed that day was substantially different from that which the Board had ordered the Union to sign. The Company also acceded to the Union's position concerning the grievance with respect to the seniority rights of the employees who had been laid off for more than 6 months. On the morning of November 5 at the regular starting time all of the Company's production employees in the various operations returned to work.

The Company's fiscal records in evidence establish that as a result of the strike it suffered serious financial losses during the months of September and October. The record establishes that after the denial of the petition to enjoin the strike, the Company decided that it could no longer afford to serious economic losses caused by the strike and that it was economically compelled to accede to the Union's demand to sign the contract previously submitted by the Union in order to get the employees back to work, resume operations, and terminate the continuing losses. On December 18, as hereinabove noted, the Court of Appeals remanded this proceeding for the taking of additional evidence concerning the changed circumstances.

C. Concluding Findings

The Union's position is that the changed circumstance, i. e., the execution of the contract on November 4, renders the case moot and that the Board should modify its Order by dismissing the complaint. This conclusion is based on a contention that the contract was the result of "collective bargaining" between the parties, which is of course encouraged by the Act and indeed a primary right guaranteed therein, and hence the matter should be dismissed. The Union's contention is devoid of merit and contrary to all of the principles for which the Act stands. The record establishes beyond dispute that the contract of November 4 was entered into by the Company as a direct result of the economic coercion of the strike for which, as hereinafter found, the Union was responsible or caused, and instead of being the result of collective bargaining was in reality caused by the Union's continued refusal to bargain in violation of the Act and of the Board's Order by refusing to sign the contract which the parties had agreed to and the Board had ordered the Union to sign, and by insisting that the Company "bargain" for a contract in direct violation of the Board's Order and the agreement previously reached. Instead of being collective bargaining, such action by the Union was merely an extension or continuation of its prior refusal to bargain and a

deliberate violation of the Board's Order to sign the contract submitted August 11, 1967. Once the parties had reached agreement, as found by the Board, and had been ordered to sign the contract agreed to, clearly the Union had no right to request or demand "bargaining" for a different contract, and such demand, aided and abetted by the economic coercion of a strike, constituted a continuing violation of the Act and a further refusal to bargain, not to mention a deliberate violation of the Board's Order.

Section 8(d) of the Act defines bargaining collectively as specifically including "the execution of a written contract incorporating any agreement reached if requested by either party," and thus it follows that the insistence on "bargaining" for a contract at a time when an agreement has already been reached and the party requesting bargaining is refusing to sign the written contract necessarily constitutes a refusal to bargain, rather than collective bargaining as contended by the Union. Such a conclusion is even more patent after the Board's Order directing the Union to sign the contract. After the Board's Order of June 13, the Union not only refused to sign the contract but continued to insist that the Company "bargain" about a contract and agree to the version previously submitted by the Union and rejected by the Board. At several points in its brief, the Union contends that its continuing violation of the Act and its refusal to comply with the Order of the Board were proper because the issue of an agreement was unresolved and pending in the Court of Appeals. This position is also incorrect. Until the Board's petition of September 30, 20 days after the union caused strike commenced, nothing was pending in the Court of Appeals and the issue was not in litigation. Moreover, to economically coerce the Company to sign a different contract while the issue of an agreement was pending before the Court usurps its functions and authority. I conclude and find that the contract of November 4 was not the result of "collective bargaining," but was brought about by the Union's continued violation of the Act and refusal to comply with the Board's Order and was itself a further violation of Section 8(b)(3) of the Act.

The record establishes that the Company did not enter into the contract of November 4 voluntarily but on the contrary was coerced by the strike and the resultant economic pressure to agree to the Union's demands, which were in violation of the Act and the Board's Order. From the time of the original agreement on July 10, 1967, to and after the Board's Order of June 13, the Company uniformly insisted that there was nothing to bargain about, that the parties had reached agreement, and that the Union should sign the contract agreed to and as later ordered by the Board. Only after the substantial economic pressure brought about by the strike for the contract the Union wanted and the denial of an injunction thereof did the Company yield to such pressure and accede to the Union's demand that it enter into a contract different from that to which the parties had agreed.

The Union correctly points out that the record contains no proof that it officially sanctioned or authorized the

strike which coerced the Company to sign the November 4 contract. However, it is well settled that a union's responsibility for or authorization of a strike may be established by circumstantial evidence.⁶ Just as in conspiracy cases, patently parties engaging in unlawful conduct are unlikely to make admissions against interest by officially authorizing such conduct. The record here contains numerous circumstances leading to the conclusion that the Union in fact was responsible for the strike. Throughout the entire relevant period the Union adamantly insisted that it would not sign the contract agreed to and ordered by the Board and instead insisted that the Company agree to the contract previously submitted by the Union and rejected by the Board. The employees were fully aware of this position of the Union. The record establishes beyond dispute that the employees struck only to secure a signed contract, the one demanded by the Union.

In setting up the first meeting after the Board's Order to "bargain" about a contract, Thompson specifically requested that Menebroker, the Company's attorney who had negotiated the agreed-to contract and who Thompson knew was the Company's bargaining representative, be bypassed and not present at such meeting. When Thompson insisted on August 29 that the Company bargain about a contract, and the Company replied that there was nothing to bargain about because the Board had ordered the Union to sign the contract agreed to, Thompson replied that no third party was going to tell the Union what to do. The Union's shop steward and two other employees were present at the meeting and thus this position of the Union was known to the employees. When about 1 week later on September 6 Litchfield asked Thompson for 2 or 3 days more for the Company's answer, Thompson replied that he had to have an answer that day. When the Company failed to give the Union a reply to its unlawful demand later that day, Thompson said: "It is out of my hands now, we will see."

On September 9, when Menebroker conveyed the Company's request for additional time to Thompson, he replied that the Company had had enough time. That same day, which was the next workday after Thompson's ominous prediction of September 6, all of the employees at the Antelope plant decided they would no longer work without a signed contract. After the Antelope employees decided on the afternoon of September 9 that they were no longer going to work, the shop steward informed Thompson after quitting time and requested him to notify the employees at the Company's other operations of the strike, which apparently he did. With the exception of the four employees at the Company's Milpitas operation, all of the employees including those in Martinez, San Leandro, and Sacramento went on strike at the same time on the morning of September 10 and substantially all reported to the union hiring hall. On September 10 Thompson called the Company's foreman, a member of the Union, at

⁶ *International Union of Operating Engineers, Local 925, AFL-CIO (J L Manta, Inc)*, 154 NLRB 671 (1965)

San Leandro and tried to persuade him to join the strike by offering him a steady job in Sacramento.

On September 10 the Union dispatched all of the striking employees who reported to the hall to other jobs and thereafter took no disciplinary action against them for striking. The strike was in violation of the contract which the Board had ordered the Union to sign. Although the record establishes that the employees only reason for striking was the lack of a signed contract, affidavits of Wallis and Thompson filed with the court of appeals by the Union in support of its opposition to the General Counsel's petition for and injunction stated that the strike was caused by the employees' grievances, instead of the lack of a signed contract. On November 4 the Company signed the contract insisted on by the Union, with certain minimal modifications agreed to by the Union, which contract was substantially different from that which the parties had agreed to and the Board had ordered signed. Although only Thompson and the same three employees who were present on August 29 were present at the November 4 meeting, on the following morning at starting time substantially all of the employees returned to work.

I am satisfied and find from the foregoing circumstances that the Union in fact was responsible for the strike. Moreover, assuming *arguendo* that the Union was not directly responsible for the strike, the record establishes beyond dispute that the Union caused the strike. As hereinabove found, the employees' only reason for refusing to work was the lack of a signed contract and they immediately returned to work as soon as the Company signed the contract insisted on by the Union. It was the Union's refusal to bargain by its continued refusal to sign the contract agreed to and its adamant insistence that the Company sign a contract different from that agreed to and ordered by the Board which caused the lack of a signed contract and the employees to strike. Regardless of whether the Union was directly responsible for or specifically authorized the strike, it was caused by the Union's refusal to sign the contract and its continued violation of the Act and the strike itself was a continuation of the refusal to bargain by economic coercion to compel the Company to sign a contract different from that agreed to by the parties and ordered by the Board. It follows that the strike caused by the Union and the contract entered into November 4 were additional refusals to bargain by the Union in violation of the Act as well as of the Board's Order. Such a contract not only does not render the issue moot and warrant the dismissal of the proceeding, as urged by the Union, but instead emphasizes the propriety and necessity of the Board's Order directing the Union to sign the contract agreed to by the parties.

Assuming *arguendo*, contrary to the above findings, that the November 4 contract was voluntarily entered into by the parties as the result of valid collective bargaining, it is well settled that such private agreements do not render the proceeding moot or affect the Board's power under the Act to correct and remedy unfair labor practices. Section 10(a) of the Act specifically provides that the Board's power "to prevent any person

from engaging in any unfair labor practice . . . shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise." Moreover, even if the November 4 contract constituted full compliance with the Board's Order, which clearly it does not, it is well settled that such compliance is immaterial and should have no effect on enforcement of the Board's Order, which is concerned with effectuating the policies of the Act and remedying unfair labor practices rather than disposing of private rights. As the Supreme Court has stated:

We think it plain . . . that . . . compliance with an order of the Board does not render the cause moot, depriving the Board of its opportunity to secure enforcement from an appropriate court . . . A Board order imposes a continuing obligation; and the Board is entitled to have the resumption of the unfair labor practice barred by an enforcement decree. . . . "no more is involved than whether what the law already condemned, the court shall forbid, and the fact that its judgment adds to existing sanctions that of punishment for contempt, is not a circumstance to which a court will ordinarily lend a friendly ear". . . . The Act does not require the Board to play hide and seek with those guilty of unfair labor practices. [Citations omitted.]⁷

D. *The Remedy*

The remands of the Court and the Board directed a consideration of what effect, if any, the changed circumstances hereinabove found should have on the Board's Order. As hereinabove found, the Union not only refused to comply with the Board's Order but continued to violate the Act by refusing to sign the contract agreed to, insisting that the Company sign a different agreement, and coercing the Company to do so by causing the employees to strike and bring economic pressure to bear on the Company to effectuate such result. Under such circumstances it seems clear that the Board's Order should be expanded to include such continuing and additional violations of the Act. The record clearly establishes that the Company suffered substantial economic losses during September and October as a result of the strike caused by the Union's refusal to bargain in violation of the Act, and it might well be considered appropriate that the Union be required to make the Company whole for such losses in order to remedy the unfair labor practices and effectuate the purposes of the Act. However, the General Counsel has not proposed such a comprehensive remedy, but instead has requested only that the Union be required to make the Company whole for any financial expenditures required of it as a result of the contract executed November 4, which it would not have been obligated to make under the contract the parties agreed to and the Union refused to sign.

⁷ *N L R B v Mexia Textile Mills*, 339 U. S. 563 (1950)

Under all of the circumstances I am satisfied and find that this more limited make-whole remedy would effectuate the purposes of the Act and serve to remedy the continuing unfair labor practices of the Union. Clearly at this stage of the proceeding a mere confirmation of the Board's prior Order requiring the Union to sign the contract agreed to July 10, 1967, now, which contract expires in 7 months and patently will have little if any unexpired time after the disposition of the petition for enforcement, would permit the Union to retain the fruits of its unlawful conduct and constitute little if any effective remedy of its continuing unfair labor practices. Accordingly I shall recommend that the Union be required to make the Company whole for any financial expenditures incurred under the November 4 contract which it would not have been obligated to pay under the contract the parties agreed to and the Board directed the Union to sign.

E. Recommendation

Upon the basis of the foregoing findings and conclusions, and upon the entire record in the case, and pursuant to Section 10(e) of the Act and the remands of the court and the Board, I recommend that the Board reaffirm its Order of June 13, 1968, directing the Union, *inter alia*, to immediately execute the collective-bargaining agreement submitted to it by the Company on August 11, 1967, and modify said Order by requiring the Union to cease and desist from continuing violations of the Act by causing or attempting to cause the Company to enter into a written contract different from the agreement of the parties, and to make the Company whole for any financial expenditures made under the November 4, 1968, contract which it would not have been obligated to make under the contract to which the parties had previously agreed.