

**Pride Candy and Tobacco Company and Richard Ernst Case 29-CA-1500**

August 14, 1969

**DECISION AND ORDER**

**BY CHAIRMAN McCULLOCH AND MEMBERS BROWN AND ZAGORIA**

On May 8, 1969, Trial Examiner Thomas S Wilson 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 to the 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,<sup>1</sup> conclusions, and recommendations of the Trial Examiner.<sup>2</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, as modified herein, and hereby orders that the Respondent, Pride Candy and Tobacco Company, Bayshore, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified.

1 In place of the present paragraph 1(a), substitute the following:

"(a) Discouraging appeals to the collective-bargaining representative having as their purpose the submission, presentation, and processing

<sup>1</sup>The Respondent excepts to the Trial Examiner's credibility findings. It is the Board's established policy however not to overrule a Trial Examiner's resolutions with respect to credibility unless, as is not the case here, the preponderance of all the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products Inc* 91 NLRB 544 enfd 188 F 2d 362 (C A 3)

<sup>2</sup>In its exceptions to the Trial Examiner's Decision the Respondent contends for the first time that the Board should defer to an alleged settlement of a grievance concerning the discharge of the Charging Party. The record clearly indicates that the conferences asserted as a settlement did not meet the standards set forth in *Spielberg Manufacturing Company* 112 NLRB 1080. Accordingly apart from any other considerations we find no merit in this contention.

of grievances or otherwise policing the terms of a collective-bargaining agreement by discharging, refusing to reinstate, or in any other manner discriminating against any of its employees in regard to their hire or tenure of employment, or any term or condition of employment."

2 Replace the period at the end of the present paragraph 1(c) of the Trial Examiner's Recommended Order, and at the end of the last indented paragraph of the notice attached to the Trial Examiner's Decision, with a comma and add

except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

3 Add the following as paragraph 2(b), and reletter the following paragraphs accordingly:

"(b) Notify the above-named employee if presently serving in the Armed Forces of the United States of his 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."

4 Add the following as the second indented paragraph of the Appendix:

WE WILL notify the above-named employee if presently serving in the Armed Forces of the United States of his 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.

5 Add the following paragraph as the third indented paragraph of the notice attached to the Trial Examiner's Decision:

WE WILL NOT discourage appeals to the collective-bargaining representative having as their purpose the submission, presentation and processing of grievances or otherwise policing the terms of a collective-bargaining agreement by discharging, refusing to reinstate, or in any other manner discriminating against any of our employees in regard to their hire or tenure of employment, or any terms or conditions of employment.

**TRIAL EXAMINER'S DECISION**

**STATEMENT OF THE CASE**

THOMAS S WILSON, Trial Examiner Upon a charge duly filed on October 28, 1968, by Richard Ernst, an individual, hereinafter referred to by the name or as the Charging Party, the General Counsel of the National Labor Relations Board, hereinafter referred to as the General Counsel<sup>1</sup> and the Board, respectively, by the

<sup>1</sup>This term specifically includes the attorney appearing for the General Counsel at the hearing.

Regional Director for Region 29, Brooklyn, New York, issued its complaint dated December 31, 1968, against Pride Candy and Tobacco Company hereinafter referred to as the Respondent. The complaint alleged that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (3) and 2(6) and (7) of the Labor Management Relations Act, 1947, as amended, herein referred to as the Act.

Respondent duly filed an answer admitting certain allegations of the complaint, but denying the commission of any unfair labor practices.

Pursuant to notice, a hearing thereon was held before me in Brooklyn, New York, on February 20, 1969. All parties appeared at the hearing, were represented by counsel, and were afforded full opportunity to be heard, to produce and cross-examine witnesses, and to introduce evidence material and pertinent to the issues. At the conclusion of the hearing oral argument was waived. A brief was received from General Counsel on March 12, 1969. No brief was received from Respondent.

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

#### FINDINGS OF FACT

##### I THE BUSINESS OF RESPONDENT

Pride Candy and Tobacco Company is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York. At all times material herein, Respondent has maintained its principal office and place of business at 137 Fourth Avenue, in the town of Bayshore, County of Suffolk, State of New York, herein called the Bayshore warehouse, where it is engaged in the sale and distribution at wholesale of candy and tobacco products and other related products. During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business, purchased and caused to be transported and delivered to its Bayshore warehouse, candy, tobacco products, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its Bayshore warehouse in interstate commerce directly from States of the United States other than the State of New York.

The complaint alleged, the answer admitted, and I find that Respondent is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II THE UNION INVOLVED

Confectionery and Tobacco Drivers and Warehousemen, Local 805, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, is and has been at all times material herein a labor organization admitting to membership employees of Respondent.

##### III THE UNFAIR LABOR PRACTICES

###### A The Facts

Robert Schwartz has been in the candy and cigarette business since the age of 10 when he began working on the delivery truck for a company owned by his father. When

his father sold the business, Schwartz became the driver of delivery truck for the purchaser. During his last year of employment as such driver, Schwartz had Richard Ernst on the truck with him as his assistant.

In December 1967 Schwartz founded Respondent of which he is the president and owner. At that time Ernst became Respondent's delivery driver.

On March 21, 1968, Respondent recognized the Union as the collective-bargaining agent for its employees and executed the contract between the Union and the Employers Association of which Respondent was a member. The contract, which contained a union-security clause, was by its terms to expire on September 21, 1968. Prior to that the Union notified Respondent that the contract would remain in full force and effect until the succeeding contract negotiations were completed.<sup>2</sup>

During the summer of 1968 Respondent appears to have operated its business with Schwartz and his wife, also his secretary, handling the orders by telephone and making up such orders, two route salesmen, Schwartz' cousin, a high school student, assisting with the making up of orders, a warehouseman, and Ernst making deliveries 5 days a week and in his spare time also making up orders.

Schwartz himself described Respondent's relationship with Ernst as follows:

A Mr Ernst, when he was working for me on the truck, was a very satisfactory worker, never had a problem. And the first six months I'd say, working on the truck as a driver we didn't have any problem either. He was well liked. There was really no great problems at all. It's just in the last couple of months when he seen this fellow, Teddy, work, he felt that Teddy shouldn't be helping me at all, the heck with the customers, he wanted his overtime.

Also, according to Schwartz, the trouble at the Respondent's began when Respondent hired a new replacement salesman whose prior employer had informed Schwartz prior to hiring that this salesman was "a union instigator." According to Schwartz:

THE WITNESS I don't know. I think it's because I had another salesman working for me that was giving Ernst some information, I think, on Union contracts and what he's entitled to, and he wanted Ernst to get everything he had coming to him, and there was a few little things that I don't think I was giving him that he [Ernst] wanted.

On September 16, Monday, Schwartz asked Ernst to make Respondent's Saturday deliveries and Ernst agreed to do so.<sup>3</sup>

On that same day Ernst for the first time say "Teddy"<sup>4</sup> in the plant making up an order and learned in conversation that he was the manager of a neighboring 7-11 Store and had been purchasing supplies from Respondent for several months.

On the afternoon of September 17 Ernst returned to the warehouse after making some deliveries expecting to find some 14 to 17 further deliveries to make. There were none. Maureen Schwartz told him that there were no more deliveries to be made that day and asked that he drop off a bill on his way home. Bob Schwartz was not at the warehouse. Maureen stated that Bob was making the deliveries. When he arrived at home Ernst telephoned the

<sup>2</sup>The succeeding contract was actually executed by Respondent on October 23 1968.

<sup>3</sup>Saturdays had been Ernst's day off. The Saturday deliveries apparently had been made by a nonunion driver named Phil.

<sup>4</sup>Teddy's last name was never given.

plant telling Maureen that he did not see how it was possible for Bob to have made the deliveries as he did not have a truck or a car available to him and asked to have Bob call him back. When Bob Schwartz called back he told Ernst that Teddy had made the other deliveries that day, that he was breaking Teddy in as a salesman, and that Teddy had "only made those deliveries to help him out that day because we were running behind." Ernst complained that he did not want a nonunion man making deliveries because this was cutting into Ernst's pay. Schwartz stated that "this was not going to be a normal practice, that he had only done the one day and it would not be repeated." Ernst replied that "if it would not be repeated, it was all right but that otherwise I will have to call the Union and complain about it."

Then on Thursday, September 19, Ernst returned to the warehouse about 2 p.m. after completing his deliveries and was put to making up orders. He discovered that orders already made up were placed in two separate piles. He inquired as to why there were two separate piles and was told by Bob Schwartz that he, Schwartz, was going to deliver one pile himself. Soon thereafter Teddy came into the warehouse. Thereupon Ernst told Schwartz that he realized that Teddy was going to deliver the second pile of orders in his own Ford Econoline truck because Schwartz had neither truck nor car in which to make the deliveries. Schwartz said that "if he [Schwartz] wanted Teddy to deliver them, Teddy would deliver them, that this was his company and he would do as he liked." Ernst threatened that he "would call the Union because he did not want this man taking my work away from me." Schwartz replied that, if Ernst called the Union, "I am going to fire you." Ernst said that he was going to call the Union.

Ernst left the warehouse and called the union hall but was unsuccessful in getting Business Agent Ornstein as he was out of the office. Ernst returned to the warehouse and proceeded to make the deliveries of both piles of orders.

On Friday, September 20, Ernst succeeded in reaching Ornstein by telephone and explained his problem. Ornstein said that the negotiations of the new contract were on and that he would take care of the problem as soon as possible.

Subsequently on Friday, September 20, Schwartz informed Ernst that he did not want Ernst working on Saturday as he was going to make the deliveries himself using the truck. Ernst answered that he had found out that Schwartz did not drive the truck on Saturdays but had a person by the name of Phil driving the truck and making the deliveries which Ernst complained was not right or in accord with the union contract and that Ernst should be making the deliveries. Ernst threatened that he would call the Union if Schwartz insisted on Phil's making the deliveries. Schwartz replied that "this was his company, he would run it, that the Union contract meant nothing to him, it was nothing but a piece of paper." He also stated he had no intention of abiding by the contract and again threatened to fire Ernst if Ernst telephoned the Union.

When Ernst reported for work on Monday, September 23, Schwartz told him that he, Schwartz, realized that Ernst had called the Union and said he thought Ernst was a "wise guy" for calling them and that he, Schwartz, was going to fire Ernst. Ernst replied that, according to the union contract, Schwartz would have to give him 2 weeks written notice if he wanted to discharge him and would also have to give the Union 2 weeks written notice with the statement of the causes of the discharge in accordance with the contract. Schwartz replied, "Well, we'll see."

With that exchange completed, Ernst went about his business of making deliveries.

Sometime on the afternoon of September 27,<sup>5</sup> Schwartz, who testified that he was out making a special delivery of a telephone order, came upon Ernst sitting reading a newspaper and drinking a cup of coffee in Respondent's truck parked on Mattatuck Road. Schwartz stopped and asked Ernst what he was doing. The answer was that Ernst was taking the remainder of his lunch hour. Schwartz asked if he had any more deliveries to make. Ernst replied that he had two more.

Schwartz thereupon left and proceeded to the nearest telephone where he called the Union and reported that "This fellow is costing me a lot of money" and that he had caught Ernst "goofing off." According to Schwartz, the union official told him to send the Union a letter notifying it of Ernst's suspension and to suspend him as of Friday night.

When Ernst finished his two deliveries he returned to the warehouse and was informed by Schwartz that he had been "suspended" for 1 week. When Ernst inquired as to the cause of the suspension, Schwartz stated, "You were parked there and you were goofing off on the job." Ernst asked what a suspension meant and asked to see the union contract. Schwartz told Ernst, "I called the Union and told them I was going to suspend you." Ernst agreed to accept the suspension in accordance with the terms of the contract.

On the day of September 27 Respondent wrote the Union as follows:

This is to inform you that we are suspending Richard Ernst, truck driver, as of Friday, September 27, 1968 at 6 p.m. This was done as per Mr. Daniel Ornstein's instructions by phone on Sept. 27, 1968 at 4:30 P.M.

On Monday, September 30, Ernst got in touch with Ornstein by telephone and explained what had happened. At Ornstein's request Ernst attended a union meeting that night and saw Ernst personally about the matter. Ornstein told him to call back on October 3.

On October 3 Respondent sent the following letter to the Union:

Please be advised that we have this day, Wed. October 3, 1968, discharged Richard Ernst, driver for lack of business.

Schwartz testified that the Union had instructed him to use the excuse of "lack of work" in making the discharge of Ernst. There is no proof in this record, other than the fact that Respondent had at some time unspecified lost one customer, that Respondent's business had fallen off.

When Ernst got in touch with Ornstein on October 3, as requested, Ornstein told him that Schwartz had explained to him that he was only a small business man, could not afford to pay a union driver or to pay overtime, and that he was going back to making deliveries himself and wanted to lay Ernst off because he could not afford a union driver. According to what he was told by Ornstein, Schwartz had offered to pay Ernst 1 week's salary if Ernst would agree. Ernst agreed on the condition that Schwartz could not afford a union driver. Ernst subsequently received 1 week's pay from Schwartz.

Within 2 or 3 weeks thereafter, however, Ernst discovered that Schwartz had hired a full-time driver to make the deliveries previously made by Ernst. There is no question but that Schwartz was not making the deliveries himself.

<sup>5</sup>Ernst testified that it was about 3:30 p.m. whereas Schwartz testified that it was 4:20 p.m.

Ernst has never been reinstated.

### B. Conclusions

As found above, Schwartz himself testified, after saying that Ernst was a "very satisfactory worker, never had a problem," that "it's just in the last few months when he seen this fellow, Teddy, work, he [Ernst] felt that Teddy shouldn't be helping me at all, the heck with the customers, he wanted his overtime."

This testimony confirms perfectly that given by Ernst. The reference in the Schwartz testimony is to the identical event which Ernst testified triggered his trouble at Respondent's, namely, the September 16 employment of Teddy with Ernst's prompt attempt to police the collective-bargaining agreement together with Ernst's threat to call in the Union, a development which Schwartz admittedly did not want and resented. Despite having executed the agreement, that contract was to Schwartz "nothing but a piece of paper." Admittedly Schwartz intended and desired to handle his employment problems by himself without let or hindrance from the Union or from the collective-bargaining agreement. When Ernst carried out his threat and the Union did enter the picture, Schwartz referred to Ernst as a "wise guy." Eleven days after the problem arose in this manner this "very satisfactory employee" was suspended and then discharged. It is quite clear from all the facts that the Ernst's threat, and subsequent fulfillment of that threat, constituted a part, at least a substantial part, of the motivation behind the discharge of Ernst on September 27.<sup>6</sup>

I make the above findings upon a consideration of only the undenied testimony of both Ernst and Schwartz. The Schwartz' denial that he ever made a threat to discharge Ernst if he went to the Union with the existing problem has thus played no part in the above determination. In fact, if made, this threat to discharge would only be corroborative of the admitted reaction of Schwartz to the Ernst's grievance over his own loss of work, the employment of nonunion drivers, and the alleged violations of the collective-bargaining agreement. However, as the threat to discharge is the sole disputed testimony in this record and is material on the question of motivation, this conflict in testimony should be resolved although it is not determinative of the question of motivation. Ernst impressed me as a witness candidly telling the truth whether favorable or not. On the other hand, Schwartz impressed me as a witness telling the truth most of the time but seeking ways, means, and/or excuses to obliterate the rather patent discrimination he had practiced upon Ernst. In short I credit Ernst and find that Schwartz did make the threat to fire in order to keep the problem out of the hands of the Union as Schwartz desired. This was a clear violation of Section 8(a)(1) of the Act.

In addition Schwartz came up with a number of matters which he contended "caused" the discharge of Ernst: (1) the afternoon lunch hour on September 27; (2) alleged shortages in deliveries; (3) alleged stealing of two one-half cartons of cigarettes; (4) Respondent's inability to afford a full-time driver; and (5) "lack of work." Examination proves each of these to be unproven or

untrue.

There was no denial of the fact that it was normal practice for the driver to split his lunch hour, half in the morning and half in the afternoon. In fact it is undenied that Ernst learned this practice from Schwartz. Such was normal, unobjectionable procedure—until Schwartz chose to use it as an excuse to "suspend" Ernst on September 27.

Unfortunately shortages in deliveries is also a normal occurrence. The causes for such shortages are almost without number. Among them, of course, would be carelessness in making up the orders, merchandise lost enroute due to careless tying up the packages, and/or thefts by the drivers. Allegedly these shortages, according to Schwartz, increased about the time of Teddy's employment. Actually there is no evidence proving that they did or did not, in fact, increase. As shown below, Schwartz apparently did not intend to impute dishonesty to Ernst. It is undenied, in any event, that Respondent trusted Ernst sufficiently to have him make bank deposits for and on behalf of Respondent running into the thousands of dollars.

Then there was an incident testified to by Schwartz that, after the employment of Teddy, when one Jerome (Jerry) Seidenberg told Schwartz that he, Jerry, had seen Ernst take two one-half cartons of cigarettes in the plant. Schwartz' testimony, of course, was rank hearsay because Jerry did not testify. Both Schwartz and Ernst testified, without objection except from this Trial Examiner, to almost diametrically oppose conversations each had allegedly had with Jerry thereafter. In the first place such hearsay testimony is not probative on the question of the honesty of Ernst. But this conflict arising from this hearsay testimony appears to have been resolved in Ernst's favor by the fact that Jerry failed to testify, that Maureen Schwartz and Teddy also failed to corroborate the Schwartz' hearsay testimony even though both allegedly had been present during the Schwartz-Jerry conversation as well as the fact that following these alleged conversations, Jerry suddenly ceased working for Schwartz. And finally Schwartz himself disposed of whatever question existed when he testified, "I had no reason to believe he [Ernst] was dishonest. He was honest to the best of my knowledge . . ."

Schwartz' next reason for the discharge, Respondent's alleged inability to pay for a driver, was proved patently false when Respondent hired a replacement promptly after discharging Ernst.<sup>7</sup>

Finally the "lack of work" excuse given by Respondent in its letter of October 3 to the Union was also proved false by the prompt employment of a driver after the discharge of Ernst.

As the Board took occasion to remind me not too long ago,<sup>8</sup> the law is now well settled that even a rank-and-file employee is engaging in protected concerted activities when he attempts to police or enforce the terms of the collective-bargaining agreement then in force between his bargaining representative and his employer and that said employer violates Section 8(a)(1) and (3) if it discharges that employee for engaging in such protected concerted

<sup>6</sup>Despite the verbiage used by Schwartz on September 27 and in the letter dated September 27, I am convinced and, therefore, find that Respondent discharged Ernst on September 27 although paying him until October 3 when the discharge was finalized in words.

<sup>7</sup>Schwartz also was not telling the truth when he allegedly told the Union that he, Schwartz, was going to make the deliveries thereafter himself. But this testimony is also rank hearsay because Ornstein to whom the statement was allegedly made prior to October 3 did not testify.

<sup>8</sup>*N.L.R.B. v. Interboro Contractors, Inc.*, 388 F.2d 495 (C.A. 2), *enfg.* 157 NLRB 1295.

activities.<sup>9</sup> This is exactly what occurred in the instant case.

I am convinced, and therefore, conclude that on September 27, 1967, the Respondent discharged Richard Ernst because of his union membership and activities and because of his efforts to police the collective-bargaining agreement existing by and between Respondent and the Union as well as because of his threat and its fulfillment to take Respondent's alleged violations of that agreement to the Union. Such discharge is in violation of Section 8(a)(3) and (1) of the Act.

#### 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 the 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 of commerce.

#### V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I will recommend that Respondent cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discriminated in regard to the hire and tenure of employment of Richard Ernst by discharging him on September 27, 1968, because of his membership in and activities on behalf of the Union and particularly for his action in calling in the Union to police the existing collective-bargaining agreement between Respondent and the Union despite Respondent's objection thereto, I will recommend that Respondent offer to Richard Ernst immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of said discrimination against him by payment to him of a sum of money equal to that which he would have earned from the date of the discrimination against him to the date of his reinstatement, less his net earnings during such period (excluding the period between September 27 and October 3, 1968), in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289, with interest thereon at 6 percent per annum.

Because of the variety of the unfair labor practices engaged in by Respondent, I sense an opposition by Respondent to the policies of the Act in general, and hence I deem it necessary to order Respondent to cease and desist from in any manner infringing upon the rights guaranteed its employees in Section 7 of the Act.

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

#### CONCLUSIONS OF LAW

1. Confectionery and Tobacco Drivers and Warehousemen, Local 805, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Richard Ernst by discharging him on September 27, 1968, because of his membership in and activities on behalf of the Union and particularly because he threatened to, and did, call in the Union to police the collective-bargaining agreement existing by and between Respondent and the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

3. By threatening Richard Ernst with discharge if he should call the collective-bargaining agent of the employees in to police its collective-bargaining agreement with Respondent, Respondent has engaged in interference, restraint, and coercion in order to discourage its employees from engaging in union membership and activities in violation of 8(a)(1) of the Act.

#### RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in this case, I recommend that Pride Candy and Tobacco Company, Bayshore, County of Suffolk, State of New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating in regard to the hire and tenure of employment or of any term or condition of employment of its employees because of their membership in or activities on behalf of the Union herein or of any other labor organization of their choice.

(b) Threatening any of its employees with discharge in the event such employee should call upon his bargaining representative to police the collective-bargaining agreement by and between Respondent and that representative in violation of Section 8(a)(1) of the Act.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by the Act.

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

(a) Offer Richard Ernst immediate and unconditional reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered by reason of the discrimination against him in the manner set forth in the section of this Decision entitled "66 The Remedy," with interest thereon at 6 percent per annum.

(b) 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.

(c) Post at its plant in Bayshore, New York, copies of the attached notice marked 66 Appendix.<sup>10</sup> Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by Respondent 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.

<sup>9</sup>*Price Brothers Company*, 175 NLRB No. 47

<sup>10</sup>In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words

(d) Notify the Regional Director for Region 29, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith."

IT IS FURTHER RECOMMENDED that, unless Respondent notifies said Regional Director within 20 days from the receipt hereof that it will take the action here recommended, the Board issue an order directing Respondent to take the action here recommended.

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

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

#### APPENDIX

##### NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL offer Richard Ernst his former or substantially equivalent position, without prejudice to

his seniority or other rights and privileges, and WE WILL pay him for any loss of pay he may have suffered because of our discrimination against him together with interest thereon at 6 percent per annum.

WE WILL NOT threaten any of our employees with discharge in the event that they call in their chosen bargaining representative to police the collective-bargaining agreement by and between ourselves and that bargaining representative.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the Charging Party herein, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection or to refrain therefrom.

PRIDE CANDY AND  
TOBACCO COMPANY  
(Employer)

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

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11201, Telephone 212-596-5387.