Edwin P. Omernick d/b/a American Building Components Company *and* Millmen's Union No. 550, United Brotherhood of Carpenters and Joiners of America. Case 20–CA–7480

May 22, 1973

DECISION AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

On February 8, 1973, Administrative Law Judge Louis S. Penfield issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions to which the General Counsel responded.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and General Counsel's response and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

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 Administrative Law Judge and hereby orders that the Respondent, Edwin P. Omernick d/b/a American Building Components Company, Dublin, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

LOUIS S. PENFIELD, Administrative Law Judge: This case was tried before me in San Francisco, California, on September 20 and October 2 and 3, 1972, with all parties represented.[1] The complaint is based on a charge and amended charge filed May 9, 1972, and July 25, 1972, respectively, by Millmen's Union No. 550, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, herein called Local 550. The complaint alleges violations of Section 8(a)(1), (3), and (5) by Edwin P. Omernik d/b/a American Building Components Company, herein called Respondent. Copies of the charges and complaint were duly served on Respondent. All parties were given full opportunity to participate in the proceeding, argue orally, or to file briefs. The parties, however, did not argue orally on the record, and elected to waive the filing of briefs.

Upon the entire record in the case, and upon my observation of the witnesses and their demeanor I make the following:

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

At all times material herein Respondent has functioned as a sole proprietorship owned by Edwin P. Omernik, with a place of business located in Dublin, California, where it has been engaged in the manufacture of building components. During the past year in the course and conduct of its business Respondent purchased and received goods and supplies valued in excess of $50,000 directly from suppliers located outside the State of California, and during the same period purchased and received additional materials and supplies also valued in excess of $50,000 from suppliers located within the State of California, which suppliers had received such goods and materials directly from points located outside the State of California. I find that at all times material Respondent has been engaged in a business affecting commerce with the meaning of the Act.

II THE LABOR ORGANIZATIONS INVOLVED

Local 550 is a labor organization within the meaning of Section 2(5) of the Act. Production Carpenters Locals 3036 and 2559, each affiliated with United Brotherhood of Carpenters and Joiners of America, herein called Local 3036 and Local 2559, respectively, are each labor organizations within the meaning of Section 2(5) of the Act.

III THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges Local 550 to be the statutory representative of Respondent's employees. The complaint further alleges various acts of unlawful interference, the discriminatory discharge of one individual, and certain conduct claimed to constitute a refusal to bargain within the meaning of the Act. Respondent denies the alleged unlawful conduct in all its aspects.

A. *The Background and the Advent of Local 550*

Edwin P. Omernik has been engaged in the manufacture of a variety of building components since 1949. He commenced his operation in San Carlos, California, a location 10 miles or more from the present Dublin location. In 1955 Omernik entered into a collective-bargaining relationship with Local 3036, a labor organization which, like Local 550, was also an affiliate of the United Brotherhood of Carpenters and Joiners of America.

In 1962, Omernik undertook to move his business from San Carlos to Dublin. Before making the move, he communicated with Clarence Briggs, business agent for Local 3036, and asked if following the move he would still be within the jurisdiction of Local 3036. Briggs replied in the affirmative.

[1] Stewart Weinberg entered an appearance on the day the hearing opened but no representative of the Charging Party was present on the last 2 hearing days.

This assurance from Briggs was, according to Omernik, an "absolute deciding factor that I stay with them, with this union, or that I should know which union I would be with, before moving." Omernik further testified that he "was emphatic in predetermining this simply because [he] never wanted to be a part of 550, because of their record gained from other employers."

Following the move to Dublin Respondent continued the collective-bargaining relationship with Local 3036 until 1968. During that year, Business Agent Briggs came to Omernik and advised him that the membership in Local 3036 was not sufficient to continue it as a separate entity, and that Local 3036 was therefore consolidating with Local 2559, another Production Carpenters local. Omernik signified his acquiescence in this change only after being assured by Briggs that the existing contract with Local 3036 would continue in effect, and that the contract would continue to be administrated by the same personnel. When the existing contract with Local 3036 expired, Omernik negotiated a new contract with Local 2559. This new agreement was signed on May 1, 1970. It was to remain in effect until May 1, 1972, and thus was in effect when the events which gave rise to this proceeding came into being.

Omernik testified that, at all times since his first contract with Local 3036, signed in 1955, and continuing after Local 2559 took over, he had maintained an excellent relationship with each local, that he had never been subjected to a strike by either one, and he "had never even had as much as one grievance. . . ."

On or about April 30, 1971, Clarence Briggs, business agent for Local 2559, and Arsie Bigby, business agent for Local 550, visited Omernik and advised him that Local 2559 did not have sufficient business in the area to keep operating there, and that its jurisdiction and representation rights were being transferred to Local 550. This information, conveyed orally, was followed by a letter from Clarence Briggs advising Omernik of the transfer of his jurisdiction to Local 550, advising him that the membership had signed authorization cards with Local 550, that the matter had been approved by the International, and that from now on, Local 550 was to be the representative of the Respondent's employees. Local 550, likewise, mailed Omernik a letter advising him that that local was now the collective-bargaining representative of his employees, and that the majority of such employees had authorized Local 550 to act as such representative. Omernik testified that when first approached by the representatives of the two locals, he had told them that he "would never change to Local 550, not because they are not a recognized union, but, because when I moved out here, I was very emphatic and specific that I wouldn't get involved with Local 550, because of the problems that I know and other things that I had heard about them and that I know from other employers, and I said I do not want anything to do with Local 550 and as for the contract that you and I negotiated for 2559, that is good for another, approximately, year and a half at that time."

Following the first meeting and the followup letters Bigby made various unsuccessful efforts to persuade Omernik to recognize Local 550 as the successor to Local 2559 now vested with jurisdiction to administer the existing contract. Omernik, however, insisted that only Local 2559 was the representative of his employees, and that he would deal exclusively with representatives of that local. At first he refused to sign anything acknowledging Local 550 to have become the successor. Unable to resolve the issue in other ways, in early July Local 550 put up a picket line at Respondent's premises for the purpose of pressing its representation claim. On July 15, 1971, the pickets were removed and the immediate problem was apparently adjusted when Omernik sent the following letter to Local 550:[2]

> I agree that Millmen's Local No. 550 shall be substituted in place of Production Carpenters Local No. 2559 throughout the 1970–1972 agreement with American Building Components Company, and that Millmen's Local 550 shall have all the contractual rights formerly held by Production Carpenters No. 2559.

B. *The Appropriate Unit and the Majority*

It stands undisputed that the unit covered by Respondent's contract with Local 2559 is comprised of all production employees employed by Respondent at its Dublin, California, plant, excluding office clerical employees, guards and supervisors as defined by the Act. It is undisputed that such unit would be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, and I so find.

As set forth above it stands undisputed that Local 2559 ceded its representation and contract rights to Local 550. It is also undisputed that prior to the successorship, a majority of the employees in the appropriate unit had been represented by Local 2559. Omernik testified that at some point when discussing the change in representatives, he had suggested that the employees possibly had not acquiesced when the changeover to Local 550 took place. It does not appear, however, that at the time Omernik took positive steps to have Local 550 prove its majority designation. As set forth above Local 550 affirmatively asserted that a majority of the employees had designated it as their representative at the time of the takeover. This assertion stands unrefuted in this record. Moreover, testimony of employee witnesses corroborates such assertion and establishes that a majority in the unit had, in fact, designated Local 550 and I so find. I further find that at all times material since April 30, 1971, Local 550 succeeded to the representation and contract rights previously held at Local 2559, and that, at all material times thereafter, Local 550 has been the representative of a majority of Respondent's employees in the unit heretofore found appropriate.

In addition to the foregoing, as set forth above in the July 15, 1971, letter Respondent acknowledged the transfer of jurisdiction from Local 2559 to Local 550, accorded Local 550 recognition as the statutory representative of its employees, and accepted its status as the successor to the con-

[2] Omernik testified that at some point Bigby had requested that he sign an agreement with Local 550 There is no other evidence to this effect, and this letter of July 15 by which the initial controversy was settled indicates that Bigby had not been seeking a new agreement to take the place of the one with Local 2559, but merely had been pressing Omernik to recognize that the transfer had taken place, and that the Local 2559 agreement was not being administered by Local 550 as its successor

tractual rights theretofore possessed by Local 2559.[3]

C. *The Attempts of Local 550 To Resolve Grievances*

According to Omernik neither Local 3036 nor 2559 had pressed for the adjustment of any grievances whatsoever during the many years each had represented Respondent's employees. Local 550, however, soon embarked on efforts in this regard. These efforts are evidenced by a series of letters from Local 550 to Respondent as well as by testimony developed at the hearing.

The first letter from Local 550 was dated September 15, 1971. Local 550 claimed Respondent to be improperly interpreting the contract with respect to its wage schedule and as to its use of leadmen, and requested a meeting to work out these problems. Omernik did not respond at all, and on September 29 Local 550 sent him another letter demanding arbitration. Although the circumstances are not entirely clear, apparently, at some point, Omernik did make some response, and this particular problem was worked out without the need for pressing further for arbitration.

Commencing on December 7, 1971, Local 550 pressed a new series of grievances. These related to claims of various individuals concerning layoffs and payment for hours worked. The grievances are described in a series of letters commencing on December 7, and continuing through January 3, 1972. There is no showing that Omernik made written replies to any of them, and the record shows no responses of any other nature. On January 19, 1972, Local 550 summarized its position as to the individuals, and requested either immediate settlement or arbitration. On February 2, 1972, Local 550 formally demanded arbitration of these grievances.

There was a further dispute between Local 550 and Respondent concerning delinquencies in payments Respondent was required to make to a union trust fund, pursuant to the terms of the contract. In some measure, these delinquencies had accrued before the takeover by Local 550. The issue, however, did not come to a head between Local 550 and Respondent until the early months of 1972. Omernik concedes that he had misconstrued his obligation under the contract, and that he was obligated to make certain payments to the union trust fund. Omernik, however, claimed that certain payments, which he had made, had not been properly credited to him, and when the issue arose in March or April of 1972 he sought an adjustment that would take this into account. This brought about a delay, but eventually, in mid-April or thereabouts, the amount owing was agreed upon. Omernik asserts the adjustment included agreement that he might pay the money owing in installments. Local 550 disagreed, and in late April, demanded payment of the entire sum which Omernik admittedly owed. When a delay in receiving this ensued, Local 550 picketed Omernik's premises commencing on or about April 28. Full payment was almost immediately forthcoming.[4]

D. *The Alleged Acts of Interference and the Discharge of Randy Grobler*

The General Counsel alleges several incidents claimed to violate the Section 7 rights of employees. Each is of a nature which, if established, would constitute both an independent violation of Section 8(a)(1) and also have a bearing upon Respondent's approach to its statutory bargaining duty. The General Counsel also alleges the discriminatory discharge of Randy Grobler under circumstances which also throw light on Respondent's attitude toward bargaining with Local 550.

It is charged that on two occasions, one in January and the other in April, Omernik attempted to run down with his automobile employees who were engaged in picketing near the gate to his premises. Three witnesses testified concerning these incidents. No purpose will be served in detailing their testimony. Suffice it to say it was recounted that on each occasion Omernik approached the plant entrance where picketing was taking place in seeming anger, and perhaps driving at excessive speed. On one occasion the approach of his car caused a picket to jump out of the way to avoid being hit. On the other occasion, Omernik's car rolled back after stopping and the open door struck a picketing employee with whom Omernik then engaged in a verbal altercation. In neither instance was anyone hurt. I am convinced that the General Counsel has established no more than an open display of anger by Omernik occasioned by the presence of the pickets at his premises. No witness testified that he believed Omernik deliberately attemped to injure the pickets on either occasion. Nor do the circumstances, as they relate them, make it appear that Omernik, an emotional man, consciously attempted to run over or injure employees who were engaged in picketing, despite an openly expressed anger at their presence. Accordingly, I find that it has not been established that in either of these instances did Respondent engage in unlawful conduct of the nature alleged by the General Counsel.

The General Counsel also alleges that Respondent threatened employees with discharge for refusing to cross the picket line, informed employees that it would close its plant rather than execute a bargaining agreement, asserted it would never execute a collective-bargaining agreement with Local 550, and encouraged employees to withdraw their support from Local 550 and select another labor organization as their collective-bargaining representative. Mutually corroborative testimony of witnesses Pierson, Grobler, and Terry describes discussions which took place between Omernik and a number of employees at some point in March

[3] Respondent's counsel suggested at one point in the proceedings that this letter should not be construed as a recognition of Local 550's status, inasmuch as the circumstances indicate that the letter had been written under duress. Apparently counsel was referring to the picketing which preceded the writing of the July 15 letter. This picketing was, apparently, aimed at getting Omernik to recognize the transfer of bargaining rights to Local 550. There is nothing in the record, however, to show this to have been an unlawful object or to show that the picketing was conducted in an unlawful manner. Thus while unquestionably it was the picketing that brought about the signing of the letter by Omernik, it cannot be said that this came about in an atmosphere of such unlawful coercion that its effect should be nullified.

[4] This picketing took place at the same time that Local 550 was also seeking to negotiate a new contract to succeed the one expiring on May 1, 1972. This particular grievance issue and the difficulties which were being experienced in arranging negotiation meetings are not sufficiently separable in this record to establish a primary cause for the picketing. Possibly at the outset it had a dual object, but later when the grievance was adjusted it continued to protest Respondent's failure to negotiate a new contract.

or April at a time when the existing contract was about to expire and efforts were being made by Local 550 to negotiate a new one. According to these employees, the discussion centered about Local 550 and the forthcoming contract negotiations. Omernik was asked what he expected to do regarding a new contract. The employees state he told them that "he would never sign with [Local 550]," that "if we signed pledge cards for 550, we'd have to get them voided," but that there was a union from Stockton that might be brought in and "that he would like us to consider this union." Omernik does not deny making these statements to the employees.[5]

Randy Grobler was an employee of Respondent and a member of Local 550. At some point in March or April, Grobler was elected shop steward for Local 550 and this became known to Respondent. On or about April 10, Grobler testified that he noticed that men were working in the yard who did not appear to have punched timecards. He viewed this as a possible violation of the contract. Accordingly, Grobler went to Jim Sweeney, the plant superintendent, and asked how it happened that these men were working without punching timecards. Sweeney stated that he would take the matter up with Omernik. Some 30 or 40 minutes later, Omernik came out of his office appearing to be quite angry. He forthwith directed Grobler to punch out and come into his office. Grobler refused to punch out, but stated that he did wish to talk with Omernik about the so-called grievance. At this point Omernik told Grobler he was fired for insubordination and for failing to obey a direct order. Employee Pierson corroborates Grobler's version of the events surrounding his discharge. Pierson further testified that some time later in the month he had been talking to Omernik about the incident, and at that time Omernik had advised him that "Randy started off as a good worker, but, we started listening to the Union and that it was causing too much trouble and that he'd had to discharge him." Omernik did not testify at all concerning the Grobler incident.

E. *The Individual Bargaining and the Attempts To Negotiate a New Contract*

The General Counsel alleges that, on one or more occasions in November 1971, Respondent dealt directly with some of its employees rather than Local 550 with respect to their rates of pay, and that such conduct was in derogation of Respondent's statutory bargaining duty. Uncontradicted testimony in the record from employees Pierson and Grobler discloses that each had talked with Omernik in November concerning Saturday work and that Omernik had asked each, as well as some other employees, to work on Saturdays at a time and a half rate, although the contract required double time for Saturday work. Both Pierson and Grobler testified that he had agreed to work for time and a half. Later each did work on one or more Saturdays. In spite of the earlier discussions, each acknowledges that he was paid double time for this Saturday work.

On February 28, 1972, Arsie Bigby of Local 550 sent Respondent a letter reciting that pursuant to the terms of section 23 of the contract Local 550 wished to open negotiations for modifications in the contract. Omernik sent a letter, also dated February 28, to Mr. Clarence E. Briggs, business agent of Local 2559, reading in full as follows:

> This is to advise you that I wish to terminate the agreement dated May 1, 1970, with Production Carpenters Local 2559 along with any assignments of same. Effective termination date May 1, 1972.

Omernik did not reply to Bigby's February 28 letter. Bigby wrote Omernik another letter on March 28 suggesting several specific dates in April as suitable for bargaining conferences. By April 17, Bigby, having received no reply from Omernik, wrote another letter in which he stated Omernik's failure to respond "shows lack of good faith," once again suggesting additional dates for bargaining meetings. On April 24, Bigby sent a telegram to Omernik threatening to file unfair labor practice charges if Omernik did not respond to his April 17 letter. In a letter dated the same day, which may or may not have been sent before the telegram, Omernik wrote Bigby stating that "In accordance with Production Carpenters Agreement Local 2559 Section 23" he was available to meet with Bigby on April 27 or April 28. Bigby responded by a telegram dated April 28 advising Omernik that he could meet on May 2 or 3. As above noted, on April 28, Local 550 placed pickets at Respondent's premises. Bigby testified that while this picketing was partly related to the Union's trust fund grievance, such pickets were placed there at least in part to protest Omernik's seeming recalcitrance in meeting to negotiate a new agreement. In any event, the picketing which commenced at this time continued for an undisclosed period, and it is reasonable to assume that since no negotiation meetings ever took place and the trust fund grievance was adjusted promptly, its continuance after the grievance settlement came to be to protest Omernik's delays in meeting with Local 550.

Although further efforts were made, both by telephone and letter, to arrange negotiation meetings after the May 1 expiration date of the contract, no such meetings ever took place. In part the attempts of arrangements became complicated by the occurrence of certain acts of vandalism and a serious fire, the latter presumably caused by arson, which had occurred at Respondent's premises in the first or second week of May. There is nothing whatsoever in this record to show that Local 550, or any of its adherents, were in any way connected with these incidents. In his testimony Omernik does not directly accuse Local 550 of complicity in these matters. However, from a consideration of Omernik's testimony as a whole including his openly expressed and long held animosity toward Local 550, and his demeanor generally I am convinced that Omernik personally believed at the time, and still held the belief at the time of the hearing, that in some manner that he could not definitely prove Local 550, or its adherents, were responsible for these unfortunate incidents. Accordingly it is reasonable to infer that his reluctance or inability to reach the bargaining table was in part

[5] I find no evidence in the record of a specific threat directed at any individual employee for refusing to cross a picket line established by Local 550, nor do the three witnesses who testified spell out a specific threat by Omernik to close the plant rather than execute a collective-bargaining agreement, although possibly the latter threat might be inferred from the undenied assertion that he would never execute a collective-bargaining agreement with Local 550

at least influenced by this belief.

F. *Discussion of the Issues and Conclusions*

This case arises from problems created by the takeover of Local 550 as successor to the representation and bargaining rights of Local 2559, and Respondent's reluctance or unwillingness to accept it in such role and deal with it openly as the collective-bargaining representative of its employees. The General Counsel's case appears to rest on the premise that from the outset Respondent rejected Local 550 as the successor to the bargaining rights of Local 2559, that it conceded such status only under pressure, that it stalled and sought to avoid grievance adjustments with Local 550 while at the same time it dealt with its employees individually, that it openly threatened never to sign a new contract with Local 550, that it urged employees to bring in another union, that it discharged a union steward, and that finally it openly showed unwillingness and delays in meeting and bargaining with Local 550 regarding a new contract. It is claimed that by this course of conduct Respondent engaged in both independent violations of Section 8(a)(1) and (3), and demonstrated an unwillingness to fulfill its statutory bargaining duty. I am of the opinion that the largely undisputed record supports such conclusion.

I have heretofore found Local 550 to have succeeded Local 2559 as the statutory representative of Respondent's employees commencing on May 1, 1971, and continuing thereafter. Omernik's hostility toward Local 550 long antedates its attaining status as his bargaining representative, and is frankly and openly expressed by Omernik in his testimony. Thus, assurances that he could avoid dealing with Local 550 were made a significant condition precedent to his move to Dublin in 1962. His ready acceptance of Local 2559 for Local 3036 came only after his being assured that he would still be dealing with the same union representatives. Omernik's response to the Local 2559 takeover at this time contrasts sharply with his reaction to a similar takeover by Local 550 on May 1, 1971. At this time Omernik's long held hostility toward Local 550 asserted itself openly and forcefully, and his initial response was the unequivocal assertion that he "would never change to Local 550." The takeover appeared regular and included a designation of Local 550 by Respondent's employees which Omernik made no attempt to question. Nevertheless Omernik refused to acknowledge the Local's newly acquired status either orally or in writing until confronted by the picketing in July. Even the written acknowledgment of Local 550's status coming after the July picketing appears to have had no effect on Omernik's real attitude toward that organization. Omernik testified, somewhat plaintively, that during all the years with Locals 3036 and 2559 as bargaining representatives he had not been pressed on a single grievance, but that with the advent of Local 550 he had been pressed constantly, and had been subjected to picketing on four separate occasions by that organization when things had not worked out. Apparently his concept of a desirable collective-bargaining representative was one which signed a contract and thereafter left him alone. The efforts of Local 550 to adjust grievances, take them to arbitration if necessary, and even picket when that seemed required only served to reaffirm his long held conviction that this local was an undesirable collective-bargaining representative for his employees.

The record is somewhat imprecise and confusing as to the details of the various grievance disputes and their adjustments, if any, which arose between Omernik and Local 550 after his reluctant acceptance of that organization as the bargaining representative. A fair appraisal of the entire situation, however, suggests a continuing determination on Omernik's part not to deal with Local 550 insofar as he could avoid it, whether this meant not answering letters, not discussing specific problems, not choosing an arbitrator, or what have you. His entire approach to the efforts of Local 550 to bring up grievances neither demonstrated a genuine acceptance of Local 550 as the bargaining representative, nor a real acknowledgment that the statutory bargaining duty as defined by Section 8(d) required that he sit down and in good faith attempt to work out these matters.

Omernik's approach scarcely differed when it came to negotiating with Local 550 regarding a new contract. Omernik's February 28, 1972, letter purporting to terminate the contract was addressed to Local 2559 rather than Local 550, and demonstrates his continuing conviction that the former, rather than the latter, was the true bargaining representative. Continuing adherence to such approach is confirmed by Omernik's failure to reply to the efforts of Local 550 to arrange meetings for the purposes of negotiation. Only when confronted with the presence of pickets did he signify that he might yield and meet. While the final collapse of efforts to arrange meetings was undoubtedly furthered by the somewhat traumatic experiences which Omernik had experienced as the result of the vandalism and fire in early May, Omernik does not claim that Local 550 was necessarily responsible for these unfortunate incidents, so even this falls short of modifying his continuing duty to bargain. Nothing else occurred indicating any real willingness to negotiate in good faith.

Omernik's reluctant approach toward acceptance of a statutory bargaining duty with Local 550 is further supported by certain other conduct, described above, which was directed at his employees. Thus, as we have seen, it stands undenied that Omernik did ask the employees to work on Saturdays at time and a half rather than at the contract rate of double time. Local 550 was the statutory representative at the time and Omernik was required to bargain with it on such a matter. Thus, his attempt to bargain individually with his employees stands as an independent act in violation of Section 8(a)(5), and I so find. It is also undenied that Omernik did tell certain employees that he would never sign a contract with Local 550, and that Omernik did urge the employees to bring in another labor organization. These acts tend to confirm Omernik's unwillingness to deal with Local 550, while at the same time constituting independent acts of interference with the statutory rights of employees as guaranteed by Section 7 of the Act, thus being themselves violative of Section 8(a)(1), and I so find. The circumstances surrounding the discharge of Randy Grobler are also undenied. The timing of Grobler's discharge, together with Omernik's later admission to Pierson, makes it clear beyond any doubt that Grobler's effort as a shop steward to press for the adjustment of grievances on behalf of Local 550 was

the motivating factor in bringing about the discharge. The discharge was thus clearly discriminatory and accordingly violative of Section 8(a)(3) and I so find. In addition, the circumstances of its occurrence serve further to point up Omernik's attitude toward his obligations to deal with Local 550 as the representative of its employees.

In summation I am satisfied from the record as a whole that because of Omernik's deeply felt and long held hostility toward Local 550, he was unwilling to, and did not, fulfill his statutory bargaining duty toward that organization. Omernik's initial reaction to the advent of Local 550, his continuing failure to respond to grievances that that organization pressed, his attempts at individual bargaining, his discriminatory discharge of a shop steward, his expressed threat that he would not sign a contract with Local 550, his urging of employees to get another union, and his failure to negotiate a new contract under circumstances described above, all comprise a continuing pattern inconsistent with the good faith approach to collective bargaining that the statute demands. Under the circumstances, and for reasons more fully set forth above, I find that Respondent has engaged in conduct violative of Section 8(a)(5) of the Act.

On the basis of the entire record I make the following:

Conclusions of Law

1. Respondent is an employer as defined in Section 2(2) of the Act, and is engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 550, Local 3036, and Local 2559 are each labor organizations within the meaning of Section 2(5) of the Act.

3. All production employees employed by Respondent at its Dublin, California plant excluding office clerical employees, and guards and supervisors as defined by the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material Local 550 has been the exclusive representative of all employees in the aforesaid appropriate bargaining unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By individually bargaining with employees concerning overtime pay, by failing or refusing to bargain with Local 550 concerning grievances, and by failing or refusing to bargain with Local 550 with regard to a new contract, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

6. By threatening never to sign a contract with Local 550, by urging the employees to bring in another union, and by the discriminatory discharge of Randy Grobler, Respondent has interfered with, restrained, and coerced employees in violation of Section 8(a)(1) of the Act.

7. By discharging Randy Grobler on or about April 10, 1972, because of his membership and activity on behalf of Local 550, Respondent has engaged in a violation of Section 8(a)(3) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

9. Respondent has not violated Section 8(a)(1) of the Act in any of the other respects alleged herein.

The Remedy

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

Having found that Respondent unlawfully refused to bargain with Local 550 as the statutory representative of its employees, I shall recommend that it be ordered to do so upon request, and if agreement is reached to embody the agreement in a signed contract.

Having also found that Respondent discriminatorily discharged Randy Grobler I shall recommend that Respondent offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a 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 during the period of his discrimination, by payment to him of a sum of money equal to that which he would have earned as wages from the date of such discrimination to the date of Respondent's offer of reinstatement, less his net earnings during such period, with backpay and interest thereon to be computed in the manner prescribed by the Board in *F. W. Woolworth Company,* 90 NLRB 289, and *Isis Plumbing & Heating Co.,* 131 NLRB 716.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I hereby issue the following recommended:

ORDER [6]

Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Millmen's Union No. 550, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production employees employed by Respondent at its Dublin, California plant, excluding office clerical employees, guards and supervisors as defined by the Act.

(b) Discharging any of its employees for antiunion reasons.

[6] In the event no exceptions are filed as provided by Sec 102 46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes

(c) In any other manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Upon request bargain collectively with the above-named labor organization as the exclusive representative of the employees in the above-described appropriate unit with respect to rates of pay, wages, hours of employment and other terms and conditions of employment, and, if an understanding is reached embody such understanding in a written signed agreement.

(b) Offer to Randy Grobler immediate and full reinstatement to his former job or, if that job no longer exists, to a 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 in the manner set forth in the section hereof entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records necessary or useful to determine and compute the amounts of backpay due as herein provided.

(d) Post at its plant in Dublin, California, copies of the attached notice marked "Appendix." [7] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and 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.

(e) Notify the Regional Director for Region 20, in writing, within 20 days from the date of the receipt of this Decision,what steps Respondent has taken to comply herewith.

[7] In the event that the Board's Order is enforced by a Judgment of an Order 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."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL bargain collectively upon request with Millmen's Union No. 550, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, as the exclusive representative of all our employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production employees employed by Respondent at its Dublin, California plant, excluding office clerical employees, and guards and supervisors as defined by the Act.

WE WILL NOT discharge any of our employees for antiunion reasons and WE WILL offer to Randy Grobler immediate and full reinstatement to his former job and make him whole for any loss of pay suffered as a result of his discriminatory discharge.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed by Section 7 of the Act.

EDWIN P. OMERNIK D/B/A
AMERICAN BUILDING
COMPONENTS COMPANY
NY
(Employer)

Date By
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 13018 Federal Building, Box 36047, 450 Golden Gate Avenue, San Francisco, California 94102, Telephone 415–556–0335.