

## 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, we hereby notify our employees that:

WE WILL NOT refuse to bargain with Retail Department Store Employees Local 1207, or any designated representative thereof, as the representative of our employees in the unit described below. The bargaining unit is:

All retail sales clerk employees at our Seattle, Washington, stores located at 1st and Lander, Roosevelt Way, and Market Street, excluding supervisory personnel.

WE WILL, upon request, bargain collectively with the above-named labor organization, or any designated representative thereof, concerning the provisions of a 1-percent commission program and a union membership program, or any other conditions of employment, and, if an understanding is reached, we will embody said understanding in a signed agreement.

WE WILL NOT in any like or related manner refuse to bargain with said Union as the representative of our employees in said unit or interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent permitted under Section 8(a)(3) of the Act.

SEARS, ROEBUCK & Co., INC.,  
*Employer.*

Dated..... By.....  
(Representative) (Title)

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

Employees may communicate directly with the Board's Nineteenth Regional Office, 327 Logan Building, 500 Union Street, Seattle, Washington, Telephone Number, Mutual 2-3300, Extension 553, if they have any question concerning this notice or compliance with its provisions.

**Quality Coal Corporation, Brazil Block Coal and Clay Co., Inc., and Center Point Block Coal Corporation and Carl F. Kumpf and Local 7365, United Mine Workers of America, Charging Party and International Union, Progressive Mine Workers of America, Party to the Contract and Party of Interest**

**International Union, Progressive Mine Workers of America and Local 7365, United Mine Workers of America, Charging Party and Quality Coal Corporation, Brazil Block Coal and Clay Co., Inc., and Center Point Block Coal Corporation and Carl F. Kumpf, Parties to the Contract and Parties of Interest. Cases Nos. 25-CA-1399 and 25-CB-457. October 25, 1962**

## DECISION AND ORDER

On December 15, 1961, Trial Examiner John H. Dorsey issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached

Intermediate Report. Thereafter, the General Counsel filed exceptions to the Intermediate Report together with a supporting brief. Exceptions were also filed by Respondents Center Point Block Coal Corporation (herein called Center Point). Carl F. Kumpf and International Union, Progressive Mine Workers of America (herein called PMW), and PMW filed a brief in support of its exceptions.<sup>1</sup>

Pursuant to the provisions of Section 3(b) of the Act the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Fanning, and Brown].

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 Intermediate Report, the exceptions and briefs, and the entire record herein, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, but only to the extent not inconsistent with the following:

1. We agree with the Trial Examiner, and for the reasons stated by him, that Respondents Quality Coal Corporation and Brazil Block Coal and Clay Co., Inc. (herein called Quality and Brazil, respectively), constitute a single employer, that the business done by Quality-Brazil meets the Board's jurisdictional requirements, and that at the time material here Quality and Brazil were engaged in commerce within the meaning of the Act.

We also agree with the Trial Examiner that the operations of Respondent Center Point meet Board jurisdictional standards and that this Respondent is engaged in commerce within the meaning of the Act. As is set forth in the Intermediate Report, following its incorporation Center Point acquired the mining operation in question and also purchased much of the mining equipment used by Quality. Further, Center Point leased a new Page dragline with a 16-cubic yard capacity to replace one of 10-cubic yard capacity which had been used by Quality. While Center Point assumed the operation of the mine on June 5, 1961, the following 3 months were spent in erection of this new dragline, and no coal was mined until September 5, 2 weeks prior to the instant hearing. Center Point, however, caused to be transported in interstate commerce during this 3-month period approximately \$5,000 in coal and allied products which it had purchased, processed, and sold. Center Point is engaged in the same operation previously conducted by Quality-Brazil, and, with more modern equipment, it is reasonable to expect that Center Point will do an annual interstate business well in excess of the Board minimum

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<sup>1</sup> Center Point and Carl Kumpf also filed a request for oral argument. As the record, exceptions, and briefs adequately set forth the issues and positions of the parties, the request is denied.

jurisdictional standards.<sup>2</sup> Upon this fact, and the interstate business already done by Center Point, we find that it will effectuate the purpose of the Act to assert jurisdiction over Center Point.

2. We agree with the Trial Examiner that at all times material here Local 7365, United Mine Workers of America (herein called UMW), was the majority representative of the employees employed in the mining operation involved in this proceeding. Prior to May 31, 1961, while ownership of the operation was still in Quality-Brazil, the UMW was admittedly the bargaining representative of these employees, all of whom were UMW members, and up to that date there was in force a contract between Quality and the UMW. We think it clear that the UMW continued to be the majority representative of these employees upon Center Point's acquisition and resumption of the mining operation. We note first that although the mining operation was sold by Quality-Brazil to Center Point, there was no change in any essential attribute of the employment relationship. The nature of the business remained the same, Carl Kumpf continued to manage the mine for Center Point as he had for Quality-Brazil, and those employees called to work for Center Point were employees who had worked for Quality-Brazil. Secondly, it is obvious that Center Point, through its agent Carl Kumpf, was fully aware of UMW's representative status. As is detailed in the Intermediate Report, much of Carl Kumpf's efforts during this period was principally on behalf of Center Point and directed to the dissipation of UMW's majority status. As found *infra*, the PMW and its Local 403 were unlawfully assisted by the Respondent Companies.

In these circumstances, we find that not only was Quality-Brazil obligated to recognize and bargain with the UMW, but that Center Point, too, was so obligated.<sup>3</sup> Far from discharging their obligation, it is apparent that Quality-Brazil acted in complete disregard of this duty to bargain when Carl Kumpf engaged in efforts to replace UMW with PMW, deliberately misrepresented the facts to the UMW as to future operations of the mine, and concealed from the UMW the facts of the arrangements made with Center Point. Such conduct is the antithesis of good-faith bargaining, and we find that by Kumpf's conduct Quality-Brazil and Kumpf violated Section 8(a)(5) and (1) of the Act. We similarly find that by the conduct of Kumpf in continuing his efforts to replace UMW and by executing the bargaining agreement with PMW in derogation of its duty to bargain with UMW, Center Point, and Kumpf violated Section 8(a)(5) and (1) of the Act.

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<sup>2</sup> *Siemons Mailing Service*, 122 NLRB 81

<sup>3</sup> In our view of the case, it is immaterial whether a failure by Quality fully to comply with Section 8(d) of the Act in sending its termination notice of March 31, 1961, resulted in the continuance of that contract for any purpose. We therefore do not pass upon the Trial Examiner's resolution of this issue.

3. The Trial Examiner found, and we agree, that the Respondents Quality-Brazil, Center Point, and Carl Kumpf interfered with and assisted the PMW and its Local 403, prior to May 31, 1961, in violation of Section 8(a)(2) and (1) of the Act by meeting and negotiating with PMW while the UMW was the majority representative of the employees, and by encouraging and soliciting the employees to choose PMW as their bargaining agent in place of UMW. We similarly find that by like conduct occurring after May 31, and by Center Point's executing the collective-bargaining agreement with PMW at a time that the Union did not represent an uncoerced majority of Center Point's employees, Center Point and Kumpf further violated Section 8(a)(2) and (1). Also in agreement with the Trial Examiner, we find that Respondent PMW violated Section 8(b)(1)(A) by entering into this bargaining agreement providing for exclusive recognition when it did not represent an uncoerced majority of Center Point's employees.<sup>4</sup> This contract specifically provided for the deduction of union fees and dues and their remittance to PNW. By receipt of these moneys pursuant to this contract, we find, as alleged in the complaint, that PMW further violated Section 8(b)(1)(A) of the Act.<sup>5</sup>

4. The Trial Examiner found that the Respondent Companies violated Section 8(a)(3) and (1) by entering into the contract with PMW which contract he found required membership in PMW as a condition of employment. He also found that PMW violated Section 8(b)(1)(A) by entering into such a contract. The contract clause in question provides in pertinent part:

... as a condition of employment all employees covered by this contract shall be or shall become members of the Progressive Mine Workers of America to the extent and in the manner permitted by law.

In view of the fact that Indiana has a right-to-work law under which membership in a union cannot be made a condition of employment, and in light of the Supreme Court's decision in *News Syndicate*,<sup>6</sup> we find that the contract does not, by itself, condition employment upon PMW membership.<sup>7</sup>

<sup>4</sup> *International Ladies' Garment Workers' Union, AFL-CIO v. N.L.R.B. (Bernhard-Altman Texas Corp)*, 366 U S 731.

<sup>5</sup> Inasmuch as PMW's exclusive recognition agreement with Center Point, although without union-security provisions, imposed a bargaining agent which was not freely chosen by a majority of Center Point employees, Member Brown agrees that PMW, by its execution of such contract, violated Section 8(b)(1)(A) of the Act. However, he finds no justification for the finding that PMW restrained and coerced employees in further violation of Section 8(b)(1)(A) by any receipt of moneys from employees covered by the contract and consequently does not join in the finding of this additional violation

<sup>6</sup> *N.L.R.B. v. News Syndicate Company, Inc. and New York Mailers' Union No 6, International Typographical Union, AFL-CIO*, 365 U S. 695.

<sup>7</sup> See also *John L. Lewis et al. v. Quality Coal Corp.*, 270 F. 2d 140 (C.A. 7); *Perry Coal Company and Peabody Coal Company, et al. v. N.L.R.B.*, 284 F. 2d 910 (C.A. 7).

However, we do find that in actual practice, Respondent Center Point conditioned employment on PMW membership. We note here the alternative of "no-union" or PMW given by Carl Kumpf to the employees; Kumpf's frequently expressed preferences for and his unlawful activities on behalf of PMW; the statements by Supervisor Arthur Kumpf to prospective employees Loughmiller and Thomas that the mine was "going to operate Progressive or not at all"; and the fact that these employees are required to sign PMW membership application cards before starting work. Under all the circumstances, we think it clear that Respondents Center Point and Carl Kumpf unlawfully required membership in PMW as a condition of employment in violation of Section 8(a)(3) and (1) of the Act.<sup>8</sup>

Upon Center Point's start of its operation of the mine, it was the sole employer of the employees. Irrespective of the unfair labor practices we have found to have been committed by Quality-Brazil prior to this time, it is clear that the unlawful hiring practices engaged in by Center Point are not attributable to the employees' former employer. Thus, our finding of a violation of Section 8(a)(3) and (1) here is limited to Respondents Center Point and Carl Kumpf.

5. Because the Trial Examiner considered the remedy he recommended "broader than and inclusive of the usual remedy for individual Section 8(a)(3) violations," he found it unnecessary to consider whether the Respondents unlawfully failed and refused to recall certain named individuals as alleged in the complaint. The General Counsel excepts to the Trial Examiner's failure to so find.

In our view, and contrary to the contentions of the General Counsel, the record will not support a finding that the named employees suffered discrimination. The record established that between February 21 and 24, 1961. Quality laid off 13 of its 36 employees for "lack of work." All of Quality's 23 remaining employees were laid off for the same reason between May 24 and 31, 1961.<sup>9</sup> On June 5, Center Point began its operation at the mine with those employees who had participated in the precontract discussions with the PMW being among the first hired. Subsequent hirings brought the total number of employees to 26 at the time of the hearing herein (10 less than the number on the payroll when layoffs began in February 1961). With four exceptions, all of these were former Quality employees. The alleged

<sup>8</sup> We note that the General Counsel had not specifically alleged that the PMW contract was unlawful on its face, but only that the Respondent Companies had maintained an unlawful condition. The General Counsel did not allege that Respondent PMW, either by the terms of the contract or by arrangement with the Companies, made PMW membership a condition of employment. Our finding here is that Respondents Center Point and Kumpf maintained an unlawful hiring practice. We do not find that this was pursuant to any arrangement with the PMW, and accordingly are not finding a violation by PMW in this regard.

<sup>9</sup> Although the General Counsel had alleged that these terminations were unlawfully motivated, he did not except to the Trial Examiner's failure to find that they were in violation of Section 8(a)(3) of the Act.

individual discriminatees are 14 former Quality employees who have not been recalled, and 3 others who were not recalled until September 1961. Contrary to what appears to be the General Counsel's theory, we do not think that the fact that those employees who had signed PMW membership cards at the time the PMW contract was executed were among the first recalled is sufficient to support a finding of specific discrimination as to the individuals not recalled. We note that four employees who were not members of the original "pro-PMW" group were put to work before all members of that group were employed, and further that among the 26 hired by the time of the hearing several had not expressed an earlier interest in PMW. We also note that there is no evidence in this record that any of the alleged discriminatees had applied for work at Center Point. Moreover, there is no substantial evidence that in recalling or rehiring former Quality employees for Center Point, Kumpf departed from any method of recall he had previously used, or that his basis for recall was not, as he testified, on qualifications alone. Accordingly, we find that the General Counsel has not sustained his burden of proof as to the alleged individual discriminations.

### The Remedy

Having found that the Respondents engaged in certain unfair labor practices, we shall provide for an appropriate cease-and-desist order and shall direct that certain affirmative action be taken in order to effectuate the policies of the Act.

As to Quality and Brazil, we have found that these Respondents have engaged in conduct violative of Section 8(a)(1), (2), and (5) of the Act. In view of the fact that Quality and Brazil no longer operate the mine and as the employees at work there are no longer their employees, there is no justification for the issuance of an affirmative order requiring Quality-Brazil to bargain with the UMW. Nevertheless, as these Respondents did illegally refuse to bargain prior to May 31, 1961, we find it appropriate to remedy that violation by requiring Quality-Brazil to bargain with the UMW if, and when, it resumes operation of the mine. We reserve the right to modify this Order if there is substantial change of conditions in the future, or to clarify its application to specific circumstances not now apparent.

As to Center Point and Kumpf, we shall direct that these Respondents withdraw and withhold recognition from PMW and its Local 403 until they are certified by the Board. We shall also direct that, upon request, they bargain with the UMW as the representative of Center Point's employees in the appropriate unit. We have found that these Respondents unlawfully assisted PMW by inducing employees to become members of that labor organization and by signing an ex-

clusive bargaining contract with it when PMW was not the majority representative, and that they unlawfully conditioned employment upon membership in this assisted union. In these circumstances, we believe that to fully remedy these unfair labor practices the employees should be reimbursed for all dues and other fees exacted from them and paid to the PMW as the price of employment.

Although we have found that PMW was not party to any arrangement with Center Point which made PMW membership mandatory, we shall, in order to remedy PMW's unlawful conduct, direct that PMW be jointly and severally liable with Center Point for reimbursing the employees. As noted, the bargaining agreement PMW signed with Center Point not only contemplated but in fact expressly provided for the checking off of dues, fees, and assessments by Center Point and their remittance to PMW, and we have found that PMW violated the Act in this regard. PMW, therefore, must share with Center Point the responsibility for its recognition as the bargaining representative of these employees and the results which flowed from that recognition. To absolve PMW of liability respecting the dues and fees remitted to it under the unlawful contract would permit PMW to profit from its own wrong doing. Hence, any order short of making PMW jointly and severally liable with Center Point for reimbursement of the employees would not remedy the violations found. We shall, therefore, order Respondents Center Point and PMW to reimburse the employees for all dues and fees, exacted and retained. Also, in accordance with our decision in *Isis Plumbing & Heating Co.*, 138 NLRB 716, we shall include an allowance for interest thereon, such interest to be computed in the manner set forth in *Seafarers International Union of North America, Great Lakes District, AFL-CIO*, 138 NLRB 1142.<sup>10</sup>

### ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondents Quality Coal Corporation, Brazil Block Coal and Clay Co., Inc., and Carl F. Kumpf, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

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<sup>10</sup> For the reasons stated in his dissenting opinion in *Isis Plumbing & Heating Co.*, 138 NLRB 716, Board Member Rodgers is convinced that the award of interest on dues reimbursement, like the attachment of interest to backpay, exceeds the Board's remedial authority. Accordingly, he dissents from that portion of the Decision and Order herein which awards such interest. Also, as the theory of the *Isis* decision is at least in part that the party who holds and utilizes the money due an employee should pay interest on it, Board Member Rodgers would not, even applying the *Isis* result, require Respondent Center Point to pay interest on dues and fees it did not retain in its possession.

(a) Assisting and contributing support to International Union, Progressive Mine Workers of America, and its Local 403, or to any other labor organization.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Local 7365, United Mine Workers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

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

(a) If and when Respondents resume operation of the mine presently operated by Center Point Block Coal Corporation, bargain, upon request, with Local 7365, United Mine Workers of America, as the exclusive representative of all employees in the appropriate unit described in the Intermediate Report, and embody any understanding reached in a signed agreement.

(b) Send to each of their former employees carried on the payroll in February 1961, a copy of the attached notice marked "Appendix A."<sup>11</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by Respondents, be sent to the employees at their last known address.

(c) Notify the Regional Director for the Twenty-fifth Region, in writing, within 10 days from the date of this Order, what steps the Respondents have taken to comply herewith.

B. Respondents Center Point Block Coal Corporation and Carl F. Kumpf, their officers, agents, successors, and assigns, shall :

1. Cease and desist from :

(a) Giving effect to the collective-bargaining agreement entered into on or about June 3, 1961, with International Union, Progressive Mine Workers of America, or to any extension, renewal, or modification thereof, or any other contract or agreement with said labor organization or its Local 403 which may now be in force.

(b) Recognizing the above-named labor organization or its Local 403 as the representative of any of its employees for the purpose of dealing with it concerning wages, rates of pay, hours of employment, or other conditions of employment, unless and until such labor organization shall have been certified by the Board as the exclusive representative of the Respondent's employees in the appropriate unit.

(c) Assisting and contributing support to the above-named labor organization and its Local 403, or to any other labor organization.

<sup>11</sup> In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

(d) Requiring as a condition of employment that employees be members of the above-named labor organization or its Local 403.

(e) Refusing and failing to bargain with Local 7365, United Mine Workers of America, concerning wages, rates of pay, hours of employment or other conditions of employment, as the exclusive representative of all employees in the appropriate unit described in the Intermediate Report.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, including Local 7365, United Mine Workers of America, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities.

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

(a) Withdraw and withhold all recognition from International Union, Progressive Mine Workers of America, and its Local 403, as the exclusive representative of its employees, unless and until such labor organization shall have been certified by the Board as such representative.

(b) Upon request, bargain collectively with Local 7365, United Mine Workers of America, as the exclusive representative of the employees in the unit found appropriate concerning wages, rates of pay, hours of employment, or other conditions of employment, and embody any understanding reached in a signed agreement.

(c) Jointly and severally with Respondent International Union, Progressive Mine Workers of America, reimburse all employees for dues, fees, and other assessments exacted from them as a condition of employment,<sup>12</sup> together with interest at the rate of 6 percent per annum in the manner set forth in the section of the Board's Decision and Order entitled "The Remedy."

(d) 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 amounts of reimbursement due under the terms of this Order.

(e) Post at its mine copies of the attached notice marked "Appendix B."<sup>13</sup> Copies of such notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by authorized representatives, be posted immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily

<sup>12</sup> In accord with the Board's usual practice, we shall not hold Respondent Kumpf individually liable for reimbursement.

<sup>13</sup> See footnote 11, *supra*.

posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(f) Mail to the Regional Director for the Twenty-fifth Region signed copies of the notice marked "Appendix B" for posting by Respondent International Union, Progressive Mine Workers of America, as provided herein. Copies of said notice, to be furnished by the Regional Director, shall, after being duly signed by representatives of Respondents, be forthwith returned for such posting.

(g) Post at the same places and under the same conditions as set forth in (e) above, as soon as they are forwarded by the Regional Director, copies of the notice marked "Appendix C."

(h) Notify the said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondents have taken to comply herewith.

C. Respondent International Union, Progressive Mine Workers of America, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Giving effect to the collective-bargaining agreement entered into on or about June 3, 1961, with Center Point Block Coal Corporation, or any extension, renewal, or modification thereof.

(b) Acting as the exclusive bargaining representative of the employees of the above-named Company for the purpose of dealing with said Company concerning wages, rates of pay, hours of employment, or other conditions of employment unless and until said labor organization shall have been certified by the Board as such exclusive representative.

(c) In any like or related manner, restraining or coercing the employees of the above-named Company in the exercise of the rights guaranteed in Section 7 of the Act.

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

(a) Jointly and severally with Respondent Center Point Block Coal Corporation reimburse all employees of this company for dues, fees, and other assessments exacted from them and remitted to Respondent labor organization, together with interest at the rate of 6 percent per annum in the manner set forth in the section of the Board's Decision and Order entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records necessary to analyze the amounts of reimbursement due under the terms of this Order.

(c) Post at its offices and meeting halls, copies of the attached notice marked "Appendix C."<sup>14</sup> Copies of such notice, to be fur-

<sup>14</sup> See footnote 11, *supra*.

nished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by an authorized representative, be posted immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members 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.

(d) Mail to the Regional Director for the Twenty-fifth Region signed copies of the notice marked "Appendix C" for posting as provided in B(2)(g) of this Order. Copies of said notice, to be furnished by the Regional Director, shall, after being duly signed by a representative of the Respondent, be forthwith returned for such posting.

(e) Post at the same places and under the same conditions as set forth in (b) above, as soon as they are forwarded by the Regional Director, copies of the notice marked "Appendix B."

(f) Notify the said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

## APPENDIX A

### NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order 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, if and when we resume operation of the mine presently operated by Center Point Block Coal Corporation, bargain, upon request, with Local 7365, United Mine Workers of America, as the exclusive representative of all our employees in the unit described below, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is:

All employees employed at the Center Point mine, including truckdrivers, excluding all office clerical employees, guards, professional employees, and all supervisors as defined in the Act.

WE WILL NOT assist or contribute support to International Union, Progressive Mine Workers of America, or its Local 403, or to any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local

7365, United Mine Workers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

QUALITY COAL CORPORATION,  
*Employer.*

Dated\_\_\_\_\_ By\_\_\_\_\_

(Representative) (Title)

BRAZIL BLOCK COAL AND CLAY CO., INC.,  
*Employer.*

Dated\_\_\_\_\_ By\_\_\_\_\_

(Representative) (Title)

CARL F. KUMPF,  
*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.

Employees may communicate directly with the Board's Regional Office, 150 West Market Street, Indianapolis 4, Indiana, Telephone Number, Melrose 3-8921, if they have any question concerning this notice or compliance with its provisions.

APPENDIX B

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT give effect to the collective-bargaining agreement entered into on or about June 3, 1961, with International Union, Progressive Mine Workers of America, or to any extension, renewal, or modification thereof, or any other contract or agreement with said labor organization or its Local 403.

WE WILL NOT assist or support the above-named labor organization or its Local 403, or any other labor organization.

WE WILL NOT require as a condition of employment that employees be members of the above-named labor organization.

WE WILL withdraw and withhold recognition from the above-named labor organization, and its Local 403, unless and until such

labor organization shall have been certified by the Board as the exclusive representative of our employees.

WE WILL, jointly and severally with the International Union, Progressive Mine Workers of America, reimburse all employees for dues, fees, and other assessments exacted from them as a condition of employment and remitted to this labor organization, with interest thereon at 6 percent.

WE WILL, upon request, bargain collectively with Local 7365, United Mine Workers of America as the exclusive representative of our employees in the following appropriate unit concerning wages, rates of pay, hours of employment, or other conditions of employment, and embody any understanding reached in a signed agreement. The appropriate unit is:

All employees employed at the Center Point mine, including truckdrivers, excluding all office clerical employees, guards, professional employees, and all supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, including Local 7365, United Mine Workers of America, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

All our employees are free to become or to refrain from becoming or remaining members of Local 7365, United Mine Workers of America, or any other labor organization.

CENTER POINT BLOCK COAL CORPORATION,  
*Employer.*

Dated\_\_\_\_\_ By\_\_\_\_\_

(Representative) (Title)

CARL F. KUMPF

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.

Employees may communicate directly with the Board's Regional Office 150 West Market Street, Indianapolis 4, Indiana, Telephone Number, Melrose 3-8921, if they have any question concerning this notice or compliance with its provisions.

APPENDIX C

NOTICE TO ALL MEMBERS OF INTERNATIONAL UNION, PROGRESSIVE MINE WORKERS OF AMERICA, AND TO ALL EMPLOYEES OF CENTER POINT BLOCK COAL CORPORATION, CENTER POINT, INDIANA

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT give effect to the collective-bargaining agreement entered into on or about June 3, 1961, with Center Point Block Coal Corporation, or any extension, renewal, or modification thereof.

WE WILL NOT act as the exclusive bargaining representative of any of the employees of Center Point Block Coal Corporation, unless and until we have been certified by the Board as such representative.

WE WILL NOT in any like or related manner restrain or coerce employees of Center Point Block Coal Corporation in the exercise of rights guaranteed in Section 7 of the Act.

WE WILL, jointly and severally with Center Point Block Coal Corporation, reimburse the employees of this Company for dues, fees, and other assessments exacted from them as a condition of their employment and remitted to us.

INTERNATIONAL UNION, PROGRESSIVE  
MINE WORKERS OF AMERICA,  
*Labor Organization.*

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.

Employees may communicate directly with the Board's Regional Office, 150 West Market Street, Indianapolis 4, Indiana, Telephone Number, Melrose 2-1551, if they have any question concerning this notice or compliance with its provisions.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASES

There are two cases in both of which the charges were filed by Local 7365, United Mine Workers of America, herein referred to as UMW.

In Case No. 25-CA-1399 complaint issued on August 4, 1961. The complaint as amended alleges that Respondents Quality Coal Corporation (herein called Quality), Brazil Block Coal and Clay Co., Inc. (herein called Brazil), Center Point Block Coal Corporation (herein called Center Point), and Carl F. Kumpf, an individual (herein called Kumpf),<sup>1</sup> individually and collectively violated Section 8(a)(1),

<sup>1</sup> Other persons mentioned herein who have the surname "Kumpf" will be distinguished from this Respondent by their first name or initials.

(2), (3), and (5) of the Act; and, Brazil was a successor employer to Quality and/or the two corporations were a single employer and Center Point is a successor employer to Brazil and Quality. Each of Respondents filed answer denying the alleged unlawful conduct. Prior to hearing Local Union No. 403, Progressive Mine Workers of America (herein called Local 403, PMW), and International Union, Progressive Mine Workers of America<sup>2</sup> (herein called PMW), filed a motion to intervene which was granted. Thereafter each of them filed an answer denying that Respondents had engaged in a course of conduct in concert or relations with PMW which violated the Act as alleged in the complaint.<sup>3</sup>

In Case No. 25-CB-457 complaint issued on August 29, 1961. It alleges that: (1) Brazil was a successor employer to Quality and/or the two corporations were a single employer, and Center Point is a successor employer to Brazil and Quality; (2) PMW and the employer(s) entered into negotiations for and executed a collective-bargaining contract at a time when PMW did not represent a majority of employees in a unit; and (3) the provisions of the contract, adhered to by the parties thereto, restrained and coerced and are restraining and coercing the employees in the exercise of their rights guaranteed by Section 7 of the Act in violation of Section 8(b)(1)(A). Local 403, PMW, and PMW filed a "combined answer" in which they: (1) admit the appropriateness of the collective-bargaining unit as alleged in the complaint; (2) admit the existence of the contract and checkoff of dues, fees, and assessments by the employer for the account of PMW; and (3) deny the commission of any unfair labor practice.

On August 29, 1961, the Regional Director for the Twenty-fifth Region issued an order consolidating the cases for hearing.

Hearing was held before Trial Examiner John H. Dorsey at Brazil and Terre Haute, Indiana, on September 19 and 20, 1961.<sup>4</sup> The parties waived oral argument. Each filed a brief.

Upon the entire record, consideration of the briefs, and my observations of the demeanor of the witnesses, I make the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF RESPONDENT EMPLOYERS

This proceeding involves the Center Point strip mine located near Center Point, Indiana, herein referred to as the Mine. The Mine property with appurtenances had been owned or leased by Brazil for many years and, insofar as herein material, from 1955 to May 31, 1961. The Mine was worked by Quality during the period. Since on or before June 5, 1961, the Mine property has been and is owned or leased and worked by Center Point<sup>5</sup>

Brazil, Quality, and Center Point are each corporations, incorporated under the laws of the State of Indiana, and their principal place of business is the Center Point Mine. Kumpf has been and is operating head, officer, director, and stockholder in each of the three corporations.

During the year ending December 31, 1960, Quality and Brazil, in the course and conduct of their business operations, caused to be mined and sold at Center Point, Indiana, coal valued in excess of \$450,000 of which coal valued in excess of \$300,000 was sold to, among others, Bell & Zoller of Chicago, Illinois, which enterprise ships products purchased in Indiana valued in excess of \$50,000 from Indiana to customers located in the State of Illinois, Wisconsin, and Iowa.<sup>6</sup> Further the evidence establishes that from September 1, 1960, to May 31, 1961, Brazil sold coal valued in excess of \$100,000 to Bell & Zoller that was shipped out of the State of Indiana. Counsel admitted that up to May 31, Brazil and Quality each met the Board's jurisdictional requirements.

Center Point was incorporated on March 18, 1961, and acquired from Brazil all its rights, title, and interest in the Mine realty and appurtenances; also, it purchased selected machinery and equipment from Brazil and leased, in April, a new Page dragline which had been advised by technicians as necessary to increase production

<sup>2</sup> The name of International Union, Progressive Mine Workers of America, appears as amended at the hearing

<sup>3</sup> The complaint alleges that Respondents (1) engaged in a course of conduct with PMW in violation of Section 8(a)(2) of the Act; (2) bargained with PMW in violation of Section 8(a)(5) of the Act; and (3) in establishing and effectuating their relationship(s) with PMW, violated Section 8(a)(3) and (1) of the Act

<sup>4</sup> All dates herein are in the year 1961 unless otherwise indicated

<sup>5</sup> The facts concerning the acquisition of the Mine by Center Point are set forth, *infra*.

<sup>6</sup> This is admitted in the answers of Quality and Brazil.

and make the working of the Mine efficient and profitable.<sup>7</sup> On or about 1, 1961, Center Point took possession of the Mine and continued to sell coal to Bell & Zoller as did the predecessor operator. On September 5, it began operating a new Page dragline with a 16-cubic-foot capacity which replaced a dragline of 10-cubic-foot capacity which had been used by the predecessor operator and which had worn out in February 1961. It is not disputed that the new Page dragline was acquired on the advice of engineering specialist as being necessary to increase production to make the working of the Mine a profitable venture. Inasmuch as Center Point admitted that it was working the Mine with more productive equipment than Quality and Brazil and was selling its coal through the same factor it can be concluded that the amount of coal which it will produce each year which will be shipped to points outside the State of Indiana will be at least equal to that so shipped by its predecessor operator.<sup>8</sup> Cf. *C & P Coal Company*, 130 NLRB 910.

Upon the basis of the foregoing I find that at all times material herein Quality, Brazil, and Center Point engaged in commerce and operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Kumpf, at all times material herein, has been and is an officer of Quality, Brazil, and Center Point and has been head of operations at the Mine. On the basis of his relationship to each of the corporations, the scope of his authority and functions and his actions on behalf of the corporations, the facts of which are set forth, *infra*, I find that Kumpf was and is an agent of each corporation and is an "employer" within the meaning of Section 2(2) of the Act.

## II. THE LABOR ORGANIZATIONS INVOLVED

I find that PMW; Local 403 PMW; and UMW are each labor organizations within the meaning of Section 2(5) of the Act.

## III. THE CORPORATE STRUCTURE OF AND RELATIONSHIPS BETWEEN QUALITY-BRAZIL-CENTER POINT

### A. Stockholders of Respondent corporations

Brazil issued 25 shares of common stock held as follows:

1955: All 25 shares owned by Quality.

1956: All 25 shares transferred to A. E. Geisey an officer-director of both Brazil and Quality.

1956: Geisey sold 12½ shares to Kumpf an officer-director of Brazil and Quality.

March 10, 1961: Brazil bought Geisey's 12½ shares and put in treasury stock.<sup>9</sup>

Quality issued 185 shares of common stock held as follows:

1955: 185 shares held by Kumpf and his wife Thelma.

1956: Kumpf and his wife transferred the 185 shares to Brazil.

Center Point was incorporated on March 18, 1961, for the sole purpose of purchasing and operating the Mine. Its stock is held as follows:

	<i>No. of shares</i>
Lafayette Spring Coal Co. -----	1,000
Kumpf -----	232
A. E. Geisey -----	120
Arthur L. Kumpf -----	45
P. Melvin Kumpf <sup>10</sup> -----	30
Howard Dean -----	7
Howard Burns -----	75

<sup>7</sup> The facts concerning the lease are set forth, *infra*.

<sup>8</sup> From June 1 to August 31, Bell & Zoller purchased in excess of \$5,000 of coal from Center Point which was sent by rail and truck to points outside the State of Indiana. Respondent Kumpf testified on September 19, the first day of the hearing, that the new Page dragline had been operating from September 5—a 2-week period—and during that period, coal, having a sales value of \$20,000, had been sold by Center Point to Bell & Zoller, at least some of which went to Illinois; and, during the period the new Page dragline was only "running part time." A projection, based on this experience, indicates sales by Center Point to Bell & Zoller for interstate shipment greatly in excess of the minimum jurisdiction amount.

<sup>9</sup> As shown, *infra*, this transfer occurred shortly before Center Point purchased Brazil's interests in the Mine.

<sup>10</sup> Arthur L. Kumpf and P. Melvin Kumpf are brothers of Respondent Kumpf.

*B. Officers and directors of Respondent Corporations*

Name	Brazil		Quality		Center Point	
	Office	Director	Office	Director	Office	Director
Kumpf.....	Pres.....	×	Pres.....	×	Vice pres.....	×
A E Geisey.....	Vice pres.....	×	Sec.....	×	.....	.....
Thelma Kumpf.....	Sec-treas.....	×	.....	×	.....	.....
A. L. Kumpf.....	.....	.....	Vice pres.....	.....	.....	.....
M. K. Kumpf.....	.....	.....	Treas.....	.....	.....	.....
John Wade Bell.....	.....	.....	.....	.....	Pres.....	×
C. F. Cunningham.....	.....	.....	.....	.....	Sec-treas.....	×

*C. Relationship between Brazil and Quality*

Since 1955 Quality has mined coal only on lands leased or owned by Brazil. Brazil has leased to no other mining companies. From at least 1955 up until December 21, 1957, Quality operated on lands leased by it from Brazil, paying Brazil an "override" with a "royalty" paid to land owners. On or about December 19, 1955, Brazil and Quality entered into an agreement whereby nearly all of Quality's assets and liabilities were transferred to Brazil. This agreement established a lease of equipment from Brazil to Quality, rental of which was established at \$3,000 per month for the first 6 months, and \$8,000 per month thereafter. Quality never made any of these payments to Brazil. Yet, Brazil made no attempt to lease or rent its assets to any other party. On or about December 17, 1957, Quality sold all of its assets to Brazil. Since January 1, 1958, Quality had a contract with Brazil whereby Quality mined coal lands owned or leased by Brazil, used equipment owned by Brazil with Brazil selling the coal and paying Quality on a cost-plus basis; this arrangement continued to May 31, 1961.

Throughout all the period from 1955 to May 31, 1961, Kumpf was president of both Quality and Brazil. He ran the affairs of each as he alone chose<sup>11</sup> He received one salary for his work from both corporations with no differentiation as for whom his services were performed. Brazil and Quality shared the same address, the same physical office facilities, a single office manager. The books of both corporations were kept in the Cleveland, Ohio, office of A. E. Geisey, an officer-director of both corporations.

*D. Organization of Center Point*

In January 1961, the Page Engineering Company of Chicago, Illinois, made a report to Kumpf of a survey made of the Mine in December 1960. It recommended the installation of a large Page dragline to increase efficiency and production to attain profitable operation of the Mine. It appearing to Page that Quality and/or Brazil could not afford such an installation Page brought the situation to the attention of John Wade Bell, Jr., and Castle F. Cunningham, officers of the Lafayette Spring Coal Company of West Virginia, who were seeking investments in the coal mining business. Bell made several trips to Center Point, the first in January or February 1961. After exploring the situation Bell entered into negotiations with Kumpf

As a result of the negotiations between Kumpf and Bell, Center Point was incorporated on March 18, 1961, for the purpose of purchasing the rights, titles, and interests of Quality-Brazil in the Mine and selected machinery and equipment. Prior to this date the parties had the properties appraised, abstracts of title furnished, and reached agreement. The interests represented by Bell and Cunningham acquired two-thirds of the stock of Center Point for \$150,000. The record does not reveal what consideration was given by Kumpf and the other stockholders of Center Point for their stock. The actual purchase of the properties was from Brazil which at that time had outstanding only 12½ shares owned by Kumpf.<sup>12</sup> In April 1961 Center Point signed a lease agreement with Page Engineering Company for the rental of a 16-cubic-foot dragline to be installed at the Mine for a term of 72 months (6 years) at a rental of \$14,464 per month. Assembly of this dragline was begun

<sup>11</sup> He described himself as being the "ramrod."

<sup>12</sup> The corporations, Quality and Brazil, continue in existence

at the Mine about June 5 and it was put into operation about September 5. On June 30, Center Point purchased additional equipment and supplies from Brazil. All the equipment now used by Center Point in operating the Mine was purchased from Brazil with the exception of the Page dragline.

#### E. Management of Center Point

While the equity interest and controlling interest in Center Point differs from that of Quality and Brazil, Kumpf continues to be the operating head of the mining operations. While Kumpf testified that his status changed because he no longer had controlling stock interest and had to keep informed Bell and Cunningham, the other two officers-directors, the record does not disclose any diminution of Kumpf's authority as sole head of operations at the Mine.<sup>13</sup> Bell and Cunningham can be likened to absentee owners reposing operational control in Kumpf.

When Center Point took over operation of the Mine, on or about June 1, it continued to sell coal to Bell & Zoller as provided for in the contract between that organization and Quality. Kumpf testified that in the period from June 5 to September 5, during which the new Page dragline was being assembled, Center Point purchased coal from other mines and prepared it for sale "in order to keep our coal contracts."

#### CONCLUSIONS

Upon the basis of the foregoing facts, I find that:

1. Quality and Brazil are a single employer, hereinafter referred to as Quality-Brazil.
2. Center Point is a successor employer to Quality-Brazil.
3. Kumpf is an "employer" within the meaning of Section 2(2) of the Act.
4. From March 18 Kumpf was, at the same time, an agent of Quality, Brazil, and Center Point and each of the three corporations, individually and collectively, is responsible for his actions involving labor relations at the Mine.
5. As a successor employer to Quality-Brazil, Center Point was and is legally obligated to: (a) recognize the exclusive bargaining representative of Quality Brazil employees; and (b) to honor, for its term, any collective-bargaining contract between said representative and Quality-Brazil existing as of the date the successorship was effectuated.

#### IV. THE UNFAIR LABOR PRACTICES

##### A. Background

For over 20 years Quality has been party to collective-bargaining agreements with UMW.<sup>14</sup> The last agreement was signed December 16, 1958. *Inter alia*, it provided for UMW membership of the employees; checkoff of UMW dues, etc.; payment to UMW's welfare fund of a royalty of 40 cents per ton payment of coal mined; and, after November 30, 1959, termination of the contract by either party upon 60 days' written notice. Quality-Brazil concede that all employees in the unit were members of UMW through May 31, 1961, and that UMW was the exclusive bargaining representative to that date.

Since sometime prior to 1955, Quality made no payments to UMW's welfare fund. The trustees of the welfare fund, as a consequence, initiated two actions against Quality. The first was filed on October 31, 1955, resulting in a summary judgment against Quality for an amount in excess of \$40,000 which was affirmed on appeal.<sup>15</sup> This judgment was subsequently satisfied. The second action resulted in a summary judgment, issued December 8, 1958, against Quality in excess of \$84,000 which, also, was affirmed on appeal.<sup>16</sup> This judgment remains outstanding.

In a letter signed by Kumpf, dated March 31, 1961, addressed to UMW with copies to Federal Mediation Service and the National Labor Relations Board, Quality "advised that this letter is the formal notice of the cancellation of the existing Agreement as of the close of business May 31, 1961." The Conciliation Service of the Indiana Department of Labor was not notified until August 30.

<sup>13</sup> Concerning his relationship with Bell and Cunningham, Kumpf testified, ". . . they can help me outline what we do. We make our policy in the board of directors' meetings." There is no evidence of any such policy making meetings.

<sup>14</sup> Kumpf signed all of these agreements for the employer.

<sup>15</sup> *John L. Lewis, et al. v. Quality Coal Corporation*, 243 F. 2d 769 (C.A. 7); cert. denied 353 U.S. 882.

<sup>16</sup> *John L. Lewis, et al. v. Quality Coal Corporation*, 270 F. 2d 140 (C.A. 7); cert. denied 361 U.S. 929.

### B. *The appropriate unit*

Respondents admit and I find that the following described unit is appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by employer Respondents and/or each of them at the Center Point Mine, including truckdrivers, excluding all office clerical employees, guards, professional employees, and all supervisors as defined in the Act.

### C. *The unfair labor practices*

In weighing the facts the following are ubiquitously significant:

1. The failure of Quality to make the 40 cents per ton royalty payments to the UMW welfare fund. Kumpf's attitude, often expressed by him and a matter of common knowledge among the employees, was that the Mine could not continue to be operated if required to pay this royalty. As shown, *infra*, Kumpf sought a way to avoid making such payments; and, this motivated the commission of unfair labor practices.

2. Kumpf, Cunningham, and Bell began negotiations for the sale of the Mine in January or February and all agreements for the sale were completed prior to March 18, on which date Center Point was incorporated for the sole purpose of purchasing the Mine—Kumpf, Cunningham, and Bell being the only officers and directors of Center Point. On March 18, Kumpf, Cunningham, and Bell all were agents of Center Point with knowledge that Center Point would take over operation of the Mine on or about June 1.<sup>17</sup>

3. UMW was the admitted collective-bargaining representative of the employees of the Mine, with a contract in force, in the period from at least 1958 through May 31, 1961.

#### 1. The initiation and creation of the Center Point-PMW relationship

About March 15, Kumpf made a trip to Harrisburg, Illinois, where he met with an International representative of PMW with whom he talked "for a couple of hours, just generalities." He reported what occurred at this meeting to Cunningham and Bell about the middle of April and suggested that they go with him to Harrisburg and meet with the International representative of PMW "just [to] get it direct and see if I had the information straight." This they did on or about April 15. In testifying concerning the April 15 meeting, Kumpf said that Cunningham and Bell were given the same information, by the PMW representatives, he had obtained at the March meeting. Asked what had prompted him to go to the PMW Kumpf replied that some of the employees had asked him to get information from PMW. Although this may have been so the following testimony of Kumpf reveals his reason:

Q. Where did those negotiations take place?

A. It wasn't exactly a negotiation, it was a fact finding trip to find out whether we wanted it or not.

TRIAL EXAMINER: Whether you wanted what?

The WITNESS: Whether I wanted to join any union or not. I was to go non-union, that's the only way I was interested.

When asked what information he had gotten Kumpf replied:

. . . it was information as to what the welfare paid, what sick or hospitalization, death benefit, the amount of money paid in by the Companies. . . .

The rest of it would be generalities, the main thing—let's see—was the welfare and retirement for the men. . . .

At another point in his testimony when pressed as to what facts he was seeking, Kumpf answered:

Trying to find out the facts about Progressive Mines, what kind of a welfare system they had, see whether it actually worked. . . .

Throughout his testimony Kumpf's demeanor was persuasively convincing that the "fact finding" in which he, Cunningham, and Bell were interested was what payments would have to be made to the PMW welfare fund if the employees of the Mine were covered by a PMW contract.

Kumpf received a letter, dated May 5, 1961, from Eugene Hughes, president of PMW, which reads:

<sup>17</sup> June 1 was the date set by Page Engineering for beginning delivery of the components of the new dragline to the Mine for assembly by employees of the Mine.

Pursuant to my telephone conversations with you, and the other conversations of officers and members of this Union, you are hereby informed that we are contemplating on setting up a local union of the Progressive Mine Workers of America, at Brazil, Indiana.

It is my understanding that you intend to open up an operation of a mine near Center Point, Indiana and we hereby request the opportunity of meeting with you and discussing the possibility of this organization representing your employees.

The telephone conversation, Kumpf said, was originated by Hughes and occurred about a week before receipt of the letter and was "purely in generalities." Also, at the time Hughes knew that he [Kumpf] "had been gathering all information concerning the Progressive Mine Workers" and "I [Kumpf] had rechecked the information with Mr. Bell and Mr. Cunningham, and this was still at this time in the talking stage. First we [Kumpf, Bell, and Cunningham] wanted to know whether the Company would like this sort of an arrangement, and the men would have the final say as to whether they wanted to be represented by Progressive Mine Workers." [Emphasis supplied.] Implicitly, the employees would have no choice unless, "first" a deal could be made with PMW that was to the liking of Kumpf, Bell and Cunningham.

On May 24, Kumpf met with President Hughes of PMW; Jay Albertina, co-trustee of PMW's welfare and retirement fund; and PMW Attorney William Horsley. As to the reason for this meeting, Kumpf testified:

. . . my going to Springfield to get the information directly, not so much from Mr. Hughes, as from the . . . I can't directly call his name, whether it's Albert Hine or who it is, who is head of the welfare and retirement fund, and also I talked with counsel for Progressive Miners.

As to what occurred during the meeting, Respondent Kumpf listed the following:

1. He came to "tentative" agreement with PMW on the terms of three collective-bargaining contracts covering the employees of the Mine in the appropriate unit.
2. He received a supply of PMW authorization cards.
3. He made "tentative" arrangements to meet with PMW representatives at Marshall, Illinois, June 3.

Note all of the foregoing meetings, negotiations, and communications between the employer and PMW, absent any employee representation, occurred during a period in which UMW was the undisputed employees' collective-bargaining representative; and, PMW did not have as a member a single employee of the Mine. There is no evidence that the employees of the Mine were informed of these goings on.

Prior to June 2, PMW mailed to Kumpf copies of two of the three contracts "tentatively" agreed to on May 24. One was a complete agreement in respect to rates of pay, wages, hours of employment, and other conditions of employment of the Mine's employees within the appropriate unit—Bell described this agreement as "regular run of the contract." It provides, *inter alia*, for membership in PMW and checkoff of dues, fees, and assessments as conditions of employment; also, for a 40-cents per ton royalty payment to PMW's welfare fund. The other "tentative" agreement mailed to Kumpf is captioned "Modification of Agreement" which reduced the 40-cents per ton contribution of the employer to PMW's welfare fund to 20 cents per ton. The third "tentative" agreement, a copy of which was not mailed to Kumpf, was also a modification of the basic agreement which provides for a wage scale "while construction is being done to prepare the mine for operation"—the contemplated construction being the assembly of the new Page dragline<sup>18</sup> Kumpf testified that he "knew reasonably well that it would be . . . because we had talked on it" at Springfield on May 24.

About 7 p.m. on June 2, the evening before the day (June 3) on which Kumpf, at his May 24 meeting with PMW, had made a "tentative" agreement to meet with PMW representative at Marshall, Illinois, Kumpf met with 12 former employees of the mine and 2 truckers employed by R & L Trucking, Inc., who were on the mine's payroll when they were assigned to work at the mine. At the time Quality had given notice of termination of employment to all the employees of the Mine in the appropriate unit (on or before May 29) and Center Point had not started to work the Mine.

<sup>18</sup> The contention of counsel for Center Point that such an agreement comes within the purview of Section 8(f) of the Act is without merit. The employer in this case is not "engaged primarily in the building and construction industry" which is an indispensable requirement of the section.

Kumpf testified that the employees had asked him to arrange a place for the June 2 meeting. He first made arrangements to have it in his home but later changed it to the Jackson Township Band Cabin. Kumpf presided at the opening of the meeting. He had brought to the meeting the PMW authorization cards which he had obtained from the PMW. He placed them on the table; told the men what they were, and said, "There are the cards." He also brought to the meeting a letter from PMW President Hughes explaining PMW's organization and particularly its welfare and retirement fund; and, notes which he had made during his prior meetings with PMW representatives. For about an hour and a half he said he explained to those assembled, through "questions and answers," what he chose to call the information which he had obtained concerning PMW. He then left the meeting along with the two truckdrivers.

Arthur Kumpf, vice president of Quality,<sup>19</sup> when questioned as to what Kumpf had said at the meeting became very evasive. The General Counsel confronted him with an affidavit he had executed on July 26 which contained the following questions and answers pertaining to the June 2 meeting:

Q. Did Carl [Kumpf] say that if anyone does not want to belong to PMW, they can walk out and no hard feelings?

A. He did.

Q. Did he say that he could not work under the UMWA contract?

A. I don't know whether it was in the exact words that you stated it, but the group of the men as a whole knows that it is practically impossible for any small operator to move the type of coal that we have been mining and comply with the vicious terms of the UMWA.

Q. Did Carl say this at this time?

A. In about so many words.

Upon my observation of the demeanor of Arthur Kumpf, I credit the statements in his affidavit.

John Williams, one of the employees attending the meeting, testified that Kumpf said:

. . . that we have been in contact with the Progressive Mine Workers and that is the way we wish to go in business, affiliated with them, and if there is anyone that doesn't wish to belong to this organization, they can walk out right now and there will be no hard feelings.

When Kumpf was questioned as to whether he told those at the meeting that "he had checked into the Progressives enough and were willing to sign a contract," he testified:

A. I don't believe I stated it just that way.

Q. How did you state it?

A. As I have testified before, I was wanting nonunion, but if this—this would give them the protection that they wanted, and if that's what they wanted, that I would be willing to go along and sign a contract.

Q. Did you tell these men that you had been planning on or thinking about going nonunion?

A. I think that was reasonable all over the job; I believe every man knew that.

Q. You told them that?

A. They had heard me sometime or another or by the grapevine.

In 45 minutes, during which Kumpf and the truckdrivers absented themselves from the June 2 meeting, those remaining signed the PMW authorization cards and elected temporary officers. When Kumpf returned to the meeting he was told this; and, that the men had decided to get more information by meeting with PMW. Kumpf said, "We had tentative arrangements whereby they could do that," and he would contact the president of PMW. (Note: On May 24 Respondent Kumpf had made "tentative" arrangements for a meeting with PMW representatives on June 3.) Then Kumpf telephoned PMW President Hughes and confirmed the meeting for the following day and told Hughes that if the men decided to go Progressive the company would sign a contract. Arthur Kumpf, vice president of Quality, took possession of the signed authorization cards.

<sup>19</sup> In addition to being vice president Arthur Kumpf worked at the mine. He was paid a salary; the other miners were paid an hourly rate. He directed the employees in the work to be done, authorized absences from the mine, and in the absence of Respondent Kumpf he acted in his stead. I find Arthur Kumpf was a supervisor within the meaning of Section 2(11) of the Act.

On Saturday, June 3, the men who had attended the meeting the previous evening went to Marshall, Illinois, in a four-car caravan—one of the cars being that of and driven by Kumpf. In a room at a motel, which had previously been reserved, Kumpf introduced the men to representatives of PMW including President Hughes and Attorney Horsley. Then Kumpf left. The PMW representatives proceeded to read their contract to the men and discussed its welfare provisions. The men voted to have PMW as their representative and Arthur Kumpf, vice president of Quality, presented to PMW the authorization cards which had been signed the previous evening. Thereupon PMW immediately created and chartered a new local—Local 403 PMW—and the temporary officers selected the evening before were elected its officers and Arthur Kumpf, vice president of Quality, was appointed to be an officer of PMW District 4 and an International board member. Next, Kumpf was asked to come back into the room. He was introduced to the new officers and forthwith executed, on behalf of Center Point, the three contracts which he had negotiated with PMW and “tentatively” agreed to on May 24 when not a single employee was a member of PMW. The contracts were dated June 3 to be effective June 5.

On June 5 Center Point began operating the Mine. On that date five of the men who had participated in the June 2 and 3 meetings started to work for Center Point; three more on June 6; two on June 16; and two on July 13. Fourteen other men, all except two being former employees of Quality, began working on various dates from June 6 to September 11. Each of the 14 were told that as a condition of employment they had to join PMW and sign checkoff authorizations for PMW dues, fees, and assessments. Each one did before starting to work.

It bears repetition that at the time the 12 former employees of Quality joined PMW (June 2) and Kumpf executed the contract (June 3) Center Point had not begun operating the Mine and had no employees in the appropriate unit. Therefore, there being no Center Point employees on June 2 and 3 the 12 men who executed PMW's authorization cards on June 2 were not qualified to select a representative for collective bargaining on and after June 5 (Section 9(a) of the Act). Consequently they could not vest PMW with the prerogatives of exclusive bargaining representative. Counsel for Respondents contend that since the men who joined PMW had been told prior to June 5 that they would be called back to work at the Mine after Center Point began operating it they became employees at the time of the telling. I hold the employer-employee status, under the facts of this case, did not come into being until the men actually started to work. To hold otherwise would be analogous to a finding that an engagement to be married makes the parties husband and wife.

The foregoing facts, without interpolation, clearly reveal: (1) employer interference with the formation of a labor organization and contribution of support to it in violation of Section 8(a)(2) of the Act; and (2) employer interference, restraint, and coercion of employees in the exercise of their rights guaranteed by Section 7 of the Act in violation of Section 8(a)(1). Also, that PMW engaged in a course of conduct with the employer to deprive the employees of their right to self-organization, to form, join, or assist labor organizations, and to bargain through representatives of *their own choosing* in violation of Section 8(b)(1)(A) of the Act. I find accordingly.<sup>20</sup>

## 2. The UMW contract has not been terminated

There is no dispute that on March 31, there was in existence a collective-bargaining contract between Quality and UMW, all the employees of the Mine in the appropriate unit were members of UMW, and UMW was their exclusive collective-bargaining representative. This contract was subject to termination by either party upon 60 days' written notice.

In a letter to UMW, dated March 31, Quality gave notice that it was canceling the agreement as of the close of business May 31. The letter gave no reason for this action on the part of Quality. Quality forwarded copies of the letter to the Federal Mediation Board and the National Labor Relations Board. No copy or other notification was transmitted to the Conciliation Service of the Indiana State Department of Labor as required by Section 8(d)(3) of the Act.<sup>21</sup> Quality did notify the Conciliation Service on August 30; but, this did not satisfy the mandatory requirement of Section 8(d)(3) that the notice must be given within 30 days after

<sup>20</sup> These findings would be the same even if an employer-employee relationship existed on June 2 and 3 between Center Point and the 12 men who joined PMW on June 2.

<sup>21</sup> See *Local No. 156, United Packinghouse Workers of America, AFL-CIO, et al. (Du Quoin Packing Company)*, 117 NLRB 670

the date on which UMW was notified of the termination.<sup>22</sup> Consequently the contract has not been terminated as required by law; *a fortiori*, the contract remains in force.

### 3. Violation of Section 8(a)(5) of the Act

On or about April 4, after receipt of the letter from Quality concerning termination of the contract, Wilbert Killion, International board member of District 8, UMW, met with Kumpf. Killion asked the reason for the termination. Kumpf replied that the Company has lost money for a long time, he was broke, lost everything he had, could not continue to operate. Killion told Kumpf that he had heard Kumpf was buying a new dragline and asked as to Kumpf's future plans. To this Kumpf answered that he could not tell Killion anything definite, he had been working on a couple of things which did not appear to be working out, and the buying of a new dragline was only one of a number of unfounded rumors. Then Killion told Kumpf that if anything came up he wanted to get "another agreement signed"; replying, Kumpf said he had no objection but would have to wait and see what he came up with.<sup>23</sup> With reference to this meeting Kumpf testified tht he told Killion he intended to stay in business in some way and:

I had prospects in mind, but none of them ever did materialize; that was—quite a while before these fellows ever came along.<sup>24</sup>

Thus we find Respondent Kumpf deliberately misrepresenting the facts and misleading the exclusive-bargaining agent for by that time:

1. Cunningham and Bell had not only "came along" but they and Kumpf had incorporated Center Point (March 18), purchased the Mine, and made arrangements to lease a new dragline for a term of 6 years.<sup>25</sup>

2. Kumpf had met with representatives of PMW on March 15. Certainly he wouldn't have done this had he intended to cease operations at the Mine. Indeed, prior to March 18, probably before the meeting with PMW, all arrangements had been completed for transfer of the Mine to Center Point.

3. On the same day that Kumpf had written the letter to UMW concerning the termination of the UMW contract he exercised an option to extend the contract for sale of coal from the Mine to Bell & Zoller.

Collective bargaining is a continuing process. It involves day to day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employees' rights already secured by contract. The collective-bargaining agent, the UMW in this case, not only has the duty to negotiate collective-bargaining agreements but also the statutory obligation to police and administer the existing agreements. The employer has the statutory duty to furnish the collective-bargaining agent with relevant and necessary information in its possession which the agent needs to perform this function.<sup>26</sup> Kumpf's concealment from the UMW of the true facts obviously was bad faith and a failure to comply with the employers' statutory duty to supply UMW with requested information which UMW needed to perform its statutory duty. The facts in this case, alone, so glaringly paint a word picture of failure to bargain in good faith that further analysis would be superfluous.

Inasmuch as Quality-Brazil have been found to be a single employer, Center Point a successor employer to Quality-Brazil and Kumpf, simultaneously, an employer-agent for the three Respondent Corporations all of whom had knowledge of UMW's status as exclusive-bargaining representative; and, all of whom participated in the negotiations with PMW, set forth *supra*, I find that the Respondents, individually and collectively, violated Section 8(a)(5) of the Act.

<sup>22</sup> There was a "dispute" between Quality and UMW concerning the termination of the contract. True, because Respondent Kumpf misled UMW, as shown, *infra*, the facts which created the dispute were not known to UMW until after June 1. Under such circumstances the principle of *nunc pro tunc* applies. Material evidence of the dispute is the charges filed by UMW in these proceedings when the true facts became known.

<sup>23</sup> These facts are from testimony of Killion which stands unrebutted.

<sup>24</sup> The "fellows" being Cunningham and Bell.

<sup>25</sup> The lease agreement was executed sometime in April. Obviously, negotiations had been going on between the manufacturer of the dragline (Page Engineering), Kumpf, Cunningham, and Bell for sometime before.

<sup>26</sup> *J. I. Case Company*, 118 NLRB 520. See *Oregon Coast Operators Association, et al*, 113 NLRB 1338; *Leland-Gifford Company*, 95 NLRB 1306; *California Portland Cement Company*, 101 NLRB 1436; *Gulf Atlantic Warehouse Co.*, 129 NLRB 42.

## 4. After Center Point began operating the Mine

Center Point began operating the Mine on June 5. On June 7, Killion of UMW telephoned Kumpf requesting that he meet with him and UMW's District Secretary-Treasurer Linton. The meeting was set for that night at Kumpf's summer home. When Killion and Linton arrived there were four representatives of PMW present. Killion reminded Kumpf of his prior statement on April 4 regarding talking about an agreement if the Mine was operated after May 31. Kumpf, immediately and for the first time, told Killion that he had signed a contract with PMW. When Linton asked what the difference was between UMW and PMW, Kumpf spoke up and said:

Let me explain, I am just a coal miner with a high school education, and I can put it in terms that any simple minded bastard can understand . . . the difference between the two was in United Mine Workers welfare and retirement plan you paid 40 cents a ton royalty, in Progressive you paid 20 cents a ton. . . .

When Killion asked Kumpf if he was going to rehire his employees that worked for Quality, Kumpf replied, "Some would be, some would not be." Killion told Kumpf that he was obligated to recall those men, they had established job rights at the Mine, there was no difference with the exception of changing names since the same preparation plant and pit was being used. Kumpf replied that he had two partners and all the "say wasn't up to him." When Killion inquired as to the identity of his two partners Kumpf replied that it was none of his business.

## 5. The violation of Section 8(a)(3) of the Act

The complaint in Case No. 25-CA-1399 alleges that the Respondents, since June 6, failed and refused to recall and hire 20-named employees of Quality-Brazil in violation of Section 8(a)(3) of the Act.

Having found that Respondents engaged in a course of conduct with PMW in violation of Section 8(a)(1), (2), and (5) of the Act, "The Remedy" section of this report, *infra*, provides, *inter alia*, for the setting aside of the PMW contract, adherence by Respondent employers to the provisions of the UMW contract, during its term, including employment of employees according to its provisions; also all employees who suffered any loss because of the unfair labor practices to be made whole by the Respondent employers and Respondent PMW, said Respondents to be jointly and severally liable.

Inasmuch as "The Remedy," relative to the Section 8(a)(1), (2), and (5) violations, which is found necessary to effectuate the policies of the Act, is broader than and inclusive of the usual remedy for individual Section 8(a)(3) violations alleged in the complaint, no further effectuation of public policy can be accomplished by considering violations with reference to specific individuals. Suffice to say: By illegally entering into the contract with PMW which required the employees to become members of PMW as a condition of employment Respondents violated Section 8(a)(3) and (1) of the Act.

## 6. Recapitulation

Kumpf having come to the conclusion that the Mine could not be operated without additional capital and profitably continued in operation if the operator paid 40 cents a ton royalty to a welfare and retirement fund, as compelled by the UMW contract, sought a source of capital and ways and means to avoid the royalty payments.

In looking for capital needed to continue operation of the Mine Kumpf began negotiations toward that objective, in January or February, with Cunningham and Bell who were seeking to add to their investments in the coal mining business. The negotiations soon resulted in a meeting of the minds—before March 18 all agreements had been reached and on that date Center Point was incorporated<sup>27</sup> for the sole purpose of purchasing the Mine, its appurtenances and selected machinery and equipment with intent to continue the Mine in operation after May 31.

Certainly as of March 18, Kumpf, Cunningham, and Bell knew that a new dragline had to be acquired and had entered into negotiations with Page Engineering for such acquisition—the contract was formally executed in April. It would be naive to think that Cunningham and Bell would commit themselves to invest \$150,000 in the Mine without assurance with a dragline, indispensable to the operation of the

<sup>27</sup> The required application for incorporation was undoubtedly prepared and filed with the Secretary of State, State of Indiana, before March 18.

Mine, could be acquired and its costs (actually leased for a term of 72 months (6 years) at \$14,464 per month (\$173,568 per year); a total commitment for the 6-year term of \$1,041,408).

The capital having been obtained Kumpf's remaining objective was the reduction of operating costs by terminating the contractual obligation to pay 40 cents per ton royalty to UMW's welfare and retirement fund. This objective was known to Cunningham and Bell. They knew of the existing UMW contract and of Kumpf's negotiations with PMW. The evidence supports the inference that it was part of the deal between Kumpf, Cunningham, and Bell that Kumpf would find ways and means of getting out of the UMW contract. Let us now look at how Kumpf went about his task.

On March 15, Kumpf met with representatives of PMW. He testified that for sometime prior to that date some of the employees had requested him to get information and it was for this reason he met with PMW. The true reason is disclosed in Kumpf's statement, that, "First we wanted to know whether the company would like this sort of an arrangement. . . ." The incredible testimony of Kumpf is that the meeting lasted at least a couple of hours and we talked in "just generalities." The testimony of Kumpf, considered as a whole, establishes that at this meeting and subsequent ones with PMW his objective was the making of a deal with PMW whereby in consideration of his signing a collective-bargaining contract with PMW the amount of royalty per ton to be paid to PMW's welfare and retirement fund would be less than the 40 cents per ton payable under the UMW contract.<sup>28</sup>

There followed other meetings and communications between Kumpf and PMW representatives. Then at a meeting on May 24, Kumpf and PMW "tentatively" agreed on a collective-bargaining contract which Kumpf admitted was not in substance different from the UMW contract except that "in terms that any simple minded bastard can understand . . . the difference between the two was in United Mine Workers welfare and retirement fund you paid 40 cents a ton royalty, in Progressive you paid 20 cents a ton. . . ." <sup>29</sup>

The deal that was made between Kumpf and PMW is discernible: Kumpf agreed to a PMW contract, which in section 33(a) requires the employer to pay a 40-cent per ton royalty, in consideration of a separate modification of agreement reducing the royalty to 20 cents a ton. Both of these documents were executed by PMW and Kumpf on June 3, to be effective June 5, the day on which Center Point took over operation of the Mine.

It must be emphasized that all of the foregoing negotiations between Kumpf and PMW were carried on with PMW not having a single member among the employees at the mine, without employee representation of any kind, and while UMW was the admitted collective-bargaining representative of the employees. Obviously, Kumpf and the Respondent employers which he represented and PMW were representing their own selfish interest. In return for PMW reducing the royalty, from 40 to 20 cents a ton, Kumpf would sign a contract requiring the employees to become members of PMW with checkoff of dues, fees, and assessments. When this was agreed to "tentatively" on May 24, Kumpf satisfied his condition that "First we wanted to know whether the company would like this sort of an agreement. . . ."

All of the foregoing was clandestinely accomplished. To preserve the secrecy Kumpf, on April 4, deliberately withheld from and misrepresented the facts to UMW, the exclusive-bargaining representative of the employees. On that date Kumpf told Killion, representing UMW, that: (1) the reason for his having served notice to terminate the UMW contract on May 31 was because he was broke; (2) there were no plans to continue operation of the mine; and (3) he had no objections to another UMW agreement if the mine was again worked.

After PMW and Kumpf had reached their "tentative" agreement on May 24 they made another "tentative" agreement to meet on June 3.

Respondents contend that Quality-Brazil terminated all employees on or before May 29.

On June 2 Kumpf arranged a meeting with some of the "former employees" of Quality-Brazil to be held in his home. When his home became unavailable he changed the meeting place. Twelve of the former employees attended. Kumpf's

<sup>28</sup> Kumpf repeatedly testified that he wanted to go nonunion and left no doubt that this was generated by his desire to avoid making royalty payments to any labor organization for employee benefits

<sup>29</sup> Bell testified that the PMW and UMW contracts were "basically, as far as wage scale and their relationship with coal operators, pretty much the same; I can't see much difference in them."

testimony as to how they were selected and invited was evasive; all he would say was that they were some of the men who had asked him to get information concerning PMW and employees who had not made such a request were not invited. Kumpf presided at the opening of the meeting and for about an hour and a half, by questions and answers, he informed the employees concerning PMW. Further, he delivered to those assembled authorization cards which he had obtained from PMW and told them that if they wanted he would sign a PMW contract. The record does not reveal whether Kumpf told these men that he had already made a "tentative" agreement with PMW. However, the record does make clear that all the men knew that Kumpf had said that the mine could not be operated if the employer had to pay a 40-cent per ton royalty to the UMW welfare fund. Kumpf left the meeting for about 45 minutes during which all those in attendance executed the PMW authorization cards and elected temporary officers. When Kumpf returned he was told what the men had done and they were interested in meeting with PMW officials. Kumpf said he could arrange this and proceeded to telephone the president of PMW and confirm the meeting for the following day, June 3—a meeting which Kumpf and PMW had "tentatively" arranged on May 24.

On June 3, the men who had attended the June 2 meeting and had executed PMW authorization cards in company with Kumpf went to Marshall, Illinois. Kumpf introduced the men to the PMW officials and exited. The PMW officials read their contract to the men and explained the organization and operation; the men voted to have PMW as their bargaining agent; the authorization cards which had been executed the previous evening were handed to PMW; PMW further issued a charter for a local; and the temporary officers selected the previous evening were appointed officers of the local. These things having been accomplished Kumpf returned to the meeting, was told of the actions taken, and immediately proceeded to execute the previously drafted PMW contract and two separate modifications of it, all of which had been "tentatively" agreed to by PMW and Kumpf on May 24. The contract and the modification agreements were dated June 3 to be effective beginning June 5, the day on which Center Point was to and did take over operation of the mine.

Granting that some of the Quality-Brazil employees were dissatisfied with the operation of UMW's welfare fund and that the mine could not be profitably operated if required to pay a 40-cent a ton royalty, neither is a defense to or can be held to condone unfair labor practices.

The selection or rejection of an exclusive-bargaining representative can be exercised only through the free choice of the employees under the conditions and in the manner prescribed by law. An employer who selects or even attempts to prevail upon the employees to select a particular bargaining agent for its employees violates Section 8(a)(1) of the Act.

Once the employees have selected an exclusive-bargaining representative of their choice the Act makes mandatory that the employer, upon request, bargain in good faith with the representative. An employer who does less or takes action to replace the representative with another of his own choosing violates Section 8(a)(5) of the Act.

Once an employer enters into a collective-bargaining contract with the duly selected collective-bargaining representative of its employees neither party can terminate it except by full compliance with the mandatory provisions of Section 8(d) of the Act—in the event of failure to fully comply the contract remains in force and effect and a successor employer is bound by the contract.

An employer who interferes with the formation of a labor organization or contributes support to it violates Section 8(a)(2) of the Act.

Quality-Brazil being a single employer and having been the employer through May 31 is liable for unfair labor practices during the tenure of the employer-employee relationship; and, Center Point, the successor employer, is liable for the unfair labor practices in which it engaged prior to its taking over the operation of the Mine.

Respondents Quality-Brazil having been found to be a single employer with Center Point a successor employer and Kumpf an employer acting simultaneously as agent for the corporate employers, they and each of them have violated Section 8(a)(1), (2), and (5) of the Act.

By entering into an unlawful contract requiring the employees as a condition of employment to become members of PMW at a time when UMW was the exclusive-bargaining representative of their employees Respondent Employers, individually and collectively, violated Section 8(a)(3) of the Act and PMW violated Section 8(b)(1)(A).

Disregarding the finding that Center Point is a successor employer: (1) By entering into a collective-bargaining contract with PMW, at a time when Center Point

had no employees, to cover future employees; and (2) the contract compelling future employees to become members of PMW as a condition of employment; Center Point violated Section 8(a)(1), (2), (3), and (5) of the Act; and PMW having entered into the contract violated Section 8(b)(1)(A) of the Act.

#### V. THE REMEDY

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

Having found that Quality, Brazil, Center Point and Kumpf, individually and collectively: (1) Assisted and gave support to PMW and Local 403, PMW, in violation of Section 8(a)(2) and (1) of the Act; (2) entered into negotiations for and executed a collective-bargaining contract with PMW at a time when PMW did not represent a majority of employees in the appropriate unit which contract required employees, as a condition of employment, to become members of PMW in violation of Section 8(a)(3), (5), and (1) of the Act—the contract providing for checkoff of PMW dues, fees, and assessments with which provision the employer complied; (3) entered into negotiations for and executed the contract with PMW, referred to in 2, above, while UMW was the exclusive representative of the employees in the appropriate unit with a collective-bargaining contract then and now in force; and having found that PMW engaged in a course of conduct which restrained and coerced the employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A), I shall recommend that Quality, Brazil, Center Point, Kumpf, and PMW cease and desist from such conduct. Further, as affirmative action I shall recommend that:

1. *Quality, Brazil, Center Point, and Kumpf, individually and collectively.* (a) Withdraw and withhold all recognition from PMW and Local 403, PMW, and cease giving effect to any agreement, renewal, or extension thereof, with said labor organization unless and until either has been certified by the National Labor Relations Board as exclusive representative of the employees following a Board-conducted election; (b) recognize UMW as the exclusive representative of the employees at the Mine within the appropriate unit unless and until UMW's entitlement to such representative status is terminated as provided for by law; (c) continue to give effect to and comply with the provisions of the existing contract with UMW until such contract is terminated as provided for by law; (d) offer reinstatement to all employees who would have been reinstated on and after June 5 in accordance with the terms of and the prevailing practices under the UMW contract, said employees to be made whole for any loss of pay which each suffered from the date they would have been employed, absent the unfair labor practices, to the date of reinstatement, said backpay to be computed in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289; (e) pay to UMW a sum of money equal to the dues, fees, and assessments which it would have checked off and paid to UMW as per the existing UMW contract from June 5 to date of compliance; (f) pay to UMW for its welfare and retirement fund a sum of money equal to 40 cents per ton of coal produced at the Mine on and after June 5 in accordance with the terms of the existing UMW contract.

2. *PMW:* (a) Pay to Center Point a sum of money equal to that which Center Point; since on and after June 5, checked off for dues, fees, and assessments and paid to PMW plus a sum of money equal to all royalty payments of 20 cents per ton paid to PMW and/or its welfare and retirement fund as provided for in PMW's unlawful collective-bargaining contracts with Center Point (see *Double A. Products Company*, 134 NLRB 222); and (b) cease giving effect to any agreement, renewal, or extension thereof, with Center Point unless and until it has been certified by the National Labor Relations Board as majority representatives of the employees of the mine following a Board-conducted election.

Because it is believed that the Respondents' conduct in the commission of the unfair labor practices found herein goes to the very heart of the Act, and also because it is believed that it may be anticipated from the Respondents' past conduct that Respondents may commit other violations of the Act in the future, it shall be recommended that broad cease-and-desist orders issue forbidding Respondents from infringing in any other manner upon the rights of employees as guaranteed by the Act, in addition to those rights found to have been violated herein (see *John McAuliffe Ford, Inc.*, 134 NLRB 340).

I do not recommend disestablishment of PMW, as urged by the General Counsel in his brief, since I find that PMW was not and is not dominated by Respondent Employers.

## CONCLUSIONS OF LAW

1. Quality, Brazil, and Center Point are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Kumpf is an employer within the meaning of Section 2(2) of the Act.
3. Quality and Brazil constitute a single employer.
4. Center Point is a successor employer to Quality-Brazil.
5. PMW; Local 403; PMW; and UMW are each a labor organization within the meaning of Section 2(5) of the Act.
6. Respondents Quality, Brazil, Center Point, and Kumpf, individually and collectively, have violated Section 8(a) (1), (2), (3), and (5) of the Act.
7. Respondent PMW has violated Section 8(b) (1)(A) of the Act.
8. The activities of Respondents set forth in section IV, above, occurring in connection with the operations of Respondents described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

[Recommendations omitted from publication.]

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**Charles T. Reynolds, Sr. doing business as Charles T. Reynolds Box Company, and Reynolds Pallet & Box Co. and Local 637, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case No. 9-CA-2464. October 25, 1962**

## DECISION AND ORDER

On July 2, 1962, Trial Examiner Stanley Gilbert issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. The Trial Examiner also found that the Respondents had not engaged in certain other unfair labor practices alleged in the complaint. Thereafter, the Respondents filed exceptions to the Intermediate Report together with a supporting brief.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Fanning, and Brown].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as noted.<sup>1</sup>

<sup>1</sup> The Trial Examiner's recommendation that the backpay allegation of Respondent include the payment of 6 percent interest per annum is adopted. However, for the reasons given in his dissent in the *Isis Plumbing & Heating Co.* case, 138 NLRB 716, Member Rodgers would not grant any interest in this case.