

Hickmott Foods, Inc. and **Damian Rodriguez**
Cannery, Warehousemen, Food Processors, Drivers
and **Helpers Union, No. 750, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America** and **Damian Rodriguez**. Cases
32-CA-643 and 32-CB-136

June 21, 1979

DECISION AND ORDER

On October 30, 1978, Administrative Law Judge Earle V. S. Robbins issued the attached Decision in this proceeding. Thereafter, Respondent Cannery, Warehousemen, Food Processors, Drivers and Helpers Union, 750, International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America (hereinafter called the Union), filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt her recommended Order, as modified herein.

We agree with the Administrative Law Judge's conclusion that Respondent Union violated Section 8(b)(2) and (1)(A) of the National Labor Relations Act, as amended, by causing Hickmott Foods, Inc. (hereinafter called the Employer), to discriminate against a nonmember of the Union in violation of Section 8(a)(3) and (1) of the Act. However, we find merit in the Union's exception¹ to the breadth of the Administrative Law Judge's recommended Order that would require the Union to cease and desist from "in any other manner restraining or coercing employees of Hickmott Foods, Inc., in the exercise of their Section 7 rights to organize and bargain collectively or to refrain from such activities." (Emphasis supplied.) In our opinion, as explained below, such an order is warranted only when a respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights. Accordingly, each case will be analyzed to determine the nature and extent of the violations committed by a respondent so that the Board may tailor an appropriate order?

¹ The Employer did not file exceptions to the Administrative Law Judge's Decision and recommended Order. It appears from the pleadings that at the time of the hearing in this case the Employer was involved in a chapter XI bankruptcy proceeding.

N.L.R.B. v. Express Publishing Company, 312 U.S. 426 (1941).

The Board, relying on *Entwistle*,³ has until now regularly included the broad order provision as a remedy whenever respondents were found to have committed violations which went "to the very heart of the Act," and we have routinely considered discharging or causing the discharge of an employee in violation of Sections 8(a)(3) or 8(b)(2) to be such a violation. However, we have carefully reconsidered our policy regarding remedial orders with respect to discriminatory discharges. In so doing, we have reached the conclusion that automatic adoption of broad orders in every discharge case is not warranted, but rather that a narrow order, responsive to the particular actions of a violator of the Act, would usually be more appropriate.

The issuance of the narrow "in any like or related manner" order will not, in our opinion, frustrate effective enforcement of the Board's remedial orders, nor will it provide less effective protection of rights under the Act. If there is a repetition of 8(a)(3) or 8(b)(2) conduct—or, indeed, 8(a)(1) discharges—such would certainly be within the scope of the narrow order and could thus form a basis for a contempt citation. Subsequent illegal conduct violative of a different section of the Act would engender further orders against a respondent, again tailored to the offense, and the result might well be a broad order. Further, closer scrutiny of violations in relation to the order to be issued to remedy the same would not necessarily mean that a broad order could not be issued if a respondent committed only a single discriminatory discharge. Where such violations of the Act are proved and it can be further shown that a respondent, either previous to or concurrently with the discriminatory discharge, engaged in other severe conduct violative of, for example, Section 8(a)(1) or 8(b)(1)(A), a broader order may be warranted. Thus, repeat offenders and egregious violators of the Act would be subject to the traditional Board remedy for conduct which requires broad injunctive relief.⁴

With respect to the instant dispute we find, based on the foregoing and the facts as found by the Administrative Law Judge, that the broad injunctive order issued against the Union is not warranted herein.

³ *N.L.R.B. v. Entwistle Manufacturing Company*, 120 F.2d 532 (4th Cir. 1941), enfg. 23 NLRB 1058 (1940). Compare, e.g., *N.L.R.B. v. J. W. Mays, Inc.*, 518 F.2d 1170, 1171 (2d Cir. 1975); *Trico Products Corporation v. N.L.R.B.*, 489 F.2d 347, 354 (2d Cir. 1973); *Sweeney & Company, Inc. v. N.L.R.B.*, 437 F.2d 1127, 1136 (5th Cir. 1971); *N.L.R.B. v. The Great Atlantic and Pacific Tea Company, Inc.*, 406 F.2d 1173, 1175 (5th Cir. 1969); *N.L.R.B. v. Bowman Transportation, Inc.*, 314 F.2d 497 (5th Cir. 1963); *N.L.R.B. v. Ampex Corporation*, 442 F.2d 82, 86-87 (7th Cir. 1971); *N.L.R.B. v. Thompson Ramo Wooldridge, Inc.*, 305 F.2d 807, 810-811 (7th Cir. 1962); *N.L.R.B. v. Standard Metal Fabricating Company*, 297 F.2d 365, 367 (8th Cir. 1961); *Puerto Rican Drydock & Marine Terminals, Inc. v. N.L.R.B.*, 284 F.2d 212, 216 (D.C. Cir. 1960).

⁴ See, e.g., *Florida Steel Corporation*, 223 NLRB 174 (1976).

The record herein is devoid of any facts which require a broader remedy. Insofar as the record shows, the Union engaged in this single violation of Section 8(b)(2) in securing the discriminatory discharge. Therefore, only a narrow order is necessary at this time to remedy the violation **here**.⁵

Accordingly, we will modify the Administrative Law Judge's recommended Order herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that Respondent Hickmott Foods, Inc., Antioch, California, its officers, agents, successors, and assigns, and Respondent Cannery Warehousemen, Food Processors, Drivers and Helpers Union, No. 750, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Oakland, California, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph A. 1, (b):

"(b) In any like or related manner restraining or coercing employees of Hickmott Foods, Inc., in the exercise of their rights guaranteed by Section 7 of the Act."

2. Substitute the following for paragraph B. 1, (b):

"(b) In any like or related-manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act."

3. Substitute the attached notices for those of the Administrative Law Judge.

⁵The Administrative Law Judge recommended that a broad order issue against Respondent Employer. Although Respondent Employer failed to file exceptions to this recommended Order, we will also narrow the Order against it, inasmuch as the 8(a)(3) and (1) violation is based on the same conduct found to violate Sec. 8(b)(2) and (1)(A).

APPENDIX A

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

After a hearing at which all sides had a chance to give evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act, as amended, and has ordered us to post this notice and we intend to carry out the Order of the Board and abide by the following:

The Act gives all employees these rights:

- To engage in self-organization
- To form, join, or help unions
- To bargain collectively through representatives of their choosing
- To act together for collective bargaining or other mutual aid or protection
- To refrain from any or all of these things.

WE WILL NOT do anything that restrains or coerces employees with respect to these rights.

WE WILL NOT cause or attempt to cause Hickmott Foods, Inc., to unlawfully discriminate against Damian Rodriguez, or any other employee, by (1) denying them their proper seniority because they are not our members; (2) removing them from their jobs because they are not our members; (3) posting their jobs for bidding by employees who are our members even though they have not vacated such jobs; and (4) replacing them in their jobs with employees who are our members.

WE WILL NOT in any like or related manner restrain or coerce employees of Hickmott Foods, Inc., in the exercise of their Section 7 rights.

WE WILL notify Hickmott Foods, Inc., and Damian Rodriguez, in writing, that we have no objection to the placement of Rodriguez on the seniority list based on his total past service with Hickmott, or to his reinstatement to his job.

WE WILL jointly and severally with Hickmott Foods, Inc., make Damian Rodriguez whole for any loss of earnings he may have suffered as a result of the unlawful discrimination against him, plus interest.

CANNERY, WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND HELPERS UNION, NO. 750, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

APPENDIX B

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

After a hearing at which all sides had a chance to give evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act, as amended, and has ordered us to post this notice and we intend to carry out the Order of the Board and abide by the following:

The Act gives all employees these rights:

To engage in self organization
 To form, join, or help unions
To bargain collectively through representa-
tives of their choosing
To act together for collective bargaining or
 other mutual aid or protection
To refrain from any or all of these things.

WE WILL NOT do anything that interferes with or restrains or coerces employees with respect to these rights.

WE WILL NOT unlawfully discriminate against Damian Rodriguez, or any other employee, by (1) denying them their proper seniority because they are not members of Teamsters Local No. **750**; (2) removing them from their jobs because they are not members of Teamsters Local No. **750**; (3) posting their jobs for bidding by employee-members of Teamsters Local No. **750**, even though they have not vacated such jobs; and (4) replacing them in their jobs with employee-members of Teamsters Local No. **750**.

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

WE WILL offer Damian Rodriguez immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to any rights and privileges he previously enjoyed, and reinstate him to a seniority status based on his total past service with us.

WE WILL jointly and severally with Teamsters Local No. **750** make Damian Rodriguez whole for any loss he may have suffered as a result of the discrimination against him, plus interest.

HICKMOTT FOODS, INC.

DECISION

STATEMENT OF THE CASE

EARLDEAN V. S. ROBBINS, Administrative Law Judge: This case was heard before me in Oakland, California, on **September 14, 1978**. The charges in Cases **32-CA-643** and **32-CB-136** were filed by Damian Rodriguez on **January 11, 1978**, and copies thereof were served respectively on **Hickmott Foods, Inc.**, herein called **Hickmott** or **Respondent Employer**,¹ and on **Cannery, Warehousemen, Food Processors, Drivers and Helpers Union, 750, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America**, herein called **Respondent Union** or

¹ Hickmott made no appearance at the hearing herein. Hickmott is presently a debtor in possession in a chapter **XI** proceeding under the **Bankruptcy Act**.

Local **750**. A first amended charge was filed by Rodriguez in Case **32-CB-136** and served on Respondent Union on **February 23, 1978**. An Order consolidating cases and a consolidated complaint which alleges violations of Section **8(a)(1)** and **(3)** and Section **8(b)(1)(A)** and **(2)** of the National Labor Relations Act, as amended, issued on **March 13, 1978**. The principal issue herein is whether Respondent Union **unlawfully** caused Hickmott to deny Rodriguez his seniority rights, **removed** him from his job, and **replaced** him with an employee member of Respondent Union in violation of Section **8(a)(3)** of the Act.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Hickmott, a California corporation with its principal office located in Antioch, California, and places of business located in Pittsburg, California and Antioch, California, is engaged in the commercial canning and nonretail sale of tomatoes. During the 12-month period preceding the issuance of the consolidated complaint herein, Hickmott, in the course and conduct of its business operations, sold goods or services valued in excess of \$50,000 to customers or business enterprises within the State of California, which customers or business enterprises themselves meet one of the Board's jurisdictional standards other than the indirect inflow or indirect outflow standard.

The complaint alleges, Respondents admit, and I find that Hickmott is, and at all times material herein has been, an employer engaged in commerce and in operations affecting commerce within the meaning of Section **2(2)**, **(6)**, and **(7)** of the Act.

II. LABOR ORGANIZATION

The complaint alleges, Respondents admit, and I find that Local **750** is now, and has been at all times material herein, a labor organization within the meaning of Section **2(5)** of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

For a number of years Hickmott has been party to or covered by an industry collective-bargaining agreement between California Processors, Inc., and the Teamsters California State Council of Cannery and Food Processing Unions, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers at its Antioch facility. The last such agreement is effective by its terms from **July 1, 1976**, to **June 30, 1979**. Cannery, Warehousemen, Food Processors, Drivers and Helpers Union, Local No. **678**, herein called Local **678**, administered the collective-bargaining agreement as to Hickmott employees until about **October 1977**. Effective **October 1, 1977**, Local **678** was merged into Cannery Local **750**, and since that time Cannery Local **750** has administered the collective-bargaining agreement as to Hickmott.

For a number of years the collective-bargaining agreement has required, as a condition of employment, that employees become and remain members of the Union. Teamsters Local 315 represents the truckdrivers at Hickmott and apparently also has a union-security provision in its contract.

Damian Rodriguez has been employed by Hickmott as a forklift mechanic since 1965. In 1970 he was informed by his foreman that he was to join Teamsters Local 315, which he did.² He has maintained his membership in Teamsters Local 315 since that time.

In October 1977³ when Local 750 began servicing the Hickmott plant, Frances Cagle, and Local 750 business representative assigned thereto, began to receive various complaints and grievances from unit employees as to matters which had not been resolved by Local 678. Among these was a complaint that Rodriguez was not in the production unit represented by Local 750, that he had no seniority under the contract, and that the job he was holding should be in the unit and should be posted. According to Cagle, she conferred with Freddy Sanchez, secretary-treasurer of Local 750, and sought instructions as to what should be done concerning Rodriguez. Sanchez told her that Rodriguez' job should be posted "because he was not a member of the [Local 750] collective-bargaining agreement."⁴

Thereafter, sometime in October, Cagle and Sanchez met with Tony Morici, Hickmott owner; Dee Smith, Hickmott plant manager; and Charles Newport, Hickmott personnel manager. At this meeting Sanchez informed the Hickmott representatives that Hickmott was in violation of the collective-bargaining agreement because Rodriguez had no seniority in the plant yet he was performing a job covered under the contract. The company representatives admitted that the job was a Local 750 job. They checked the 1977 seniority list. Rodriguez did not appear on the list. Sanchez said that the job would have to be posted under the job posting procedures of the contract. The Hickmott representatives agreed to post the job. It is unclear whether Rodriguez was on layoff status at the time of this conversation.

Rodriguez was laid off in a seasonal layoff on October 28. On November 15, without any notification to Rodriguez by either Local 750 or Hickmott, Rodriguez' job was posted and later filled.⁵ The contract provisions upon which Local 750 relies are:

SECTION IX

SENIORITY

A. The Seniority List. There shall be one seniority list in each plant. Seniority will be attained after an em-

Rodriguez creditably testified that he wanted to join Cannery Local 678, and that he attempted to do so in 1968, but his application was refused. The record does not indicate why he was instructed to join Local 315. His job appears to be covered by the Local 678 agreement.

² All dates hereinafter will be in 1977 unless otherwise indicated. Cagle testified that by "member of the collective-bargaining agreement" she meant member of Local 750, paying dues to Local 750.

⁵ The first person to successfully bid on the job asked to be transferred after a short period of time. The next person to successfully bid on the job was determined by Hickmott to be unqualified after several weeks. The record does not reveal subsequent assignments to this job. At the time of the hearing herein Respondent was operating its warehouse in Pittsburg with probably six employees but was not engaged in production.

ployee has worked thirty (30) working days dating from the employee's hire date within two (2) consecutive calendar years. Subject to the approval of the U.S. District Court, all employees shall have their seniority adjusted to the employee's earliest seniority date. Until and unless such approval is obtained, the current seniority order as modified by the Conciliation and Settlement Agreement shall apply.

B. Order of Seniority. The order of seniority shall be on the day that the employee attains the thirtieth (30th) work day. When an employee has worked thirty (30) days as provided above, the employee's name shall be added to the seniority list.

* * * * *

D. Effective Date for Seniority. Until an employee's name appears on the seniority list, the employee shall not be entitled to seniority privileges. Job assignment, layoff and recall may be made without regard to hiring dates until such time as an employee gains seniority listing.

* * * * *

H. Job Posting.

1. All jobs permanently vacated by fourteen hundred (1400) hour seniority employees and temporary job openings, that the company requires to be filled, for non-seasonal assignments of four (4) or more weeks' duration will be posted on the plant bulletin board for three (3) working days
2. Only applications made within the specified posting period by seniority employees will be considered.
3. The company will consider all employees who apply although consideration need not be limited to this group if there are no qualified applicants.

At the time of the posting Rodriguez was on vacation in Mexico. His brother, also an employee at Hickmott, telephoned him and informed him of the posting. Rodriguez returned later that month and inquired of Newport as to when he would be recalled. Newport said that Rodriguez would have to talk to Smith, which he did. Smith told him that there was a jurisdictional problem, and that Rodriguez would have to change Unions if he wanted to work. Smith said that there was nothing he could do, Rodriguez would have to talk to someone from Local 315 and from Local 750.6

Rodriguez then spoke to Dick Fleming, business representative for Local 315. He told Fleming that Smith had told him he would have to change Unions if he wanted to continue working at Hickmott. Fleming told him to speak to Sanchez.

Rodriguez then went to Sanchez. According to the un- denied testimony of Rodriguez, which I credit, he told Sanchez what Smith had told him. He further told Sanchez that he had been the only mechanic since 1965. Sanchez appeared surprised, said he would have to look over some

⁶ This is a composite of the testimonies of Newport and Rodriguez which I find more accurately reflect what was said.

documents, and that he would telephone Rodriguez at home.

Sanchez did telephone Rodriguez, at which time he told Rodriguez that it would be impossible for him to change his membership from Local 315 to Local 750. Later, Sanchez talked to Fleming again. Fleming gave him a copy of a letter he had sent to Sanchez and told Rodriguez that was all he could do. The letter, dated January 3, 1978, states:

I am writing this letter to find some way to file a grievance for Damian Rodrigues. [sic] I do know that there was a jurisdictional dispute between our Local and Local 678. On May 4, 1977, Merc from Local 678 agreed to transfer Damian from Local 315 to Local 678. For some unknown reason this did not take place.

Since then, Local 750, your Local, has taken over Local 678. Now Damian is a member without any classification. I would like some way to file a grievance and let Mr. Damian Rodriguez have his day before the panel.

I have talked to you on the telephone, was in your office and you were on vacation. I am unable to get the right answer. I feel this man is entitled to some kind of seniority and his job back at Hickmott Foods because a Agreement was reached between Local 315, Local 678 and the Company Representatives on May 4, 1977. Everybody agreed to this.

Thank you very much.

Rodriguez then attempted to speak to Sanchez again. Sanchez was not available, but he was referred to Cagle. Rodriguez had a friend telephone Cagle for him.⁷ Cagle testified that Rodriguez' friend, Bustos, said that he felt that Rodriguez had not gotten a fair chance. Cagle said that she was sorry about what was going on, but because Rodriguez was not a member of the Local 750 "collective-bargaining agreement," they had to move on this. Bustos asked, "Then would Local 750 file a grievance for Rodriguez because he had been displaced from his job?" Cagle replied, "Well, he is not a member of our collective-bargaining agreement, and he is not paying dues to us. So I cannot file a grievance. I do not have that kind of authority." She then suggested that he speak to Sanchez. She further testified that possibly she also suggested that he contact Local 315. Rodriguez has had no further contact with representatives from either Local 750 or Local 315.

Conclusion

If the Employer and the Union agreed that the Rodriguez job classification was covered by the Local 750 collective-bargaining agreement, then Rodriguez was a member of the bargaining unit regardless of his union membership. As such, Local 750 was obligated to treat him in the same manner as it treated other members of the unit. To deny him his actual seniority in the performance of that job is clearly disparate treatment.

I reject Local 750's contention that it was merely attempting to enforce the contract. Cagle testified that in the

administration of the contract there have been situations where an employee was incorrectly left off the seniority list, or where an employee was placed on the list but with an incorrect seniority date. In those circumstances, the matter is discussed with the Company, personnel files are consulted, and the seniority list is corrected. Thus the contract seniority provisions have not been interpreted as requiring the rigid, mechanical application suggested by Local 750's position.

Further belying Local 750's contention that it was merely seeking to enforce the contract in a nondiscriminatory manner is the manner in which this problem was approached. Sanchez never inquired as to the length of time Rodriguez had held this job, and he never made any attempt to discuss with anyone from Local 678 the circumstances surrounding the previous failure to insist that this job be considered as part of the unit. This persisted even after Fleming's letter which indicated that the parties had reached some resolution of this matter in May under which Rodriguez' membership was to be transferred from Local 315 to Local 678. No attempt was made to determine why this alleged agreement had not been effected, to notify Rodriguez that his job was in jeopardy, or to notify him that he had certain obligations under the union-security provision of the Local 750 contract. In fact, Rodriguez' attempt to join Local 750 was

Furthermore, Cagle admits that Local 750 engaged in this conduct because Rodriguez was not a member of the Union. However, even in the absence of such admission, I find that in the circumstances herein, Local 750 attempted to cause Rodriguez to be replaced in his job because Rodriguez was not a member of Local 750 and thereby violated Section 8(b)(1)(A) and (2) of the Act. I further find that since Hickmott had knowledge of these circumstances, its acquiescence in Local 750's demands was violative of Section 8(a)(1) and (3) of the Act. *Bakery Wagon Drivers & Salesmen Local 484, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Oroweat Baking Company)*, 214 NLRB 891 (1971); *Barton Brands, Ltd.*, 213 NLRB 640 (1974); *International Union of Operating Engineers, Local Union 18, et al. (S. J. Groves & Sons Company)*, 227 NLRB 1477 (1977); *T.I.M.E.-DC, Inc.*, 203 NLRB 1141 (1973), *enfd.* 504 F.2d 294 (5th Cir. 1974).

CONCLUSIONS OF LAW

1. Hickmott is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
2. Local 750 is a labor organization within the meaning of Section 2(5) of the Act.
3. By causing and attempting to cause Hickmott to deny Damian Rodriguez his proper seniority, to remove him from his job, to post his job for bidding by employee members of Local 750, and to replace Rodriguez in his job by an employee member of Local 750, Local 750 has engaged in unfair labor practices within the meaning of Section 8(b)(2) and 8(b)(1)(A) of the Act.
4. By denying Damian Rodriguez his proper seniority, removing him from his job, posting his job for bidding by employee members of Local 750, and replacing him in his

⁷ Rodriguez' English is limited.

job by an employee member of Local 750, Respondent Hickmott has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (I) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

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

Having found that Respondent Hickmott has unlawfully deprived Damian Rodriguez of his proper seniority, has removed him from his job, and has replaced him with an employee member of Respondent Local 750, and that Respondent Local 750 caused such unlawful discrimination, I shall recommend that Respondent Hickmott offer Rodriguez immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to any rights and privileges previously enjoyed; that he be reinstated to a seniority status based on his total past service with Hickmott; and that Respondent Local 750 withdraw any objection thereto. I shall further recommend that Respondents jointly and severally make Rodriguez whole for any loss of earnings suffered by him by reason of the discrimination against him. The backpay obligations shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).⁸

Upon the foregoing findings of facts and conclusions of law upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁹

A. Respondent Local 750, its officers, agents, and representatives, shall: I. Cease and desist from:

(a) Causing and attempting to cause Hickmott Foods, Inc., to unlawfully discriminate against Damian Rodriguez or any other employee by denying them their proper seniority because they are not members of Local 750; removing them from their jobs because they are not members of Local 750; posting their jobs for bidding by employee members of Local 750, even though they have not vacated such jobs; and replacing them in their jobs with employee members of Local 750.

(b) In any other manner restraining or coercing employees of Hickmott Foods, Inc., in the exercise of their Section 7 rights to organize and bargain collectively or to refrain from such activities.

⁸ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

⁹ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the purposes of the Act:

(a) Notify Respondent Hickmott and Damian Rodriguez, in writing, that it has no objection to the placement of Rodriguez on the seniority list based on his total past service with Hickmott nor to his reinstatement to his job.

(b) Jointly and severally with the Respondent Hickmott make Damian Rodriguez whole for any loss of earnings he may have suffered as a result of the unlawful discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Post at its business office, meeting halls, or other places where it customarily posts notices, copies of the attached notice marked "Appendix A."¹⁰ Copies of said notice, on forms provided by the Regional Director for Region 32, shall, after being duly signed by an authorized representative of Respondent Union, be posted by Respondent Union immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter. Additional copies of said Appendix A shall be duly signed by an authorized representative of Respondent Union and furnished to the said Regional Director for transmission to Respondent Hickmott for posting by Respondent Hickmott in accordance with the Order directed to Respondent Hickmott above.

(d) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

B. Respondent Employer, Hickmott Foods, Inc., Antioch, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully discriminating against Damian Rodriguez or any other employee by denying them their proper seniority because they are not members of Local 750; removing them from their jobs because they are not members of Local 750; posting their jobs for bidding by employee members of Local 750, even though they have not vacated such jobs; and replacing them in their jobs with employee members of Local 750.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their Section 7 rights to organize and bargain collectively or to refrain from such activities.

2. Take the following affirmative action necessary to effectuate the purposes of the Act:

(a) Offer Damian Rodriguez immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to any rights and privileges previously enjoyed and reinstate him to a seniority status based on his total past service with Hickmott.

(b) Jointly and severally with Respondent Local 750 make Damian Rodriguez whole for any loss he may have suffered as a result of the discrimination against him in the

¹⁰ In the event that this Order is enforced by a Judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

manner set forth in the section of this Decision entitled "The Remedy."

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

(d) Post at its facility in Antioch, California, copies of the attached notices marked "Appendix A" and "Appendix B."¹¹ Copies of Appendix A, on forms provided by the Re-

gional Director for **Region 32**, after being duly signed by an authorized representative of Respondent Local **750** Union and copies of Appendix B, after being duly signed by an authorized representative of Respondent Hickmott shall be posted by Respondent Hickmott immediately upon receipt thereof, and be maintained by it for **60** consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent **Hickmott** to insure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for **Region 32**, in writing, within **20** days from the date of this Order, what steps Respondent has taken to comply herewith.

¹¹ See fn. 10, *supra*.