In the Matter of EPPINGER & RUSSELL COMPANY *and* FLORIDA CITRUS & ALLIED WORKERS UNION LOCAL 4A, U. C. A. P. A. W. A., C. I. O.

Case No. 10-C-1502.—Decided June 7, 1944

DECISION

AND

ORDER

On March 3, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding; finding that the respondent had engaged in and was engaging in certain unfair labor practices affecting commerce, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent duly filed exceptions to the Intermediate Report, and a motion to dismiss the complaint on the ground of alleged mootness. Pursuant to notice, oral argument was scheduled before the Board in Washington, D. C., on April 27, 1944, but none of the parties appeared and no argument was held.

The Board has considered the Intermediate Report, the respondent's exceptions and motion, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions:

The respondent does not contest the validity of the Board's certification of the Union, or the fact that it refused to bargain with Mathews, who, it admitted, was a representative of the Union. However, the respondent excepts to the Trial Examiner's findings that these facts constitute a violation of Section 8 (1) and (5) of the Act. The only evidence adduced by the respondent in support of its position was, as it admitted in its exceptions before the Board, the existence of a State statute which required Mathews to obtain a license before acting as the Union's representative, and the fact that it refused to bargain collectively with Mathews on the ground that she had no such license. The respondent did not point out any provision of the statute which prohibited it from dealing with an unlicensed union representative. Moreover, even assuming the existence of a State statute in support of the respondent's position, it is established beyond question that any such State law must yield before

the paramount authority of Congress expressed in a valid and applicable Federal law.[1] There is no question but that the National Labor Relations Act constitutionally applies to this respondent, and hence the sole inquiry must be whether Congress meant that the duty of employers to bargain, as provided in Section 8 (5) of the Act, should turn on the requirements of such State legislation. No doubt Congress could have so provided, even though this would have subjected the enforcement of legislation national in scope to the varied and perhaps conflicting provisions of State enactments; but we find nothing in the language of the Act or its legislative history which warrants the belief that Congress in fact did so provide.[2] We therefore conclude that the respondent's contention is without merit.

The respondent further contends that the Board should dismiss the complaint as moot, on the ground that, after its refusal to bargain, Mathews secured a State license and on the further ground that the respondent subsequently granted the Union's request to enter into bargaining negotiations with another representative of the Union who had obtained a State license. However, like the Trial Examiner, we find that the respondent engaged in an unfair labor practice by refusing to bargain with Mathews, a representative of the Union. In order to prevent recurrences of a refusal to bargain because of the alleged effect of State law, and pursuant to Section 10 (c) of the Act,[3] we reject the respondent's contention as being without merit, and shall issue an appropriate order.[4]

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[1] See *Hines* v. *Davidowitz*, 312 U. S. 52, 66–8, where the Supreme Court of the United States held that State law was "subordinate to supreme National law" and must yield where "inconsistent" with the exercise of Congressional power; *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148; *Napier* v. *Atl. C. L. Railroad Co.*, 272 U S 605; *Oregon-Washington Railroad & Navigation Co* v. *State of Washington*, 270 U. S 87; *C & W. C. Railway Co.* v. *Varnville Furniture Co.*, 237 U S. 597. Cf. *Union Brokerage Company* v. *Norman G. Jensen, et al* 64 S. Ct. 967, 12 L. W 4360 (May 8, 1944)

[2] See *N L. R B* v. *Hearst Publications Incorporated, etc.*, 322 U. S. 111, where the Supreme Court refused to base its determination of the meaning of the term "employees" on local State law for the reason that Congress "obviously did not intend" a result which would be destructive of national uniformity in applying the Act. The Court added that a contrary decision:

> would introduce variations into the statute's [the Act's] operation as wide as the differences the forty-eight States and other local jurisdictions make . . . Both the terms and the purposes of the statute, as well as the legislative history, show that Congress had in mind no such patchwork plan for securing freedom of employees' organization and of collective bargaining . . . It is not only proper, but necessary for us to assume, "in the absence of a plain indication to the contrary, that Congress . . is not making the application of the federal Act dependent on State law." *Jerome* v. *United States*, 318 U. S. 101, 104.

Cf *Allen-Bradley Local No 111t, etc*, v. *Wisconsin Employment Relations Board, et al.* 315 U S 740, 751

[3] Section 10 (c) of the Act states in part that if "the Board shall be of the opinion that any person named in the complaint has engaged in . . any . . . unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action . . . as will effectuate the policies of this Act."

[4] See *Consolidated Edison Company* v. *N. L. R. B.*, 305 U. S 197, 230; *N. L. R B.* v. *Pennsylvania Greyhound Lines, Inc., et al*, 303 U. S. 261, 271; *N. L. R. B.* v. *Southern*

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Eppinger & Russell Company, Jacksonville, Florida, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Florida Citrus & Allied Workers Union, Local 4A, U. C. A. P. A. W. A., affiliated with the Congress of Industrial Organizations, as the exclusive representative of all its production and maintenance employees at its Jacksonville, Florida, plant, excluding foremen, clerical workers, watchmen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, 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, as 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) Upon request, bargain collectively with Florida Citrus & Allied Workers Union, Local 4A, U. C. A. P. A. W. A., affiliated with the Congress of Industrial Organizations, as the exclusive representative of all its production and maintenance employees at its Jacksonville, Florida, plant, excluding foremen, clerical workers, watchmen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, in respect to rates of pay, wages hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places throughout its Jacksonville, Florida, plant, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

Wood Preserving Company, 135 F. (2d) 606, 607–8 (C. C. A 5); *N. L. R B* v *Ford Motor Company*, 119 F (2d) 326, 330 (C. C. A. 5); *N L. R. B.* v. *Pure Oil Company*, 103 F (2d) 497, 497–8 (C C A 5).

(c) Notify the Regional Director for the Tenth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

INTERMEDIATE REPORT

Mr. John H. Garver for the Board
Crawford and *Maw* of Jacksonville, Fla., for the respondent.
Miss Anne Mathews for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed on December 24, 1943, by Florida Citrus & Allied Workers Union Local 4A, UCAPAWA, CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Tenth Region (Atlanta, Georgia), issued its complaint dated January 27, 1944, against Eppinger & Russell Company, Jacksonville, Florida, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and 8 (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing were duly served upon the respondent and the Union.

Concerning the unfair labor practices, the complaint alleged in substance: (1) that on November 11, 1943, the Board in its Direction of Election in case number 10-R-1028[1] found that all the production and maintenance employees at the Jacksonville, Florida plant of the respondent excluding foremen, clerical workers, watchmen and all supervisory employees with authority to hire, promote, discharge and discipline or otherwise affect changes in the status of its employees, or effectively recommend the changes, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (c) of the Act; (2) that on December 17, 1943, the Board certified the Union as the representative of respondent's employees in said unit for the purposes of collective bargaining as the result of an election won by the Union on December 7, 1943, and that the Union is still such representative; (3) that on or about December 23, 1943, and at all times thereafter, the respondent did refuse and continued to refuse to bargain collectively with the Union as the exclusive representative of all employees of the unit described above; and (4) that by such refusal the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and that such acts constitute unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act.

Thereafter, the respondent filed an answer dated February 3, 1944, admitting those allegations of the complaint concerning the appropriateness of the unit found by the Board as alleged in the complaint, and admitting also the proceedings of the Board leading to the certification of the Union, following its selection by the employees within the unit. The respondent, however, denied the commission of any alleged unfair labor practices.

Under date of February 22, 1944, the respondent, the Union and counsel for the Board entered into a signed stipulation of facts, hereinafter called the stipulation, in which it was agreed that the stipulation might be accepted by the

[1] See *In the Matter of Eppinger & Russell Company* and *Florida Citrus and Allied Workers Union Local 4A, UCAPAWA, CIO*, Case Number 10-R-1028 decided November 11, 1943; 53 N. L. R. B. 557.

Board in lieu of testimony taken at the hearing, all parties expressly waiving the holding of a hearing. It was further specifically agreed that the "National Labor Relations Board may decide the case on the basis of the record as defined herein." In the stipulation all parties requested that a Trial Examiner issue an Intermediate Report to which all parties might have the right to file exceptions and after which they might also have the right to file briefs and make oral arguments before the Board in Washington. Various pleadings and exhibits were annexed to and made a part of the stipulation.

The stipulation was filed with the Chief Trial Examiner of the Board in Washington, D. C. on February 24, 1944. Thereafter, on February 28, 1944, he designated himself to act as Trial Examiner herein.

Upon the entire record in the case the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is a New York corporation with its principal office in New York City and is engaged in the business of treating lumber and forest products with chemical preservations. The respondent has plants in Long Island City, New York, Norfolk, Virginia, and Jacksonville, Florida. Respondent, at its plant in Jacksonville, Florida, the only one here involved, annually uses raw materials, chemicals, and other supplies exceeding $1,100,000 in value, more than 50 percent of which is obtained from points outside the State of Florida and shipped to respondent's plant in Jacksonville, Florida. More than 50 percent of the finished products at this plant is shipped to customers outside of the State of Florida.[2]

II. THE LABOR ORGANIZATION INVOLVED

The Union, Florida Citrus & Allied Workers Union, Local 4A, UCAPAWA, CIO, is a labor organization, admitting to membership employees of the respondent at its Jacksonville, Florida plant and organized for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of work.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1. The appropriate unit and representation by the Union of a majority therein

On November 11, 1943, the Board issued a decision and direction of election[3] finding that: "All production and maintenance employees at the Jacksonville, Florida, plant of the respondent, excluding foremen, chemical workers, watchmen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act." The complaint herein alleges and the respondent admits the appropriateness of such unit. The undersigned so finds. Following the direction of election, and pursuant thereto, an election was conducted by the Regional Director for the Tenth Region on December 7, 1943. It was won by the Union. On December 17, 1943 the Board certified the Union as the exclusive representative of the employees in the ap-

[2] These facts are taken from the Board's decision (see footnote #1) and from the stipulation herein.

[3] *In the Matter of Eppinger & Russell Company* and *Florida Citrus & Allied Workers Union, Local 4A, UCAPAWA, CIO*, 53 N L. R B. 557.

propriate unit.[4] The respondent does not challenge the status of the Union; to the contrary it concedes that at all times since December 7, 1943, the Union has been the exclusive representative of the employees in the appropriate unit. On the basis of the Board's certification of December 17, 1943, and the subsequent admission of the respondent, the undersigned finds that at all times since December 17, 1943, the Union has been, and is now, the exclusive representative of the respondent's employees in the appropriate unit hereinabove found

2. The refusal to bargain

Shortly after December 7, 1943, the date of the election, Union Representative Anne Mathews made an appointment with representatives of the respondent for the purposes of collective bargaining for December 17, 1943, at 11:00 a. m. This meeting was not held; Mathews was advised that the respondent would not commence bargaining with the Union until the certification of the Union had been received from the Board. The proposed conference was postponed until December 23, 1943. Prior to that time the Board, as previously found herein, had certified the Union on December 17.

On December 23, 1943, Anne Mathews, who had been theretofore designated by the Union as its business agent and was receiving from the Union a financial consideration for representing it as its business agent, engaged in soliciting rights and privileges for employees, came to the plant pursuant to appointment She was directed to the office of John S. Calhoun, plant superintendent of the respondent in Jacksonville, where Calhoun and Philip S. May, counsel for the respondent, awaited her. Upon her arrival there, Mathews requested that the respondent send for certain employees to assist her in representing the Union. May stated, "Miss Mathews, before we call these men in, we would like to see your license as a business agent of the Union under the Florida law." Mathews replied that she had no license. May, after further discussion, stated that the respondent declined to deal with her as the business agent of the Union until she was able to produce a license, or until some governmental authority required the respondent to negotiate with her notwithstanding the fact that she had no license.[5]

The record further discloses that the Florida Law referred to by May is Chapter 21968, in Acts of 1943, Laws of Florida. The pertinent provisions of this law are set forth below.[6]

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[4] The certification of representatives issued by the Board finds, *inter alia*, that of 152 valid votes cast, 142 were in favor of the Union and 10 were against

[5] The facts hereinabove found are substantially as set forth in the stipulation

[6] AN ACT

TO REGULATE THE ACTIVITIES AND AFFAIRS OF LABOR UNIONS, THEIR OFFICERS, AGENTS, MEMBERS, ORGANIZERS, AND OTHER REPRESENTATIVES; MAKING PROVISION FOR SUITS AND PROCESS BY AND AGAINST THE SAME; REQUIRING CERTAIN FEES; DECLARING CERTAIN PUBLIC POLICY OF THE STATE, GIVING CERTAIN DEFINITIONS AND RECOGNIZING CERTAIN RIGHTS AS BELONGING TO EMPLOYEES; EXEMPTING CERTAIN LABOR ORGANIZATIONS FROM ITS PROVISIONS; PROVIDING CERTAIN PENALTIES AND PUNISHMENT FOR VIOLATIONS, WITH A SAVING CLAUSE IN CASE OF UNCONSTITUTIONALITY; AND REPEALING ALL LAWS AND PARTS OF LAWS IN CONFLICT HEREWITH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

SECTION 1 (Policy) Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected The right to work is the right to live

It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their

The undisputed facts herein pose the question of whether respondent's refusal to meet with the designated representative of the Union under the circumstances

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officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

SEC 2 (Definitions) The following terms, when used in this Act, shall have the meaning ascribed to them in this section.

(1) The term "labor organization" shall mean any organization of employees, local or subdivision thereof having within its membership residents of the State of Florida, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions or grievances of any kind relating to employment

(2) The term "business agent" as used herein shall mean any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any "labor organization" in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees.

SEC. 3 (Employee Rights) Employees shall have the right to self-organization, to form, join, or assist labor organizations, 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

SEC. 4. (Licensing of Business Agents) No person shall be granted a license or a permit to act as a business agent in the State of Florida, (1) who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior to making application for such license or permit (2) Who has been convicted of a felony (3) Who is not a person of good moral character, and every person desiring to act as a business agent in the State of Florida shall before doing so obtain a license or permit by filing an application under oath therefor with the Secretary of State, accompanied by a fee of One Dollar. There shall accompany the application a statement signed by the president and secretary of the labor organization for which he proposes to act as agent, showing his authority so to do. The Secretary of State shall hold such application on file for a period of thirty days during which time any person may file objections to the issuing of such license or permit. After the expiration of the thirty day period, regardless of whether or not any objections have been filed, the Secretary of State shall submit the application, together with all information that he may have including any objections that may have been filed to such application to a Board to be composed of the Governor as Chairman, the Secretary of State, and the Superintendent of Education. If a majority of the Board shall find that the applicant is qualified, pursuant to the terms of this Act and are of the opinion that the public interest requires that a license or permit should be issued to such applicant, then the Board shall by resolution authorize the Secretary of State to issue such license or permit, same shall be for the calendar year and shall expire on December 31 of the year for which issued unless sooner surrendered, suspended, or revoked.

SEC 5 (Initiation Fees of Union) . . .

SEC 6. (Reports to Secretary of State) . . .

SEC. 7. (Accounting of Union Finances) . . .

SEC. 8 (Reinstatement of Veterans into Union Membership)

SEC. 9. (Prohibited Acts) It shall be unlawful for any person

(1) To interfere with or prevent the right of franchise of any member of a labor organization. The right to franchise shall include the right of an employee to make complaint, file charges, give information or testimony concerning the violations of this Act, or the petitioning to his union regarding any grievance he may have concerning his membership or employment, or the making known facts concerning such grievance or violations of law to any public officials, and his right of free petition, lawful assemblage and free speech.

(2) To prohibit or prevent any election of the officers of any labor organization.

(3) To participate in any strike, walk-out, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; Provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection 3 of this section without a secret ballot

(5) To charge, receive, or retain any dues, assessments or other charges in excess of, or not authorized by, the constitution or bylaws of any labor organization.

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.

above set forth, is a violation of Section 8 (1) and (5) of the Act. In the opinion of the undersigned the answer is clearly in the affirmative.

It is not a valid defense to urge, as does the respondent, that the business agent of the Union certified by the Board had failed to obtain a license under the Florida law. The Act clothes the Board with the exclusive power to determine representation for collective bargaining among employees in industries that fall within the Board's jurisdiction. The Board's decision and direction of election of November 11, 1943 and subsequent certification of December 17, 1943, make it clear that the Board has exercised its power in the present case.[7] If respondent's contention were accepted, the result would be, in effect, a nullification of the Board's certification by operation of the Florida statute. Such an interpretation would be contrary to the plain language of the Act and the many decisions of the Board and Courts construing it.

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(7) To solicit membership for or to act as a representative of an existing labor organization without authority of such labor organization to do so

(8) To make any false statement in an application for a license.

(9) For any person to seize or occupy property unlawfully during the existence of a labor dispute.

(10) To cause any cessation of work or interference with the progress of work by reason of any jurisdictional dispute, grievance or disagreement between or within labor organizations

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in Section 3 of this Act, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

(12) To picket beyond the area of the industry within which a labor dispute arises.

(13) To engage in picketing by force and violence, or to picket in such a manner as to prevent ingress and egress to and from any premises, or to picket other than in a reasonable and peaceable manner.

SEC. 10. (Enforcement) An action may be commenced by the Attorney General of the State on complaint of any interested party, for the suspension or revocation of the license of any business agent for the violation of any of the provisions of this Act Said action shall be commenced only in the circuit court of the county of residence of such business agent or of the county in which such violations occurred. Such action shall be heard by the court without a jury and the rules of equity procedure shall apply in such proceedings. The court may suspend such license for such time as in its judgment is deemed best, or may revoke such license.

SEC. 11. (Suability of Unions) Any labor organization may maintain any action or suit in its commonly used name and shall be subject to any suit or action in its commonly used name in the same manner and to the same extent as any corporation authorized to do business in this State. All process, pleadings and other papers in such action may be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization. Judgment in such action may be enforced against the common property only, of such labor organization.

SEC. 12. (Disposition of Fees) All fees collected by the Secretary of State hereunder shall be paid to the State Treasurer and credited to the general fund

SEC. 13 (Preservation of Rights) Except as specifically provided in this Act, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right of individuals to work; nor shall anything in this Act be so construed as to invade unlawfully the right to freedom of speech.

SEC 14. (Penalties) Any person or labor organization who shall violate any of the provisions of this Act, shall, upon conviction thereof, be adjudged guilty of a misdemeanor and be punished by a fine not exceeding Five Hundred Dollars ($500 00) or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

SEC. 15. (Exemptions) All railway labor organizations and members thereof shall be exempt from all of the provisions of this Act as long as they are regulated by any Act of the Congress of the United States.

SEC 16 (Separability of Provisions) . . .

SEC. 17. (Effective Date) This Act shall take effect immediately upon its becoming a law.

Approved by the Governor June 10, 1943.

[7] In its Decision and Direction of Election (53 N. L. R. B. 557) the Board makes the following finding: "The Company (respondent) admits that it is engaged in commerce within the meaning of the National Labor Relations Act."

The undersigned finds that the respondent on December 23, 1943, and at all times thereafter has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit and has thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent 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 of commerce.

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Since it has been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. Florida Citrus & Allied Workers Union, Local 4A, UCAPAWA, affiliated with the Congress of Industrial Organizations, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of the Company, employed at its Jacksonville, Florida, plant, excluding foremen, clerical workers, watchmen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Florida Citrus & Allied Workers Union, Local 4A, UCAPAWA, affiliated with the Congress of Industrial Organizations, was on December 17, 1943, and at all times thereafter has been, the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on December 23, 1943, and at all times thereafter, to bargain collectively with Florida Citrus & Allied Workers Union, Local 4A, UCAPAWA, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

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

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, Eppinger & Russell Company, Jacksonville, Florida, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Florida Citrus & Allied Workers Union, Local 4A, UCAPAWA, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all its production and maintenance employees at its Jacksonville, Florida, plant, excluding foremen, clerical workers, watchmen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action:

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Upon request, bargain collectively with Florida Citrus & Allied Workers Union, Local 4A, UCAPAWA, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all its production and maintenance employees at its Jacksonville, Florida, plant, excluding foremen, clerical workers, watchmen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action;

(b) Post immediately in conspicuous places at its Jacksonville, Florida, plant, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a) and (b) of these recommendations, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Tenth Region in writing, within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32, of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief

in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

FRANK BLOOM
Trial Examiner

Dated March 3, 1944.