In the Matter of THE PRUDENTIAL INSURANCE COMPANY OF AMERICA [1] *and* AMERICAN FEDERATION OF INDUSTRIAL AND ORDINARY INSURANCE AGENTS' UNION #23039, AFL

Case No. 8-C-1517.—Decided June 30, 1944

DECISION

AND

ORDER

On March 21, 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 and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. Thereafter the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. The Board has considered the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Upon request of the respondent and United Office and Professional Workers of America, CIO,[2] and pursuant to notice, a hearing was held before the Board in Washington, D. C., on May 11, 1944, for the purposes of oral argument. The respondent, the Union, and International Union of Life Insurance Agents were represented and participated in the hearing.[3]

The Board has considered the Intermediate Report, the exceptions and brief filed by the respondent, and the entire record in the case,

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[1] Incorrectly described in the complaint as Prudential Insurance Company of America

[2] At the hearing before the Trial Examiner, the CIO sought permission to intervene in the proceeding on the ground that it represented the respondent's agents throughout the United States in all but a very few areas, including the State of Ohio, in its motion the CIO alleged that a unit less than State-wide in scope is inappropriate; that the CIO wishes to file a petition for a State-wide unit; and that "pendency of these proceedings will probably be regarded by the Board as a bar to the filing of a State-wide petition". The Trial Examiner denied the CIO's motion to intervene, and the CIO thereupon appealed this ruling to the Board. The CIO was thereafter granted leave to present oral argument on its motion to intervene but failed to appear at the oral argument The Trial Examiner's denial of the CIO's motion to intervene is hereby affirmed

[3] Following the issuance of the Intermediate Report and again at the oral argument, the respondent moved that the Board consolidate the bargaining units which had previously been found to be appropriate in Cases Nos R-5256 to R-5264, and R-4420. The motions, being tantamount to a request for dismissal of the complaint, are hereby denied for the reasons hereinafter indicated.

56 N. L. R. B., No. 325.

and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and exceptions.

1. In his Intermediate Report the Trial Examiner found that the respondent had offered no evidence of any substantial change in the circumstances surrounding the representation of its industrial agents since the hearing in the prior representation proceeding. On the contrary, the record reveals that the respondent made several offers of proof by which it sought to show that there had been what it contends was a substantial change in the extent of self-organization among the respondent's agents throughout the State of Ohio after the hearing in the representation proceeding, and that the Trial Examiner rejected such offers of proof. A unit finding based upon the limited extent of union organization must rest upon facts as they exist at a particular time; however, it also takes into account the fact that organization may continue, and that, at a later date, a larger or more inclusive unit may be appropriate. The purpose of the Board's determination establishing the smaller unit as appropriate is to make collective bargaining an immediate possibility for those employees who have indicated a desire for it. That purpose would not be served if the Board's unit determination could be ignored by reason of changes of circumstances postdating the establishment of the appropriate unit. Thus changes in extent of organization occurring after a representation proceeding cannot justify an employer's subsequent refusal to bargain with the statutory representative certified as such for the established bargaining unit. Such evidence being immaterial, we affirm the rulings of the Trial Examiner excluding evidence of changes in the extent of union organization occurring after the hearing in the representation proceeding.

2. The Trial Examiner also rejected various offers of proof by which the respondent sought to present evidence of organizational activity and actual organization alleged to have occurred prior to the hearing in the representation proceeding herein but which was not introduced in that proceeding. In view of the failure of the respondent to present any substantial reason for its failure to present such evidence at the hearing in the representation proceeding, we affirm the ruling of the Trial Examiner in this regard. Moreover, even if we accepted these offers of proof, the evidence offered, since it reveals actual organization limited in scope, would in no way alter our conclusions.

Orderly and stable labor relations require that "the employer * * * accord to a certified agent recognition as the proper bargaining agent until the certification is rescinded or succeeded by another."[4] This is equally true when the Board's unit finding is based upon the limited

[4] *Valley Mould & Iron Corp.* v. *N. L. R. B.*, 116 F. (2d) 760, 765, enf'g 20 N. L. R. B. 211.

extent of employee self-organization as when it is based upon other factors.[5] We do not by our decision in this case foreclose the respondent from again raising the unit issue by appropriate means after the lapse of a reasonable period of time, in any event, not less than a year from the date of the respondent's compliance with our Decision and Order herein. At such time we will, upon appropriate proceedings, consider the unit issue *de novo* and determine whether or not to alter the existing collective bargaining units.[6]

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, The Prudential Insurance Company of America, Newark, New Jersey, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with American Federation of Industrial and Ordinary Insurance Agents' Union Local #23039, Toledo, Ohio, AFL, as the exclusive representative of all its licensed industrial agents employed in its district offices located in Toledo, Ohio, including its subdistrict office in Bryan, Ohio, but excluding superintendents, assistant superintendents, clerks, and cashiers, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Engaging in any like or related acts interfering with, restraining, or coercing its employees in the exercise of the rights 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 Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with American Federation of Industrial and Ordinary Insurance Agents' Union #23039, Toledo, Ohio, AFL, as the exclusive representative of all its licensed industrial agents employed in its district offices located in Toledo, Ohio, including its subdistrict office in Bryan, Ohio, but excluding superin-

[5] The limited extent of self-organization of employees has long been considered by the Board to be a relevant factor in determining the appropriate bargaining unit, and our position in this regard has recently been specifically approved by the Supreme Court. *N. L. R. B.* v *Hearst Publications, Inc., et al.*, 322 U. S. 111

[6] In our decision in the representation proceeding we stated that our finding that the smaller unit was appropriate did not preclude a later finding that a larger unit would be appropriate

tendents, assistant superintendents, clerks, and cashiers, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places in its offices in Toledo, Ohio, and Bryan, Ohio, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating 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 that the respondent will take the affirmative action set forth in paragraph 2 (a) hereof;

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

INTERMEDIATE REPORT

Russell Packard, Esq., of Cleveland, Ohio, for the Board

George L Russ, Washington, D C., for the Union

Milo J Warner, Esq., of *Doyle, Lewis and Warner*, 1631 Nicholas Bldg., Toledo, Ohio, and *Joseph T. Ferris, Esq.*, of Newark, N. J. for the respondent.

John W. Mulligan, vice president, Local 132, UOPWA of Cleveland, Ohio, for the United Office and Professional Workers of America, CIO.

STATEMENT OF THE CASE

Upon a charge filed June 5, 1943, by the American Federation of Industrial and Ordinary Insurance Agents' Union #23039, AFL, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighth Region, (Cleveland, Ohio), issued its complaint dated February 18, 1944, against the Prudential Life Insurance Company of America, herein called the respondent, alleging that the respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat 449, herein called the Act. Copies of the complaint and charge accompanied by notice of hearing thereon were duly served upon the respondent and the Union. In addition, a copy of the complaint and charge accompanied by notice of hearing thereon was served upon International Union of Life Insurance Agents at its office in Milwaukee, Wisconsin.[1]

With respect to unfair labor practices, the complaint alleges that on December 26, 1942, in a Decision and Direction of Election issued in the Matter of The Prudential Insurance Company of America—Branch Offices, Toledo, Ohio, and American Federation of Industrial and Ordinary Insurance Agents' Union #23039, Toledo, Ohio (AF of L), Case No. R-4420, the Board found that all licensed industrial agents of respondent employed in its district offices located in the City of Toledo, Ohio, including the sub-district office at Bryan, Ohio, but excluding the superintendent, assistant superintendent, clerks, and cashiers, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act;[2] that on February 5, 1943, in the same case,

[1] International Union of Life Insurance Agents did not enter an appearance in this matter nor take any part in the proceedings

[2] For purposes of identification, this will be referred to as the Toledo unit

the Board issued its certification of representatives, certifying the Union as the exclusive representative of all employees in said unit for purposes of collective bargaining and that, at all times since that date, the Union has been and is now the exclusive representative of all employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment. The complaint further alleges that on or about April 20, 1943, and at all times thereafter, while the respondent was engaged in the operation of its business at Toledo, Ohio, the Union requested the respondent to bargain collectively with it, in respect to wages, rates of pay, hours of employment and other conditions of employment, as the exclusive representative of all employees in the said unit, and that the respondent failed and refused and continues to fail and refuse to so bargain collectively with the Union or negotiate with it as such exclusive representative of all the employees in the unit, and by so refusing has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act.

The respondent filed its answer in due course, and just prior to the opening of the hearing filed an amended answer in which it admits the allegations of the complaint pertaining to the corporate existence of and the extent and character of the business carried on by the respondent, with the exception of one recital pertaining to the number of licensed industrial agents employed at the Toledo office. In this regard the respondent alleges that instead of employing 160 such agents in its district offices at Toledo and its attached office at Bryan, Ohio, it actually employs only 108 such agents. The answer denies that the respondent is engaged in commerce within the meaning of the Act but admits that the Union is a labor organization within the meaning of the Act, and further admits that the Board, in its Decision and Direction of Election referred to, did in fact find that the unit therein described constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, but denies that such unit was then or is now appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. It admits that, after the request from the Union that the respondent bargain with it in respect to rates of pay, wages, hours of employment and other conditions of employment, the respondent refused to so bargain with the Union and continues to so refuse, for the reason that at the time the demand was made by the Union, there was pending before the Board another proceeding involving the representation of all the respondent's industrial agents in the State of Ohio, including those in the Toledo unit, as an appropriate unit for purposes of collective bargaining The answer affirmatively alleges that the Board's finding that the unit consisting of the agents of the respondent in Toledo and Bryan offices is an appropriate unit, was arbitrary and capricious and not based upon substantial evidence; that at the time the petition upon which the determinaton of the Toledo unit was based, was filed with the Board, organization of the industrial insurance agents of the respondent had extended throughout the State of Ohio; that the decision of the Board in Case No. R-4420 was a temporary finding only, to be effective only until such time as organization of the agents of the respondent in the State of Ohio had extended throughout that State; and that when the Board, on June 17, 1943, in Consolidated Cases R-5256 to R-5264, inclusive,[3] found that organization of the industrial agents of the respondent had extended throughout the State of Ohio, the exclusion by the Board of the Toledo unit from the otherwise state-wide unit found in the

[3] Hereinafter referred to as the Consolidated Cases

Consolidated Cases to be appropriate for purposes of collective bargaining, was arbitrary and capricious and in derogation of the Act.[4] The respondent further alleges that it has never bargained collectively with any representative of its industrial agents in a city-wide unit or in a unit less than a state-wide unit and that it is and always has been ready and willing to bargain collectively with any representative that may be designated by its industrial agents in the entire State of Ohio.

Pursuant to due notice, a hearing was held on March 6, 1944, at Cleveland, Ohio, before R. N Denham, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by its president. The United Office and Professional Workers of America, affiliated with the Congress of Industrial Organizations, appeared and filed a motion for leave to intervene, alleging an interest in the issues involved in this case by virtue of an interest in the representation of the industrial agents of the respondent throughout the State of Ohio. The motion was taken under advisement to be ruled upon after the character of the evidence relied upon by the respondent in support of its admitted refusal to bargain with the Union had been disclosed, with permission to the representative of the intervenor to remain and participate pending the final ruling on the motion. After all evidence had been offered and there being no evidence of any interest on the part of the United Office and Professional Workers of America in this controversy, the motion for leave to intervene was denied. All parties participated in the hearing and were afforded full opportunity to examine and cross-examine witnesses and to introduce evidence bearing upon the issues. At the close of the taking of all testimony, counsel for the Board moved to conform all pleadings to the proof with respect to correction of names, dates and other minor matters not affecting the issues involved. The motion was granted without objection. The respondent, then, for the record, offered a motion that the Board modify its order "heretofore made in this case" so as to include all the industrial agents of the respondent in Toledo in a state-wide unit. No disposition was or is made of this motion which was noted on the record for record purposes only, at the insistence of counsel for the respondent, in view of the obvious lack of jurisdiction of the Trial Examiner to either deal with or dispose of it. At the close of the hearing oral argument was waived, as was the privilege of filing briefs with the Trial Examiner.

Upon the basis of the foregoing and after having heard and observed all the witnesses and considered the exhibits admitted in evidence, and upon the entire record made herein, the undersigned now makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Prudential Insurance Company of America is a mutual life insurance corporation organized under and existing by virtue of the laws of the State of New Jersey with its home office and principal place of business at Newark, New Jersey, where it is engaged in the business of insuring the lives of its policy holders on a participating plan, investing the proceeds of such business in the various operations incident thereto.

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[4] On March 2, 1944, the respondent filed and duly served on all the parties, a motion for the consolidation of the instant case with Case No. 8–C–1602, which involves a charge of refusal to bargain with the Union certified by the Board in the Consolidated Cases. The motion was duly referred to the Board. On March 6, 1944, the Board denied the motion.

Respondent is licensed to conduct its insurance business in the 48 States, including the State of Ohio, as well as the District of Columbia, the Territory of Hawaii, and 9 Provinces of the Dominion of Canada. In the course and conduct of its business respondent operates 3 district offices at Toledo, Ohio, and a subdistrict office at Bryan, Ohio, where approximately 108 industrial agents are employed.

On December 31, 1941, respondent was the second largest life insurance company in the United States in terms of assets and value of insurance in force. On that date, respondent's assets totaled $4,556,085,244.84 and it had 31,960,286 policies having a total face value of $19,549,175,369 in force among some 20,000,000 policy holders situated throughout the United States, Canada, and Hawaii.

The respondent's assets consist of cash, bonds, stocks, mortgages, real estate and notes. The greater portion of the cash is deposited in commercial banks and trust companies throughout the several States of the United States. As of December 31, 1941, such assets amounted to $120,792,001. The securities owned by respondent comprise holdings in issues of the Governments of the United States and Canada and various political subdivisions thereof, and public utilities, transportation, industrial and manufacturing enterprises situated throughout the United States. On December 31, 1941, respondent owned real estate valued at $152,806,443 and held loans secured by real estate located in 47 States and the Dominion of Canada. Respondent manages its real estate through 230 managing agents and 255 local farm supervisors in 39 States of the United States, the District of Columbia, and 6 Canadian Provinces. Respondent also has 8 loan correspondents, 26 branch offices and 443 authorized brokers in 47 States, the District of Columbia, and Canada.

During the calendar year 1941 respondent purchased equipment having a value of $445,146. During the same period the respondent purchased paper and other stationery supplies having a value of $673,452. In the same period respondent spent $1,329,502 for postage, telephone, telegraph and express services and $711,259 for traveling expenses.

In connection with its business respondent owns and operates a printing plant at Newark, New Jersey. During the calendar year 1941 respondent printed material having a value of $1,370,849, of which amount 37 percent by value was used in other States than New Jersey and 0 5 percent was used in Canada.[5]

The Board has heretofore given full consideration to the general character and extent of business ordinarily transacted by insurance companies throughout the United States, particularly in its decision with reference to the John Hancock Mutual Insurance Company.[6] In view of the observations of the Board in that case, it is not deemed necessary at this point to dwell further on the general character of insurance companies, of which the respondent herein is the second largest in the United States. It is found that the respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

American Federation of Industrial and Ordinary Insurance Agents' Union #23039, AFL is a labor organization admitting to membership, the employees of the respondent who are engaged as industrial insurance agents.

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[5] The foregoing findings are taken from the allegations of the complaint which the respondent, in its amended answer admits are true.

[6] 26 N L R B 1024–1029.

III THE ALLEGED UNFAIR LABOR PRACTICES

In Case No R–4420 the Board, on December 26, 1942, issued its Decision and Direction of Election in the matter of The Prudential Insurance Company of America—branch offices, Toledo, Ohio, and American Federation of Industrial and Ordinary Insurance Agents' Union No. 23039, Toledo, Ohio (AFL),[7] in which it found that:

> all licensed industrial agents of the Company (the respondent) employed in its district offices located in the city of Toledo, Ohio, including the subdistrict office in Bryan, Ohio, but excluding superintendents, assistant superintendents, clerks, and cashiers, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

and directed that an election by secret ballot be held among the employees within such unit "to determine whether or not they desire to be represented by American Federation of Industrial and Ordinary Insurance Agents' Union No 23039, Toledo, Ohio (A F. of L.), for the purposes of collective bargaining"

Pursuant to the foregoing Decision and Direction of Election, an election was duly held by the Regional Director of the Eighth Region, as a result of which, the Board, on February 5, 1943, issued its certificate, certifying the American Federation of Industrial and Ordinary Insurance Agents' Union, #23039, Toledo, Ohio (A. F. of L), as the exclusive representative for the purposes of collective bargaining, of all the employees of the respondent within the above described unit. At the hearing upon which the Decision and Direction of Election of December 26, 1942, was based, the respondent appeared and objected to the unit above described, contending that the only appropriate unit should be made up of all its licensed industrial agents employed in the State of Ohio. Extended testimony was taken on the subject, except that the respondent did not at that time, present to the Board any evidence as to the extent of organizational efforts and solicitation which had been made by the Union within the State of Ohio. The decision, however, reflects that the character and extent of successful organization by the Union within the State of Ohio was before the Board and was considered by it in arriving at its findings.

On April 20, 1943, George L. Russ, on behalf of the Union, wrote to the President of the respondent requesting a conference between the officials of the respondent and the Union to negotiate a contract for the employees within the unit above referred to, with respect to rates of pay, wages, working conditions and other conditions of employment On April 30, 1943, the respondent replied, calling attention to the fact that there was then pending before the Board the question of a State-wide unit arising out of a petition filed by the United Office and Professional Workers of America, and quoting the following language from the Board's Decision and Direction of Election in case No R–4420:

> Our finding does not preclude a later finding that a state-wide or larger unit is appropriate for collective bargaining purposes.

suggested that bargaining negotiations be deferred until the Board had decided "this subsequent issue" Russ referred the respondent's suggestion to the Local, by whom it was rejected and the demand for bargaining was renewed Again the respondent refused On June 5, 1943, the Union filed its charge against the respondent in the office of the Eighth Region On June 17, 1943, the Board issued

[7] 46 N L R B 430

its Decision and Direction of Election in the Consolidated Cases[8] in which it made, inter alia, the following observations and findings:

> * * * From the aforesaid facts it is clear that the time is ripe for the establishment of a State-wide unit in Ohio. However, inasmuch as we have so recently certified the AFL in the Toledo unit, we shall exclude it from the appropriate unit in the instant proceedings.[9]
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> We find that all industrial agents of the Company licensed and working in the State of Ohio, excluding, however, those agents attached to the three District offices in Toledo and detached office at Bryan, Ohio, and excluding superintendents, assistant superintendents, office clerks, and cashiers, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act

After an election in which International Union of Life Insurance Agents was successful, motions were filed with the Board by International Union of Life Insurance Agents and by the respondent, to amend its former order by including the Toledo unit in the State-wide unit The contention of the respondent for a State-wide unit was fully presented to the Board by oral argument and on November 19, 1943, the Board, in a Supplemental Decision in the Consolidated Cases, declined to set aside the certification of the Union, issued in the Toledo case

On December 7, 1943, the Union again demanded of the respondent that it bargain collectively with it as the representative of the employees in the Toledo unit. On December 13, 1943, the respondent replied as follows:

> As you know, the Company has consistently maintained that anything less than a state-wide unit is inappropriate. You also know that the Company has never declined to enter into negotiations on a state-wide unit basis with chosen representatives of a majority of our agents We consider this unit question of such importance that we must decline to enter into negotiations with representatives of our Toledo and Bryan agents until it is finally determined
>
> For your information we have, for the same reasons, declined to enter into negotiations with International Union of Life Insurance Agents as the representative of our agents in Ohio, excluding those in the three Toledo district offices and the detached office in Bryan

The respondent offers no evidence of any substantial change in the circumstances surrounding the representation of its industrial agents in the State of Ohio or in any district or part thereof, since the first consideration of such representation by the Board in 1942, its sole contention being that, prior to the hearing in Case No 4420 (The Toledo case), the Union had engaged in solicitation among the respondent's agents in localities other than Toledo, Akron and Canton, in which it had succeeded in establishing itself, that such fact was not brought to the attention of the Board, and that the respondent had refrained from investigating such solicitations prior to the representation hearings, for fear of being charged with unfair labor practices and therefore had been unable to fully present the facts to the Board prior to this hearing.

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[8] 50 N L R B 689.

[9] At this point, the decision reflects an appended footnote as follows: "If the AFL desires to waive its rights under the certification it may by timely motion filed with the Board request the incorporation of the Toledo unit into the State-wide unit herein established" The AFL has not, however, waived any of its rights referred to.

The respondent embodied the results of its investigation concerning the extent of solicitation in Ohio by the A. F. of L. prior to the 1942 hearing in Case No. 4420, in comprehensive offers of proof accompanied by copies of publications by the Union, solicitation letters, and pamphlets and notices, but made no offer of proof of actual organization other than in Toledo, Akron and Canton. The offers, made in connection with the testimony of Sylvester C. Smith, associate general solicitor and Harold M. Stewart, vice president, were rejected by the undersigned as covering facts not material or relevant to the issue here involved.

Aside from not feeling at liberty to investigate the organizational activities of A. F. of L. prior to the hearing in the Toledo case and later in the Consolidated Cases, the respondent makes no claim that it has not, in those cases, been given full opportunity to present its contention for the State-wide unit and it now makes no claim that conditions have changed. It merely reiterates the contention that, for the conduct of its business, it regards a State-wide unit as essential for successful collective bargaining with its agents, and that anything less than State-wide units, where agents, all licensed by the same State, may be represented by different organizations, would tend to disrupt its labor relations; and that therefore the Board was in error in the first instance in fixing the appropriate unit as it did in this case. This is the sole and only reason advanced by the respondent for its refusal to bargain with the Union

The situation presented here admits of little argument. The Board has exercised the judgment and discretion required of it by the Act in determining the appropriateness of the unit. The respondent has alleged that, in so doing, its action was arbitrary and capricious, but it fails to produce any relevant or material evidence in support of such allegation. The record amply reflects that unusually full and deliberate consideration was given by the Board to all the facts available, which might have a bearing on the appropriateness of the unit. The respondent has produced no new or different facts The most it has shown is that it disagrees with the Board's conclusion and believes it would be hampered in the conduct of its business if any unit should be less than State-wide Because it disagrees, it refuses to comply with the provisions of the Act and bargain with the certified Union That is no excuse. It has had its point of view considered by the Board in December, 1942, and rejected. In November 1943, the Board again heard and considered its contention and again rejected it. In such circumstances, it cannot now be heard to say that the Board failed to weigh the question, or that it was deprived of any right to a full hearing in the case out of which this certification arose. It is therefore found that the respondent on April 30, 1943, after due request by the Union as the certified exclusive representative of all the employees within the appropriate unit above described, refused to bargain with the Union as such exclusive representative, and at all times since that date has continued to refuse to so bargain with the Union, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them 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, which have been found to have interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, 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 thereof.

V. THE REMEDY

It having been found that the respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take affirmative action which will effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. American Federation of Industrial and Ordinary Insurance Agents' Union #23039, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The respondent, The Prudential Insurance Company of America is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. All licensed industrial agents of the respondent employed in the district offices located in the City of Toledo, Ohio, including the subdistrict offices at Bryan, Ohio, but excluding superintendents, assistant superintendents, clerks, and cashiers, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act.

4. American Federation of Industrial and Ordinary Insurance Agents' Union #23039, Toledo, Ohio, AFL, was on April 20, 1943, and at all times thereafter has been, the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing on April 30, 1943, and at all times thereafter, to bargain collectively with the American Federation of Industrial and Ordinary Insurance Agents' Union #23039, Toledo, Ohio, AFL, as the exclusive representative of its employees in the appropriate unit above described, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

6. 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.

7. 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 foregoing findings of the fact and conclusions of law, and upon the entire record, the undersigned recommends that the respondent, its officers, agents, and representatives shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with American Federation of Industrial and Ordinary Insurance Agents' Union Local #23039, Toledo, Ohio, AFL, as the exclusive representative of all its licensed industrial agents employed in its district office located in Toledo, Ohio, including the sub-district office in Bryan, Ohio, but excluding superintendents, assistant superintendents, clerks, and cashiers;

(b) In any similar manner interfering with, restraining, or coercing its employees in the exercise of the rights 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 will effectuate the policies of the Act:

(a) Upon request bargain collectively with American Federation of Industrial and Ordinary Insurance Agents' Union #23039, Toledo, Ohio, AFL, as the exclusive representative of all its licensed industrial agents employed in its district offices located in the City of Toledo, Ohio, including its sub-district office in Bryan, Ohio, but excluding superintendents, assistant superintendents, clerks, and cashiers, in respect to rates of pay, wages, hours of employment, or other conditions of employment;

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

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

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

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 this 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 this 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 within ten (10) days from the date of the order transferring the case to the Board.

R N. DENHAM,
Trial Examiner.

Dated March 21, 1944.