In the Matter of THE ARUNDEL CORPORATION *and* INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA, C. I. O., LOCAL 43

Case No. 5–C–1740.—Decided November 25, 1944

DECISION

AND

ORDER

On July 20, 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 a copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions, and Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., Local 43, herein called the Union, filed a brief. Oral argument was held before the Board in Washington, D. C., on October 17, 1944.

The Board has reviewed the rulings on motions and on objections to the admission of evidence made by the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner except insofar as they are inconsistent with our findings and order hereinafter set forth.

1. We agree with the Trial Examiner's findings and conclusion that the limitation on the Board's use of funds in connection with certain cases, which is contained in the National Labor Relations Board Appropriation Act of 1945,[1] does not preclude the Board from proceeding in the instant case. In addition, we wish to point out that we find no merit in the respondent's contention that an order herein requiring it to bargain collectively with the Union concerning terms and conditions of employment of its employees at the ship repair yard, would ad-

[1] A somewhat similar limitation was contained in the National Labor Relations Board Appropriation Act of 1944.

versely affect the contracts entered into between the respondent and other labor organizations covering other plants of the respondent, on the ground that its ship repair yard employees are occasionally transferred temporarily to such other plants for the purpose of repairing equipment located there.[2] Whether those employees, on such occasions, are covered by the contracts applicable to such other plants depends, of course, upon the terms of such contracts. Assuming, however, that they are covered by these contracts while performing operations at the other plants, there is nothing to prevent the respondent from entering into a contract with the Union covering the ship repair yard employees which would not conflict with the terms of these other contracts.

2. We agree with the Trial Examiner's conclusion that the respondent's conduct in negotiating directly and individually with its employees subsequent to the certification of the Union as their exclusive bargaining representative, was violative of Section 8 (1) of the Act. We further concur in the Trial Examiner's finding that such conduct was not protected by the proviso to Section 9 (a) of the Act.[3]

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 Arundel Corporation, Baltimore, Maryland, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in respect to rates of pay, wages, hours of employment, and other conditions of employment, with Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., Local 43, as the exclusive representative of all its production and maintenance employees at its Fairfield, Maryland, ship repair yard, including Feehly, truck drivers, and watchmen, but excluding foremen, assistant foremen, clerical employees, 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;

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[2] We find equally without merit the respondent's broader contention that, because of the last-mentioned circumstance, an order requiring the respondent to bargain collectively with the Union at its ship repair yard would result in chaos and industrial unrest and would not effectuate the purposes and policies of the Act.

[3] In that connection, we note that the principles governing the application of that proviso, as set forth in the Intermediate Report, follow those outlined in our original decision of May 27, 1944, in *Matter of Hughes Tool Company,* 16–C–1018 Since the date of the issuance of the Intermediate Report, we have modified that decision in our Order Amending Decision of August 11, 1944. See *Matter of Hughes Tool Company,* 56 N. L. R. B. 981. We find no circumstances herein which would bring the respondent's action within the permissive conduct, under the proviso in question, described in our last-mentioned decision.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., Local 43, or any other labor organization, 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 in respect to rates of pay, wages, hours of employment, and other conditions of employment, with Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., Local 43, as the exclusive representative of all its production and maintenance employees at its Fairfield, Maryland, ship repair yard, including Feehly, truck drivers, and watchmen, but excluding foremen, assistant foremen, clerical employees, 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 ship repair yard at Fairfield, Maryland, 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;

(c) Notify the Regional Director for the Fifth 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. Earle K. Shawe, for the Board.

Messrs. Jacob Blum and *G. Donald Schaub*, of Baltimore, Md., for the respondent.

Mr. I. Duke Avnet, of Baltimore, Md., for the Union.

Mr. F. C. Ellis, of Baltimore, Md., for the Intervenor.

STATEMENT OF THE CASE

Upon a charge filed by Industrial Union of Marine and Shipbuilding Workers of America, C. I. O. (Local #43), herein called the C. I. O., the National Labor Relations Board, herein called the Board, by its Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint dated May 20, 1944, against The Arundel Corporation, 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 (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 the charge, accompanied by notice of hearing, were duly served upon the respondent, the C. I. O., and the following labor organizations affiliated with the American Federation of Labor: Baltimore Building and Construction Trades Council, Baltimore Metal Trades Council, and International Union of Operating Engineers.

With respect to the unfair labor practices the complaint alleged in substance that: (1) the respondent on or about January 6, 1944, and at all times thereafter, has refused to recognize and bargain collectively with the C. I. O. as the exclusive representative of the respondent's employees within an appropriate unit although the C. I. O. was certified by the Board on December 17, 1943, as the exclusive bargaining representative of the employees in said unit; (2) the respondent from on or about November 26, 1943, the date of the Board-ordered election upon which the aforesaid certification was based, and at all times thereafter, has bargained directly and individually with its employees within the said appropriate unit concerning grievances, rates of pay, wages, hours of employment, and other conditions of employment, to the exclusion of the C. I. O.; and (3) the respondent by the foregoing acts interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act. The respondent on May 31, 1944, filed an answer in which it admitted certain of the allegations of the complaint, but denied that it had engaged in any unfair labor practices.

Pursuant to notice, a hearing was held on June 5, 1944, in Baltimore, Maryland, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. At the opening of the hearing, the Trial Examiner granted the petition of Building and Construction Trade Council, herein called the Council, for leave to intervene as a party to this proceeding. The Council filed an answer denying that the unit described in the complaint is an appropriate unit for the purposes of collective bargaining, and alleging that it was the collective bargaining representative of the respondent's employees. The Board, the respondent, and the C. I. O. were represented at the hearing by counsel, the Council by one of its officers. 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.

The respondent moved to dismiss the complaint in its entirety upon the ground that the Board cannot proceed with the instant case because a proviso attached to the Board's Appropriation Act for the fiscal year ending June 30, 1944, precludes the use of any of its funds for purposes of such proceedings[1] Ruling was reserved on this motion. For the reasons set forth in Section IV below, the motion is hereby denied. The Trial Examiner, without objection, granted a motion by the Board to conform the complaint to the proof with respect to formal matters. All parties argued orally before the undersigned, but waived the privilege extended them to file briefs.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, a Maryland corporation, has its principal office and place of business in Baltimore, Maryland, and branch offices in New York City; Miami, Florida; and Los Angeles, California. The respondent is principally engaged in dredging and constructing bridges During the year 1942 the respondent per-

[1] See footnote 6, *infra*.

formed services in 13 States of the United States and Puerto Rico, for which services it received approximately $27,500,000.00. The respondent is also engaged in the production, sale, and distribution of sand, gravel, crushed stone, crushed slag, and concrete, all of which materials it produces in the State of Maryland. During the first 6 months of 1943 its sales of these products were in excess of $800,000, of which 8½ percent was shipped to points outside the State of Maryland.

The respondent also owns and operates a fleet of tugs and barges and a fully equipped ship repair yard at Fairfield, Maryland, the only operation with which this proceeding is concerned. The Fairfield yard is engaged in repairing tugs, barges, dredges and miscellaneous vessels, steam shovels, cranes, bulldozers, and construction equipment. In connection with the operation of its ship repair yard, the respondent, during the first 6 months of 1943, purchased raw materials valued in excess of $79,422.00, about 20 percent of which was shipped to the repair yard from points outside the State of Maryland. The respondent admits that it is engaged in commerce within the meaning of the Act.[2]

II. THE ORGANIZATIONS INVOLVED

Industrial Union of Marine & Shipbuilding Workers of America, Local #43, and Building and Construction Trades Council, are labor organizations admitting to membership certain of the respondent's employees. They are affiliated, respectively, with the Congress of Industrial Organizations and the American Federation of Labor.[3]

III. THE UNFAIR LABOR PRACTICES

The refusal to bargain collectively; interference, restraint and coercion

1. The appropriate unit and representation by the C. I. O. of a majority therein

On November 6, 1943, the Board issued a Decision and Direction of Election in the aforesaid representation case, finding, among other things, that all production and maintenance employees of the respondent employed at its Fairfield, Maryland, ship repair yard including an employee named William Feehley, truck drivers and watchmen, but excluding foremen, assistant foremen, clerical employees, 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.

On November 26, 1943, an election was held pursuant to said Direction of Election, as amended.[4] The tally of the ballots showed that of approximately 102 eligible voters in the unit, 89 cast valid votes, of which 86 were for the C. I. O., 2 were for the Baltimore Metal Trades Council, affiliated with the American Federation of Labor, and 1 was for neither. On December 17, 1943, the Board certified the C. I. O. as the exclusive bargaining representative of the employees within the unit heretofore described, for the purposes of collective bargaining. At the hearing in the instant case, the respondent did not question

[2] The parties stipulated at the hearing that the Board's findings with respect to the business of the respondent set forth in a prior representation proceeding (Case 5–R–1370, 53 N. L. R. B. 466) is an accurate description of the respondent's current operations

[3] The same labor organizations previously appeared in the aforesaid representation proceeding.

[4] Upon the request of the Baltimore Building and Construction Trades Council, A. F. of L., the Board amended its Direction of Election on November 24, 1943, substituting the name of "Baltimore Metal Trades Council, affiliated with the American Federation of Labor," on the ballot in place of "Baltimore Building and Construction Trades Council."

the results of the election or the status of the C. I. O as the duly designated representative of a majority of the employees in the aforesaid unit. Although the respondent denied the appropriateness of the unit, contending that the Board's determination in the representation proceeding was arbitrary and capricious since it allegedly disregarded the history of collective bargaining between the respondent and the Council, no additional evidence was adduced in the instant hearing on the issue of the appropriateness of the unit. For this reason, coupled with the fact that the respondent's contentions relating to the history of collective bargaining were fully considered by the Board in its decision in the representation proceeding, the undersigned finds, in accordance with the Board's previous determination, that all production and maintenance employees of the respondent employed at its Fairfield, Maryland, ship repair yard, including Feehley, truck drivers, and watchmen, but excluding foremen, assistant foremen, clerical employees 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, and at all times material hereto have constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. The undersigned further finds that on and at all times after November 26, 1943, the C. I. O. was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit, and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was on November 26, 1943, and at all times thereafter has been and is now the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

2. The refusal to bargain

About January 1, 1944, the C. I. O. requested the respondent to bargain collectively with it as the exclusive bargaining agent in the unit described above with respect to rates of pay, wages, hours of employment, and other conditions of employment. By letter dated January 6, the respondent, through its attorney, advised the C. I. O. that it would decline to enter into collective bargaining negotiations with the C. I O, and that it would not recognize the C. I O. "until such time as a court . . . had the opportunity of reviewing the National Labor Relations Board certification." Thereafter at a meeting held on January 10, 1944, attended by representatives of the C. I. O., the respondent, and the Department of Labor Conciliation Service, the C. I O. reiterated its demand, but the respondent adhered, as it has since continued to do, to the position set forth in its letter of January 6.

3. Individual bargaining

Following the Board's certification of the C. I O. and the latter's demand upon the respondent, the respondent continued its practice of dealing with its employees at the ship repair yard on an individual basis. Joseph P. Tewey, the respondent's ship repair yard superintendent, testified that at all times since the election, all questions of wages, hours, and working conditions, including a number of promotions and wage increases, were negotiated directly with the individual employees without consulting the C. I O

4. Concluding findings

On all of the above, the undersigned finds that on January 6, 1944, and at all times thereafter, the respondent refused to recognize and bargain collectively with the C I. O. as the exclusive representative of the respondent's employees within

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.

The undersigned also finds that the respondent's conduct falls within the proscription of Section 8 (1), as well as Section 8 (5), in still another respect. The undisputed evidence shows that, despite the C. I. O.'s certification by the Board as the sole and exclusive collective bargaining representative for the ship repair yard employees, the respondent at all times since has continued to negotiate directly and individually, and without reference to the C. I. O., with its employees concerning grievances, rates of pay, wages, hours, and other terms and conditions of employment. In *Medo Photo Supply Corporation* v. *N. L. R. B.*, 321 U. S. 678, the Supreme Court recently reemphasized the principle that "the obligation [of the employer to bargain collectively with the chosen representative of his employees] being exclusive . . it exacts the negative duty to treat with no other"; that "it is a violation of the essential principle of collective bargaining for the employer to disregard the bargaining representative by negotiating with individual employees"; and that "such conduct is therefore an interference with the rights guaranteed by Section 7 and a violation of Section 8 (1) of the Act". It is not controlling that the individual employees may in some instances have initiated the direct dealing, for, as the Supreme Court stated in the *Medo Photo* case, the employer is "not relieved from its obligations because the employees asked that they be disregarded . . . the statute was enacted in the public interest . . . and it may not be ignored by the employer even though the employees consent . . . or the employees suggest the conduct found to be an unfair labor practice." Nor is the respondent's conduct in that respect protected, as it asserts, by the proviso to Section 9 (a) of the Act. While Section 9 (a) permits an individual employee to *present* grievances to his employer, it does not confer upon the employer the right to negotiate the settlement of the grievance without the participation of the exclusive bargaining representative. Once having presented the grievance to the employer, the rights of the individual employee respecting grievances cease and become subject to the collective rights of all employees; the settlement of those grievances must thenceforth be entrusted to negotiations between the employer and the employees' exclusive representative.[5] Individual bargaining with employees, where there is a collective bargaining representative present, operates no less effectively to undermine collective bargaining, to disparage the services of the union, and to induce defections therefrom, than a campaign of coercion and intimidation designed to destroy the majority status of a collective bargaining representative.

IV. THE RESPONDENT'S MOTION TO DISMISS BASED UPON THE APPROPRIATIONS RIDER

As noted above, the respondent moved at the hearing to dismiss the complaint on the ground that the proviso attached to the Board's appropriation Act for the fiscal year ending June 30, 1944, precludes the use of any Board funds for purposes of the instant proceeding.[6]

[5] See *Matter of Hughes Tool Company*, 56 N. L. R. B. 981, and cases cited therein.

[6] Title IV, Labor-Federal Security Agency Appropriation Act, Public Law 135, Ch. 221, 78th Cong., 1st Sess., approved July 12, 1943, provided that:

> No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement between management and labor which has been in existence for three months or longer without complaint being filed. *Provided*, That, hereafter, notice of such agreement shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested person.

This proviso, with certain modifications not here applicable, was reenacted in the appropriations Act for the current fiscal year, July 1, 1944, to June 30, 1945. (Labor-Federal Security Agency Appropriation Act 1945, Pub. Law 373, 78th Cong., 2nd Sess.)

In support of its contention that this proceeding falls within the proscription of the appropriations rider, the respondent relies entirely upon a written agreement between the respondent and the Council, dated March 29, 1940, referred to at the hearing as a master agreement, which reads as follows:

> THIS AGREEMENT made and entered into by and between
> THE ARUNDEL CORPORATION hereinafter known as the "Company", and the BALTIMORE BUILDING & CONSTRUCTION TRADES COUNCIL, a subordinate Council of the NATIONAL BUILDING & CONSTRUCTION TRADES DEPARTMENT affiliated with the American Federation of Labor, hereinafter known as the "Council."
>
> WITNESSETH:
>
> That for the purpose of mutual understanding and that in order that a harmonious relationship may exist between the Company and the Council to the end that continuous and efficient service will be rendered to and by both parties for the benefit of both, it is hereby agreed that:
>
> 1st. None but members in good standing of the various Local Unions, affiliated with the Council will be employed by the Company on all of the Company's operations and such other operations controlled by the Company that properly come within the jurisdiction of the Council.
>
> 2nd. Within fifteen (15) days from the date hereof the Company will meet with representatives of the Local Unions affiliated with the Council in which Local Unions the present employees of the Company properly belong, for the purposes of collective bargaining and consummation of an agreement covering Wages, Hours and Working conditions for such present and/or future employees of the Company.
>
> 3rd Such agreements shall be consummated and signed by the parties hereto as rapidly as possible, but in any event, not later than thirty (30) days from the date hereof.
>
> 4th. The Council and its affiliated Local Unions agree to recognize the Company as fair to organized labor and further agree to advertise the Company by placing the corporate name of the Company on its "Fair List" of Employees, and so advising the general building and construction industry.
>
> IN WITNESS WHEREOF, the parties hereunto set their hands and seals this 29th day of March, 1940.

The terms of the agreement do not specifically set forth the precise operations and employees intended to be covered thereby. However, the agreement on its face does not purport to cover all of the respondent's operations wherever situated; it contains a qualifying provision limiting its coverage to "all the Company's operations and such other operations controlled by the Company *that properly come within the jurisdiction of the Council*" (emphasis supplied).[7] Moreover, the agreement expressly provides that collective agreements shall only be entered into with affiliated locals of the Council in which "the present employees of the Company properly belong" Because of the indefiniteness of the "master agreement," it is necessary, in order to determine whether the parties thereto intended to include the employees in the ship repair yard within its scope, to examine the circumstances surrounding the execution of the agreement, and the manner in which the parties themselves applied and interpreted the agreement. See *Glen Alden Coal Co.* v. *N. L. R. B.*, 141 F. (2d) 447 (C. C. A 3).

[7] The respondent and the Council do not assert that the agreement extends to all the respondent's operations, but only to those located in the State of Maryland, and thus, in effect, concede the applicability of the jurisdictional qualification.

In addition to the ship repair yard, the only operation involved in this proceeding, the respondent's operations in the State of Maryland include 6 sand and gravel plants, 4 stone quarries, 4 concrete plants, and 1 truck loading station, all located at widely separated points ranging in distance from 1½ to 115 miles from the ship repair yard. Significantly, with the exception of the ship repair yard, all of the respondent's operations are directly related to the building and construction industry, in which industry the Council undertook to advertise that the respondent was "fair to organized labor."

That the Council itself, at the time of the execution of the agreement considered the ship repair yard outside its organizational sphere and therefore not within the scope of the "master contract" is clear from the testimony of Albert W. Derrick, business representative of Local 37 of the Operating Engineers, an affiliate of the Council, and a member of both the Council and the committee which negotiated the "master contract." Derrick testified in the representation proceeding[8] that the organizational activities of the Council prior to the execution of the "master contract" had never been extended to the ship repair yard but had been confined to the respondent's other Maryland operations. Derrick further testified that when the master agreement was executed and jurisdiction was allocated by the Council to its divers local affiliates, no mention was made of the ship repair yard.

In the more than 4 years following the execution of the "master contract," a number of collective bargaining agreements were entered into between the respondent and various local affiliates of the Council covering employees within the craft jurisdictions of the respective contracting locals. These agreements were applied by the parties to employees in the stone quarries, the sand and gravel pits, the concrete plants, and the trucking operations of the respondent, but admittedly were not construed as extending to any of the employees in the ship repair yard.[9]

At the ship repair yard, in sharp contrast to the action taken at the other Maryland operations of the respondent, the respondent admittedly has continued to hire employees without reference to the master contract provision requiring that none but members in good standing of affiliated locals be employed, nor has the Council endeavored to enforce this provision in the ship repair yard. Joseph F. Tewey, superintendent of the ship repair yard for 23 years, testified that he had never heard of any collective agreement covering employees in that yard, and that wages, hours, and working conditions had always been determined by individual dealing rather than by collective action.

It was not until August 21, 1943, 3 days after the C. I. O. had served its demand on the respondent for recognition as collective bargaining representative for the ship repair yard employees, that an affiliate of the Council for the first time made an effort to assert jurisdiction over the employees in the ship repair yard. On that occasion, Local No. 37, International Union of Operating Engineers, advised the respondent by letter that "the Home Office of our organization has recently granted jurisdiction to our Local to cover the employees in your repair yard," and requested "the inclusion of your [the respondent's] employees in the Repair Yard

[8] See footnote 2, *supra*.

[9] The record in the representation proceeding discloses that contracts were entered into with the following Council affiliated locals International Union of Operating Engineers, Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and International Hod Carriers, Building and Common Laborers Union of America. None of these contracts was urged as a bar to a determination of representatives in the representation proceeding, and it is not urged in the instant proceeding that any of these contracts operate under the appropriation rider to preclude the Board from proceeding.

under our Agreement." [10] Significantly, the Operating Engineers' Local did not base its claim to jurisdiction on the master contract or upon an award by the Council, but solely upon a grant of jurisdiction from its parent body, the International, thereby disclosing that it did not consider the master contract as having any bearing on the ship repair yard operation In its reply, the respondent, noting the Operating Engineers' request, simply added that "The Superintendent of our Shipyard will allow your representative the freedom of access in order to contact the men who are interested." Moreover during the aforesaid representation proceedings. the Council itself disclaimed jurisdiction over such employees. On November 17, 1943, the Council, in a letter to the Board requested that the name of the "Baltimore Metal Trades Council" be substituted for its own name on the ballot in the Board election conducted in the ship repair yard. The Council expressly stated that:

> With reference to the election to be held at the Arundel Sand and Gravel Corporation Shipyard, Curtis Bay, Maryland, please be advised that this yard comes under the jurisriction of the Metal Trades Department.

The circumstances narrated above are persuasive and impel the conclusion that it was never the intent of the parties to the master contract to include the ship repair yard within its coverage. However, even if it were assumed *arguendo* that their original intent had been otherwise, the same circumstances demonstrate that the conclusion would follow that the parties waived and abandoned the contract in its application to the ship repair yard employees. The master agreement does not purport to be a final collective bargaining contract. At most it is a preliminary agreement to negotiate at a later date collective bargaining agreements affecting employees of the respondent. It imposes a definite time limitation—30 days—within which that is to be done. By failing within the prescribed period to consummate the master agreement with respect to the ship repair yard and by continuing thereafter to treat that operation as removed from the contractual area, the parties to the agreement by their mutual acquiescence allowed the master agreement, to the extent that it might otherwise have covered the ship repair yard operation, to lapse by non-performance

The undersigned therefore concludes, contrary to the contention of the respondent and the Council, that the "master agreement" was neither intended to nor does it apply to the employees in the ship repair yard, and that it does not constitute a bar to the instant proceeding.

V. 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.

VI. THE REMEDY

Since it has been found that the respondent has engaged in certain 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 C. I. O. as the exclusive representative of its employees within an

[10] The agreement referred to was the agreement between the respondent and the Operating Engineers' covering other operations of the respondent

appropriate unit, it will be recommended that the respondent upon request bargain collectively with the C. I. O.

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

CONCLUSIONS OF LAW

1. Industrial Union of Marine & Shipbuilding Workers of America, C. I. O. (Local #43), is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of the respondent employed at its Fairfield, Maryland, ship repair yard, including Feehley, truck drivers, and watchmen, but excluding foremen, assistant foremen, clerical employees, 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 and at all times material herein have constituted a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Industrial Union of Marine & Shipbuilding Workers of America, C. I. O. (Local #43), was on November 26, 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 or about January 6, 1944, and at all times thereafter, to bargain collectively with the Industrial Union of Marine and Shipbuilding Workers of America, C. I. O. (Local #43), 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, The Arundel Corporation, its officers, agents, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Industrial Union of Marine and Shipbuilding Workers of America, C. I. O. (Local #43), as the exclusive representative of all its production and maintenance employees employed at its Fairfield, Maryland, ship repair yard, including Feehly, truck drivers, and watchmen, but excluding foremen, assistant foremen, clerical employees, 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) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights to self organization, to form labor organizations, to join or assist Industrial Union of Marine and Shipbuilding Workers of America, C. I. O. (Local #43), or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection 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 Industrial Union of Marine and Shipbuilding Workers of America, C. I. O. (Local #43), as the exclusive representative of all of its employees in the aforesaid appropriate unit;

(b) Post immediately in conspicuous places at its ship repair yard at Fairfield, Maryland, 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 paragraph 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 Fifth 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—as amended, 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 or exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the 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.

WILLIAM J. ISAACSON,
Trial Examiner.

Dated July 20, 1944.