In the Matter of PACIFIC AIRMOTIVE CORPORATION *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 1309, DIST. 87

Case No. 20–C–1484.—Decided November 26, 1947

Mr. Thomas J. Davis, Jr., for the Board.

Victor Ford Collins, Esq., of Los Angeles, Calif., by *Mr. Frank J. Kanne, Jr.*, for the respondent.

Mr. A. C. McGraw, of Oakland, Calif., for the Union.

DECISION

AND

ORDER

On March 11, 1947, Trial Examiner Sidney L. Feiler 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 the respondent cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of 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 respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the respondent, Pacific Airmotive Corporation, Fresno, California, and its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain with International Association of Machinists, Lodge 1309, Dist. 87, as the exclusive bargaining representative

of all its employees at its Fresno branch at Fresno, California, engaged in the maintenance, repair, and servicing of aircraft and aircraft engines, except for guards, office clericals, salesmen, group leaders, and all supervisors;

(b) In any other manner interfering with the efforts of International Association of Machinists, Lodge 1309, Dist. 87, to negotiate for or represent the employees in the aforesaid unit as their exclusive bargaining agent.

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

(a) Upon request, bargain collectively with International Association of Machinists, Lodge 1309, Dist. 87, as the exclusive bargaining representative of the employees in the unit set forth above, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its offices in Fresno, California, copies of the notice attached to the Intermediate Report, marked "Appendix A."[1] Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the respondent or its representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

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

INTERMEDIATE REPORT

Mr. Thomas J. Davis, Jr., for the Board.

Victor Ford Collins, Esq., of Los Angeles, Calif., by *Mr. Frank J. Kanne, Jr.*, for the respondent.

Mr. A. C. McGraw, of Oakland, Calif., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by International Association of Machinists, Lodge 1309, District 87, hereinafter referred to as the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region

[1] Said notice, however, shall be, and it hereby is, amended by striking from line 3 thereof the words "The Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order." In the event that this order is enforced by a decree of a Circuit Court of Appeals, there shall be inserted in the notice, before the words "A Decision and Order," the words "A Decree of the United States Circuit Court of Appeals Enforcing."

(San Francisco, California), issued its complaint dated November 29, 1946, against Pacific Airmotive Corporation, Fresno, California, 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, together with notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to unfair labor practices, the complaint alleges in substance that the respondent on April 18, 1946, refused, and thereafter continued to refuse, to recognize the Union as the duly designated exclusive representative of its employees in an appropriate unit for the purpose of collective bargaining. In its answer, dated December 6, 1946, the respondent denies that its activities at Fresno constitute interstate commerce within the meaning of the Act, admits that it has refused to bargain with the Union, but alleges that the Union is not the duly constituted bargaining representative of its employees in an appropriate unit.

Pursuant to notice a hearing was held at Fresno, California, on December 12, 1946, before the undersigned, Sidney L Feiler, the Trial Examiner duly designated by the Chief Trial Examiner The Board and the respondent were represented by counsel; the Union, by a representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties At the commencement of the hearing the respondent moved to amend its answer to specifically deny the allegations in the complaint as to the nature and extent of its Fresno operations This motion was granted without objection After all the evidence had been offered, all parties presented oral argument Opportunity was then afforded the parties to file briefs and proposed findings of fact and conclusions of law. Briefs were received from all the parties; the brief from the Union also contained proposed conclusions of law.

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 is a California corporation having its principal office and place of business in Glendale, California Detailed information concerning the history and business of the respondent is contained in Amendment No 3 to Registration Statement, dated April 2, 1946, and filed by the respondent with the Securities and Exchange Commission The following material taken from that statement is pertinent herein

> The business of the Company now consists of. (1) Repair, overhaul, modification, and servicing of airplanes, aircraft engines, accessories, propellers, instruments, and parts; (2) manufacture and sale of specialized aircraft tooling and equipment for use in the assembling, servicing, and maintenance of aircraft; (3) selling at wholesale and retail of aircraft engines, parts, accessories, and general aeronautical supplies, (4) export of aircraft parts, materials, and supplies, including equipment manufactured by the Company, (5) acting as manufacturer's agent; (6) assembly of propellers shipped in a "knock-down" condition from original manufacturers; (7) operation of airport at San Jose, California; (8) acting as authorized distributor and jobber, as well as authorized repair stations for many well-known aeronautical lines; (9) manufacturer of engines for use in model airplanes, and (10)

generally conducting a complete business in the aircraft supply and service field.

* * * * * * *

The Company maintains its executive offices at 6265 San Fernando Road, Glendale 1, California, and also maintains plants and offices to conduct its operations at Lockheed Air Terminal, Burbank, California; Glendale, California; North Hollywood, California; Oakland, California; San Diego, California; San Jose, California; Fresno, California; Seattle, Washington; Kansas City, Missouri, and Anchorage, Alaska.

There is set forth in the following a more detailed description of the business and activities carried on by the Company:

Service

(*a*) The Company holds five Civil Aeronautics Authority approved repair station certificates and engages in the repair, overhaul, service, modification and reconversion of practically all types and sizes of airplanes, airplane engines, radios, instruments, propellers, parts, and accessories These services are performed for domestic and foreign air lines, industrial and business firms, air freight carriers, charter service operators, flying schools, privately owned airplanes, and for manufacturers in the aviation industry.

(b) The Company assembles aircraft propellers, which are shipped to it in a disassembled condition for final assembly and test. Such propellers when completed, are delivered mainly to airframe manufacturers and to their customers.

Manufacturing

(a) The Company manufactures over 350 items of specialized aviation tools and equipment for use in the maintenance, repair, overhaul and service of airplanes, engines, propellers, accessories, and parts. This equipment is being sold to air lines and overhaul stations, both for domestic and foreign use.

(b) The Company manufactures and sells miniature engines, under the trade name of "Dennymite," for use in model airplanes.

Stores

(a) The Company maintains stores at several of its locations which carry inventories of engines, engine parts, accessories, instruments, radios, and general aeronautical supplies These are sold at wholesale or retail to air lines, air freight carriers, charter service operators, dealers, airframe manufacturers, and to private flyers.

The respondent also lists in the aforementioned statement companies for whom its acts as distributor and manufacturer's agent Several of the concerns mentioned have been found by the Board to be engaged in interstate commerce within the meaning of the Act

The respondent concedes that it is engaged in interstate commerce and also admits that in a recent representation proceeding relating to its operations at Burbank, California, it conceded that it was subject to the Act as to its activities at Burbank. However, it denies that its operations at Fresno, California, which are the subject of this proceeding, are in interstate commerce [1]

[1] On March 6, 1946, C C Smith, the respondent's Industrial Relations Director, addressed a letter to the Board in answer to its request for information as to the respondent's business in connection with a representation petition filed as to the Fresno operations The concluding paragraph of that letter is as follows.

* * * * * * *

The respondent commenced operations at Fresno in February 1946, when it purchased materials and equipment from a local concern at Chandler Field The operations at Fresno are described by the respondent in its afore-mentioned registration statement as, "Engine and aircraft maintenance and overhaul, general aeronautical supply sales" The operations at Fresno are in charge of a manager who receives his instructions from top supervisory officials at the respondent's headquarters While some quantities of materials and supplies are purchased directly by the Fresno branch, the great majority of its supplies are received from the respondent's main warehouses located elsewhere since the respondent uses a system of central purchasing. A. L. Schluttig, assistant to the vice president and also in charge of the Fresno operations at the time of the hearing, was unable to specify the points of origin of shipments to the respondent of items purchased centrally and later requisitioned for use at Fresno.[2] However, he identified various items used at Fresno as made by companies distributing their products Nation-wide and who have been found by the Board in prior cases to be engaged in interstate commerce.[3] In addition, the Fresno branch on advice from the home office purchases approximately three or four hundred dollars worth of material and supplies each month from points outside the State of California.

The Fresno branch supplies parts to dealers in the territory approximately 100 miles north and south of Fresno. About 500 airplanes are based in that territory and the respondent has business relations with approximately 10 dealers In addition the respondent leases space from the city of Fresno at Chandler Field. The general nature of the respondent's operations at that field, according to Schluttig, is air-frame repair work, recovering, painting, and engine tests. Employees also have been engaged since the summer of 1946 in dismantling B–24 engines. The parts are sent to the respondent's Glendale branch and are used for replacement work on DC–3 and other commercial aircraft. The DC–3 airplanes are the type used by regularly scheduled airlines engaged in interstate commerce

The sales and services by the respondent at its Fresno operation for 1946 totaled $96,337.41 up to November 30. The bulk of the work performed was on small-type aircraft not engaged in interstate operations. There was introduced in evidence a statement of the respondent's accounts receivable at the Fresno operation for the month of November 1946, and it was stipulated that it was typical and showed substantially the same customers, with the exception of Union Oil Company and Fire Company Adjustment Bureau, that the respondent dealt with in the other months of 1946 Some of these customers were operators of airfield, Civil Aeronautics Administration, U. S. Forestry Service, Mazzei-

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It is our earnest desire, at all times, to cooperate with the NLRB and to assist them in any particular case which may be appearing before the Board. The information requested by the Board in subject case would require a great deal of time and effort to compile and since the Company is in Interstate Commerce, it is raising no question as to the National Labor Relations Board's jurisdiction In view of these facts, we would appreciate the Board withdrawing their request for the indicated information

The respondent now takes the contrary position.

[2] There was no substantial dispute as to the factual background of the respondent's Fresno business, and the findings herein are based principally upon the testimony of Schluttig.

[3] Some of the items mentioned by Schluttig were engine parts for Continental, Lycoming, and Franklin motors, Motorola radios, Pioneer and Kolzman instruments, and General Electric lamps.

Hill Aeronautics and Pacific Air Lines, charter carriers, and U. S. Coast Guard. These individual accounts with the exception of Mazzei-Hill were small in dollar value for the month. Some repair jobs and checking have also been done for Transcontinental and Western Airlines, but no major work has been undertaken for them. Work also was performed in July 1946 for a charter carrier based in Arizona.

Employees also have been engaged since August 1946 in making repairs on a large airplane owned by the Union Oil Company and making it ready for tests and licensing by the Civil Aeronautics Administration. Employees from other locations were used for certain special work on this airplane.

The Fresno branch has not performed any work outside the State of California. Such work has been referred to the home office.

Conclusions

The respondent contends that its operations at Fresno do not constitute interstate commerce within the meaning of the Act. It maintains that the operations at Fresno are separable from the other operations of the respondent at other centers and that while the respondent is engaged in interstate commerce the operations at Fresno are not integrated with the interstate activities; and as to the business at Fresno itself, the work performed there is intrastate in character and that certain work relied on as being in interstate commerce were isolated transactions inconclusive in nature, and occurred after the election held herein on March 19, 1946. The Board and the Union contend that the Fresno operations are integrated with the respondent's other operations and that independently thereof the nature of Fresno operations make the respondent subject to the Act.

The undisputed facts established that a close relation exists and has existed between the Fresno operation and the other operations of the respondent. A substantial portion of the materials and supplies used at Fresno are obtained by requisition from stores accumulated by central purchasing. The respondent does not argue that these purchases were not originally made in interstate commerce, but it maintains that these purchases came to rest at the respondent's warehouse facilities in California and that the later shipments to Fresno form no basis for a finding that the respondent's Fresno operations are thereby subject to the Act. The undersigned does not accept this argument. The respondent's purchases at its main branch had to be made with due regard for the requirements at Fresno. To disregard this normal flow of materials and supplies would be to set up a barrier or artificial separation which does not exist in fact. It cannot be said that a labor dispute at Fresno would not interfere with the purchases and flow of goods to the respondent's main facilities since those purchases of necessity in part reflect the needs at Fresno The contrary is true. The remaining purchases at Fresno to the extent of three to four hundred dollars per month were admittedly made in interstate commerce

The organizational set-up of the respondent indicates quite clearly that a main purpose was to establish various branches giving standardized service and serving as outlets for materials and equipment purchased in interstate commerce.

The undersigned concludes that the operations at Fresno are planned and do operate as an integrated part of the respondent's complete operations and for that reason and because of the effect of the Fresno operations upon the re-

spondent's purchases in interstate commerce the undersigned finds that those operations affect commerce within the meaning of the Act.[4]

Certain aspects of the work at Fresno during 1946 are indicative of the close relationship between the other parts of the respondent's organization and the Fresno branch. When the respondent undertook to dismantle aircraft engines to add their parts to its stores, that work was assigned to the Fresno branch. Conversely, when the Fresno branch undertook reconditioning work for the Union Oil Company mechanics were assigned from the main headquarters of the respondent to assist in their work.

The evidence as to the repair work performed at Fresno indicates that for the most part it consisted of repairs to airplanes not engaged in interstate operations. However, the Fresno branch did perform work for or made sales to charter carriers, governmental agencies and companies engaged in interstate commerce.

The undersigned concludes and finds that at all times here relevant the respondent at its Fresno branch has been engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, Lodge 1309, Dist. 87, is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES; THE REFUSAL TO BARGAIN

A. *The appropriate unit; representation by the Union of a majority therein*

The Union filed a representation petition on January 24, 1946. On March 15, 1946, the Union and the respondent signed an Agreement for Consent Election. The Agreement provided that an election by secret ballot should be conducted on March 19, 1946, among the respondent's employees in the following appropriate unit:

> All employees of the Corporation's Fresno Branch at Fresno, California, engaged in the maintenance, repair, and servicing of aircraft and aircraft engines, except for guards, office clerical, 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, salesmen and group leaders.

The day before the election two employees eligible to vote were sent from Fresno to another city for business reasons. The respondent brought this situation to the attention of a representative of the Board and an agreement was reached that the two men would be allowed to cast their ballots by mail.[5]

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[4] *N. L. R. B.* v *Virginia Electric & Power Company*, 314 U. S. 469, affirming on this point 115 F. (2d) 414 (C. C. A. 4), enf'g 20 N. L. R. B. 911; *Williams Motor Company* v *N. L. R. B.*, 128 F. (2d) 960 (C. C. A. 8), enf'g 31 N. L. R. B. 715; *N. L. R. B.* v. *Schmidt Baking Co., Inc.*, 122 F. (2d) 162 (C. C. A. 4), enf'g 27 N. L. R. B. 864; *Matter of Pangburn Company, Inc.*, 64 N. L. R. B. 1551; *Matter of Atlantic Company*, 65 N. L. R. B. 1274.

[5] Respondent's Objections to Conduct of Election (Bd. Ex. 17), pg. 2. There is a dispute as to the extent of the agreement concerning the voting procedure. The Regional Director in his Report on Objections to Election (Bd. Ex. 16) found that the respondent had agreed not only to the procedure of allowing the absent employees to vote by mail, but also to a delay in the counting of ballots until all the ballots could be commingled. The actions of the respondent immediately after the election tend to negative such an agreement. The evidence presented at the hearing, in the opinion of the indersigned, does not sufficiently establish the making of a definite agreement for the commingling and counting of ballots at a later date.

On March 19, 1946, the election was held at Fresno as scheduled. The respondent and the Union each designated an observer to watch the balloting At the conclusion of the balloting, the Board Field Examiner in attendance sealed the ballots in an envelope and he and each of the observers signed their names across the flap. The observers signed a Certification on Conduct of Election. The Field Examiner then informed representatives of the respondent that he was taking the ballots to the Regional office at San Francisco and that all parties would be informed when a count of the ballots would be made

On March 20, 1946, the respondent sent a telegram to the Regional Director objecting to the conduct of the election on the grounds that the votes were not counted and tabulated as soon after the election as feasible, that a tally of ballots was not furnished to the parties at the conclusion of the election, that the authorized observer for the respondent was denied his privilege and duty of verifying the tally by reason of the removal of the ballots to San Francisco, and that the ballots were removed from the place of election prior to their count and tabulation.

On March 25, representatives of the respondent and the Union met with the Field Examiner at the Board office in San Francisco for the purpose of counting the ballots. When the respondent pressed its objections, the counting was postponed.

The Union then filed a memorandum on the objections, dated March 26, 1946, in which it maintained that the procedure sought to be followed by the Board was fair and that the objections were specious The respondent in its reply to the Union's memorandum reiterated its position. It called attention to paragraph 6 of the "Agreement for Consent Election," which provides:

> Observers—Each party hereto will be allowed to station an equal number of authorized observers, selected from among the nonsupervisory employees of the Employer, at the polling places during the election to assist in its conduct, to challenge the eligibility of voters, and to verify the tally. As soon after the election as feasible, the votes shall be counted and tabulated by the Regional Director, or his agent or agents. Upon the conclusion of the counting, the Regional Director shall furnish a Tally of Ballots to an observer designated by each party for such purpose.

The respondent maintained that the above provision requires that the ballots be counted immediately after the voting so that the observer could verify the tally. While recognizing that special situations might require a departure from normal procedures, the respondent maintained that that was not the situation in this case, that it was feasible to count the ballots at the time of the election, and that a more reasonable procedure would have been to have counted the ballots on hand at the time of the election and to have made a subsequent count of the mailed ballots, if necessary.

On March 29, 1946, the Regional Director issued a Report on Objections to Election in which he considered the objections raised to the conduct of the election, concluded that they were without merit, and ordered that the ballots be counted at the Board offices in San Francisco on April 5, 1946.

The Union and the respondent were both represented at the counting of the ballots, the respondent having designated its Fresno Manager Hawker as observer without prejudice to its previously expressed objections. The Field Examiner identified his signature on the flap of the sealed Fresno ballots. The respondent then checked the signatures of the observers on the flap and also the signatures on the envelopes of the two ballots that had been received by mail. The mailed ballots were then intermingled and counted by Hawker and the repre-

sentative of the Union, McGraw. They both then signed a Tally of Ballots certifying that a majority of the votes had been cast for the Union.[6]

The respondent then filed Objections to Conduct of Elections maintaining and affirming its previously expressed position. The Regional Director on April 12, 1946, issued a Report on Objections to Election overruling the objections. On April 22, 1946, he issued a Consent Determination of Representatives finding that the Union was the designated exclusive collective bargaining representative of the respondent's employees in the unit set forth in the consent election agreement.

Conclusions

The sole issue as to the respondent's refusal to bargain is the validity of the procedure used in the counting of the ballots. It is true, as the respondent contends, that the election procedure set forth in the Board's Rules and Regulations contemplates an election by secret ballot and the counting of those ballots and the preparation of a tally immediately thereafter. In this manner, full effect is given to the twin policies of assuring employees who vote that they can exercise their freedom of choice secure in the knowledge that the individual votes will not be disclosed and secondly, that the respective parties will have full opportunity to observe the counting of the ballots and thus be able to make timely objections and prevent any fraud or mistake. However, as the respondent recognizes in its brief, special circumstances do arise where a different procedure must be employed to protect the rights of all the parties and it has been held that the Board has wide discretion in determining the election procedure to be used.[7]

In the instant case a special situation did arise immediately prior to the election in that two of the eligible voters were absent from Fresno on the day of the election on the respondent's business The two alternatives open to the parties were to either postpone the election or to proceed and to make provisions for allowing the two absent employees to cast their ballots. The latter choice was agreed to prior to the election.

At the conclusion of the balloting at Fresno two alternatives again faced the parties. There was a strong possibility in view of the small total of ballots, that the two mailed ballots might be determinative of the election. If the ballots were counted at Fresno and a later count made of the mailed ballots, the choice of the two absentee voters would have been revealed and the secrecy of the ballot would have been destroyed as to them The other possibility, and the one selected by the Field Examiner, was to postpone the count until all the ballots had been received. In this way the secrecy of the ballot was fully preserved to all the voters.

In addition, steps were taken to safeguard the interests of the parties against any tampering with the ballots After the balloting at Fresno, the two ob-

[6] The tally was as follows:

Approximate number of eligible voters	13
Void ballots	0
Valid votes counted	13
Challenged ballots	0
Votes cast for Union	9
Votes cast against the Union	4

[7] *Southern Steamship Co* v. *N L. R. B*, 316 U. S. 31, reversing and remanding 120 F. (2d) 505 (C. C. A. 3), enf'g 23 N. L. R. B. 26; *N. L. R. B.* v. *O. U. Hofmann, et al.*, 147 F. (2d) 679 (C. C. A. 3), enf'g 55 N L. R. B. 683.

servers and the Field Examiner signed their names across the flap of the envelope containing the ballots. The ballots remained in custody of the Board. Before the ballots were counted, representatives of the parties were assembled and the signatures on the flap of the envelope containing the Fresno ballots and the signatures on the envelopes of the mailed ballots were compared with signatures on file with the respondent. The ballots were then mingled and the count was made by the parties.

It is clear that precautions were taken to prevent any tampering with the ballots and there is no allegation of fraud. The respondent's chief contention is that the consent election agreement prescribed a set procedure which could not be varied, that there was such a variance, and that the election was a nullity. The undersigned does not agree The consent election agreement provides in Section 1 thereof, "Said election shall be held in accordance with the National Labor Relations Act, the Board's Rules and Regulations, and the customary procedures and policies of the Board . . " The experience of the Board, as evidenced in its decisions, is that special situations do arise in the conduct of elections which require special arrangements and the Courts have recognized that the Board has wide discretion in such matters. The sentence quoted above concludes, as follows, "provided that the determination of the Regional Director shall be final and binding upon any question, including questions as to the eligibility of voters, raised by any party hereto relating in any manner to the election." The undersigned construes the provision to mean that the Regional Director has discretion in determining whether an election has been properly conducted. The provision expressly contemplates that questions may arise in the conduct of an election and that the Regional Director may make final determination thereon.[8]

The evidence establishes that a special situation arose which required a special procedure in order to protect the secrecy of the ballots cast. The method used preserved the secrecy of the ballot and also insured against any fraud or tampering with the ballots before they were counted. The undersigned concludes that the Regional Director acted within the scope of authority as set forth in the consent election agreement in overruling the objections raised to the election and in certifying the Union as collective bargaining representative. The undersigned further concludes that said decisions effectuated the policies of the Act as to the selection of collective bargaining representatives

The undersigned, therefore, finds that all employees of the respondent's Fresno Branch at Fresno, California, engaged in the maintenance, repair, and servicing of aircraft and aircraft engines, except for guards, office clerical, salesmen, group leaders, 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 constituted, a unit appropriate for the purposes of collective bargaining. The undersigned further finds that on and at all times after April 5, 1946, the Union was the duly designated collective bargaining representative of the employees in said appropriate unit.

B. *The refusal to bargain*

The complaint alleges and the answer admits that the Union requested the respondent to bargain collectively with it as the exclusive representative of all the

[8] *A. J. Tower Company* v. *N L R. B.*, 67 S Ct 324 *Matter of Capitol Greyhound Lines*, 49 N L R B 156, enf'd 140 F. (2d) 754 (C. C. A. 6), cert den 322 U S 763. See also, *Matter of Botany Worsted Mills*, 56 N. L R B 370, 382

employees in the aforesaid appropriate unit. Letters from the attorney of the respondent to the Union dated April 22, 1946 and November 29, 1946, were introduced in evidence In both these letters, the respondent's position, as discussed above, was set forth and also a refusal to recognize the Union and bargain with it.

The undersigned finds that the respondent on April 22, 1946, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in an 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.

Because of the basis of the respondent's refusal to bargain as indicated by the facts found, and because of the absence of any evidence that danger of other unfair labor practices is to be anticipated from the respondent's conduct in the past, the undersigned will not recommend that the respondent cease and desist from the commission of any other unfair labor practices. Nevertheless, in order to effectuate the policies of the Act, the undersigned will recommend that the respondent cease and desist from the unfair labor practices found and from any other acts in any manner interfering with the efforts of the Union to negotiate for or represent the employees in the unit herein found appropriate, as exclusive bargaining representative.

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. International Association of Machinists, Lodge 1309, Dist. 87, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees of the respondent's Fresno Branch at Fresno, California, engaged in the maintenance, repair, and servicing of aircraft and aircraft engines, except for guards, office clerical, salesmen, group leaders, 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 constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. International Association of Machinists, Lodge 1309, Dist. 87, was on April 5, 1946, and at all times thereafter has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

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4 By refusing on April 22, 1946, and at all times thereafter to bargain collectively with International Association of Machinists, Lodge 1309, Dist. 87, as the exclusive representative of all of 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 said acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby 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 within the meaning of Section 2 (6) and (7) of the Act [9]

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, Pacific Airmotive Corporation, Fresno, California, its officers, agents, successors and assigns shall:

1. Cease and desist from

(a) Refusing to bargain with International Association of Machinists, Lodge 1309, Dist. 87, as the exclusive bargaining representative of all its employees at its Fresno Branch, at Fresno, California, engaged in the maintenance, repair, and servicing of aircraft and aircraft engines, except for guards, office clerical, salesmen, group leaders, 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 other acts in any manner interfering with the efforts of International Association of Machinists, Lodge 1309, Dist 87, to negotiate for or represent the employees in the aforesaid unit as exclusive bargaining agent.

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

(a) Upon request bargain collectively with International Association of Machinists, Lodge 1309, Dist. 87, as the exclusive bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached embody such understanding in a signed agreement;

(b) Post at its offices at Fresno, California, copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by respondent, be posted by respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by respondent to insure that said notices are not altered, defaced, or covered by any other material;

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

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations,

[9] The Union has submitted four proposed conclusions of law These have been adopted

the National Labor Relations Board issue an order requiring respondent to take the action aforesaid.

As provided in Section 203 39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203 38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, 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; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, 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. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203 65 As further provided in said Section 203 39, 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 service of the order transferring the case to the Board.

SIDNEY L. FEILER,
Trial Examiner.

Dated March 11, 1947.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT engage in any acts in any manner interfering with the efforts of INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 1309, DIST. 87, to negotiate for or represent the employees in the bargaining unit described below.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described below with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees at the Fresno Branch, Fresno, California, engaged in the maintenance, repair, and servicing of aircraft and aircraft engines, except for guards, office clerical, salesmen, group leaders, 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.

PACIFIC AIRMOTIVE CORPORATION,
Employer.

By _____
(Representative) (Title)

Dated _____

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