

In the Matter of LIFT TRUCKS, INC. and INTERNATIONAL ASSOCIATION
OF MACHINISTS

Case No. 9-C-2271.—Decided January 23, 1948

Mr. Allen Sinsheimer, Jr., for the Board.

Mr. James G. Manley, of Cincinnati, Ohio, for the respondent.

Messrs. D. J. Omer and Edwin J. Hengehold, of Cincinnati, Ohio,
for the Union.

Mr. Philip J. Kennedy, of Cincinnati, Ohio, for the Intervenor.

DECISION

AND

ORDER

On February 27, 1947, Trial Examiner J. J. Fitzpatrick 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 attached hereto. Thereafter, the respondent and the Intervenor filed exceptions and supporting briefs.

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 exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following exceptions, additions, and modifications:¹

¹ Those provisions of Section 8 (1) and (5) of the National Labor Relations Act, which the Trial Examiner herein found were violated, are continued in Section 8 (a) (1) and 8 (a) (5) of the Act as amended by the Labor Management Relations Act, 1947

We hereby correct the following subsidiary findings of fact contained in the Intermediate Report, to which the respondent has excepted:

(a) The Trial Examiner found that on October 19, 1945, the respondent and the Union were in accord as to the provisions of a contract, except on the question of wages. The record shows, and we find, that on October 19, the respondent and the Union were in agreement on a number of the issues in dispute, but were unable to agree on the principal issue—wages.

(b) The Trial Examiner found that the defection of membership from the Union to the Intervenor occurred on March 12, 1946. The record shows, and we find, that on March 12,

On July 23, 1945, the Regional Director certified the Union as the bargaining representative of the respondent's employees, except for certain agreed exclusions.² Thereafter, the Union and the respondent entered into collective bargaining negotiations which continued until March 14, 1946, when the respondent refused to sign the agreement previously reached with the Union or to negotiate further because of receipt of the Intervenor's claim that the employees had repudiated the Union and desired henceforward to be represented by the Intervenor.³ The respondent persisted in its refusal to bargain from March 14, 1946, until sometime after June 10, 1946, when the Board announced its ruling upholding the Regional Director's dismissal of the Intervenor's petition. This was a period of approximately 3 months, extending from about the eighth to the eleventh month after the Regional Director's certification of the Union. It should be noted that the respondent continued in its refusal to bargain even after the Regional Director dismissed the Intervenor's petition on May 2, 1946. In July 1946, the respondent and the Union resumed negotiations and continued their bargaining until September 19, 1946, when the respondent broke off negotiations again, because of the Intervenor's renewed demand for recognition and the filing of the Intervenor's second petition with the Board. The respondent again refused to deal with the Union until after the Board had upheld the Regional Director's dismissal of the Intervenor's petition.

An employer is obligated to bargain with a certified union for a reasonable period of time.⁴ In the absence of unusual circumstances, a reasonable period of time is customarily held to be 1 year.⁵ An em-

1946. 18 of the 32 employees in the appropriate unit signed a statement revoking the Union's authority to act as their bargaining representative.

(c) The Trial Examiner found that after February 21, 1946, the Union had to appeal to the U. S. Conciliation Service to secure another conference with the respondent. The record does not support this finding.

(d) The Trial Examiner found that Conciliator O'Connor arranged for two meetings in his office on August 15 and 17, 1946. The record shows, and we find, that the meetings were held on August 15 and 16, 1946.

² The Board gives the same effect to a certification by a Regional Director pursuant to an "Agreement for Cross-Check" as it gives to a Board certification following a Board-directed election. *Matter of Joe Hearn*, 68 N. L. R. B. 150.

³ We credit the testimony of witnesses Omer, Hengehold, and Higgins, as did the Trial Examiner, that at the March 14, 1946, meeting between the Union and the respondent, the former presented the retyped contract for signature and that the respondent refused to sign because of receipt of the Intervenor's rival representation claim. We find it unnecessary to decide, unlike the Trial Examiner, whether the respondent's request on February 21, 1946, that the contract be retyped on legal-sized paper before being signed, constituted a refusal to bargain in good faith.

⁴ *N. L. R. B. v. Swift & Co.*, 162 F. (2d) 575, 582 (C. C. A. 3) cert. denied October 20, 1947; *N. L. R. B. v. Prudential Insurance Co. of America*, 154 F. (2d) 385 (C. C. A. 6); *N. L. R. B. v. Century Oxford Manufacturing Corporation*, 140 F. (2d) 541 (C. C. A. 2), cert. denied, 323 U. S. 714; *N. L. R. B. v. Appalachian Electric Power Company*, 140 F. (2d) 217 (C. C. A. 4).

⁵ National Labor Relations Board, *Eleventh Annual Report*, p. 43; *Matter of Con P. Curran Printing Company*, 67 N. L. R. B. 1419.

ployer is not free to disregard a certification during the certification year because a rival union has made a claim for recognition or has filed a representation petition with the Board.⁶ "The rule that a Board's certification cannot be disregarded by an employer and that the certification is valid until declared invalid or replaced by the Board, is well settled: *N. L. R. B. v. May Department Stores Company*, 8 Cir., 146 F. (2d) 66, 70 and the cases cited therein, (affirmed with modifications 326 U. S. 376)."⁷

The respondent and the Intervenor contend that the respondent was justified in suspending negotiations with the Union after receipt of the Intervenor's claim that it represented a majority of the respondent's employees on the authority of prior Board decisions,⁸ and specifically *Matter of J. M. Portela & Company, Inc.*,⁹ *Matter of Midwest Piping and Supply Co., Inc.*,¹⁰ and *Matter of I. Spiewak & Sons*.¹¹ However, none of these cases supports this contention. The *Portela* case was overruled in the *Con P. Curran* case.¹² Moreover, the decision in the *Portela* case was reached on the basis of its peculiar facts and not because of any general doctrine that an employer is justified in refusing to bargain with a certified union any time that a rival union makes a claim for recognition or files a representation petition. Neither do the *Midwest Piping* and *Spiewak* cases support such a doctrine. Both cases stand for the proposition that, when an employer is confronted with conflicting claims for recognition which are sufficient to create a *question concerning representation*, he violates the Act if he unilaterally resolves the representation question and accords exclusive recognition to one of the two rival labor organizations.¹³ But it is not every rival claim that imposes a duty upon the employer to refrain from granting exclusive recognition to one of the competing unions. The claim must be of such character and must be made at such time as to create a *question concerning representation*. A rival claim made during the year following the certification of another union does not, except under

⁶ See *Matter of Greder Machine Tool & Die Company*, 49 N L R B 1325, enfd 142 F. (2d) 163 (C C A 6)

⁷ *N L R. B. v. Swift & Co.*, 162 F (2d) 575 (C C. A. 3), cert denied October 20, 1947. See also *N. L. R. B v. Century Oxford Manufacturing Corporation*, *supra*, *N L R B v. Appalachian Electric Power Company*, *supra*, *Valley Mould and Iron Corporation v N. L. R B*, 116 F. (2d) 760 (C. C A 7), cert. denied, 313 U S 590

⁸ Both the respondent and the Intervenor also contend that the defection in the Union's membership was caused by the latter's inept handling of the negotiations with the respondent. The record does not establish this as a fact. But even if it were true, the respondent was not thereby relieved of its duty to continue to recognize and bargain with the Union, at least during the certification year.

⁹ 61 N L R B 64.

¹⁰ 63 N L R B 1060.

¹¹ 71 N L R. B 770.

¹² *Matter of Con P. Curran Printing Company*, 67 N L. R. B 1419, decided May 15, 1946.

¹³ See *Matter of Radio Corporation of America*, 74 N L R B 1729.

unusual circumstances which are not present here, create a question concerning representation.¹⁴ Hence the respondent was under a duty to ignore the Intervenor's claim and to continue to recognize and to bargain with the Union at least until a year had elapsed from the date of certification or the Board had revoked the certification. Any other rule would give to third persons the power virtually to nullify a certification by making repeated demands for recognition, would defeat the purpose of the certification to fix the bargaining agency for a reasonable period of time,¹⁵ and would lead to "litigious bedlam and judicial chaos."¹⁶

Accordingly, we find, as did the Trial Examiner, that by refusing to sign the draft agreement on March 14, 1946, and by refusing thereafter to continue negotiations with the Union, the respondent refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. Inasmuch as the remedy for the respondent's refusal to bargain with the Union during the pendency of the Intervenor's first claim is to require the respondent to bargain with the Union, we find it unnecessary, unlike the Trial Examiner, to determine whether the respondent's refusal to bargain after receipt of the Intervenor's second claim for recognition in September 1946 was also unlawful:

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, Lift Trucks, Inc., Cincinnati, Ohio, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Association of Machinists as the exclusive representative of all employees of the respondent, excluding office and clerical employees, engineering and drafting room employees, foremen, superintendents, and other supervisors and guards as defined in the Act;

¹⁴ It was for this reason that the Regional Director dismissed the Intervenor's petition, and the Board upheld his action.

¹⁵ See *N L R B v. Century Oxford Manufacturing Corporation*, 140 F. (2d) 541 (C. C. A. 2), cert. denied, 323 U. S. 714.

¹⁶ *N L R B v. Appalachian Electric Power Company*, 140 F. (2d) 217, 221.

In *Matter of Ensher, Alexander & Baisoom, Inc.*, 74 N. L. R. B. 1443, a majority of the Board used the following cautionary language about the application of the *Midwest Piping* doctrine. "That doctrine, necessary though it is to protect freedom of choice in certain situations, can easily operate in derogation of the practice of continuous collective bargaining, and should therefore be strictly construed and sparingly applied."

(b) In any manner interfering with the efforts of International Association of Machinists to bargain collectively with it, as the exclusive representative of its employees in the appropriate unit described above.

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 as the exclusive representative of all its employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed contract;

(b) Post at its plant in Cincinnati, Ohio, copies of the notice attached to the Intermediate Report, marked "Appendix A."¹⁷ Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by the respondent's 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 the said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Ninth 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. Allen Sinsheimer, Jr., for the Board.

Mr. James G. Manley, of Cincinnati, Ohio, for the respondent.

Messrs D. J. Omer and Edwin J. Hengehold, of Cincinnati, Ohio, for the Union.

Mr. Philip J. Kennedy, of Cincinnati, Ohio, for the intervenor.

STATEMENT OF THE CASE

Upon an amended charge dated and filed December 13, 1946, by International Association of Machinists, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Ninth Region (Cincinnati, Ohio), issued its complaint dated December 13, 1946, against Luft

¹⁷ Said notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order." In the event this Order is enforced by decree of a Circuit Court of Appeals, there shall be inserted before the words "A Decision and Order" the words "A Decree of the United States Circuit Court of Appeals Enforcing."

The description of the unit in the notice is also hereby amended by striking therefrom the words "and other supervisory employees having the right to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action;" and substituting therefor the words "and other supervisors and guards as defined in the amended Act."

Trucks, Inc., herein called the respondent, alleging that the respondent had 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 accompanied by notice of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent since about July 23, 1945, has refused to bargain collectively in good faith with the Union which was the exclusive bargaining representative of respondent's employees within an appropriate bargaining unit; and that from about March 14, 1946, until July 9, 1946, and again from about September 20, 1946, to the date of the issuance of the complaint herein, the respondent refused to bargain in any respect with the Union as the exclusive representative of its employees in said appropriate unit.

The respondent thereafter filed its answer wherein it denied the commission of any unfair labor practices. It alleged that it recognized the Union as bargaining representative in the unit alleged after a cross-check on July 12, 1945; that thereafter, in March 1946, a question of representation arose when Lift Truck Makers Union, herein called intervenor, demanded recognition from the respondent as collective bargaining agent in the defined unit and filed with the Board a petition for investigation and determination of representatives, and that subsequent to June 10, 1946, after the Board had sustained the Regional Director's refusal to issue notice of hearing on intervenor's petition, the respondent engaged in collective bargaining with the Union; that on September 20, 1946, the intervenor filed a second petition with the Regional Director who again refused to issue notice of hearing thereon and his action in that respect was sustained by the Board on January 6, 1947, and that on January 9, 1947, the respondent notified counsel for the Board that it would resume collective bargaining with the Union.

Pursuant to notice, a hearing was held at Cincinnati, Ohio, on January 13, 14, and 15, 1947, before J. J. Fitzpatrick, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. At the opening of the hearing counsel for the respondent moved for an indefinite postponement of the hearing on the basis of the allegation in its answer that on January 9, 1947, the respondent had offered to resume collective bargaining with the Union. Board's counsel objected and the motion was denied. Lift Truck Makers Union was permitted to intervene in the case insofar as its interests therein might appear. The Board, the respondent, and the intervenor were represented by counsel, the Union by two of its officials. All participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the conclusion of the testimony a motion by Board's counsel to conform the pleadings to the proof in formal matters was granted without objection. All parties waived oral argument before the undersigned but since the conclusion of the hearing briefs have been received from counsel for the intervenor, the respondent, and the Board.

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

Lift Trucks, Inc., is an Ohio corporation with its principal office and only place of business in Cincinnati, Ohio, where it is engaged in the manufacture of indus-

tial lift trucks Its annual purchases of material for its manufacturing business are in excess of \$200,000, approximately 50 percent of which is shipped to Cincinnati from points outside the State of Ohio. The respondent's manufactured products exceeded \$400,000 in value in the calendar year 1946, of which approximately 90 percent thereof was shipped to points outside the State.¹

II. THE ORGANIZATIONS INVOLVED

International Association of Machinists and Lift Truck Makers Union, unaffiliated, are labor organizations admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

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

Pursuant to an understanding between the respondent and the Union a cross-check was held on July 12, 1945, under the direction and supervision of the Regional Director for the Ninth Region in an agreed unit consisting of all employees of the respondent except office and clerical employees, engineering and drafting room employees, foremen, superintendents, and other supervisory employees having the right to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action. On July 23, 1945, the Regional Director found that 19 of the 29 employees in the agreed unit had designated the Union and, pursuant to the terms of the Cross Check Agreement, determined that the Union was the exclusive representative of all the employees in the above unit for the purposes of collective bargaining. In its answer the respondent admitted the appropriateness of this unit and no point was made at the hearing that the unit was in any way inappropriate. In view of the consent determination by the Regional Director for the Board and for reasons which will hereafter appear, the undersigned finds that the Union, on July 23, 1945, was, and at all times material since that time has been, the exclusive representative of the respondent's employees in the above appropriate unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment within the meaning of Section 9 (a) of the Act.

B. *The refusal to bargain*

1. Sequence of events

Following the determination by the Regional Director that the Union was the exclusive representative of all the employees in the defined unit, the Union, on August 18, 1945, wrote the respondent enclosing a proposed contract and suggesting that a date be assigned for a conference thereon. Thereafter, in September and October of 1945, several meetings were held between representatives of the Union and of the respondent in an effort to arrive at an agreement. On October 19, as a result of various conferences and discussions on proposals and counterproposals, the respondent and the Union were in accord as to the provisions of a contract, except on the question of wages. The Union wanted a general wage increase, but the respondent contended that it was unable to assume a general wage increase at that time.

¹ Findings based on the pleadings and a stipulation between counsel for the Board and counsel for the respondent.

Because of this apparent impasse on wages, Mr. J. J. Addicks of the United States Conciliation Service was called in by the Union. At two conferences the Conciliator strove to get the parties to agree on some wage increase but was unsuccessful, the respondent taking the position that it was in no financial condition to grant a general wage increase because of threatened litigation involving certain of its patents. At the second conference with the Conciliator on November 5, 1945, Addick suggested that the wage increase issue be postponed for some future period and that, in the meanwhile, the parties each prepare a tentative draft of a contract covering all other matters in which they appeared to be in agreement. Pursuant to this suggestion, on November 9, the respondent drafted a proposed contract containing all the provisions that had been discussed and agreed to, but eliminating therefrom any reference to a wage increase,² and sent a copy thereof to the Union on November 9, with a covering letter as follows:

We herewith attach rewritten copy of contract with amendment made as per our recent discussion.

Thereafter, as suggested by the Conciliator, the Union and the respondent's representatives again conferred on November 23. The Union stated that it was in accord with all the provisions of the contract drafted by the respondent except that it wanted a wage increase. When the respondent again reiterated that no general wage increase was possible under the circumstances, the Union suggested that some wage increases should be permitted.

Up to this time the negotiations had been conducted by B. J. Hengehold, business representative of the Union, assisted by a committee of employees, as the Union's representatives, and by Walter C. Steubing, Jr., vice president and general manager, and Superintendent Sanders on behalf of the respondent, but with Hengehold and Steubing, Jr., doing the actual talking and negotiating.³ Most of these conferences, with the exception of the two with the United States Conciliator, were held in the office of the respondent at the plant. It is the testimony of Hengehold that on December 29, the Union's representatives notified the respondent that it was ready to sign the contract as submitted previously by the respondent but that they were advised that the respondent could not execute the agreement until the return from out of town of President W. C. Steubing, Sr.; that on January 5, 1946, he was advised by Steubing, Jr., that the contract would have to be submitted to the respondent's attorney before it could be signed; and on January 11, the Union's representatives were informed by Steubing, Jr., that his father was again out of town and nothing could be done about the contract until his return as he was to sign the contract for the respondent. That on February 8, and again on February 15, Steubing, Jr., told him that Steubing, Sr., was away, and that a meeting was then arranged for February 21 when Steubing, Sr., would be back.

Steubing, Jr., testified and denied that there was any formal conference between the two committees, as such, on December 29, January 5, or January 11. In this he was corroborated by Superintendent Sanders. Steubing, Jr., admitted that Hengehold may have been at the plant and talked to him informally on the dates above referred to or some of them. He did not specifically deny the statements attributed to him by Hengehold on these occasions. For reasons that will hereafter appear it is found that, while there may not have been regular

² Bd. Exh. No. 2M

³ W. C. Steubing, Sr., president of the Company, appears to have participated in at least one of the conferences

formal meetings of the conferees in December, January, and early February, the respondent was advised and understood that the Union was ready and willing to sign the contract as prepared by the respondent and with the wage-increase clause eliminated.

At the February 21 conference in the respondent's office, the respondent's representatives refused to sign the agreement on the ground that it was not on legal-sized paper and had penciled notations thereon. Hengehold promised to have the contract redrafted on paper of the size deemed appropriate.⁴ At this meeting Steubing, Jr., asked Hengehold if the rank and file of the employees had seen the contract and the business agent for the Union replied that they had and that the employees had gone over the terms of the contract at a previous union meeting.

At a meeting on March 14 called by Conciliator Addicks at the request of the Union in an effort to get the parties together, the Union was represented by International Representative D. J. Omer, in addition to Hengehold and the committee. The respondent was represented by Steubing, Jr., and Sanders. Steubing, Sr., was also present on this occasion. At this time the recopied draft of the contract on legal size paper, as had been requested, was submitted by the Union to the respondent, but the latter refused to sign the newly drafted agreement and produced a letter dated March 13, 1946, from intervenor claiming to represent a majority of the employees in the unit.

On March 15, 1946, the intervenor filed a petition for investigation and certification of representatives covering all the production and maintenance employees of the respondent except supervisors. On May 2, 1946, the Regional Director for the Ninth Region wrote the intervenor and the Union that further proceedings in this representation proceeding did not seem warranted and that he was therefore refusing to issue notice of hearing therein.⁵ On May 12, intervenor filed an appeal to the Board from the action of the Regional Director and on June 10 the Board advised that it was sustaining the action of the Regional Director.

Contract negotiations between the Union and the respondent were resumed at one or two meetings in July. At that time the Union resubmitted for execution the contract which the respondent had refused to sign the previous March, but coupled it with a request for a general wage increase amounting to 3½ cents an hour more than it had requested the previous fall. The respondent again refused any wage increase and submitted a counterproposal which materially changed items previously agreed upon such as hours, overtime, and seniority. At a meeting on August 9 some of the items in dispute were settled but others were not, and no agreement was reached on the request for a wage

⁴ This testimony of Hengehold was corroborated by employee Lawrence Higgins, a member of the Union's employee-committee. Steubing Jr., and Superintendent Sanders testified that at the meeting Hengehold again asked about pay increases and inferentially denied that anything was said at the conference about signing the agreement. Steubing Sr., although present at this February 21 meeting and who was a witness, did not testify relative to the same. However, it is quite clear from the entire record that by February 21 the Union and the respondent were agreed on the terms of the contract. It was merely a question of details. This is emphasized by a letter which Steubing, Sr., wrote to Union Representative Hengehold under date of March 8, the body of which reads as follows:

Ever since I talked with you, I had great difficulties in reaching my attorney inasmuch as he advised me before I left for the east that he wanted to give a final checkup of all the details to see that matters were in order.

I just learned that he will not be available until the early part of next week after which I can again get in touch with you.

⁵ On March 15, the Union also filed with the Ninth Region the original charge in the present complaint proceeding.

increase. The dispute was then again referred to the United States Conciliation Service and Conciliator O'Connor arranged for two meetings in his office on August 15 and 17. The time at those meetings was used in an effort to compromise on a wage increase. The respondent again refused a general wage increase but at the last meeting before the Conciliator, countered with a new wage schedule which involved some increases. But no accord was reached. It was agreed, however, that a later meeting be held between the respondent's and the Union's representatives on September 20.⁶ The meeting scheduled for September 20, 1946, was never held nor has any other conference been held between representatives of the respondent and the Union in regard to bargaining because on September 19, 1946, the intervenor filed a second petition for representation in the Regional Office in the same unit covered in the first petition. On October 25, the Regional Director advised the intervenor that the matters involved in the petition had been investigated and then added,

In accordance with principles announced in prior Board decisions which appear to me to be controlling on the facts of the instant case as established by our preliminary investigation, it does not appear that further proceedings seem warranted inasmuch as an agreement or cross-check issued in Case 9-R-1869 on July 23, 1945, constitutes a bar to investigation of representatives at this time

Thereafter, intervenor petitioned the Board for a review of this decision of the Regional Director and on January 2, 1947, the Board advised intervenor that it was sustaining the decision of the Regional Director. The answer alleges and the testimony at the hearing shows that, on January 9, the respondent through its counsel notified counsel for the Board that it was ready to resume bargaining with the Union. During the course of the hearing counsel for the Union announced that it was willing to meet with management for the purpose of negotiating an agreement at any time during the hearing or subsequent thereto.

Conclusion

It having been determined by a card check under Board auspices that the Union was the exclusive bargaining agent on July 23, 1945, the respondent was obligated to bargain with the Union for a reasonable time thereafter. The Board and the courts have held that during this period a shift of allegiance by a majority of the employees in the unit is in itself insufficient to relieve the employer of his obligation to bargain.⁷ The Board has frequently held that a certified union is ordinarily protected against successful attacks on its representative status for at least 1 year. Fairly recently the Board reiterated this position in the *Curran* case.⁸

It is the contention and defense of the respondent that under the law and the decisions of the Board it was required to suspend negotiations with the Union until the questions concerning representation had been determined by the Board because if it had proceeded otherwise it would have constituted unlawful assistance to one of two competing labor organizations where a question existed as to

⁶ Pending vacations among the conferees on both sides prevented the setting of an earlier date than September 20

⁷ *Matter of the Century Oxford Manufacturing Corporation*, 47 N. L. R. B. 835, enf'd 140 F. (2d) 541 (C. C. A. 2), cert'd en 323 U. S. 714, *N. L. R. B. v. Valley Mould and Iron Corp.*, 146 F. (2d) 760 (C. C. A. 7)

⁸ *Matter of Con P. Curran-Printing Company, etc.*, 67 N. L. R. B. 1419.

the identity of the majority representative.⁹ While it is true that in some instances in the past the Board has held such conduct on the part of a respondent to constitute assistance, the decisions were based usually upon a background of other assistance to the favored union and invariably where the two unions involved had been competing for the employer's recognition for some period of time. That is not true in the instant case. The record shows that defection of membership from the Union to the intervenor occurred on March 12, 1946, and the respondent had no knowledge of the existence of such competing union until the receipt of the letter from intervenor's attorney dated March 13. Under the circumstances there seems no valid reason for departing from the Board's precedent established by many decisions to give the certified and recognized representative uninterrupted bargaining rights for a period of at least 1 year. Furthermore, the record shows, as above found, that the Union and the respondent were in accord in all terms of the contract in the fall of 1945. While it is true that the Union thereafter strove to secure for the employees a general wage increase, it abandoned that effort on or before the first of the year 1946, and thereafter sought to secure the respondent's signature to the agreement with which both parties were in accord. The record shows that prior to March 14, the date on which the respondent raised the question of representation, and at least from February 21 on, the agreement was not executed merely because of technical objections raised by the respondent having nothing to do with the terms of the contract.¹⁰ It therefore appears conclusively and the undersigned finds that the Union and the respondent were in full agreement as to the terms of a collective bargaining contract on February 21, 1946, and that such contract had been reduced to writing, but that the respondent refused to sign the contract for reasons having nothing to do with the terms thereof, but on the specious plea that the contract had not been written on legal-size paper. The undersigned therefore finds that on February 21 the respondent refused to bargain in good faith with the Union. Even if we assume, as some of the respondent's witnesses contend, contrary to the findings herein, that the Union and the respondent did not reach full accord on the terms of the contract until March 14, and at that time the respondent refused to sign because the contract was not on legal-size paper and also because of the pending petition for representation by the intervenor, the respondent was still not justified in refusing to sign the contract under the Board's decisions hereinbefore referred to. Thereafter, collective bargaining having been interrupted through no fault of the negotiating Union beyond the conventional 1-year period of certification, the Union's immunization against attacks on its representative status was extended beyond the year under the *Allis-Chalmers* doctrine¹¹ to the effect that the certification remains in full force and effect until the certified union has had a reasonable opportunity to consummate a collective bargaining agreement with the employer.

It is therefore found that the respondent, on February 21, 1946, and thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

⁹ Cf. *Matter of Midwest Piping and Supply Co., Inc.*, 63 N. L. R. B. 1060.

¹⁰ It is also noted that after February 21 the Union had to appeal to the U. S. Conciliation Service to secure another conference with the respondent.

¹¹ *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306, *Matter of Kennecott Copper Corporation*, 51 N. L. R. B. 1140; *Matter of Taylor Forge and Pipe Works*, 58 N. L. R. B. 1375, *Matter of Wentworth Bus Lines*, 64 N. L. R. B. 65.

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 failed and refused to bargain with the Union as the representative of all its employees in an appropriate unit, it will be recommended that it cease and desist therefrom and that, upon request, the respondent bargain collectively with the Union with respect to wages, hours, and working conditions.

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. All employees of the respondent, except office and clerical employees, engineering and drafting room employees, foremen, superintendents, and any other supervisory employees having the right 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.

2 International Association of Machinists was on July 23, 1945, 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

3. By failing and refusing on and after February 21, 1946, to bargain collectively in good faith with International Association of Machinists as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act

4. 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.

5. 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, Lift Trucks, Inc., Cincinnati, Ohio, and its officers, agents, successors, and assigns shall:

1. Cease and desist, from:

(a) Refusing to bargain collectively in good faith with the International Association of Machinists as the exclusive representative of all its employees in the unit hereinabove found to be appropriate;

(b) In any other manner interfering with the effort of International Association of Machinists to bargain collectively with it

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 as the exclusive representative of all its employees in the aforesaid appropriate unit in regard to any terms and conditions of employment affecting the said employees and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant in Cincinnati, Ohio, copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by the respondent's 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 Ninth Region in writing within ten (10) days from 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 has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the 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.

J. J. FITZPATRICK,
Trial Examiner.

Dated February 27, 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 in any manner interfere with the efforts of the INTERNATIONAL ASSOCIATION OF MACHINISTS to bargain with us.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the 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. The bargaining unit is:

All employees of the respondent, except office and clerical employees, engineering and draft room employees, foremen, superintendents, and other supervisory employees having the right to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action

LIFT TRUCKS, INC.,
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