tion on behalf of its members, including these three Employers.[5] As it is thus clear that the contracts in question are not the result of collective bargaining on a multiemployer basis by the Employers themselves, we find the circumstance relied upon by the Petitioner to be without significance.

Upon the basis of the above facts, and the entire record, including the absence of collective bargaining on a multiemployer basis involving these three Employers, we are of the opinion that the extent of integration between the three Companies is insufficient to warrant a single unit composed of employees of all the Companies. We shall therefore dismiss the petition.

### Order

IT IS HEREBY ORDERED that the petition filed in the instant case be, and the same hereby is, dismissed.

[5] In *Retail Merchants Association of Terre Haute, Indiana,* 83 NLRB 112, the Board found inappropriate a unit embracing employees of the members of that association.

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HAMILTON'S LTD., PETITIONER, *and* SAN DIEGO COUNTY FEDERATED TRADES AND LABOR COUNCIL AND ITS AFFILIATES: COOKS AND WAITRESSES, LOCAL 402; BUILDING SERVICE EMPLOYEES, LOCAL 102; OFFICE WORKERS, LOCAL 139; BUTCHER WORKMEN, LOCAL 229; BAKERY WORKERS, LOCAL 315; TEAMSTERS, LOCAL 542; RETAIL CLERKS, LOCAL 1222. *Case No. 21–RM–163. March 30, 1951*

### Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Daniel J. Harrington, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[1]

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Murdock and Styles].

[1] The hearing officer properly denied the motion of the Unions that the hearing be adjourned on the ground that the Board, not the Regional Director, is empowered to conduct the investigation of petitions and decide if there is reasonable cause to believe that a question of representation exists. The preliminary determination of whether there is reasonable cause to believe that a question of representation exists is an investigative phase of the Board's work which the Board may properly vest in the Regional Director just as the Board may delegate any duties except those which require the Board's exercise of its final adjudicatory authority. *The Procter and Gamble Manufacturing Company,* 78 NLRB 1043. Also see *Evans* v. *International Typographical Union,* 76 F. Supp. 881, at 887.

In view of our finding below on the question of the assertion of jurisdiction wherein we rely only on the Respondent's shipments out of State, we find it unnecessary to pass upon the hearing officer's revocation of that part of the *subpoena duces tecum* requested by the Unions which related to the out-of-State purchases made by the Respondent.

Upon the entire record in this case, the Board finds:

1. The Employer is a California corporation engaged in that State in the manufacture and sale on a retail basis of fancy foods, candy, bakery goods, and liquors. During the period from November 1, 1949, to October 31, 1950, it shipped to points outside the State of California, primarily on the orders of local purchasers products amounting to approximately $50,045 in value. Of this amount, about 15 percent represented handling and postage charges which the Employer incorporates into the price of the goods. We find that the Employer is engaged in commerce within the meaning of the National Labor Relations Act and that it will effectuate the policies of the Act to assert jurisdiction.[2]

2. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

The Unions moved at the hearing that the petition be dismissed on the ground that they did not seek recognition by the Employer as the bargaining agent of its employees, did not claim to represent a majority of the employees of the Employer, and in fact, did not represent any of those employees. The Employer opposed the motion for dismissal, asserting that the disclaimer of the Unions was not in good faith.

In May and June 1950, shortly after a new management had taken over the operations of the Employer, two meetings were held between representatives of the Employer and representatives of the various Unions herein involved. At these meetings the Unions proposed that if the Employer would agree to recognize them as bargaining agents for its employees, they would defer contractual demands until a later time. The Employer rejected this proposal. In August 1950, the Unions placed the Employer on their "We do not patronize" list and set up a picket line at the premises of the Employer. In addition, the Unions persuaded various firms to stop delivery of supplies to the Employer. At a further meeting between the Employer and the Unions held about October 16, 1950, the Unions proposed to discontinue these activities and not to make any demands for recognition until they represented 51 percent of the employees, if the Employer would withdraw its petition herein and would agree to hire all new employees through two of the Unions here concerned. The Employer would not accede to this proposal. At the time of the hearing the Unions were still engaging in the picketing and other activities.

It is the contention of the Employer that the action of the Unions in continuing the picketing and related measures demonstrates that the disclaimer of the Unions is not bona fide. On the other hand, the

[2] *Stanislaus Implement and Hardware Company, Limited,* 91 NLRB 618.

Unions assert that they have not made and are not now making any claim for recognition. They contend that their activities in connection with the Employer were for the sole purpose of organizing the employees of the Employer.

The parties agree that the Unions have never represented any employees of the Employer. At the hearing and in their motions to dismiss, the Unions stated that they "unequivocally and expressly disclaim any and all interest in the representation of the present employees of the Employer"; that they expressly disclaim any current right to recognition as collective bargaining representatives of the employees of the Employer; and that they are making no claim for bargaining and no claim for recognition. The Employer is consequently under no obligation to recognize the Unions as the representatives of its employees.[3] The Employer asserts, however, that the Unions' disclaimer of representation is not in good faith.

The Board has held that a union's withdrawal of its claim to representation may be made at the hearing,[4] provided it is clear and unequivocal and the union's conduct does not otherwise cast substantial doubt upon the validity of its disclaimer to representation.[5] The facts in this case reveal that during their meeting with the Employer in October 1950, the Unions, in effect conceded that they did not represent a majority of the employees, and agreed to abandon their demand for recognition, if the Employer would grant other concessions—upon the merits of which we need not here pass that might enable the Unions to achieve majority representative status. Under these circumstances, we are unable to find that the Unions by their picketing and related conduct have cast substantial doubt upon their clear and unequivocal disclaimer currently to represent the Employer's employees. Rather, we are of the opinion that the Unions' conduct in this case constituted nothing more than a determined effort to organize the employees involved and thereby become the majority bargaining representatives. The Board has held that there is nothing inconsistent between a valid disclaimer of present majority status and continued organizational activity whose ultimate objective may indeed be to obtain that status.[6] The principles enunciated in the cited cases are applicable and controlling in this case.

We find that there is no present claim for recognition as the exclusive bargaining representative of the Employer's employees and therefore there exists no question concerning representation. Accordingly, we shall dismiss the petition.

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[3] *Ny-Lint Tool & Manufacturing Co.*, 77 NLRB 642.

[4] *Ny-Lint Tool & Manufacturing Co., supra.*

[5] See *Coca-Cola Bottling Co. of Walla Walla, Washington*, 80 NLRB 1063.

[6] *John F Hubach and C R. Parkinson, d/b/a Hubach and Parkinson Motors, et al.*, 88 NLRB 1202; *Bur-Bee Company—Walla Walla, Inc., and Bur-Bee Company—Pasco, Inc*, 90 NLRB 9.

## Order

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.

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R. L. POLK & Co. *and* OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL 227, AFL, PETITIONER. *Case No. 9–RC–880. March 30, 1951*

## Supplemental Decision and Order

On October 20, 1950, pursuant to a Decision and Direction of Election issued by the Board herein,[1] an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Ninth Region, among the employees in the unit found appropriate. Upon completion of the election, a tally of ballots was furnished the parties. The tally shows that, of the 731 valid votes counted, 289 were for, and 442 against, the Petitioner, and there were 21 challenged, and 4 void, ballots.

On October 23, 1950, the Petitioner filed objections to conduct affecting the results of the election. In accordance with the Rules and Regulations of the Board, the Regional Director conducted an investigation, and, on February 15, 1951, issued and served upon the parties his report on objections to election. In his report, the Regional Director found that the Employer engaged in activities interfering with, and raising substantial and material issues with respect to the conduct of, the election, and recommended that the election be set aside. The Employer timely filed exceptions to the Regional Director's report.

The Regional Director's recommendation that the election be set aside is based essentially on the following findings: On September 5, about a month after the hearing in this case, the Employer promised the employees a wage increase of 5 cents an hour, and the adoption of a new wage progression schedule. On September 25, the Board issued its Decision and Direction of Election and, on October 5, the Employer announced the increase and new schedule, effective retroactively to September 4. In connection with this announcement, the Employer stated that these benefits were granted because of the increase in the cost of living, the rates paid for comparable work by other companies in the area, and the efficiency of the plant employees.[2] The Regional Director found that these benefits were announced and put into effect at the plant involved herein before similar changes at the Employer's

[1] 91 NLRB 443.

[2] Although the Employer contends that the benefits were also granted to stem a high personnel turnover, the Regional Director found that such turnover was not substantially higher than previously experienced by the Employer and not followed by any wage increases.