personally or through an authorized representative. There is no evidence of such participation by the Employer since March 1950 as to any of its employees. As already stated, the most recent contracts with the Intervenor covering the drivers and with the CIO covering the inside employees were negotiated by the Employer without the intervention of the Association. Accordingly, we will give effect to the Employer's expressed desire to pursue an individual course in its labor relations, despite a prior history of multiemployer bargaining.

We find that all driver-salesmen, helpers, and over-the-road drivers at the Employer's Cincinnati, Ohio, plant, excluding office and clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.].

FARRINGTON MANUFACTURING COMPANY *and* LODGE 264 OF DISTRICT 38, INTERNATIONAL ASSOCIATION OF MACHINISTS. *Case No. 1–CA–658.—April 17, 1951*

Decision and Order

On November 27, 1950, Trial Examiner C. W. Whittemore 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 Intermediate Report attached hereto. Thereafter, the Respondent and the Association filed exceptions to the Intermediate Report and supporting briefs. The Respondent's request for oral argument is hereby denied, as the record and briefs, in our opinion, adequately present the issues and the positions of the parties.

The Board [1] has reviewed the rulings of the Trial Examiner made 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 the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following exceptions, additions, and modifications:

1. The Trial Examiner found that the Respondent has dominated and interfered with the Guild, Inc., and the Association, Inc., and

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

has dominated and interfered with their successor—the Association, all of which is in violation of Section 8 (a) (2) and 8 (a) (1) of the Act. We agree. Like the Trial Examiner, we find that the Respondent interfered with and dominated the administration of the Guild, Inc., and the Association, Inc., before March 1950, by granting, among other things, company time and property for meetings of both organizations, by giving financial assistance, and by membership in both organizations of most of Respondent's executives, officials, and supervisors, some of the latter holding office and taking part in the administration.[2] We conclude also, as did the Trial Examiner, that, while the successor organization—the Association—was formed in early March 1950, the change was one of form rather than substance. Thus, the change occurred without any cleavage or clear line of fracture between the "old" (the Guild, Inc., and the Association, Inc.) and the "new" (the Association) being communicated to the employees, and without any disavowal by the Respondents of its illegal conduct with respect to the "old" organization. In these circumstances, no basis exists for differentiating between the illegal acts with respect to the "old" organization before March 1950 and the "new" organization thereafter.[3] Furthermore, the record shows that one executive [4] and several supervisors continued to be carried on the membership roll of the "new" Association. The disabilities of the "old" organizations attach to the "new" Association.

The Respondent contends that its activities set forth above and detailed in the Intermediate Report are indicative of good labor relations rather than illegal conduct. We do not agree. Freedom from strikes, desirable though it be, is not the criterion by which Congress intended us to judge labor organizations within the framework of Section 8 (a) (2) of the Act. Nor is it relevant, as is also contended by the Respondent, that its activities in connection with the labor organizations involved may not have been marked by *ordinary* coercion or threats.[5]

As we have found that the Guild, Inc., and the Association, Inc., were dominated and interfered with and supported by the Respondent, and as their successor—the Association—was born without cleavage from them and without disavowal by the Respondent of its interference with, domination, and support of, the former organi-

[2] In arriving at this conclusion, we have not relied upon the meeting of the Association called by Plant Manager Dugdale concerning the operations of the cafeteria in plant 1, to which the Trial Examiner referred in the Intermediate Report.

[3] See *N. L. R. B.* v *Southern Bell Telephone and Telegraph Company*, 319 U. S. 50.

[4] Vice President Vogt.

[5] See *N. L. R. B.* v. *Southern Bell Telephone and Telegraph Company, supra,* and cases there cited; *N. L. R. B.* v *Red Arrow Freight Lines*, 180 F. 2d 585 (C. A. 5), *N. L. R. B.* v *Tappan Stove Co.*, 174 F. 2d 1007 (C. A. 6).

zations, it follows that the latter has inherited the disabilities of its predecessors.[6]

In view of the foregoing, we find that the Respondent has dominated, interfered with, and supported the Association. We shall, therefore, in accordance with our policy in such circumstances, order the Respondent to disestablish the Association and their predecessors, the Guild, Inc., and the Association, Inc.[7]

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Farrington Manufacturing Company, Boston, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the formation or administration of or contributing support to, Farrington Employees Association, Inc., Farrington Guild, Inc., Farrington Employees Association and Guild, by whatever name they may be known, or any other labor organization, and from otherwise interfering with the representation of its employees through a labor organization of their own choosing.

(b) Recognizing or in any other manner dealing with Farrington Employees Association and Guild, Farrington Employees Association, Inc., Farrington Guild, Inc., or any successor thereto, as the collective bargaining representative of any of its employees for the purpose of dealing with Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or any other conditions of employment.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Lodge 264 of District 38, International Association of Machinists, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

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

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[6] See cases cited in footnote 5. Also see *N. L. R. B.* v *Pennsylvania Greyhound Lines*, 303 U S 261, 58 S Ct. 571, 82 L Ed 831, 115 A L R 307; *N. L. R. B* v. *Falk Corporation*, 308 U. S. 453, 60 S. Ct 307, 84 L. Ed 396.

[7] See *N. L R. B.* v *Southern Bell Telephone and Telegraph Company, supra;* and *Duro Test Corporation*, 81 NLRB 238, and cases cited therein.

(a) Withdraw all recognition from Farrington Employees Association and Guild, Farrington Employees Association, Inc., and Farrington Guild, Inc., by whatever name they may be known, as the representative of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or any other condition of employment, and completely disestablish said organization as such representative.

(b) Post at its plants in Boston, Massachusetts, copies of the notice attached hereto and marked Appendix A.[8] Copies of said notice, to be furnished by the Regional Director for the First 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 First Region, in writing, within ten (10) days from the date of the receipt of this Order what steps the Respondent has taken to comply therewith.

Appendix A

Notice to All Employees

Pursuant to a Decision and Order 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 hereby disestablish Farrington Employees Association and Guild, Farrington Employees Association, Inc., and Farrington Guild, Inc., as representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and we will not recognize them or any successor thereto for any of the above purposes.
>
> We will not dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.
>
> We will not otherwise interfere with the representation of our employees through a labor organization of their own choosing.
>
> We will not recognize Farrington Employees Association and Guild, Farrington Employees Association, Inc., and Farrington Guild, Inc., or any successor thereto, as the representa-

[8] In the event this Order is enforced by decree of a United States 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 Court of Appeals Enforcing."

tive of any of our employees for the purpose of collective bargaining.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist LODGE 264 OF DISTRICT 38, INTERNATIONAL ASSOCIATION OF MACHINISTS, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

All our employees are free to become or remain members of this union, or any other labor organization.

FARRINGTON MANUFACTURING COMPANY,
Employer.

Dated _____ By _____
(Representative) (Title)

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

Intermediate Report

Mr. Leo J. Halloran, for the General Counsel.
Messrs. Frank L. Kozol, and *Thomas D. Burns*, of Boston, Mass., for the Respondent.
Mr. Harold F. Reardon, of Boston, Mass., for the Union.
Mr. Harold Brown, of Boston, Mass., for the Intervenor

STATEMENT OF THE CASE

Upon charges duly filed by Lodge 264 of District 38, International Association of Machinists, herein called the Union, the General Counsel of the National Labor Relations Board, called respectively herein the General Counsel and the Board, by the Regional Director for the First Region (Boston, Massachusetts), issued his complaint dated August 15, 1950, against Farrington Manufacturing Company, 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 (a) (1) and (2), and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charges and the complaint, together with a notice of hearing, were duly served upon the Respondent, the Union, and Farrington Employees Association and Guild, herein called the Association.

With respect to the unfair labor practices the complaint alleges, in substance, that the Respondent by various specific acts before March 4, 1950, initiated, formed, and sponsored two labor organizations of which the Association is the successor, and since that date has dominated and supported the Association, and that by these acts the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

Answers were filed by the Respondent and the Association, a motion by the Association to intervene having been granted by the Regional Director. The answers denied the commission of unfair labor practices by the Respondent.

Pursuant to notice, a hearing was held in Boston, Massachusetts, on October 17, 18, 19, 20, and 23, 1950, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel, the Respondent, the Union, and the Association were represented by counsel and participated in the hearing. 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 opening of the hearing a motion by the Association for additional particulars was denied. At the conclusion of the hearing General Counsel, the Respondent, and the Association argued orally, on the record, before the Trial Examiner. All parties waived the opportunity to file briefs after the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Farrington Manufacturing Company is a Massachusetts corporation, engaged at its plants in Boston, Massachusetts, in the manufacture and sale of display boxes and metal specialties. Its principal raw materials, consisting of various metals, textile products, and paper, are value at about $1,000,000 annually, and about 50 percent of such materials is each year purchased outside the Commonwealth of Massachusetts and transported to its Boston plants. Its finished products are valued at about $6,000,000 annually, about 75 percent of which is transported to points outside Massachusetts. The Respondent owns two subsidiary concerns, one in Massachusetts and the other in Toronto, Canada.

The Respondent concedes the Board's jurisdiction.

II. THE LABOR ORGANIZATIONS INVOLVED

Lodge 264 of District 38, International Association of Machinists, Farrington Employees Association and Guild, Farrington Employees Association, Inc., and Farrington Guild, Inc., are labor organizations within the meaning of the Act admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and issues*

This proceeding is concerned only with certain occurrences at the Respondent's two Boston plants, commonly designated as plant 1 and plant 2, involving about 900 employees.

For about 5 years before the hearing, and until March 1950, there existed at each of the plants a labor organization—at plant 1 the Farrington Guild, Inc., and at plant 2 the Farrington Employees Association, Inc. The record does not reveal the precise details of the formation of these organizations. It is clear, however, and conceded by the Respondent, that management contributed financial and other support to each organization. Moreover, also conceded by the Respondent, most of the Respondent's staff of executives, officials, and supervisors were dues-paying members. Supervisors held offices in the organizations, and took part in the administration of their affairs. The complaint raised the issues as to whether or not both the Association, Inc., and the Guild, Inc., were company-dominated labor organizations, in violation of the Act.

Early in March 1950, the officers, delegates, and some members of the two organizations gathered on company property, set up a sort of "holding" organization

called Farrington Employees Association and Guild, and adopted a constitution which "expressly provided that the Farrington Guild at Plant #1 shall hereafter constitute Local #1, and that the Farrington Employees Association at Plant #2 shall hereafter constitute Local #2." (The quotations are from Section 7 of said constitution.)

A panel of officers for what was termed, in the constitution, a "Central Organization," was selected from among the current officers and delegates of the two already existing organizations.

The complaint also contends that the new Association is company-dominated.

B. *Summary of stipulated facts bearing upon these two issues*

During the hearing the parties stipulated, or a company official testified, that the Respondent:

(a) Has permitted the use of its premises and facilities by the Association, Inc, and the Guild, Inc., up to March 1, 1950, and thereafter by the Association and its locals.

(b) Has contributed free rent and utilities for the use of the Association and its predecessors in conducting cafeterias, one in each plant.

(c) Has conferred with representatives of all three organizations, on its own time and premises without loss of pay to said representatives, on matters of grievances.

(d) Paid for time spent by two employees, representatives of the Association, in attending a conference at the Regional Office.

(e) Has permitted its officers and supervisory employees to contribute monies to the three organizations, in the same amount as nonsupervisory employees.

(f) Has permitted its plant premises to be used without charge by all three organizations for the purpose of maintaining a cafeteria in each plant, and has permitted these organizations to have the profits from various vending machines in the plants.

(g) Has bargained, discussed, and adjusted grievances with both the Association and its predecessors as representatives of its employees in matters of wages and other working conditions, although none of them has been certified as such representative.

(h) Has permitted the three organizations to post notices on plant bulletin boards.

(i) Has permitted and is permitting the three organizations to collect dues on company time.

(j) Since May 1948, has permitted the three organizations to conduct elections and other organizational business on its premises, including meetings.

(k) Loaned money to the Association, Inc., and Guild, Inc., to the amount of $500 each, to set up the two cafeterias.

(l) Permitted employees to solicit membership in the three organizations on its time and premises.

C. *Additional facts and conclusions*

Since there is no dispute as to the above facts, it appears needless to encumber this report with a review of testimony and other evidence adduced by General Counsel which, in large part, only adds names and more specific details to general facts already conceded. Nor would substantative conclusions be altered by resolving conflicting testimony as to the relative supervisory authority of certain members of these organizations, since the Respondent conceded that most of its officers, executives, and supervisory staff paid dues; and the organizations' membership books showed that they were carried as dues-paying members.

There is no merit in the claim made by counsel for the intervening Association that management representatives in the organizations were only "honorary" members. The constitution provided for no such classification, and the records of the organizations revealed no distinction in memberships. Their dues were received and recorded in the same manner as those from nonsupervisors.

An employer's domination of, interference with, and support of, a labor organization are implicit in a situation where his own representatives are members of that organization In effect, such an employer sits on both sides of the bargaining table. A specific instance of such domination appeared in the minutes of the Guild, Inc , for November 25, 1949. It appears from that record that Plant Manager Dugdale summarily called a meeting of the officers and delegates of the organization and gave them orders as to the conduct of the cafeteria in Plant 1. According to the candid testimony of Lawrence Whalen, president of Local 1, and third vice-president of the "Central Organization," management from "time to time," when it "gets ahold of some information" calls the labor organization officers to a meeting room or to the office.

It is plain, and the Trial Examiner finds, that Locals 1 and 2 of the new structure devised in March 1950, are but the *alter egos* of the original Guild, Inc. and Association, Inc , respectively. These corporate organizations still exist as such, never having been dissolved. No discontinuity was marked, either by the organizations or by management. On the contrary, bulletins posted on company bulletin boards in March 1950, openly announced, in effect, that the new move was to be, and became, simply an affiliation of the two existing organizations. The Respondent has never disavowed its support or domination of any of the organizations.

Financial support of these organizations by the Respondent has been and continues to be substantial. Although Local 1, during the year ending April 30, 1950, had operating expenses amounting to about $2,800, it collected dues totaling only $1,039.50, and an undetermined portion of such dues were received from management representatives. It received in that year $1,906 54 from "dance, cigarette, candy commissions and commissions on sale,"—all but the dance item resulting from concessions given the organization by the employer. And at the end of the year it showed total assets, "including cash, cafeteria property and supplies" of $2,643.03. Local 2's financial statement for a similar period, while differing in totals, reveals a similarly large percentage of its income as having been derived from concessions granted it by the Respondent. These organizations have, on company bulletin boards, stressed the point of their low dues—obviously made possible by the Respondent's support, in combatting the principle of employees joining an outside union.

In summary, the Trial Examiner concludes and finds that the Respondent, by its course of conduct described in Section III, B, above, occurring and continuing since October 10, 1949 (the date 6 months before the service of the first amended charge): (1) has dominated and interfered with the administration of the Guild, Inc., and Association, Inc.; (2) has dominated and interfered with the formation and administration of the Association, and has contributed financial and other support to all said organizations, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.[1]

[1] Although it would appear that the Association still derives benefit and support from the loans upon which the cafeterias were launched, it is clear that said loans were made some years ago, and have since been repaid Primary support having been given more than 6 months before the serving of the charge, the Trial Examiner does not rest, upon this item of support, his conclusion as to support of any of the organizations by the Respondent.

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

Having found that the Respondent has engaged in unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As found above, the Respondent has dominated and interfered with the administration of the Association, the Guild, Inc., and the Association, Inc, and has contributed financial and other support to them. Since it appears, from the facts above set forth, that the Guild, Inc., and the Association, Inc., still function as Locals 1 and 2 of the Association, it will be recommended that the Respondent cease and desist from recognizing any or all of said organizations, by whatever name they are known. The Respondent's continued recognition of them constitutes a continuing obstacle to the exercise by the employees of rights guaranteed them by the Act. Because of the Respondent's unlawful conduct and its underlying purpose, the Trial Examiner is convinced, and finds, that the unfair labor practices are persuasively related to other unfair labor practices proscribed by the Act and that a danger of their commission in the future is to be anticipated from the course of the Respondent's conduct in the past. The preventive purpose of the Act will be thwarted unless the Respondent is ordered to cease and desist therefrom. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act, to prevent a recurrence of unfair labor practices, thereby minimize industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, the Trial Examiner will recommend that the Respondent cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Lodge 264 of District 38, International Association of Machinists, Farrington Employees Association and Guild, Farrington Employees Association, Inc., and Farrington Guild, Inc., are labor organizations within the meaning of Section 2 (5) of the Act

2. By dominating and interfering with the administration of Farrington Employees Association, Inc., Farrington Guild, Inc, and Farrington Employees Association and Guild, and by contributing financial and other support to them, the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8 (a) (2) of the Act.

3 By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4 The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

[Recommended Order omitted from publication in this volume]