

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. It having been found that the Respondent has refused to bargain collectively with the Unions as the exclusive representative of its employees in an appropriate unit, it will be recommended that the Respondent, upon request, bargain collectively with the Unions

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following

#### CONCLUSIONS OF LAW

1. Ken Rose Motors, Inc., is engaged in commerce within the meaning of the Act

2 International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America and Local 841 thereof, affiliated with the American Federation of Labor; and International Association of Machinists, unaffiliated, and Lodge 1898 of District 38 thereof, unaffiliated, are labor organizations within the meaning of Section 2 (5) 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. All production and maintenance employees at the Respondent's Wakefield, Massachusetts, shop, excluding office clerical employees, watchmen, guards, and supervisory employees, 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.

5. By refusing on June 2, 1950, and at all times thereafter to bargain collectively with the said Unions last hereinabove named, as the exclusive representatives of all its employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. The above-named labor practices are unlawful labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommended Order omitted from publication in this volume.]

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BEACON MANUFACTURING COMPANY *and* UNITED TEXTILE WORKERS OF AMERICA, A. F. OF L., PETITIONER. *Case No. 34-RC-181. May 28, 1951*

#### Decision and Order

Pursuant to a Stipulation for Certification Upon Consent Election entered into between the parties hereto, an election by secret ballot was conducted in the above-entitled proceeding on March 17, 1950, 94 NLRB No. 28.

among employees in the unit set forth in the stipulation, under the direction and supervision of the Regional Director for the Fifth Region. Upon the conclusion of the election, a tally of ballots was furnished the parties which shows that of approximately 1,500 eligible voters, 1,404 cast valid ballots, of which 542 were for the Petitioner, 862 were against the Petitioner, and 30 were challenged.

On March 24, 1950, the Petitioner filed objections to the conduct of the election and to conduct affecting the results of the election. Thereafter the Regional Director investigated the objections and on June 29, 1950, issued and served on the parties his report on objections in which he found that the objections did not raise substantial or material issues with respect to the conduct and results of the election, and recommended that the objections be overruled and that the petition be dismissed.

Thereafter, on July 10, 1950, the Petitioner filed exceptions to the report on objections. Upon consideration of the exceptions, the Board<sup>1</sup> concluded that the objections and exceptions raised substantial and material issues of fact, and, on August 11, 1950, issued an order directing that a hearing be held and that the hearing officer prepare and serve upon the parties a report containing findings of fact and recommendations to the Board as to the disposition of the objections.

A hearing was held on August 23, 24, and 25, and September 13, 14, and 16, 1950, before Joseph A. Butler, hearing officer duly designated by the Regional Director. At the opening of the hearing, on August 23, 1950, the Employer admitted that it had received a copy of the exceptions from the Petitioner on that day, but moved that the record show that the Petitioner had before then failed to serve the Employer with the exceptions as provided for by the Board's Rules and Regulations.<sup>2</sup> The Petitioner asserted that it had served the exceptions in a proper manner. The hearing officer, believing that no substantial harm could have resulted from the Petitioner's failure to serve the exceptions as alleged by the Employer, did not rule of the Employer's motion,<sup>3</sup> and proceeded with the hearing which closed on September 16, 1950.

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<sup>1</sup> 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 [Members Houston, Reynolds, and Murdock].

<sup>2</sup> Section 203 61 of the Board's Rules and Regulations, amended August 18, 1948, provides that immediately upon the filing of exceptions to the Regional Director's report, the party filing the same shall serve a copy thereof upon each of the other parties. Proof of service shall be made to the Board. Section 203 84 provides that "Service of papers by a party on other parties shall be made by registered mail . . . . When service is made by registered mail, the return post-office receipt shall be proof of service."

<sup>3</sup> The hearing officer in his report on objections and exceptions, referred to hereinafter, appears to have regarded this as a motion to dismiss the exceptions.

Before the hearing officer prepared and issued a report, as directed in the Board's Order, the Board issued its Amended Decision in *R & R News Company*, 92 NLRB 1134, in which it granted a motion to dismiss exceptions to the Regional Director's report on challenged ballots, for the reason that the exceptions had not been served on the movant in conformity with Section 203.61 of the Board's Rules and Regulations. In view of this ruling by the Board, the hearing officer, on February 12, 1951, entered an order in the instant proceeding reopening the record and directing the parties to file proof of service or nonservice of the exceptions. Pursuant thereto, the parties submitted their proof which was duly made a part of the record. On March 12, 1951, the hearing officer issued and served on the parties his report on objections and exceptions to election in which he recommended to the Board that the Employer's motion to dismiss the exceptions and the petition be granted, on the ground that the Petitioner had not served the Employer with the exceptions in conformity with the Board's Rules and Regulations. Thereafter, the Petitioner filed exceptions to the hearing officer's report.

In these latter exceptions the Petitioner does not deny that it did not send the exceptions to the Regional Director's report by registered mail to the Employer. The Petitioner asserts that it mailed the exceptions to the Employer by regular mail, and contends that as all other documents in this proceeding which were similarly dispatched by the Petitioner were in due course received by the addressees, the Board should conclude that the exceptions were also received by the Employer. In any event, the Petitioner argues, the Employer did receive a copy of the exceptions before the hearing began and, because the hearing extended over a period of several weeks, with an interim continuation of the hearing from August 25 to September 13, 1950, the Employer was not prejudiced by the Petitioner's technical noncompliance with the Board's Rules and Regulations.

Assuming that the Petitioner has sought to effect service of the exceptions by inserting them in an envelope properly addressed to the Employer bearing sufficient postage, and had deposited the envelope in a United States Post Office Department mail box for delivery by regular mail this circumstance would at best raise only a rebuttable presumption of delivery to the Employer.<sup>4</sup> We agree with the hearing officer that the Employer's proof of nonservice, which establishes that the Employer never received the exceptions supposedly mailed to it by the Petitioner, effectively overcame this presumption.<sup>5</sup> We are satisfied, therefore, that the hearing officer correctly concluded

<sup>4</sup> 31 *Corpus Juris Secundum* Sec. 136; *Wigmore on Evidence*, Third Ed., Vol. I, Sec. 95, Vol. IX, Sec. 2534

<sup>5</sup> *Miles Laboratories*, 92 NLRB 23.

that the Petitioner failed to prove that the exceptions were served on the Employer in conformity with Section 203.61<sup>6</sup> of the Board's Rules and Regulations, or indeed were timely served at all. Thus, there remains for consideration only the Petitioner's contention that its failure to effect service in accordance with the Board's requirements constituted only a "technical" noncompliance for which, absent a showing of prejudice to the Employer, the exceptions should not be dismissed. We reject this contention. The Board in the *R & R News Company* case, *supra*, held without qualification that the service requirements set forth in the Rules and Regulations involved fundamental procedures essential to fairness. Consistent with that holding, we regard as irrelevant the fact that the Employer may or may not have been prejudiced by the Petitioner's noncompliance with these requirements. Accordingly, we hereby adopt the hearing officer's recommendation and shall dismiss the exceptions and the petition.

### Order

IT IS HEREBY ORDERED that the petition for investigation and certification of representatives of employees of Beacon Manufacturing Company, Swannanoa, North Carolina, filed herein be, and it hereby is, dismissed.

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<sup>6</sup> This section is now designated as Section 102.61 in the Board's Rules and Regulations effective March 1, 1951.

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E. A. TAORMINA, A. F. TAORMINA, MRS. MADELINE M. TAORMINA, CHARLES MESSINA AND FRANK CULUCCHIA, CO-PARTNERS, D/B/A TAORMINA COMPANY<sup>1</sup> and CITRUS, CANNERY WORKERS AND FOOD PROCESSORS UNION 24473, AFL. *Case No. 39-CA-139. May 29, 1951*

### Decision and Order

On January 24, 1951, Trial Examiner Sydney S. Asher, Jr., issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and a brief.

The Board<sup>2</sup> has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.

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<sup>1</sup> The names of the Respondents appear as amended at the hearing.

<sup>2</sup> Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this proceeding to a three-member panel [Chairman Herzog and Members Houston and Reynolds].