

them from the unit. The *hostess* is the wife of the manager, takes his place during his absence, and has full authority to hire and discharge employees, assign them work, and discipline them. The *cashier-hostess* acts as cashier from 5 until 8 in the evening, and as hostess from 8 until the restaurant closing time at midnight. In the latter capacity she has full authority to assign waitresses to various stations and can effectively recommend hiring, discharge, and disciplinary action. The Employer has no *head waitress* as such at present, but if business increases probably will assign the most efficient waitress to that work. In that event she, although continuing to serve, will take over the hostess duties of the cashier-hostess, including authority to assign waitresses and effectively recommend hiring, discharge, and disciplinary action. The chef is in complete charge of the kitchen, including the kitchen personnel of six employees. He effectively recommends the hire and discharge of these employees, disciplines them, and assigns them work.

We find that all employees of the Employer at its Ann Arbor, Michigan, "Howard Johnson's" restaurant, excluding clerical employees, watchmen, the hostess, cashier-hostess, head waitress, head waiter,² chef, assistant manager, manager, and all other 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.

5. The Employer has 8 to 10 part-time employees who, when not so employed, are housewives or students. They work 2 or 3 nights a week for a full 8-hour shift each night, and are paid on the same basis as full-time employees. We find that they have a sufficient interest in the selection of a bargaining representative to vote in the election directed herein.

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

² All parties agreed to exclude the head waiter, who apparently works only on Sundays. No testimony was taken as to his duties.

MOTOROLA, INC. and INTERNATIONAL ASSOCIATION OF MACHINISTS,
DISTRICT LODGE # 49. Case No. 21-CA-863. June 12, 1951

Decision and Order

On January 5, 1951, Trial Examiner Wallace E. Royster 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 filed exceptions to the Intermediate Report, and a brief in support thereof. The General Counsel filed a brief in support of the Intermediate Report. The Respondent's request for oral argument is denied, as the record and the briefs, in our opinion, adequately present the issues and the positions of the parties.

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].

The Board has reviewed the rulings of the Trial Examiner 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 addition and modification:

(1) Upon the entire record we find that the Respondent is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction over the Respondent.

(2) In adopting the Trial Examiner's findings, we do not rely upon his speculation as to what Rafter would have testified to regarding the pendency of general wage increases had he been called upon to testify.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Motorola, Inc., at Phoenix, Arizona, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Association of Machinists, District Lodge #49, as the exclusive representative of all the employees in the following appropriate unit: All employees in the machine shops and toolroom, excluding office, clerical, and all supervisors as defined in the Act.

(b) By such conduct, by unilaterally instituting wage increases, or in any like or similar manner, restraining or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists, District Lodge #49, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or 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, as guaranteed in Section 7 thereof.

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, District Lodge #49, as the exclusive representative of all the 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 agreement.

(b) Post at its plant in Phoenix, Arizona, copies of the notice attached to the Intermediate Report and marked "Appendix A."¹ Copies of said notice, to be supplied by the Regional Director for Twenty-first Region, shall, after being duly signed by Respondent's representative, be posted by Respondent and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are 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 Twenty-first Region in writing within ten (10) days from the date of this Order what steps Respondent has taken to comply herewith.

Intermediate Report and Recommended Order

Mr. Jerome Smith, for the General Counsel.

Mr. Edward M. Skagen, of Los Angeles, Calif., and *Mr. James C. Jones*, of Phoenix, Ariz., for the Union.

Jennings, Strauss, Salmon & Trask, by *Messrs. I. A. Jennings and Richard G. Kleindienst*, of Phoenix, Ariz., and *Sears & Strait*, by *Mr. B. F. Sears*, of Chicago, Ill., for the Respondent.

STATEMENT OF THE CASE

Upon a charge and a first amended charge duly filed by International Association of Machinists, District Lodge #49, herein called the Union, the General Counsel of the National Labor Relations Board, herein called, respectively, the General Counsel and the Board, by the Acting Regional Director for the Twenty-first Region, issued his complaint dated October 19, 1950, against Motorola, Inc., herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National

¹ This notice, however, shall be and it hereby is amended by striking from the first paragraph thereof the words, "The recommendations of a Trial Examiner" and substituting in lieu thereof the words, "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order" the words, "A Decree of the United States Court of Appeals Enforcing."

Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the complaint, the charges, and a notice of hearing were duly served upon Respondent and the Union.

With respect to unfair labor practices the complaint alleged in substance that the Union at all times material herein has been and is the majority representative of Respondent's employees in an appropriate unit, that Respondent on or about July 10, 1950, refused, and at all times since has refused, to receive proof of the Union's majority status, refused to bargain with the Union, and in an attempt to deprive its employees of rights guaranteed in Section 7 of the Act, granted wage increases to employees in the appropriate unit.

In its answer dated November 4, 1950, Respondent admitted certain of the allegations with respect to business operations, denied that the unit described constitutes a unit appropriate for purposes of collective bargaining, denied the majority status of the Union, and denied that it had at any time refused to bargain collectively in violation of the Act.

Pursuant to notice a hearing was held in Phoenix, Arizona, from November 13 through 16, 1950, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, the Union and the Respondent were represented, 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 close of the General Counsel's case-in-chief, Respondent moved to dismiss the complaint as not supported by the evidence, and when this motion was denied moved to dismiss specific allegations of the complaint with respect to the appropriate unit and the refusal to bargain. I reserved ruling on the latter motions when first made and when they were renewed at the close of the hearing. All are hereby denied. At the close of the hearing all parties argued orally on the record. A brief has been received from counsel for the Respondent.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is a corporation organized under and existing by virtue of the laws of the State of Illinois and is engaged in, and at all times material herein has been engaged in, the manufacture of a wide variety of radio and electronic products at plants located in Quincy, Illinois, and Chicago, Illinois. At Phoenix, Respondent's plant is under the cognizance of the Security Division of the Atomic Energy Commission and exists primarily for the purpose of technical research and experimentation as a subcontractor for the Sandia Corporation, a wholly-owned Government corporation, and other agencies of the United States Government. During the 12-month period preceding the issuance of the complaint, Respondent caused equipment, materials, and supplies of a value in excess of \$1,000,000 to be acquired, purchased, transported, and delivered in interstate commerce from and through States of the United States other than the State of Illinois, to Respondent's plants in Chicago, Illinois, and Quincy, Illinois. During the same period Respondent produced and sold products of a value in excess of \$1,000,000 and caused them to be transported in interstate commerce from its plants in Chicago, Illinois, and Quincy, Illinois, to, into, and through States of the United States other than the State of Illinois. Also during the same period Respondent caused equipment, material, and supplies of substantial value to

be acquired, purchased, transported, and delivered in interstate commerce from and through States of the United States other than the State of Arizona to the plant in Phoenix, Arizona.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, District Lodge #49, is a labor organization admitting to membership employees of Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The violation of Section 8 (a) (5) of the Act*

1. The appropriate unit

Respondent's plant in Phoenix, due to the character of the work performed, is physically separated into excluded and nonexcluded areas. Armed guards are stationed at the various entrances to the former. A large group of professional engineers, junior engineers, and technical laboratory assistants, who are engaged in primary research and development, is employed. Additionally, the Company employs hourly rated workers as follows:

wiring assemblers.....	50
precision assemblers.....	3
assembly supervisors.....	3
cafeteria clerks.....	3
internal expeditors.....	2
final inspectors.....	3
floor inspectors.....	2
lab-mechanical inspectors.....	2
receiving inspectors.....	5
sub-assembly line inspectors.....	4
night janitors.....	5
maintenance men.....	7
platers and polishers.....	2
shipping and receiving clerk.....	1
silver solder and welder.....	1
stock chasers.....	3
stock clerks.....	2
radio line testers.....	12
model makers.....	4
tool and die makers.....	6
machinists.....	4
general machine operators.....	5
instrument makers.....	2
mechanical engineering assistants.....	2

The unit asserted to be appropriate by the General Counsel and the Union would include only the 23 employees in the last 6 classifications. Group leaders are to be found in some of the divisions but do not possess the authority of supervisors as defined in the Act. With the exception of the cafeteria clerks and the shipping and receiving clerk, some in each classification work in the excluded areas.

In July 1950, when the events occurred which give rise to this proceeding, the employees in the unit assertedly appropriate worked in what has variously

been termed in the record as the machine shops or the model shops under the supervision of a single foreman. One group in the North model shop, a non-excluded area, works in the fabrication of experimental parts which are used in the making of phototypes. The remaining two locations are in an excluded area, in one of which precision devices are produced and another where set operations are used to produce pilot production quantities of the units in process. Each shop now has its separate foreman.

All parts are subject to inspection and some are routed for plating and polishing. Others may require silver soldering and other processing. This work is performed in various areas of the excluded section adjacent to the machine shops described above. Finished parts are routed to the stockroom from which they are sent on call to assembly positions, are incorporated in precision mechanical assemblies, or are assembled as part of radio-type devices. Wiring of assembly components and parts is performed by wire-line assemblers, and together with additional subassemblies fabricated in the shop, are routed into the final assembly areas. Individuals working in nonexcluded areas generally are not permitted to enter an excluded area and an individual working in a certain excluded area may not be permitted to enter another and different such area. Due to security regulations, all work on Respondent's products at Phoenix must be performed within the plant and none can be subcontracted except such products as have been declassified. Approximately one-half of the plant is in the excluded area. The parties stipulated that the job classification of tool and die makers, model makers, and machinists call for the employment of traditional skills of those job classifications, and that such employees work from blueprints, devise tools and dies, and make models. The evidence makes it clear, also, that instrument makers and mechanical engineering assistants are required to have similar but higher skills than those of tool and die makers, model makers, and machinists.

The Respondent's objection to the unit described in the complaint as voiced at the hearing is essentially that the entire operations at the Phoenix plant are so closely integrated that a segmentation on any basis of skill or departmentization is impractical. Further, Respondent contends it is completely dependent on the continued functioning of every department and operation in the plant to enable it to meet its commitments to the Atomic Energy Commission and the military services; that a work stoppage in any department would bring all to a halt without the possibility of securing outside assistance by way of subcontracting to substitute for the struck department. Furthermore, Respondent contends that even if the tool and die makers, the model makers, the machinists, the instrument makers, and the mechanical engineering assistants could be found to constitute a true craft division and thus an appropriate unit, the community of interest perhaps present in such a grouping is diluted if not destroyed by the insistence of the Union and the General Counsel that machine operators be included. The job of machine operator, Respondent asserts, does not require the traditional skills of the machinists' trade and does not comprise a part of a true craft grouping. Respondent also points to the fact that any grouping such as the complaint envisages would include machinists, tool and die makers and the like, no longer under single supervision and divided between the excluded and nonexcluded areas.¹

¹ Respondent also claims that any unit would be unstable; that the continuance of its operation is dependent upon so many unpredictable factors as to preclude judgment upon the question of expansion or contraction. No doubt this may be true of any experimental laboratory but there has been but slight change in the number of workers during the last 6 months.

The General Counsel and the Union assert that the unit contended for is appropriate because of the functional coherence of the employees affected and because they do in fact constitute a group of workers having comparable skills who work to some extent interchangeably and who traditionally have been represented in a craft unit.

Without making the unnecessary determination that the unit described in the complaint is the only appropriate unit at the Phoenix plant, it seems clear that it is a feasible grouping for purposes of collective bargaining. When the employees in this unit were organized in July, all of them worked under the same foreman and to some extent then as now worked on occasion in both the excluded and the nonexcluded areas as the requirements of the operations dictated, dependent, of course, upon individual clearances under security provisions. Furthermore, while the argument that machine operators as the term is generally understood does not necessarily encompass employees with the traditional skills of machinists, it seems clear, and I find, that the machine operator classification at the Phoenix plant has been and is now filled by men who, if not yet fully trained machinists, are in the process of reaching such competency. The machinery referred to includes drill presses, lathes, and the like, the operation of which is part of the machinists' skill. Other evidence, to which reference will later be made, leads to the conclusion that before the demand for bargaining was made by the Union, the Respondent considered for purposes of wage payment at least the employees in the described unit on a basis different from other hourly rated employees, and in addition to the fact of including such employees in a department under a single foreman, dealt with respect to them as if they constituted, as I find that they did and do, a clearly identifiable group.

In short, the unit described in the complaint is an appropriate unit for purposes of collective bargaining and arguments advanced by Respondent to persuade to a contrary conclusion are not substantial. I find that on July 10, 1950, and at all times since, a unit of model makers, tool and die makers, machinists, general machine operators, instrument makers, and mechanical engineering assistants² constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2. The majority status of the Union

On July 7, 1950, Respondent employed 24 workers in the appropriate unit, of which 19 had on that date designated the Union to represent them for bargaining purposes. I find that on July 7, 1950, and at all times material since, the Union was and has been the majority representative of the employees in the appropriate unit for purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

3. The refusal to bargain

James C. Jones, president and business agent of the Union, testified that he came into possession of 19 signed union designation cards and on July 10 called on Daniel Noble, Respondent's vice president at the Phoenix plant, and requested recognition.³ According to Jones, he told Noble that he represented a majority

² These latter two classifications were not in existence on July 10 but the skills required for such work were possessed and used by the workers then employed.

³ Jones was accompanied on this occasion by O. S. Osmondson, the Union's secretary. Respondent argues that on all points where Jones' testimony disagrees with Noble's as to the conference, Jones must be disbelieved because Osmondson was not called in corroboration. I find no merit in this contention.

of the machinists and that he had in his possession signed authorization cards which he was willing that any disinterested party might check in order to substantiate his assertion. According to Jones, Noble replied that he was totally inexperienced in such matters but that there was a labor relations department at the main plant in Chicago to which he would refer the question. Jones went on to explain, he testified, that the employees had a right to be represented and to obtain recognition of their bargaining representative. There was further conversation, according to Jones, in which Noble intimated, if he did not make a firm commitment, that an answer would be forthcoming within 10 days.

Noble's version of this meeting differs in some respects from that of Jones'. According to Noble, after Jones had made his claim of majority and his request for recognition and after Noble had expressed his lack of knowledge in such matters, Jones explained that the Board could conduct an election. In the belief, according to Noble, that some such procedure would be followed, and without any offer by Jones to submit authorization cards for inspection, the meeting ended. Noble agreed, however, that he had promised to reply to the request for recognition in about 10 days. From this point forward there is little if any dispute as to the happenings on any material point. Shortly after Jones left the plant Noble called in his two principal assistants, Arthur Smead and James Dunifon, to discuss the situation with them. Smead suggested that if Jones did not display authorization cards it was probable that he did not possess them.⁴ A little later in the day Noble telephoned Kenneth Piper, Respondent's Director of Human Relations in Chicago, told Piper of the visit from Jones, and suggested that Piper come to Phoenix in connection with the demand of the Union and also in connection with a wage review. Piper did so, arriving in Phoenix on July 12. Upon his arrival Piper met with each of the employees in the appropriate unit individually, questioned each as to his attitude toward Respondent, and learned from some of them at least, that they were dissatisfied with their earnings. All of the employees were called in meeting July 13, told of the benefits incident to employment with the Respondent such as pensions and insurance, and were advised that a wage increase would shortly be forthcoming. Such a wage increase was instituted on July 17. Employees in the appropriate unit were granted pay retroactively to June 19.

On July 14 Jones, learning that wage increases were about to be granted, telephoned Noble to protest asserting that, in view of the Union's demand for recognition, a wage increase was "unethical." Noble replied that he considered it to be unethical to withhold a wage increase which had already been scheduled. Jones then asked if he could speak to Piper in connection with the question of recognition. Noble replied that Piper was not available at the moment but that he would advise him of Jones' call. Noble did as he promised and Piper was told that Jones desired to speak to him. Piper testified in this connection that he was unsure of the scope of the unit in which the Union was demanding recognition, was unsure that the Union represented a majority of those employees and desired further time to gain information on these points before meeting Jones. Consequently Piper, after advising Respondent's local counsel, Irving A. Jennings, of the Union's demand and instructing Jennings to consult with Jones to learn as much as he could in connection with the unit and majority questions, departed for Chicago. Jennings, 3 or 4 days later, attempted to reach

⁴ Noble also spoke to another employer in the area, Hawley, who, assertedly, said that Jones had once claimed that the Union represented Hawley's employees but that when Hawley questioned the claim, the matter was dropped. This information, according to Noble, led him further along the road to the conclusion that Jones was a "bluffer."

Jones by telephone but learned that he was out of town. Piper returned from Chicago on July 19, consulted further with Jennings, and coming to the conclusion, he testified, that the unit sought was inappropriate, returned again to the main office. On Saturday, July 22, Jones returned to town and answered Jennings' call by going to the latter's office. Jennings told him that the work at Respondent's plant was highly confidential, that the employees were well paid and getting along satisfactorily, and that Jones was ill-advised in his attempt to organize them. The question of unit was barely adverted to, Jones saying that he wanted to represent the machinists, and Jennings, in his testimony, admitting that he understood that Jones meant substantially those employees in the appropriate unit. Jones protested the fact that a wage increase had been given and Jennings assured him that the raise was not granted in order to defeat the Union. Jones suggested that the Respondent consent to an election but Jennings refused.⁵

Respondent's explanation for the granting of wage increases following, as it did, so closely on the heels of the Union's request for recognition, is that such action had been in contemplation for a considerable period of time. In late April or early May, according to Smead, Dunifon, and Noble, the question of a wage review had been broached and the suggestion made that Kenneth Piper be brought out from Chicago in order to survey the operation and to determine what rates should be paid. Piper was then apprised of the situation and agreed to come. During the month of June, Noble was in Chicago. On the 15th of that month, Respondent, through Piper, established higher wage rates for skilled machinists and kindred classifications in the Chicago machine shops. The memorandum to the supervisory personnel concerned in Chicago, requested that the rates for such classifications in Phoenix also be adjusted upward. For some reason entirely unclear in the record, this memorandum was not sent to any official with authority to make changes in the Phoenix rates. On June 19 and 20 Smead from Phoenix telephoned Noble in Chicago, and during the conversations brought up the subject of wage adjustments. Noble answered that adjustments had just then been made in Chicago and directed Smead to have the machine shop foreman recommend rates for the employees under his direction. The same direction was given to Dunifon with respect to other groups of workers. This Dunifon and Smead did. During the telephone conversation Smead advised Noble that a change in wage schedules should be made quickly to which Noble replied that he would be returning to Phoenix about the 15th of July and the matter could be taken care of then. Noble testified that after receiving these calls from Smead he sought to reach Kenneth Piper but learned that Piper was on vacation until July 10. As the evidence shows Piper to have been on vacation for 2 weeks beginning June 24, it follows that Noble's attempt to locate him could not have been made before that time.⁶ Noble returned to Phoenix on July 5 and within the next 2 days received from Smead or Dunifon, he testified, their recommendations with respect to wage increases for the machinists' group, 11 assemblers, 4 laboratory assistants, and 3 other individuals whose classification does not appear. Noble testified that he, busy in other matters, glanced at the recommendations, said that they looked all right, and pushed them aside temporarily. Although Noble conceded that he desired Piper to come at once

⁵ The fact that the Union filed a representation petition on July 18 is not material on the question of refusal to bargain.

⁶ In its brief, Respondent implies that Noble spoke to Piper on June 20 and learned that the latter would not be "available" because of the impending vacation until July 10. Thus it is argued Piper's visit to Phoenix in connection with wages was scheduled as early as June 20 to be made as soon as the vacation ended. The record does not support the implication or the argument. Noble did not testify that he spoke to Piper on June 20 but only, mistakenly I believe, that he sought to do so on that date.

to Phoenix in connection with the Union's demand for recognition, he asserted that the additional purpose of Piper's visit, to review wage rates, was dictated only by a desire to conform the rates with those in other of Respondent's operations, to maintain Respondent's competitive position in the Phoenix labor market, and generally to bring the wage rates paid at that operation into balance.

There is some suggestion that employees at Phoenix could expect a review of wage rates at the middle and the end of the calendar year. There is testimony that an executive committee existed having this function and it is at least intimated that the changes in wage rates in July 1950 were in pursuance of a routine practice of Respondent. However, there is no evidence that the executive committee was even considering wage changes at the time when Piper came to Phoenix on July 12 to begin his survey and the council as such was not consulted in that connection. The evidence does convince me, however, that changes in wage rates were at least under consideration in early July before the Union made its demand for recognition; that even had the Union failed to appear on the scene, it is probable that within a reasonably short period some increases would have been granted. However, when Eddie Neslund, a tool and die maker, asked his foreman, Edward Rafter, for a raise, Rafter told him about July 10 that he would try to get him a raise of 15 cents an hour. John Hornyak testified credibly that when he asked Rafter for a raise about July 1, Rafter said that perhaps he could get him a 5-cent an hour raise and, when Hornyak indicated that he might not stay for that small amount, finally suggested 10 cents. When the raises were granted Neslund's rate was increased 35 cents an hour and Hornyak's by the same amount. The employees in the appropriate unit fared exceedingly well as a result of Piper's visit. By virtue of wage increases and reclassifications, their wage rates were increased 15 to 60 cents an hour. These very substantial increases coming as quickly as they did after the demand for recognition and seemingly favoring the employees in the appropriate unit above the other workers in the plant, lends persuasive force to the General Counsel's contention that they were in fact granted at the time and in the amounts stated for the purpose of discouraging membership in the Union and persuading the employees that they would be better off without representation. Such a course of conduct is not unfamiliar in labor relations. There is nothing particularly novel about an employer responding to the stimulus of a representation claim by seeking to alienate a union's followers by means of a wage increase. That Respondent's purpose here was not precisely that is difficult to believe. Respondent's progress toward reviewing wages at the Phoenix plant, correcting inequities and establishing wage rates sufficiently attractive so that it might compete successfully in the labor market for the skills required, was desultory until the visit of Jones and I do not believe that following this visit Noble telephoned Piper and arranged for him to come immediately to the Phoenix plant because of any firm arrangement made before the Union's demand occurred. The evidence is clear and the inference inescapable that Piper's presence at the Phoenix plant was dictated by the exigencies of the moment; that the quick action in raising the wages of the employees had for its purpose the discouragement of self-organization, that the Respondent hoped in this fashion to persuade its employees that no need existed for them to have representation by the Union.

In arriving at the conclusion as to the purpose of the wage increases I have placed some reliance upon the substantial amounts involved, the disparity between the possible increases suggested by Rafter to Neslund and Hornyak and the amounts they actually received after Piper's visit. These amounts would have less significance if, as Smead, Donifon, and Noble testified, the rates established by Piper were in conformance with recommendations drawn

up by Smead and Donifon on June 24 and hurriedly approved, after cursory examination, by Noble on July 6 or 7. It is a matter of some difficulty to determine the line between fact and fancy in the developments concerning wages from June 19 to the arrival of Piper. I have no doubt that Smead and Noble did discuss wages in their telephone conversations and that Foreman Rafter was directed to submit recommendations in this connection affecting the employees under his supervision. The next development, too, seems to follow in logical enough sequence and to have no inherent quality of unlikelihood about it—the submission by Rafter of his list of proposed raises. Then, still as one would expect it to be, Smead, Donifon, and Rafter collaborated in arriving at a final recommendation for submission to Noble. According to Smead, Donifon, and Noble, what was submitted (in this record in the form of a handwritten sheet with names, present rates, and proposed rates) was approved by Noble on July 6 or 7 and put into effect by Piper after review. Rafter recommended that six individuals be given a raise of 5 cents, that eight be raised 10 cents, that two be raised 15 cents, and that one be reclassified and raised 35 cents. He made no recommendation as to seven others. The recommendation assertedly made by Smead and Donifon, approved by Noble, and put into effect by Piper, granted raises as follows:

1 of 15¢	3 of 35¢
3 of 20¢	6 of 40¢
7 of 25¢	1 of 45¢
2 of 30¢	1 of 60¢

According to the testimony of Smead, the recommendations which Piper followed were in final form as early as June 24 and Rafter participated in the discussions which preceded their drafting. I do not credit this testimony. If these substantial increases were in fact in process, why did Rafter suggest to Neslund on July 10 and to Hornyak about July 1 that they could expect no more than 15 cents and 10 cents respectively? He was not called as a witness to explain. The reason for the failure of Rafter to testify in this connection is to be found, I am convinced, in the fact that he had on June 24 recommended to Smead and Donifon that increases be granted to Neslund and Hornyak in the precise amounts that he later suggested to them as possible. I believe that he would have testified that he had no information as to the pendency of raises more substantial than that. I conclude that whatever the recommendations of Smead and Donifon may have been to Noble they were not that the employees in the machine shops be increased to the extent and in the amounts that they were by Piper.

The final question concerns Respondent's good faith in stating its refusal to bargain with the Union. The principle is so well established as to require no citation of authority that an employer need not bargain with the purported representative of his employees if he entertains a reasonable and honest doubt as to the majority status of the Union or the appropriateness of the unit until such time as the doubt is dispelled. So it is true here that if Respondent questioned the Union's majority on July 10 or July 22, if it in good faith believed that the unit which the Union sought to represent did not constitute one appropriate for bargaining purposes, it was under no compulsion to extend recognition or to enter into bargaining negotiations. Were it not for the substantial wage increases so precipitately granted, it would be difficult to say that the evidence establishes by its preponderance such a lack of good faith on the part of Respondent as to support a conclusion that Section 8 (a) (5) was violated. But the increases were granted. In the circumstances and in the fashion described they were granted for an unlawful purpose and any presumption of good faith,

any honest doubt that in other premises it might well be found the Respondent could have held, is dissipated by this conduct. If the Respondent doubted the majority of the Union on July 10, Noble did not say so. If there was confusion in the minds of the responsible officials of Respondent as to the scope of the unit in which the Union sought recognition, no questions were directed to Jones or anyone acting in behalf of the Union to determine just which employees the claimed unit would embrace. Instead, another course was pursued—to alienate the Union's following. When an employer refuses to grant recognition in order to gain time to undermine the Union or otherwise to interfere with the rights of employees guaranteed by the Act, and when it appears that the Union was in fact, on the date the claim was made, a majority representative in an appropriate unit, the employer may not escape his statutory duty to bargain on any claim of good faith doubt. I find that the Respondent's refusal to recognize the Union on July 22 was but a reaffirmation of a position taken when the first request was made July 10:⁷ that Respondent's request for time in order to consider the Union's demand was made for the purpose of depriving the Union of its majority and lessening by unlawful means the desire of employees for representation. In consequence I find that the failure on July 10, 1950, to recognize and to bargain with the Union, the majority representative of its employees in an appropriate unit, was a refusal to bargain and that Respondent thereby violated Section 8 (a) (5) of the Act.

Two subsequent wage increases granted without notice to or consultation with the Union are separate and distinct violations of the same Section.⁸

B. *Interference, restraint, and coercion*

By the refusal to bargain and by granting wage increases for the purpose of alienating the interest of the employees from the Union, Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act and thereby violated Section 8 (a) (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, it will be recommended that it cease and desist from such conduct and take certain affirmative action designed to effectuate the policies of the Act.

⁷ I have not resolved the conflict in the testimony of Jones and Noble concerning the offering of authorization cards on July 10. I do find that Jones made no physical display of the cards so that Noble could recognize them for what they were. Even if Jones did, as he testified, offer to submit the cards for a check against payroll records, Noble could properly have rejected such proof of majority, if he felt it to be unsatisfactory, without violating any command of the Act. But Noble's conduct was not consistent with that of one concerned about any question of majority or appropriate unit. His call to Piper was for help—help to be forthcoming in some guise so as to avoid the statutory duty to bargain. Piper supplied it.

⁸ *The Valley Broadcasting Company*, 88 NLRB 35.

Having found that Respondent has refused unlawfully to bargain with the Union, it will be recommended that Respondent cease and desist from such refusal and upon request bargain with the Union in respect to wages, hours, and other terms and conditions of employment.

Having found that Respondent granted wage increases for the purpose of interfering with, restraining, and coercing its employees in the exercise of rights guaranteed by the Act, it will be recommended that Respondent cease and desist from such conduct.

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. International Association of Machinists, District Lodge #49, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees in the machine shops and toolroom at the Respondent's Phoenix, Arizona, plant, excluding office, clerical, 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.

3. International Association of Machinists, District Lodge #49, was, on July 7, 1950, and at all times since has been, the exclusive representative of all the employees in the appropriate unit for purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain on July 10 and July 22, 1950, and thereafter, and by unilaterally instituting wage increases on July 17, 1950, and thereafter, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By such conduct, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. 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.]

WILLIAM PENN BROADCASTING COMPANY and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL. *Case No. 4-CA-354. June 12, 1951*

Order Reopening Record

On April 2, 1951, the Board issued its Decision and Order in the above-entitled matter, in which it dismissed the complaint on the ground that the General Counsel failed to establish *prima facie* the violation alleged. The Board held that the General Counsel failed to prove that a real question concerning representation existed when the Respondent renewed its contract with the ACA on February 3, 1950, in that, among other things, he did not produce necessary evidence that the representation petition of the IBEW, pending at the