

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

time of the contract renewal, encompassed employees within an appropriate unit.

On May 7, 1951, the General Counsel filed a motion to vacate the Decision and Order of April 2, 1951, and to reopen the record, on the grounds, *inter alia*, that because the General Counsel "did not foresee that the Board would decide the case on an issue for the first time deemed relevant, he did not introduce evidence relating to the question of the appropriate unit," and that the "General Counsel has evidence indicating the appropriateness of the unit embraced by the IBEW's petition."

On May 9, 1951, the Board granted all parties leave to file briefs in opposition to or in support of the General Counsel's motion. Briefs were accordingly received from the IBEW and the ACA.¹

The Board, having duly considered the General Counsel's motion, the briefs of the IBEW and the ACA, and all matter in the record pertinent to the issue, finds merit in the motion of the General Counsel to reopen the record. Upon reconsideration, the Board believes that further hearing is desirable, under the circumstances of this case, on the issue of whether a question concerning representation existed when the Respondent executed its contract with the ACA, and in particular, whether the employees sought to be represented by the IBEW constitute an appropriate unit, so that the case may be decided upon the merits rather than upon a technical failure of the evidence.

Order

IT IS HEREBY ORDERED that the Order of April 2, 1951, dismissing the complaint, be, and it hereby is, vacated; that so much of the Decision of April 2, 1951, as relates to the refusal to remand be, and it hereby is, set aside; and that the record herein be, and it hereby is, reopened.

IT IS FURTHER ORDERED that the case be, and it hereby is, remanded to the Trial Examiner to permit the introduction of further evidence on the issue of whether there existed, when the Respondent executed its contract with the ACA on February 3, 1950, a real question concerning representation, in accordance with the principles described in the Decision and Order of April 2, 1951, and in conformance with the purposes outlined hereinabove; and that the Trial Examiner prepare and issue an appropriate Supplemental Intermediate Report.

MEMBER HOUSTON took no part in the consideration of the above Order Reopening Record.

¹The ACA's motion to intervene, more fully described in the Decision and Order, is granted.