

and exclusive agreement between the parties.”<sup>3</sup> Moreover, even if the 1951 contract be considered an amendment to the 1950 contract, this Employer would not be bound, since the 1951 agreement specifically provides that only *present* members who do not adopt the 1951 contract shall continue to be bound by the preceding one. As it is clear the Employer was not a member of the Association when the 1951 agreement was executed, the Employer is not bound by the 1950 contract.<sup>4</sup> We find, therefore, that inasmuch as the Employer has indicated a desire to pursue an independent course with respect to its labor relations, it is no longer obligated to bargain upon a multi-employer basis.<sup>5</sup>

Accordingly, upon the basis of the above amended findings of fact and the entire record in this case, we reach the following conclusions:

1. We find that a question affecting commerce exists concerning the representation of the employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

2. We find that all production employees at the Employer's Englewood, New Jersey, plant, excluding office employees, salesmen, executives, lithographic production employees, teamsters, guards, and all supervisors as defined in the Act constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

### Order

IT IS HEREBY ORDERED that the Order dismissing the petition in *this case be, and it hereby is, vacated.*

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

<sup>3</sup> The preamble of the 1951 contract provides “that the present contract between the parties is hereby amended in all respects, the following to constitute the full and exclusive agreement between the parties.”

<sup>4</sup> Assuming that the Employer is so bound, since less than 60 days remain before the Mill B date of the 1950 agreement, it would still be an appropriate time for the Employer to withdraw from the multiemployer bargaining unit. *Economy Shade Company*, 91 NLRB 1552; *Engineering Metal Products Corporation*, 92 NLRB 823.

<sup>5</sup> *Coca Cola Bottling Works Company*, 93 NLRB 1414; *The Milk and Ice Cream Dealers of the Greater Cincinnati, Ohio Area et al*, 94 NLRB 23; *Leland J. Paschich et al. d/b/a Economy Shade Company, supra*; *Pacific Metals Company, Ltd.*, 91 NLRB 696.

CLIPPARD INSTRUMENT LABORATORY, INC. and LOCAL LODGE 789, DISTRICT 34, INTERNATIONAL ASSOCIATION OF MACHINISTS, PETITIONER.  
*Case No. 9-CA-366. July 26, 1951*

### Decision and Order

On May 11, 1951, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that 95 NLRB No. 63.

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 supporting brief.

The Board 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 Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions and modifications:<sup>1</sup>

The Respondent contends that the Trial Examiner's credibility findings are erroneous. The Board attaches great weight to a Trial Examiner's credibility findings in view of his opportunity for observation of the witnesses, and accordingly does not overrule a Trial Examiner's resolution of credibility except where the clear preponderance of all the relevant evidence convinces it that his resolution was incorrect.<sup>2</sup> No such conclusion is warranted in this case. The Board therefore adopts the Trial Examiner's credibility findings and his findings of fact based thereon.

### Order

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Clippard Instrument Laboratory, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Polling its employees to determine whether they desire to be represented by Local Lodge 789, District 34, International Association of Machinists; International Union of Electrical, Radio and Machine Workers, CIO; or any other labor organization.

(b) Making promises of reward to its employees in return for their renouncement of Local Lodge 789, District 34, International Association of Machinists; International Union of Electrical, Radio and Machine Workers, CIO; or any other labor organization.

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<sup>1</sup> The Respondent excepts to the Trial Examiner's statement that its out-of-State sales during the year ending April 2, 1951, exceeded \$750,000. This was obviously a typographical error, and this figure should have been \$75,000. The statement is hereby corrected.

The Respondent further excepts to the fact that the notice attached to the Intermediate Report does not state that the employees are free to refrain from becoming members of the union. This provision has been added to the notice.

<sup>2</sup> *General Electric Company*, 94 NLRB 1260.

(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 Local Lodge 789, District 34, International Association of Machinists, or International Union of Electrical, Radio and Machine Workers, CIO, 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 or to refrain from any or all 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.

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

(a) Post at its plant in Cincinnati, Ohio, copies of the notice attached hereto, marked "Appendix A."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by the Respondent, be posted by it 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.

(b) Notify the Regional Director for the Ninth Region in writing within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

CHAIRMAN HERZOG and MEMBER REYNOLDS took no part in the consideration of the above Decision and Order.

### 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, as amended, we hereby notify our employees that:

WE WILL NOT poll our employees to determine whether they desire to be represented by LOCAL LODGE 789, DISTRICT 34, INTERNATIONAL ASSOCIATION OF MACHINISTS, or by INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, CIO, or by any other labor organization.

<sup>3</sup> In the event this Order is enforced by a 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."



District 34, International Association of Machinists, herein called the Union, is a labor organization within the meaning of Section 2 (5) of the Act.

An election was conducted among the production and maintenance employees of Respondent on January 17, 1951, under the direction and supervision of the Regional Director for the Ninth Region (Cincinnati, Ohio). The tally of ballots shows 60 valid ballots cast for the International Union of Electrical, Radio and Machine Workers, CIO; 9 valid ballots cast for Lodge 789, District 34, International Association of Machinists; 52 valid ballots cast against both labor organizations; and 24 challenged ballots.

On January 16, 1951, Local Lodge 789, District 34, International Association of Machinists filed the charges involved herein, and thereafter filed timely objections to the conduct of the election of January 17, 1951, alleging that about January 16, 1951, Respondent polled its employees to determine whether they desired to be represented by a labor organization, and promised them benefits if they voted against such representation. On February 28, 1951, the Regional Director issued his report on challenged ballots and objections to the election recommending that the election be set aside. Thereafter the National Labor Relations Board set aside said election.<sup>2</sup>

On March 8, 1951, the Regional Director issued the complaint involved herein alleging that Respondent in violation of Section 8 (a) (1) of the Act polled its employees during working hours to determine whether they desired to be represented by a labor organization and promised its employees benefits if they voted against representation by a labor organization in the election scheduled for January 17, 1951. Respondent's answer denies such conduct.

#### Facts

During the morning rest period (the rest period begins at 9:30 a. m.) on January 16, 1951, Mrs. Michelson (an office worker in the office of Respondent's president) announced over the plant loud-speaker system that there would be an assembly of all employees in an open area on the third floor of Respondent's plant immediately after the rest period. After the employees assembled in the designated area, William Leonard Clippard, Jr., Respondent's president, addressed the assembly. Clippard reminded the employees that there "is going to be an election here tomorrow" and stated that Respondent was not a big concern and could not pay the wages that some of the larger concerns could, that since the organizing efforts there had been disturbance in the shop that there would not be otherwise, and that a straw vote would be taken and "if the girls wanted better working conditions and more money, they will vote no Union."

Clippard denied saying "anything about improved wages" and testified that he explained to the employees that Respondent was not a large Company and not blessed with a lot of money and told them the organizing efforts then current had produced "a lot of fighting and a lot of hard feeling" and that the only way "we could better our working conditions around there was to quit fighting and work together instead of scrapping among ourselves constantly" and that "we were going to have a ballot because I [Clippard] would like to know how we stand." Clippard testified that when he addressed the employees on January

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than Ohio, substantial quantities of materials, supplies, and equipment (in excess of \$50,000 worth during the year ending April 2, 1951) and ships to points and places in States other than Ohio substantial quantities of products manufactured by it. (Respondent's out-of-State sales during the year ending April 2, 1951, exceeded \$750,000.)

<sup>2</sup> 94 NLRB 5.

16, 1951, he read from written statements. He testified that he did not have these statements available at the hearing but "I may be able to find them in my desk." However the statements were not produced at the hearing and no adequate explanation of their absence appears in the record. On the other hand employees present at the assembly testified that Clippard did not read from anything and was not holding any paper in his hand at the time he addressed the assembly. From my observation of the witnesses and the entire record herein I credit the testimony of the employees involved and find that Clippard promised better working conditions and more money to the employees if they voted against representation by a labor organization.

Immediately after the employees went back to their work on January 16, 1951, Clippard went to his office and had the supervisor on the various floors of Respondent's plant pass out ballots among the employees. These ballots consisted of pieces of paper on which were written: "Do you wish to be represented by either Union?" and two squares. One marked "Yes" and the other "No."

These ballots were distributed among the employees at their places of work by the various supervisors. On the second floor they were distributed in the presence of Respondent's vice president, George F. Platts. The employees marked their ballots by placing an appropriate mark in one of the squares. The employees then folded their ballots and placed them in boxes which the supervisors carried through the plant. After collecting the ballots the supervisors turned them over to Clippard, Platts, and Mrs. Michelson, who counted them. After the count Clippard announced the results over the plant loud-speaker system. A majority of the ballots were marked "No." After making this announcement Clippard thanked the employees "for the apparent vote of confidence" and said he hoped that the election (under the direction and supervision of the Regional Director and scheduled for the next day) would turn out the same way.

#### Conclusion

Upon the foregoing facts, the undersigned concludes and finds:

1. That Respondent unlawfully infringed upon the statutory rights of its employees by polling its employees on January 16, 1951. (See *F. C. Russell Company*, 92 NLRB 206 and cases cited therein.)
2. That the conduct of Respondent in connection with the afore-mentioned election, under the attendant circumstances, intimated to the employees Respondent's antipathy to union membership and that they stood to gain by renouncing labor organizations and relying on Respondent alone.
3. That Respondent, through its president, promised its employees better working conditions and more money if they renounced labor organizations.
4. That by the afore-mentioned expressions and conduct Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

#### The Remedy

As it has been found that Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom. The scope of the unfair labor practices discloses a purpose to interfere with, restrain, and coerce employees in the exercise of the rights guaranteed in Section 7 of the Act and that danger of other unfair labor practices in the future is to be

anticipated from the course of Respondent's conduct in the past. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act and effectuate the policies of the Act, it will be recommended that Respondent cease and desist from in any manner infringing upon the rights guaranteed in the Act.

[Recommended Order omitted from publication in this volume.]

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CARLTON WOOD PRODUCTS COMPANY *and* BLUE MOUNTAIN DISTRICT COUNCIL OF LUMBER AND SAWMILL WORKERS, AFFILIATED WITH THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A. F. OF L. *Case No. 19-CA-353. July 26, 1951*

### Decision and Order

On May 10, 1951, Trial Examiner James R. Hemingway 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, accompanied by a supporting brief. The Union filed a brief in support of the Intermediate Report.

Pursuant to the provisions of Section 3 (b) of the Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-member panel [Members Houston, Reynolds, and Styles].

The Board has reviewed the rulings made by 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 the recommendations of the Trial Examiner.

The Respondent now contends that it should not be required to bargain with the Union in view of the length of time which has elapsed since the election in April 1950. We find no merit in this contention. There is no showing that the Union lost its majority status. In any event, the Union's loss of majority, if any, is attributable to the Respondent's own unlawful refusal to bargain. We find it necessary to direct the Respondent to bargain collectively with the Union in order to effectuate the policies of the Act. *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72; *Franks Bros. Company v. N. L. R. B.*, 321 U. S. 702.