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.]

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.

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, Carlton Wood Products Company, Payette, Idaho, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Blue Mountain District Council of Lumber and Sawmill Workers, affiliated with the United Brotherhood of Carpenters and Joiners of America, A. F. of L., as the exclusive representative of all its employees in the appropriate unit, with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the right to self-organization, to form labor organizations, to join or assist the above-named labor organization 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.

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

(a) Upon request, bargain collectively with Blue Mountain District Council of Lumber and Sawmill Workers, affiliated with the United Brotherhood of Carpenters and Joiners of America, A. F. of L., as the exclusive representative of all employees in the appropriate unit, and embody any understanding reached in a signed agreement.

(b) Post at its plant in Payette, Idaho, copies of the notice attached hereto and marked "Appendix A."[1] Copies of such notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after having been duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, in conspicuous places, including all places where notices to employees are customarily posted, and maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

[1] In the event that 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."

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

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 WILL bargain collectively upon request with BLUE MOUNTAIN DISTRICT COUNCIL OF LUMBER AND SAWMILL WORKERS, AFFILIATED WITH THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A. F. OF L., as the exclusive representative of all employees in the bargaining unit described herein, with respect to grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees, excluding office, clerical, and supervisory employees, as defined in the Act.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other 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 activities 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.

CARLTON WOOD PRODUCTS COMPANY,
Employer.

By _____
(Representative) (Title)

Dated _____

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 and Recommended Order

STATEMENT OF THE CASE

Upon an amended charge filed on September 28, 1950, by Blue Mountain District Council of Lumber and Sawmill Workers, A. F. of L., hereinafter called the Union, against Carlton Wood Products Company, Payette, Idaho, hereinafter called the Respondent, the Regional Director for the Nineteenth Region

(Seattle, Washington), on behalf of the General Counsel of the National Labor Relations Board (the latter hereinafter being designated as the Board), issued a complaint alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (a) (1), (3), and (5) of the National Labor Relations Act as amended, 61 Stat. 136, hereinafter called the Act. Copies of the complaint, notice of hearing, and amended charge were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleges, in substance, that following a consent election agreement between the Respondent and the Union, the Regional Director caused an election to be held on April 12, 1950, and as a result thereof, the Regional Director on May 15, 1950, on behalf of the Board, certified the Union as exclusive bargaining representative of the Respondent's employees in the agreed appropriate unit; that from June 20, 1950, to date, the Respondent had refused to bargain collectively with the Union; that on February 26, 1950, the Respondent discharged Oren Wren because of his membership and activities in and on behalf of the Union and that the Respondent has since refused to reinstate Wren to his former or substantially equivalent position.

The Respondent's answer, duly filed, admits the making of the consent election agreement, the holding of the election, and the certification on May 15, 1950, by the Regional Director, but denies that the Union was thereafter the designated representative for the purposes of collective bargaining and denies the commission of any unfair labor practices.

Pursuant to notice, a hearing was held in Payette, Idaho, on April 9, 1951, before me, the duly designated Trial Examiner. At the opening of the hearing, counsel for the General Counsel, hereinafter called the General Counsel, moved to amend the complaint with respect to an immaterial allegation. The motion was granted. The General Counsel then moved to dismiss the complaint with respect to the discharge of Oren Wren and this motion was likewise granted. At the close of the hearing, upon the request of the parties, the date was fixed for the filing of briefs with the Trial Examiner. A brief was thereafter timely 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

The complaint alleges, the answer admits, and I find that the Respondent is an Idaho corporation having its principal office and place of business in Payette, Idaho, where it is engaged in the business of wood box and lumber manufacturing and processing. During the year 1949, the Respondent purchased approximately $150,000 worth of materials and supplies, of which approximately 30 percent, or $45,000 worth, originated from points outside the State of Idaho. During the same period, the Respondent sold approximately $250,000 worth of finished products, of which approximately 35 percent, or $87,000 worth, was sold and shipped to points outside the State of Idaho. The answer admits and I find that the Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Blue Mountain District Council of Lumber and Sawmill Workers, affiliated with the United Brotherhood of Carpenters and Joiners of America, A. F. of L., is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1. The consent election agreement

On April 7, 1950, the Respondent and the Union entered into a consent election agreement in which they agreed, among other things, that the appropriate collective bargaining unit consisted of all production and maintenance employees, excluding office, clerical, and supervisory employees as defined in the Act;[1] that the payroll period for eligibility should be that immediately preceding the election plus employees temporarily laid off since February 1, 1950; that challenges to ballots, if determinative of the results of the election, should be investigated by the Regional Director and a report issued thereon; and further that "the method of investigation of . . . challenges, including the question whether a hearing should be held in connection therewith" should be determined by the Regional Director, whose decision should be final and binding.

2. The election

An election was conducted under the auspices of the Regional Director on April 12, 1950. Of 22 eligible voters, 10 votes were cast for the Union, 10 against the Union, and 2 ballots were challenged by the Respondent. One of the ballots challenged was that of Oren Wren, who was one of those "temporarily laid off since February 1, 1950," and therefore one who would appear, in the absence of further evidence, to be entitled to vote under the agreement. The reason given for the challenge of Wren's vote was that the Respondent, on March 20, 1950, had recalled previously laid-off employees, including Wren, and that Wren had not reported on that date. Thereafter, the Regional Director made an investigation of the 2 challenged ballots, without a hearing. On April 17, 1950, he issued a report in which he sustained one of the challenges, but overruled the challenge to Oren Wren's ballot and followed the customary procedure in counting this ballot. It was in favor of the Union, thus giving the Union a majority of 1 vote.

On May 15, 1950,[2] the Regional Director issued a certification of representatives, certifying that a majority of valid ballots had been cast for the Union and that, pursuant to Section 9 (a) of the National Labor Relations Act, the Union was the exclusive representative of all the employees in the appropriate unit. For the reasons hereinafter given, I find that on and at all times after May 15, 1950, the Union was the exclusive bargaining representative of all the Respondent's employees in the appropriate unit within the meaning of Section 9 (a) of the Act.

3. The refusal to bargain

The Respondent does not directly deny the allegation of the complaint that "from on or about June 20 and until the present time, Respondent has refused, and continues to refuse, to bargain collectively with Sawmill [the Union] as the exclusive representative of the employees of Respondent. . . ." On June 20, 1950, the Union wrote a letter requesting the Respondent to bargain, but received no response. On May 10, 1950, after the Regional Director had issued his report on challenged ballots, the attorney for the Respondent wrote to the Regional

[1] No question is raised on the unit, and I find that the one agreed on is appropriate within the meaning of Section 9 (b) of the Act.

[2] The Regional Director issued a certification of the results of the election on May 9, 1950, but it contained an error and a revised certification was issued on May 15.

Director, informing him that he would advise his client to refuse to bargain with the Union unless it was "given the right to a hearing" on the status of Oren Wren. This was the first suggestion by the Respondent that it desired a hearing in the matter.

It is apparent that the Respondent intended not to recognize the validity of Wren's vote and the certification of the Union, but intended to carry the dispute further. I find that at all times on and after June 20, 1950, the Respondent refused to bargain with the Union as the exclusive representative of all its employees in the appropriate unit.

4. Conclusions

The question raised by the Respondent in this case is whether or not it was bound by the terms of its consent election agreement in which it undertook to abide by the Regional Director's determination of all questions arising out of the election, including questions concerning the eligibility of voters. No question was raised but that this provision was intended to apply to instances such as the status of Oren Wren. The Respondent does not argue that the Regional Director's determination of Wren's status was arbitrary or capricious except insofar as the failure to hold a hearing on the matter itself could be said to be evidence thereof. In support of its contention, the Respondent relies upon the case of *N. L. R. B.* v. *Sidran Sportswear*, 181 F. 2d 671 (C. A. 5). In that decision, the court distinguished the cases of *N. L. R. B.* v. *A. J. Tower Co.*, 329 U. S. 324 and *N. L. R. B.* v. *Capitol Greyhound Lines*, 140 F. 2d 754 (C. A. 6), from the one before it in that "in both of these cases the opinions specifically recite that a hearing on the objections to the conduct of the election was held before the Regional Director," whereas in the case before it, an investigation had been made by the Regional Director without any hearing, and it found that without a hearing the Regional Director's conduct was arbitrary.

I note that the Respondent did not propose a hearing until after the Regional Director had issued his report on challenged ballots—in fact not until after the date of the decision of the Fifth Circuit Court in the Sidran case.

Nothing in the Act expressly requires a hearing by a Regional Director in consent election cases. On the contrary, Congress, in enacting the Taft-Hartley Act, expressly approved and authorized the Board to continue its past practice of giving effect to consent election agreements under which the parties have waived the right to a hearing and authorized the Regional Director to determine finally, by any method he should deem appropriate, any and all disputed issues which might arise in connection with the election. Section 9 (c) (4) of the Act, as amended, provides:

> Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

By its agreement for consent election, the Respondent expressly agreed that the method of investigation of challenges, *including the question of whether or not a hearing should be held in connection therewith*, should be left to the determination of the Regional Director. It was likewise agreed that the decision of the Regional Director should be final. This was in conformity with Section 102.54 (a) of the Board's Rules and Regulations[3] which provides that "the rulings and determinations by the Regional Director of the results thereof

[3] Before March 1, 1951, the same language was found in Section 203.48 (a).

shall be final. . . ." The Board has refused to review, on the merits,[4] the decision of the Regional Director in consent elections conducted under the provisions of Section 203.48 (a) (current Section 102.54 (a)) of its Rules and Regulations, and it has refused to require that the Regional Director, in acting pursuant to a consent election agreement, determine post-election issues only after a hearing.[5]

Not only does the Act not require a hearing in such instance, but it is clear that the Administrative Procedure Act (hereinafter called APA) likewise did not contemplate the requirement of a hearing in such cases. If the consent election procedure and certification of representatives could be said to fall within the definition of "adjudication" in Section 2 (d) of the APA (which I believe it could not), election proceedings and certification of representatives would still not be subject to the procedural requirements under Section 5 of the APA, because they are expressly excepted therein. Thus, election proceedings and certification of representatives are treated as purely administrative functions, and, as there is no statutory requirement of a hearing, I do not see how the failure to hold a hearing could, in itself, be arbitrary or capricious conduct on the part of the Regional Director unless there was something in the nature of the case which would make the holding of a hearing imperative.

There is no indication in this case that the Regional Director refused to permit the Respondent to present its position, either with respect to the facts or the law, and no evidence was offered to show that the Regional Director acted arbitrarily or capriciously in making a determination of the facts and conclusions therefrom. The Regional Director recites in his report that C. U. Carlton, the manager of the Respondent, was interviewed. After the issuance of that report, the Respondent's attorney wrote to the Regional Director several letters, in which both the facts and the Respondent's conclusions therefrom were set out. But the Regional Director's findings of fact do not appear to be at variance with the facts set out in these letters. Rather, it appears that he drew a conclusion from such facts differing from that reached by the Respondent. There was no showing how a hearing before the Regional Director would have been of any value under these circumstances, and I can see no abuse of discretion in his failure or refusal to hold one. The issue involved was one which, although possibly susceptible to a contrary decision, could logically be decided the way the Regional Director decided it. His decision with respect thereto is similar to that of an arbitrator whose award is final and unreviewable in the absence of evidence of fraud or a showing that he acted arbitrarily or capriciously. There is here no evidence of such conduct. Hence, I make no determination on the merits of the dispute. It follows that, as the Respondent's excuse for failure and refusal to bargain with the Union after June 20, 1950, is without legal merit, its failure and refusal so to bargain was a violation of Section 8 (a) (5) and (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 as described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce

[4] *Capitol Greyhound Lines*, 49 NLRB 156; *McMullen Leavens Co.*, 83 NLRB 948.

[5] *Miehle Printing Press and Manufacturing Company*, 58 NLRB 1134; *Ferris-Lee Lumber Company*, 71 NLRB 989; *McMullen Leavens Co., supra; Highland Park Manufacturing Co.*, 84 NLRB 744; *Merrimac Hat Corporation*, 85 NLRB 329.

among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

It has been found that the Respondent has engaged in the unfair labor practice of refusing to bargain collectively with the chosen representative of its employees. It will therefore be recommended that it cease and desist therefrom and from like and related conduct and it will further be recommended that the Respondent bargain collectively, upon request, with the Union as the exclusive representative of its employees in the aforesaid appropriate unit.

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. Blue Mountain District Council of Lumber and Sawmill Workers, affiliated with the United Brotherhood of Carpenters and Joiners of America, A. F. of L., is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees, 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. Blue Mountain District Council of Lumber and Sawmill Workers, affiliated with the United Brotherhood of Carpenters and Joiners of America, A. F. of L., was, on May 15, 1950, and at all times since has been the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on and after June 20, 1950, to bargain collectively with the aforesaid Union as the exclusive representative of the employees in the appropriate unit, Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8 (a) (5) of the Act.

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

6. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommended Order omitted from publication in this volume.]

McCOMB MANUFACTURING COMPANY AND MRS. O. H. STRINGER *and* INTERNATIONAL LADIES' GARMENT WORKERS' UNION, A. F. L. *Case No. 15–CA–235. July 26, 1951*

Decision and Order

On March 20, 1951, Trial Examiner W. Gerard Ryan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in unfair labor practices and recommending that it cease and desist therefrom and