We shall direct an election in a voting group composed of the production and maintenance employees at the Employer's Hollydale, California, plant, excluding office and clerical employees, professional employees, watchmen, guards, and all supervisors as defined in the Act.

If a majority of the employees in this voting group vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate plant bargaining unit. If a majority select the Intervenor, they will be taken to have indicated their desire to become a part of the existing unit composed of employees at the Vernon plant.

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

J. I. CASE COMPANY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO. *Case No. 20–CA–587. August 31, 1951*

Decision and Order

STATEMENT OF THE CASE

Upon a charge filed on May 10, 1951, by International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO, 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 of the Twentieth Region (San Francisco, California), issued a complaint dated May 23, 1951, against J. I. Case Company, herein called the Respondent, alleging that the 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 Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint and charge were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleges in substance that the Respondent (1) on and since May 8, 1951, has continuously refused to bargain with the Union as the exclusive representative of its employees in an appropriate unit, although the Union had been certified by the Board as the representative of the employees in such unit; and (2) by such refusal has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act. On June 2, 1951, the Respondent filed its answer to the complaint, in which it admitted the jurisdictional allegations of the complaint and that it had continuously failed and refused to

meet and bargain collectively with the Union, but denied that it had committed the alleged unfair labor practices, and set forth certain affirmative defenses discussed hereinafter.

Thereafter, desiring to avoid the need for a hearing, all the parties entered into a stipulation, which set forth an agreed statement of facts. The stipulation provides that: (1) The parties have waived their right to a hearing before a Trial Examiner, the Board, or any member thereof, to the preparation and filing of an Intermediate Report and Recommended Order, and to the making and issuance by the Board of proposed findings of fact and conclusions of law; (2) the parties reserve their right to file briefs before the Board; (3) the Board, without further notice to the parties, may issue a Decision and Order based upon the stipulation and the record described in the stipulation; and (4) the stipulation, the charge, the complaint and notices of hearing, the Respondent's answer, affidavits of service of the foregoing documents, and such briefs as the parties might submit, together with the transcript of hearing, the exhibits, and the Board's Decision and Direction of Election, tally of ballots, and certification of representatives in *J. I. Case Company*, Cases Nos. 20–RC–1200 and 20–RC–1212, shall constitute the entire record in this proceeding and shall be filed with the Board in Washington, D. C. The Respondent thereafter filed a brief with the Board.

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 Styles].

The aforesaid stipulation is hereby accepted and made a part of the record herein, and, in accordance with Section 102.50 of National Labor Relations Board Rules and Regulations—Series 6, the proceeding is hereby transferred to, and continued before, the Board. Upon the basis of the aforesaid stipulation and the entire record in the case, the Board makes the following:

Findings of Fact

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a Wisconsin corporation having its principal office and place of business at Racine, Wisconsin, and factories at Racine, Wisconsin; Rockford and Rock Island, Illinois; Burlington and Bettendorf, Iowa; Anniston, Alabama; and Stockton, California. The Respondent's Stockton, California, plant is the only plant involved in this proceeding. In the regular course and conduct of its business, the Respondent purchases, sells, and causes to be transported in interstate commerce materials and products valued at more than $1,000,000 annually. During 1950, the Respondent produced at its

factory at Stockton, California, and caused to be shipped from Stockton, California, directly to points in States of the United States other than California finished products valued at more than $100,000.

The Respondent admits and we find that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO, herein called the Union, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The appropriate unit and the Union's majority representation therein*

On November 6, 1950, the Union filed a petition seeking certification as the representative of the Respondent's employees at its Stockton, California, plant. On November 10, 1950, the International Association of Machinists, District Lodge No. 41, filed a petition seeking substantially the same unit as that proposed by the Union. A consolidated hearing was held upon these petitions[1] and, on February 21, 1951, the Board issued a Decision and Direction of Election,[2] finding appropriate for the purposes of collective bargaining a unit consisting of all production and maintenance employees at the Respondent's Stockton, California, plant, including employees in the experiment division, but excluding office, office clerical, and professional employees, guards, and supervisors as defined in the Act. The Board directed that an election be held in the above-described unit, with the three above-named labor organizations appearing on the ballot. The election was held on March 15, 1951, and a majority of the ballots were cast in favor of the Union. On March 23, 1951, the Regional Director for the Twentieth Region, on behalf of the Board, issued a Certification of Representatives, certifying that pursuant to Section 9 (a) of the Act, the Union was the exclusive representative of all employees in the above-described unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. Copies of the Certification of Representatives were duly served upon the Respondent and the Union.

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[1] International Brotherhood of Blacksmiths, Drop Forgers & Helpers, Local 645, AFL, was permitted to intervene at the hearing.

[2] Cases Nos. 20–RC–1200 and 1212 (not reported in printed volumes of Board decisions), hereinafter called the representation proceeding.

The Respondent contends that the hearing, Decision and Direction of Election, and Certification of Representatives in the representation proceeding are null and void, and of no legal effect, on the grounds that (1) the above-described unit is inappropriate because employees in the experiment division are included in the same unit with the production and maintenance employees; and (2) the Board failed to comply with the requirements of Section 9 (c) (1)[3] of the amended Act, because the record in such proceeding failed to reflect that the Union represented a substantial number of employees in the above-described unit.[4]

In the representation proceeding, the Board rejected the Respondent's contention that the employees in the experiment division should be excluded from the above-described unit, on the basis of the Board's decision in an earlier proceeding involving these same employees,[5] and the Respondent's stipulation that there had been no material change in the duties or relationships of the employees involved since the record was made in such earlier proceeding. For these same reasons, we also reject the Respondent's contention that the above-described unit is inappropriate for the purposes of collective bargaining.[6]

We also reject, as did the Board in the representation proceeding, the Respondent's contention that the Board in the representation proceeding failed to comply with the requirements of Section 9 (c) (1) of the Act. The Respondent contends, in substance: (1) The Board may direct an election and issue a certification of representatives only after finding, on the basis of a record made at a hearing, that a question of representation affecting commerce exists; (2) the Board may not direct a hearing unless a petition has been filed supported by a substantial number of employees; and (3) such a substantial showing is a necessary prerequisite to a finding that a question of repre-

[3] Insofar as it is pertinent to this proceeding, Section 9 (c) (1) of the amended Act provides:

> Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in Section 9 (a) . . . the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

[4] The Respondent's motion to dismiss the representation proceeding was also predicated upon additional grounds not relevant to this proceeding.

[5] *J. I. Case Company*, 80 NLRB 223.

[6] *Standard Steel Spring Company*, 90 NLRB 1805.

sentation exists; hence it must be made part of the record at the hearing before the Board may lawfully direct an election and issue a certification of representatives.

We find no merit in the Respondent's contention that under the Act a substantial showing of interest by a petitioner is essential to a determination that a representation question exists. The only reference to such a showing is the requirement of Section 9 (c) (1) that the *petition allege* that "a substantial number of employees wish to be represented for collective bargaining."[7] It does not follow from this that Congress deemed a substantial showing of interest by a petitioner to be an essential ingredient of the Board's final determination that a representation question exists, or intended that evidence of such a showing be introduced at the hearing on the petition or be made part of the record.

While the Board does in fact investigate the substantiality of a petitioner's showing of interest, preliminary to hearing, it does so merely for the purpose of screening out those cases in which there is so little prospect of the petitioner winning an election, if directed, as not to warrant the Board incurring the expense of further proceedings on the petition.[8] Such investigation has no bearing on the issue whether a representation question exists. That question is determined solely on the basis of entirely different considerations. To the extent that such other considerations were relied upon by the Board in the instant representation proceeding, all parties were afforded an opportunity at the hearing to develop them fully, and evidence relating thereto has been incorporated in the record.

Nor do we find merit in the Respondent's contention that certain changes effected in the language of the section by the amended Act must have been designed to effect a change in the Board's preexisting practice with respect to this matter.[9] The legislative history of the

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[7] The petition filed by the Union in Case No. 20–RC–1200, which was made a part of the record in the representation proceeding, contained an allegation as to the number of employees supporting it.

[8] See *Colonial Hardware Flooring Co., Inc.*, 76 NLRB 1039, 1041.

[9] Section 9 (c) of the Act, before the 1947 amendments, provided:

> Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under Section 10, or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

The Board has held that, under the Act before such amendments, a union's showing of interest was an administrative expedient only, which did not affect the rights of the parties and which need not be incorporated in the record of the hearing. *O. D. Jennings & Company*, 68 NLRB 516. This practice has been approved by the courts. See *N. L. R. B.* v. *May Department Stores Company*, 146 F. 2d 66, 68 (C. A. 8), affd. 326 U. S. 376.

amended Act clearly negates any such inference.[10] We find, therefore, that all the requirements of Section 9 (c) (1) have been met here.

Conclusion

On the basis of the foregoing, we therefore reaffirm the Board's previous unit determination and find that all production and maintenance employees at the Respondent's Stockton, California, plant, including employees in the experiment division, but excluding office, office clerical, and professional employees, guards, and 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. We also find that, as a result of the election held pursuant to the Decision and Direction of Election, the Union was validly certified on March 23, 1951, as, and has at all times thereafter been, the exclusive bargaining representative of all employees in the above-described unit for the purposes of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

B. *The refusal to bargain*

The Respondent admits, and we find, that on or about May 8, 1951, it rejected the Union's request for a bargaining conference on the ground that the certification of the Union as the representative of its employees was invalid. We find that the Respondent, on or about May 8, 1951, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of employees of the Respondent in an appropriate unit, in violation of Section 8 (a) (5) of the Act, and has thereby interfered with, restrained, and coerced its employees in the exercise of their statutory rights in violation of Section 8 (a) (1).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES

The activities of the Respondent set forth in Section III, above, occurring in connection with its operations 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.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to

[10] Such changes were intended to alter the Board's practice only with respect to other matters. See House Report No. 245 on H. R. 3020, 80th Cong., 1st Sess., p. 35; Senate Report No. 105 on S. 1126, 80th Cong., 1st Sess., pp. 10, 24; House Conference Rept. No. 510 on H. R. 3020, 80th Cong., 1st Sess., p. 50.

take certain affirmative action which will effectuate the policies of the Act.

Upon the basis of the above findings of fact and upon the entire record in this case, the Board makes the following:

Conclusions of Law

1. International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees at the Respondent's Stockton, California, plant, including employees in the experiment division, but excluding office, office clerical, and professional employees, guards, and 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.

3. International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO, was on March 23, 1951, certified as, and has at all times thereafter been, the exclusive representative of all 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 May 8, 1951, and at all times thereafter, to bargain collectively with International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO, as the exclusive representative of all 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.

5. By interfering with, restraining, and coercing its employees in the exercise of their 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.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Order

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, J. I. Case Company, Stockton, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO, as the exclusive representative of all production and

maintenance employees at the Respondent's Stockton, California, plant, including employees in the experiment division, but excluding office, office clerical, and professional employees, guards, and supervisors as defined in the Act.

(b) In any other manner interfering with the efforts of International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO, to negotiate for, or to represent, the employees in the aforesaid bargaining unit as their exclusive bargaining agent.

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

(a) Upon request, bargain collectively with International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO, as the exclusive representative of the employees in the aforesaid bargaining unit, with respect to rates of pay, wages, hours, and other conditions of employment, and if an understanding is reached, embody such an understanding in a signed agreement.

(b) Post at its plant in Stockton, California, copies of the notice attached hereto marked "Appendix A."[11] Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being signed by the Respondent's representative, be posted by the Respondent 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.

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

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 BARGAIN collectively upon request with INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, as the exclusive representative of all employees in the bargaining unit described herein with respect to wages, rates of pay, hours, and other conditions of em-

[11] In the event that this Order is enforced by a decree of a 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."

ployment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees of the Respondent at its Stockton, California, plant, including employees in the experiment division, but excluding office, office clerical, and professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT engage in any acts in any manner interfering with the efforts of INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, to negotiate for, or represent, the employees in the bargaining unit described above.

J. I. CASE 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.

ROANE-ANDERSON COMPANY *and* OAK RIDGE GUARDS UNION, LOCAL 3, INTERNATIONAL GUARDS UNION OF AMERICA (IND.), PETITIONER.
Case No. 10–RC–1360. August 31, 1951

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Frank E. Hamilton, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 [Chairman Herzog and Members Reynolds and Murdock].

Upon the entire record in this case, the Board finds:

1. The Company is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent employees of the Company.

3. No question affecting commerce exists concerning the representation of employees of the Company within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

The Petitioner seeks to represent a unit of all patrolmen and detectives of the Oak Ridge, Tennessee, Police Department. The Roane-