In the Matter of POTOMAC ELECTRIC POWER COMPANY *and* ELECTRIC UTILITY FOREMEN'S ASSOCIATION

Case No. 5–C–2095.—Decided May 28, 1947

Mr. Earle K. Shawe, for the Board.

Bowen and Kelly, by *Messrs. W. H. Kelly* and *J. F. Castiello*, of Washington, D. C., for the respondent.

Messrs. Martin F. O'Donoghue and *T. X. Dunn*, of Washington, D. C., for the Union.

Mr. Bernard Goldberg, of counsel to the Board.

DECISION

AND

ORDER

On September 24, 1946, Trial Examiner James A. Shaw 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 supporting brief. On April 22, 1947, the Board, at Washington, D. C., heard oral argument in which both the respondent and the Union participated.

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, the contentions advanced at oral argument before the Board, 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:

1. On March 30, 1946, the Board issued a Decision and Direction of Election,[1] finding appropriate a unit of supervisors which included, *inter alia*, assistant general foremen, watch engineers, power dispatchers, administrative clerks, chief inspector and assistant chief in-

[1] *Matter of Potomac Electric Power Company*, 66 N. L R. B. 1432.

spector. Pursuant to its Decision, the Board conducted an election among employees in the appropriate unit. The results were as follows: of approximately 103 eligible voters, 100 voted—70 for the Union and 29 against, with 1 ballot challenged. On May 3, 1946, the Board certified the Union as the collective bargaining representative of the employees in the appropriate unit. Acting on this certification, the Union on May 7, 1946, requested a bargaining conference with the respondent. The latter refused, giving as its justification its contention in the representation proceeding "that a unit of supervisors is inappropriate and illegal."

On August 23, 1946, after the United States Circuit Court of Appeals for the Sixth Circuit had issued its decision in the *Packard* case,[2] upholding the Board's finding that a unit of supervisors represented by an independent foremen's union is appropriate, the Union renewed its request for a bargaining conference. The respondent again refused to meet with the Union, stating that the Circuit Court of Appeals' decision in the *Packard* case was not a final adjudication of the issue as to the legality of foremen's units.

On August 8, 1946, the Board issued its complaint, alleging a refusal to bargain. On August 30, 1946, the respondent filed its answer, denying in general terms that the unit found appropriate by the Board "constitutes a legally appropriate unit for the purposes of collective bargaining." At the hearing before the Trial Examiner on September 4, 1946, the respondent apparently relied only on its general contention that any unit of supervisors is illegal. In its Exceptions to the Trial Examiner's Intermediate Report and its brief in support thereof, both dated October 29, 1946, the respondent for the first time since the issuance of the Board's Decision and Direction of Election the previous March, made the specific contention that the Board had improperly included in the unit assistant general foremen, watch engineers, administrative clerks, chief inspector, assistant chief inspector and power dispatchers.

We have reexamined the record in the representation proceeding. As to the assistant general foremen, watch engineers and administrative clerks, we again find that they were properly included in the unit.[3] We have decided, however, to modify our previous unit finding to exclude the chief inspector, the assistant chief inspector and the power dispatchers from the unit. Although the respondent's organizational charts list these employees as supervisors and the respondent did not dispute the supervisory status of the power dis-

[2] *N. L. R. B.* v. *Packard Motor Car Co.*, 157 F. (2d) 80 (C. C. A. 6), aff'd 67 S. Ct. 789.

[3] See *N. L. R. B.* v. *Packard Motor Car Co.*, 67 S. Ct. 789, aff'g 157 F. (2d) 80 (C. C. A. 6).

patchers at the representation hearing,[4] on fuller consideration of the entire record, we have reached the conclusion that the power dispatchers, the chief inspector and the assistant chief inspector are not supervisors within the Board's customary definition.

We find that all assistant general foremen, foremen, assistant foremen, chief operators, watch engineers, assistant watch engineers, administrative clerks, storekeepers and assistant stock supervisors employed by the respondent in its generating, substation, substation construction, distribution, meter, motor transportation, and purchasing and stores departments, excluding power dispatchers, chief inspector, assistant chief inspector and per diem foremen, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

The respondent asserts that, inasmuch as the unit previously found appropriate improperly included certain categories of employees, the unit was in fact inappropriate, and, since the existence of a valid appropriate unit is a condition precedent to the creation of an obligation to bargain under Section 8 (5) of the Act, the respondent cannot be held to have violated that section of the Act. The respondent is not contending, however, that it refused to bargain with the Union because the Board included power dispatchers, the chief inspector, and the assistant chief inspector in the unit.[5] Nor is it contending that a modification of the unit to exclude power dispatchers and the chief and assistant chief inspectors will in any way affect the Union's majority status as established in the election.[6] Thus, the issue raised by the respondent narrows itself to this: Does a minor modification of a unit previously found appropriate by the Board require the dismissal of an unfair labor practice charge based on a refusal to bargain, where the Union's majority status established by an election has not been affected by the slight variation in the unit and the respondent had not refused to bargain because of alleged improper inclusions in the unit? We find that it does not.

The general appropriateness of the present unit was determined in the Board's previous decision. The minor changes which we are now making in our previous unit finding do not establish the inappropriateness of that unit. On the contrary, a comparison of the two unit findings shows that the units are identical except with respect to three borderline classifications, two of which comprise only one employee.

[4] In respect to the power dispatchers, the respondent contended at the representation hearing that, if the Board decided to establish a supervisors' unit, the power dispatchers should be in a separate unit with watch engineers, assistant watch engineers, and chief operators

[5] Cf *Matter of Spicer Manufacturing Corporation*, 51 N L. R B 679

[6] The Union won the election by a plurality of 40 votes and there are only 9 employees—7 power dispatchers, 1 chief inspector and 1 assistant chief inspector—who are now being transferred from the included to the excluded category, a number insufficient to affect the Union's majority

In the case of the third classification, power dispatchers, comprising seven employees, as we have previously noted, the respondent itself in the representation proceeding then took the position that they belonged in a unit of supervisors. Inasmuch as the unit for which the Union requested recognition is substantially identical with that found appropriate herein and the Union's majority status as previously established has not been altered by this modification of the unit, we find, as did the Trial Examiner, that by refusing to bargain collectively with the Union, the respondent violated Section 8 (5) of the Act.[7]

2. The Trial Examiner found that the respondent, by reading to its employees the Union's letter of May 7, 1946, requesting a bargaining conference, and its own answer thereto dated May 10, 1946, and by dealing unilaterally with its employees in the appropriate unit after the Board's certification of the Union, violated Section 8 (1) of the Act. The Trial Examiner based this finding on a subsidiary finding that the above-described activities of the respondent "were for the purpose of impressing its employees, in the unit found to be appropriate, with the futility of their concerted activities and thus induce them to abandon the Union as their representative for the purposes of collective bargaining." We find no evidence to support this finding of the respondent's purpose. Neither the content of the letter nor the circumstances under which they were read serve to establish such a purpose. The respondent has stated in its answer to the complaint that the letters were read to its employees "for the sole purpose of making certain that its position would be correctly and fully known." Under all the circumstances, this appears to be a reasonable explanation of its conduct and we accept it.

As to the unilateral dealings with the employees in the unit after the Board's certification, this was an inevitable consequence of the respondent's refusal to bargain collectively with the Union. There is no evidence to show that this unilateral dealing went beyond the necessary day-to-day adjustment of personnel problems. We do not believe that these unilateral dealings show a purpose on the part of the respondent to undermine the Union. Accordingly, we reject the finding of the Trial Examiner, that the respondent's purpose in reading to the employees in the unit the letters to and from the Union and in dealing unilaterally with these employees after the Board's certification of the Union was to convince the employees of the futility of their concerted activities, and thus induce them to abandon the Union as their bargaining representative. Inasmuch as we have rejected the Trial Examiner's finding of purpose, we find, contrary to the Trial Examiner, that by the aforesaid conduct the respondent did not violate Section 8 (1) of the Act.

[7] See *Matter of Barlow-Maney Laboratories, Inc.*, 65 N. L. R. B. 928, 941–945.

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, Potomac Electric Power Company, Washington, D. C., and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Electric Utility Foremen's Association as the exclusive representative of all assistant general foremen, foremen, assistant foremen, chief operators, watch engineers, assistant watch engineers, administrative clerks, storekeepers, and assistant stock supervisors employed by the respondent in its generating, substation, substation construction, distribution, meter, motor transportation, and purchasing and stores departments, excluding power dispatchers, chief inspector, assistant chief inspector, and per diem foremen;

(b) In any manner interfering with the efforts of Electric Utility Foremen's Association to bargain collectively with it, as the exclusive representative of its employees in the appropriate unit described above.

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

(a) Upon request, bargain collectively with Electric Utility Foremen's Association as the exclusive representative of all its 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 plants in the Washington, D. C., area, where employees in the appropriate unit are employed, copies of the notice attached hereto and marked "Appendix A."[8] Copies of such notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for at least 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 such notices are not altered, defaced, or covered by any other material;

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

[8] In the event that this order is enforced by a decree of a Circuit Court of Appeals, there shall be inserted before the words "A DECISION AND ORDER" the words "DECREE OF THE UNITED STATES CIRCUIT COURT OF APPEALS ENFORCING"

AND IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed, insofar as it alleges that by reading certain letters to, and by dealing individually with, its employees in the appropriate unit, the respondent violated Section 8 (1) of the Act.

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 not in any manner interfere with the efforts of Electric Utility Foremen's Association to bargain collectively with us.

We will bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All assistant general foremen, foremen, assistant foremen, chief operators, watch engineers, assistant watch engineers, administrative clerks, storekeepers, and assistant stock supervisors employed in the generating, substation, substation construction, distribution, meter, motor transportation, and purchasing and stores departments, excluding power dispatchers, chief inspector and assistant chief inspector.

POTOMAC ELECTRIC POWER 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

Earl K. Shawe, for the Board

J. E. Costiello and *W. H Kelly*, of *Bowen and Kelly*, of Washington, D. C., for the Respondent.

Martin F. O'Donoghue and *T. X. Dunn*, of Washington, D. C., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by Electric Utility Foremen's Association, herein called the Union, on May 20, 1946, the National Labor Relations Board, herein called the Board, by its Regional Director for the Fifth Region (Baltimore, Mary-

land), issued its complaint dated August 8, 1946, against Potomac Electric Power 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 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing and copies of the charge were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance that: (1) all assistant general foremen, foremen, assistant foremen, power dispatchers, chief operators, chief inspectors, assistant chief inspectors, watch engineers, assistant watch engineers, administrative clerks, storekeepers, and assistant stock supervisors employed by the respondent in its generating, substation, substation construction, distribution, meter, motor transportation, and purchasing and stores departments, excluding all per diem foremen, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, subsection (b) of the Act; (2) since May 10, 1946, and at all times thereafter, the respondent has refused to recognize and to bargain collectively with the Union as the exclusive bargaining representative of the respondent's employees in the unit designated by the Board as appropriate for the purposes of collective bargaining although a majority of said employees in such appropriate unit by secret ballot conducted on April 18, 1946, selected said Union as their collective bargaining representative and said Union was certified by the Board as such representative on May 3, 1946; and (3) since on or about May 10, 1946, and continuously down to the date of the issuance of this complaint, the respondent has dealt directly and individually with its employees in the unit described above and has informed them individually of its refusal to bargain collectively with the Union, thereby interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Thereafter the respondent filed its answer in which it admitted certain of the allegations of the complaint but denied that it had committed any unfair labor practices In substance the answer admitted that the Union had been certified by the Board as the exclusive representative for the purposes of collective bargaining of the employees in a unit found appropriate by the Board and that it had refused to bargain collectively with the Union and asserted that its refusal did not constitute an unfair labor practice for the reason that the unit found appropriate by the Board did not constitute a legally appropriate unit for the purposes of collective bargaining within the meaning of Section 9, subsection (b) of the Act. The respondent admitted that it had informed its employees in the unit found appropriate by the Board of its refusal to bargain collectively with the Union for the "sole purpose of making certain that its position would be correctly and fully known."

On motion of counsel for the Board joined in by the other parties, the transcript of evidence, exhibits, and the entire record, including decisions, orders, directives, and certifications of the Board in Case No. 5-R-1970,[1] was incorporated into and made a part of the record in this proceeding for whatever consideration it may be entitled to receive under the practices of the Board and the requirements of the Act.

Pursuant to notice, a hearing was held in Washington, D C., on September 4, 1946, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented

[1] *Matter of Potomac Electric Power Company* and *Electric Utility Foremen's Association*, 66 N. L. R B. 1432.

by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. No witnesses were called by any of the parties. At the close of all the evidence the motion of counsel for the Board to conform the pleadings to the proof as to such matters as dates, typographical errors and other minor variances was granted without objection. At the close of all the evidence counsel for the respondent moved that the complaint be dismissed, ruling thereon was reserved by the undersigned, and it is hereby denied All parties were given an opportunity to argue orally before the undersigned. None availed themselves of this opportunity Although all parties were given an opportunity to file briefs, none have been received.[2]

On the basis of the foregoing and on the entire record, after having heard and observed all the proceedings and considered all the evidence offered and received, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Potomac Electric Power Company, a District of Columbia corporation, is engaged in the production, sale, and distribution of electric power in the District of Columbia and the surrounding area of Maryland. The respondent furnishes electric power to various railroads, manufacturing and commercial enterprises, and private dwellings, and its gross sales therefrom are approximately $23,000,000 annually.

The respondent admits for the purpose of this proceeding that it is engaged in commerce within the meaning of the Act.[3]

II THE ORGANIZATION INVOLVED

Electric Utility Foremen's Association is an unaffiliated labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. The refusal to bargain

1. The appropriate unit

On March 30, 1946, after an appropriate hearing, the Board found, in the *Matter of Potomac Electric Power Company* and *Electric Utility Foremen's Association*, Case No. 5–R–1970, 66 N. L R. B. 1432, that all assistant general foremen, foremen, assistant foremen, power dispatchers, chief operators, chief inspectors, assistant chief inspectors, watch engineers, assistant watch engineers, administrative clerks, storekeepers, and assistant stock supervisors employed by the respondent in its generating, substation, substation construction, distribution, meter, motor transportation, and purchasing and stores departments, excluding all per diem foremen, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act

The respondent in its answer denied that the above unit found appropriate by the Board constituted a legally appropriate unit for the purposes of collective bargaining within the meaning of Section 9, subsection (b) of the Act. However, at the hearing in the instant case it offered no testimony in support of its

[2] Counsel for the respondent reserved the right to file a brief within 5 days from the close of the hearing None has been received.

[3] The above findings are based upon a stipulation entered into by the parties.

position. Accordingly, the undersigned finds the appropriate unit to be the same as that found by the Board in its Order and Direction of Election dated March 30, 1946, as above set out.

2. The majority

On April 10, 1946, pursuant to the order of the Board dated March 30, 1946, an election was held among the employees in the above-found appropriate unit at which a majority of said employees by secret ballot selected the Union as their bargaining representative. By order dated May 3, 1946, the Board certified said Union as the exclusive representative of the employees in said unit. As the respondent introduced no evidence at the present hearing tending to impeach this certification or the majority status of the Union, the undersigned finds that on May 3, 1946, and at all times thereafter, the Union has been, and continues to be, the exclusive representative of all the employees in the above-found appropriate unit for the purposes of collective bargaining with the respondent with respect to rates of pay, wages, hours of employment and other conditions of employment.

3. The refusal to bargain

At the hearing in the instant case the respondent stipulated that it had refused to bargain with the Union as the exclusive representative of the employees in the above-found appropriate unit

This stipulation was fully in accord with the record. On May 7, 1946, Martin F. O'Donoghue, attorney for the Union, wrote a letter to Mr. Alfred G. Neal, the respondent's president, and requested that a conference be set for bargaining negotiations on Wednesday, May 15, 1946, at 1:30 p. m. at the respondent's offices in Washington, D. C. On May 10, 1946, Mr. A G. Neal, the respondent's president, wrote the Union's attorney the following letter:

POTOMAC ELECTRIC POWER COMPANY
10th & E Streets, Northwest
Washington 4, D. C.

A G. NEAL
President

MAY 10, 1946

MARTIN F. O'DONOGHUE, ESQ.,
O'Donoghue, Dunn & Mills
Tower Building
Washington 5, D. C.

DEAR SIR: I have your letter of May 7, 1946, in which you, on behalf of the Electric Utility Foremen's Association, state that the Association has been officially certified by the National Labor Relations Board as bargaining representative for certain of this Company's supervisors, described in the certification You further request a conference for negotiation purposes on Wednesday, May 15, 1946, at 1:30 P. M. at the Power Company's building.

It has been this Company's consistent position, as fully detailed in the hearing before the National Labor Relations Board, that a unit of supervisors is inappropriate and illegal. The Company took this position because the personnel sought to be represented by the Union were, and are now, a substantial part of its management.

The Company has been advised by counsel that notwithstanding the position of the National Labor Relations Board no reviewing court has, as yet, given its sanction to any unit of supervisory personnel, and that this issue

is now pending before one of the United States Circuit Courts of Appeal. Therefore, pending final judicial approval of the Board's decision on this issue, the Company feels obliged to decline your request.

Yours very truly,

(sgd) A. G. NEAL,
President.

On August 12, 1946, the United States Court of Appeals, Sixth Circuit, Cincinnati, Ohio, issued its decision in the *Packard Motor Company* case,[4] in which a petition by the Board to enforce an order issued in a proceeding charging unfair labor practices against the Packard Motor Car Company was granted. The issues involved in that case were identical with those involved herein, namely a refusal to bargain with the Union certified by the Board as the bargaining representative for employees in an appropriate unit composed of foremen and other supervisory employees. Shortly thereafter, the Union, by its attorney, Martin F. O'Donoghue, again wrote the respondent and requested a conference for bargaining negotiations, preferably for September 3, 1946. The respondent, by its president, A. G. Neal, replied to this letter on August 30, 1946, in which it declined to meet with the Union until the *Packard* case should be finally decided [5].

In numerous cases involving facts similar to those set out herein above the Board has held such conduct to constitute a refusal to bargain with the duly certified representative of the employees in an appropriate unit.

The undersigned, therefore, finds that on May 10, 1946, and at all times thereafter, the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. *Interference, restraint, and coercion*

The Board alleged in its complaint that the respondent by its officers and agents has since on or about May 10, 1946, and continuously down to and including the date of the issuance of the complaint herein, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act by: (a) informing its employees individually of its refusal to bargain collectively with the Union for the purpose of persuading, inducing and coercing its employees to refrain from assisting, remaining or becoming members of the Union; (b) dealing directly and individually with its employees in the unit found to be appropriate concerning rates of pay, wages, hours of employment, or other conditions of employment. The parties stipulated that on or about May 15, 1946, the heads of the various departments called in employees under their supervision, who were employed in the unit herein found to be appropriate and either individually or collectively read to them the letter from the Union dated May 7, 1946, and the respondent's reply thereto dated May 10, 1946. The letters are referred to above in the section "Refusal to bargain." The parties also stipulated that the respondent had at all times since the certification of the Union as the bargaining representative of the employees in the unit herein found to be appropriate continued to deal unilaterally and directly with the individual employees in said unit.

The undersigned is convinced and finds that the activities of the respondent as set forth in the above stipulations were for the purpose of impressing its employees, in the unit herein found to be appropriate, with the futility of their

[4] *N. L. R. B. v. Packard Motor Car Company, et al.*, 157 F. (2d) (C. C. A. 6), No. 10157, August 12, 1946—Aff'd 67 S. Ct. 789, enforcing 64 N. L. R. B. 1212.

[5] See *supra.*

concerted activities and thus induce them to abandon the Union as their representative for the purposes of collective bargaining. Accordingly, the undersigned finds that by such conduct the respondent interfered with, restrained and coerced the employees in the exercise of the rights guaranteed under Section 7 of the Act.[6]

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 operation 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

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Electric Utility Foremen's Association, unaffiliated, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All assistant general foremen, foremen, assistant foremen, power dispatchers, chief operators, chief inspectors, assistant chief inspectors, watch engineers, assistant watch engineers, administrative clerks, storekeepers, and assistant stock supervisors employed by the respondent in its generating, substation, substation construction, distribution, meter, motor transportation, and purchasing and stores departments, excluding all per diem foremen, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Electric Utility Foremen's Association, unaffiliated, was on May 3, 1946, and at all times thereafter has 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 10, 1946, and at all times thereafter to recognize and to bargain collectively with Electric Utility Foremen's Association, unaffiliated, as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the 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 (1) of the Act.

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

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, the undersigned recommends that the respondent,

[6] In the *Matter of The Arundel Corporation* and *International Union of Marine and Shipbuilding Workers of America, C. I. O., Local 142*, 59 N. L. R. B. 505.

Potomac Electric Power Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to recognize and to bargain collectively with Electric Utility Foremen's Association, unaffiliated, as the exclusive representative of all assistant general foremen, foremen, assistant foremen, power dispatchers, chief operators, chief inspectors, assistant chief inspectors, watch engineers, assistant watch engineers, administrative clerks, storekeepers, and assistant stock supervisors employed by the respondent in its generating, substation, substation construction, distribution, meter motor transportation, and purchasing and stores departments, excluding all per diem foremen;

(b) Engaging in like or related acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist Electric Utility Foremen's Association, unaffiliated, or any other labor organization of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned funds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Electric Utility Foremen's Association, unaffiliated, as the exclusive representative of all its employees in the aforesaid appropriate unit;

(b) Post in its generating, substation, substation construction, distribution, meter, motor transportation, and purchasing and stores departments, copies of the notice attached to the Intermediate Report, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Fifth Region, after being signed by the respondent's representative, shall be posted by the respondent immediately upon the receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to the 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 Fifth Region in writing, within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 203 39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof, and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties

and shall file a copy with the Regional Director. Proof of service on the other parties of all paper filed with the Board shall be promptly made as required by Section 203 65. As further provided in said Section 203 39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

JAMES A. SHAW,
Trial Examiner.

Dated September 24, 1946.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner 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 not refuse to bargain with Electric Utility Foremen's Association, unaffiliated, as the exclusive representative of our employees in the unit described below.

We will not engage in any like or related acts or conduct interfering with, restraining, or coercing our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Electric Utility Foremen's Association, unaffiliated, 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. All our employees in the unit described below are free to become or remain members of this Union.

We will bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached embody such understanding in a signed agreement The bargaining unit is:

All assistant general foremen, foremen, assistant foremen, power dispatchers, chief operators, chief inspectors, assistant chief inspectors, watch engineers, assistant watch engineers, administrative clerks, storekeepers, and assistant stock supervisors employed by the respondent in its generating, substation, substation construction, distribution, meter, motor transportation, and purchasing and stores departments, excluding all per diem foremen

POTOMAC ELECTRIC POWER 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.