with notice of hearing herein, the unions notified the Regional Director that they would not appear, and that their position was still that set forth at the informal conference. The unions did not enter formal appearances at the hearing, although a representative of each was present.

It is apparent that the unions, by their proposed contracts of August 13, demanded recognition by the Employer as exclusive bargaining representatives. While the Board has held that such a demand is insufficient basis for an employer petition if followed by a *clear and unequivocal* disclaimer of interest by a union,[1] no such disclaimer was effected here. Neither the fact that the placards carried by the Union in connection with the picketing did not demand recognition, their statement of September 6, nor their failure formally to appear in this proceeding, is inconsistent with a continuing demand for recognition.[2]

Accordingly, we find that questions affecting commerce exist concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. We find that the following employees of the Employer at its Toledo, Ohio, store constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

1. All warehouse employees, excluding office and sales employees, guards, and supervisors as defined in the Act.

2. All salespersons, excluding warehouse and office employees, guards, and supervisors as defined in the Act.[3]

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

[1] *Hamilton's Ltd*, 93 NLRB 1076.

[2] Cf. *Kimel Shoe Company*, 97 NLRB 127; *Coca-Cola Bottling Company of Walla Walla, Washington*, 80 NLRB 1063.

[3] The units found appropriate are substantially in accord with those covered by the unions in their proposed contracts and requested by the Employer herein. While the Retail Clerks' proposed contract excluded employees spending more than three-quarters of their time in nonselling occupations, there are no employees presently so employed, and we therefore do not pass upon the unit placement or voting eligibility of such employees.

QUINCY STEEL CASTING CO., INC. *and* INTERNATIONAL MOLDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, AFL, LOCAL 106. *Case No. 1-CA-943. December 3, 1951*

Decision and Order

On July 31, 1951, Trial Examiner Reeves R. Hilton issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in unfair labor prac-

tices 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 [1] has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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, Quincy Steel Casting Co., Inc., Quincy, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize or to bargain collectively with International Molders and Foundry Workers Union of North America, AFL, Local 106, as the exclusive representative of all production and maintenance employees, at its Quincy, Massachusetts, plant, exclusive of office, clerical, and professional employees, guards, and all supervisors as defined in Section 2 (11) of the Act.

(b) Engaging in any like or related acts or conduct interfering with the efforts of International Molders and Foundry Workers Union of North America, AFL, Local 106, to negotiate for or to represent the employees in the aforesaid 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 Molders and Foundry Workers Union of North America, AFL, Local 106, as the exclusive bargaining representative of its employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant at Quincy, Massachusetts, copies of the notice attached hereto, marked "Appendix A." [2] Copies of such notice, to be furnished by the Regional Director for the First Region, shall, after

[1] 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 Styles].

[2] In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are 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 First 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 INTERNATIONAL MOLDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, AFL, LOCAL 106, as the exclusive representative of all our employees in the bargaining unit described below 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 production and maintenance employees at our Quincy plant, exclusive of office, clerical, and professional employees, guards, and all supervisors as defined in the Act.

WE WILL NOT in any manner interfere with the efforts of the above-named union to bargain with us, or refuse to bargain collectively with said union as the exclusive representative of the employees in the bargaining unit set forth above.

QUINCY STEEL CASTING CO., INC.,
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 a charge duly filed by International Molders and Foundry Workers Union of North America, AFL, Local 106, herein called the Union, the General

Counsel of the National Labor Relations Board,[1] by the Regional Director for the First Region (Boston, Massachusetts), issued a complaint dated June 15, 1951, against Quincy Steel Casting Co., Inc., herein called the Respondent or the Company, alleging that the Respondent has engaged in and is engaging in unfair labor practices 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, with copies of the charge and notice of hearing, were duly served upon the Respondent and the Union.

The complaint alleges in substance that the Respondent on and after April 23, 1951, refused to bargain collectively with the Union as the exclusive representative of its employees in a unit appropriate for the purposes of collective bargaining although the Union has been, and is, the duly designated representative of the employees in the unit. By reason thereof the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and (1) of the Act.

The Respondent, on or about July 2, 1951, duly filed its answer wherein it admitted certain allegations of the complaint but denied the commission of any unfair labor practices. Affirmatively, the Respondent avers that the Board's certification of the Union as the representative of the employees in the appropriate unit was illegal because the Board overruled its challenges to the eligibility of two employees to vote in an election held for the purpose of determining the majority representative without granting a full hearing to the Respondent upon this question and, therefore, its action in certifying the Union was arbitrary and in violation of the Act, the Board's Rules and Regulations, and the Administrative Procedure Act. (60 Stat. 244, 5 U. S. C., 1001, *et seq.*)

Pursuant to notice, a hearing was held at Boston, Massachusetts, on July 2, 1951, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel, the Union by its district representative, and all participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues involved. At the conclusion of the General Counsel's case-in-chief, counsel for the Respondent moved to dismiss the complaint for lack of proof, which motion was denied by the undersigned. At the conclusion of the case, counsel for the Respondent moved to dismiss the complaint for lack of proof and because no violations had been established as a matter of law. The motion was taken under advisement by the undersigned and, for the reasons appearing below, it is now denied. The parties were afforded an opportunity to present oral argument and were advised of their right to file briefs in this matter. The General Counsel and counsel for the Respondent filed briefs which have been duly considered by the undersigned.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a Massachusetts corporation and maintains its office and place of business at Quincy, Massachusetts, where it is engaged in the manu-

[1] The General Counsel and his representative at the hearing are herein referred to as the General Counsel; the National Labor Relations Board as the Board.

facture, sale, and distribution of rough steel castings and related products. In its manufacturing operations the Respondent annually purchases raw materials, including iron ore, sand, and steel scrap, valued at approximately $100,000, of which about 15 percent represents shipments to the Respondent's plant from places outside the Commonwealth of Massachusetts. Its annual sales amount to approximately $190,000, of which about 70 percent represents shipments to customers outside the Commonwealth of Massachusetts. The Respondent neither admits nor denies that its operations affect commerce as defined in the Act. The undersigned finds that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION

International Molders and Foundry Workers Union of North America, AFL, Local 106, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The prior representation proceedings*

The parties stipulated that on September 26, 1950, the Union filed a petition for certification with the Board (1–RC–1802) wherein it alleged that a question had arisen concerning the representation of the Company's employees in a unit composed of production and maintenance employees, with the customary exclusions. About October 6, representatives of the parties and the Board conferred, but were unable to informally resolve the question of representation. Accordingly, on November 17, a formal hearing was held before a hearing officer of the Board, at which the Company conceded the appropriateness of the bargaining unit but denied that it was engaged in a business affecting commerce as defined in the Act and, also, questioned the Union's majority status. Prior to the hearing, about October 10, the Company submitted to the Regional Office a list containing the names of 28 persons employed in the unit, together with their respective job classifications and departments. Following the hearing, the officer conducting the same made his report thereon and the Board, on December 18, issued its Decision and Direction of Election in the matter. There the Board found as an appropriate unit all production and maintenance employees at the Company's Quincy plant, excluding office, clerical, and professional employees, guards, and supervisors. The Board further directed that an election be conducted under the supervision of the Regional Director, within 30 days, among the employees in the unit.

Thereafter, on January 17, 1951,[2] the election was held. During the course of the voting the Company challenged the right of 2 employees, F. W. Green and J. A. Dunn, to vote on the ground that they were supervisory employees and therefore excluded from the bargaining unit. In accordance with Board procedure, the agent conducting the election permitted Green and Dunn to vote challenged ballots, which he duly impounded. At the conclusion of the election the agent issued a tally of ballots which showed that of approximately 28 eligible voters, 27 voted, of which 12 cast ballots in favor of the Union, 13 against it, and 2 were challenged ballots.

As the challenged ballots were sufficient to affect the results of the election, the Regional Director, after investigation and in accordance with the Rules and Regulations of the Board,[3] issued his report on challenges, dated February 13,

[2] All subsequent dates refer to 1951, unless otherwise stated.
[3] Section 203.61, Series 5, then in effect.

wherein he concluded that neither Green nor Dunn were supervisors and recommended that their ballots be opened and counted and that a revised tally of ballots be issued thereafter. Counsel for the Company filed timely and detailed exceptions to the report.

The Board, on March 26, issued its Supplemental Decision and Direction (93 NLRB No. 174) in which it adopted the conclusions and recommendations of the Regional Director and ordered that the challenged ballots be opened and counted and that he prepare and serve upon the parties a supplemental tally of ballots.

On March 27, counsel for the Company filed with the Board a motion to revoke the supplemental decision and requested that a formal hearing be held on the issues raised in its exceptions filed to the Regional Director's report on challenges, and that the Company be afforded an opportunity to adduce evidence in respect to the supervisory status of Green and Dunn prior to the opening of the challenged ballots.

On April 10, the Board entered an order denying the motion for lack of merit and for the reasons set forth in its Supplemental Decision and Direction.

Thereafter, the Regional Director opened and counted the challenged ballots and issued his revised tally of ballots, dated April 20, which disclosed that of approximately 28 eligible voters, 27 cast ballots, of which 14 were for and 13 against the Union. Accordingly, on April 26, the Regional Director, on behalf of the Board, certified the Union as the exclusive representative of all the employees in the bargaining unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

B. *The refusal to bargain*

The Union, on April 20, requested in writing that the Company meet with it on April 25, for the purpose of negotiating an agreement covering the employees in the unit.

The Company, by letter dated April 23, advised the Union that it considered the Board's decision upon the question of the challenged ballots as arbitrary, and since it intended to test the validity of the certification it refused to recognize or meet with the Union and suggested that it file a charge with the Board.

On May 22, the instant charge was filed.

C. *The employment status of the employees in question*

F. W. Green: Green, a witness for the Company, testified he had been in the Company's employment for about 3 years and was hired by Ervin Towns as a molder and as Towns' assistant. From the date of his employment to January 17, Green received the same hourly rate, the union scale, as paid other molders at the plant. Green, who had 28 years' experience at his trade, in addition to performing the usual duties of a molder, acted as superintendent when Towns was on his annual vacation, 1 week, for which Green received a bonus of $20. Green also acted in Towns' place at such times as he was temporarily out of the plant, which occasions Green estimated would, in the aggregate, average about 1 day per month. Green also directed the metal pouring operation, that is, the pouring of hot metal from the ladle into the mold, in that he told the crew of molders when to start pouring and the amount to pour. The pouring occurs from four to five times per day and is a rather difficult operation from a safety standpoint and requires skilled and experienced molders. Apart from telling the crew when to start and stop pouring Green issued no instructions to the employees. The record is rather vague in respect to any authority vested in Green to effec-

tively hire, discharge, or to take disciplinary action against employees. However, it appears that Green, prior to January 17, while Towns was on vacation, reported to the president, or manager, of the Company that one laborer refused to work and he subsequently quit or was discharged. On another occasion Green told a molder to go to work whereupon this individual quit. Green considered himself as an ordinary molder at the plant, punched a time clock like other employees, and received the same sickness and death benefits as other workers.

On the morning of January 17, prior to the hour scheduled for the election, Green was called to the office and advised by Rogers [4] and Towns that he was to be assistant superintendent or supervisor, that the Company had intended to do this for some time, and granted a 5-cent increase in his hourly rate retroactive to January 1. Prior to this occasion there had never "been any talk" about Green being a supervisor, except when Towns was on vacation or absent from the plant.

J. A. Dunn: Dunn stated that he had been employed by the Company in its core department for about 8 years. During the entire period of his employment Dunn received 5 cents an hour more than the regular molders in accordance with the union scale, which rates a coremaker as higher skilled than a molder. Dunn described the functions of a coremaker as producing the core or internal part of the mold or casting, "such as a radiator, the internal is made as a core." For the past 5 years Dunn has been the only permanent employee employed in the core department although at times when he needs help he usually obtains a melter or an apprentice, when they are not busy, to assist him. Like Green, Dunn is in charge of a pouring operation which occurs three to five times per day. Dunn related his operations are limited to small moulds containing up to 100 pounds of metal, and that the ladles are manhandled by the crew, usually two or three men. Green's pouring operations, he stated, are on the large molds that hold from 300 to 2,100 pounds and that the ladles are moved mechanically by the crew. In his pouring operation Dunn takes off the slag from the top of the ladle and tells the men when to start and stop pouring the metal. The operation naturally requires skill and experience, as well as caution to prevent personal injury, and Dunn admitted that practically all of the molders at the plant could perform this task. There is no evidence that Dunn ever hired, discharged, or disciplined any employees, except for one occasion when he first became employed at the plant he recommended that one individual be hired in his department and apparently his recommendation was followed. Dunn considers himself a worker, punches a time clock, and receives the same sickness and death benefits as other employees.

The Supporting Evidence

Walter J. Neitz, sandblast operator, in substance stated that one time, when Towns was not at the plant, he asked Green if he was going to work overtime and on another occasion Green told him to hurry with a casting on which he was working. Neitz admitted he had friendly conversations with Green at the plant but that the latter never criticized or reprimanded him in regard to his work.

Edward P. Short, chipper at the plant for about 6 years, stated that he worked at various times on the crews pouring metal for both Green and Dunn. About 4 or 5 weeks preceding the hearing, Dunn suffered an injury to his eye and Neitz took his place "skimming" the slag off the ladle. Neitz said that Green, while Towns was absent from the plant, issued customary orders to the employees.

[4] Green referred to Rogers as president of the Company, while Towns called him the manager thereof.

Louis Chatkowski, a witness for the General Counsel, testified that he has been employed by the Company as a bench molder for about 6 years and during that time he was a member of the crew pouring metal under Dunn. He admitted that when Towns was not at the plant Green took his place and issued orders to the workers. Prior to January 17, Green was considered and treated by the employees as one of the workers rather than as a foreman or boss. After Green was promoted, he told Chatkowski, about February, "to take over the ladle," the job previously held by Green. Since that time Chatkowski has performed duties similar to those performed by Green in the pouring operation, which he termed as "routine" for an experienced molder. Chatkowski received no increase in pay upon assuming these duties and, although the pouring crew consists of about seven molders, he does not consider himself to be a supervisor or exercising supervisory authority at the plant.

Ernest Munzing, a witness for the General Counsel, stated that he has been employed as a molder for more than 3 years and looked upon Green as an ordinary molder who performed substantially the same type of work as he did, except that Green acted in Towns' place when the latter was away from the plant. Munzing declared he first learned that Green had been promoted to supervisor on the day of the election, or the next day.

Ervin Towns testified that he is plant superintendent and when he first employed Green it was with the understanding that Green was to be his assistant and in full charge of the plant at all times when he was away therefrom. Apart from his vacation period, Towns stated that he averaged, in total hours, about one-half day per week out of the plant. Until about January 17, Towns supervised the metal pouring operation and Green and Dunn were in charge of their respective crews in that they told the employees when to commence and when to cease pouring the metal. He admitted that there is only one method of pouring and that the operation "is a routine matter in just putting the metal in, but you have to use your judgment what to put in and how much." Towns said that Dunn was in charge of the core department with authority to obtain employees to assist him when needed. He further stated that Green and Dunn were the only supervisors at the plant. Several days after the election Towns said that Green was promoted to assistant superintendent and granted an increase in pay effective as of January 1. Thereafter, Green assumed duties in respect to the pouring of metal as previously exercised by Towns. The undersigned found Towns to be an openly hostile and antagonistic witness obviously intent upon establishing the fact that Green and Dunn were supervisory employees. Further, he parried questions asked of him and was argumentative and evasive in instances where his testimony could have been plain and direct. Finally, Towns plainly exhibited, both on and off the stand, that he had little or no respect for the hearing itself and otherwise conducted himself in a manner unbecoming a plant superintendent.[5] The undersigned therefore rejects his testimony, except where it is corroborated by other witnesses, or is consistent with the facts as found herein.

D. *Contentions of the parties*

The Company contends that: (1) Green and Dunn were supervisory employees as defined in the Act, therefore ineligible to vote in the election, and since their ballots should have been excluded from the count the Union failed to receive a

[5] While Munzing was testifying on behalf of the General Counsel, Towns in an audible voice remarked: "There is a man sitting there [sic] lying" Immediately thereafter he volunteered an answer to a question propounded to the witness. The undersigned warned Towns that if he uttered any more remarks he would be excluded from the hearing.

majority of the valid votes cast in the election; and (2) the Board deprived the Company of due process in refusing to grant a hearing on the status of these employees.

The General Counsel asserts that: (1) The employees in question were not supervisors at the time of the election; and (2) the undersigned was in error in admitting evidence relating to the status of these employees and that such evidence should not be considered in determining whether the Company has engaged in any unfair labor practices.

Conclusions in Respect to the Supervisory Employees

The evidence, set forth above, shows that Green was employed as a molder at the same rate of pay received by other molders at the plant and was entitled to the same benefits granted by the Company to all like employees. Dunn's position is identical to Green's, except that by virtue of his job classification, he received a higher rate of pay than the remaining molders. Both Green and Dunn considered themselves as ordinary employees, and their fellow workers shared the same opinion. While Green acted in a supervisory capacity when Towns was on vacation, or absent from the plant, his assumption of Towns' duties on infrequent and intermittent occasions is inadequate to warrant the conclusion that he was a supervisor as defined in the Act.[6] Nor is there any evidence that the employees were ever advised by the Company that Green was a supervisor and it was not until the time of the election that Rogers and Towns hastily decided to inform Green that he was being given formal status as such, with a change of duties as well as a retroactive increase in pay.

There is no convincing or persuasive evidence that the Company issued instructions to Green or Dunn in respect to their authority to effectively recommend the hire or discharge of employees, or the enforcement of disciplinary action against them. The several instances wherein Green perhaps exhibited some authority over employees who refused to work, ultimately resulting in their quitting or being discharged, fails to support the foregoing contentions of the Company. There is, of course, no evidence that Dunn, except on one occasion years ago, ever attempted to exercise such authority. Towns' contention that Dunn could order employees to work for him and that if additional men were hired in the core department they would be under his supervision, is rejected.

The principal ground upon which the Company relies, as set forth in its brief, is the fact that Green and Dunn in the pouring operation exercised their own independent judgment and directed the work of the employees in the pouring crews. As appears above, Towns, at the time in question, was in charge of the pouring of all metal and Green and Dunn merely told their respective crews when to commence pouring metal and when to stop. Towns himself admitted that there is but one method of pouring and it is a routine matter of simply putting the metal into the mold. However, he sought to qualify that statement by adding that it required judgment as to "what to put in and how much." The qualification, considered in the light of his admission that the method is routine, seems rather meaningless and, clearly, is an attempt to establish indicia of supervisory authority on the part of Green and Dunn. Chatkowski, who assumed Green's duties in the metal pouring, stated that the operation was routine for an experienced molder. Similarly, Short, who replaced Dunn when the latter was injured (about 1 month prior to the hearing), apparently had no difficulty in performing these duties. The evidence herein convinces the undersigned that the pouring opera-

[6] *United States Gypsum Company*, 79 NLRB 48, 79 NLRB 1059; *Cole Instrument Co.*, 75 NLRB 348

tion is a routine matter and while, as in practically every type of manufacturing process, there is a safety factor involved, the duties performed by Green and Dunn in this connection are not of such character as render them supervisors but rather, at best, lead men of the pouring crews.[7]

Counsel for the Company argues in his brief that the facts here meet the tests of determining the supervisory status of employees as laid down in *Ohio Power Co.* v. *N. L. R. B.*, 176 F. 2d 385 (C. A. 6), namely the responsibility to direct the work of other employees. In the opinion of the undersigned the *Ohio Power* case fails to support the Company's position. In that case the court held that control operators, who were in complete charge of the controls for the boilers, turbines, pumps, and other equipment at a steam generating plant, had assistant control operators under them, and in times of emergency had authority to direct the activities of substantially all of the men at the plant, were in a position "responsibly to direct" other employees, and to exercise independent judgment in the performance of their duties, hence were supervisors as defined in the Act. Apart from the legal principle involved, it seems clear that Green and Dunn cannot be compared to the control operators, insofar as responsibilities, job duties, and independent discretion are concerned. Moreover the duties of Towns appear to be analogous to those of the control operators, whereas Green and Dunn seem to be in the same position as the assistant control operators.

The Company further urges that it was denied due process of law by the Board's refusal to grant a hearing upon its exceptions to the Regional Director's report on election, wherein it raised the question of the status of the employees challenged. Here it is unnecessary to decide whether a party is entitled to a hearing upon issues raised in exceptions to the conduct of an election for the Company has been afforded a full and complete hearing at which it litigated the issues raised in its exceptions. Since a hearing has been held prior to a final order of the Board requiring the Company to bargain collectively with the Union, it is immaterial at what stage of the proceedings it is held, so long as it was held, and the Company afforded an opportunity to adduce evidence upon the questions presented in its exceptions to the report of the Regional Director. (*Inland Empire District Council, etc.* v. *Millis, et al.*, 325 U. S. 697.) The decision in *N. L. R. B.* v. *Sidran* (181 F. 2d 671 (C. A. 5)), cited by counsel for Company, is inapplicable for in that case no hearing whatever was had on the Company's objections to the conduct of a consent election.

The representative of the General Counsel contends, in his brief, that the undersigned erroneously received testimony bearing upon the employment status of the two employees, which evidence should now be disregarded; that the case should be decided upon the basis that the Board's certification is determinative of the representation question and the issues raised by the Company's exceptions to the report of the Regional Director should not have been litigated. If that was the theory of his case, the representative should have so expressed himself at the hearing and afforded the undersigned an opportunity to rule upon the admissibility of the now disputed evidence. Instead, the representative not only failed to object to the Company's introduction of such evidence, but he himself produced witnesses to testify concerning the same subject. Under the circumstances, to now say that the undersigned committed error in receiving this evidence and that it should be completely ignored would make a farce and a sham of the hearing. The undersigned wishes to make it clear that, on the basis of the actions and positions of the parties, he conducted this hearing on the theory that the Company was being allowed its day in court and was

[7] *H. J. Heinz Co.*, 77 NLRB 1103; *Marshall Field & Company*, 76 NLRB 479.

being afforded an opportunity to adduce evidence upon the issues raised in its exceptions. That is still the theory of the undersigned, and it is not altered by the representative's revelation that he tried the case on some secret formula or strategy. Suffice it to say that since the representative neglected to object to the introduction of the foregoing testimony, and fully participated in the trial of the issues, his belated, and unfair, contention that this evidence was improperly admitted and should not be considered by the undersigned is rejected.

The undersigned therefore concludes and finds that Green and Dunn were not, at all times material herein, supervisory employees, but were employed by the Company as ordinary molders.

E. *Conclusions as to the appropriate unit, the majority status of the Union, and the refusal to bargain*

As set forth above, the Company refused to recognize or meet with the Union as the representative of its employees because it contested the validity of the certification issued by the Board.

In view of the foregoing conclusions and findings and upon the entire record, the undersigned finds that (1) all production and maintenance employees of the Company employed at its Quincy plant, exclusive of office, clerical and professional employees, guards, and all supervisors as defined in Section 2 (11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act; (2) on and after April 20, 1951, the Union was and now is, by virtue of Section 9 (a) of the Act, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment; and (3) on April 23, 1951, and at all times thereafter, the Company refused to recognize or bargain with the Union as the duly designated representative of its employees in an appropriate unit in 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 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

It having been found that the Respondent has engaged in certain unfair labor practices, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action which the undersigned finds will effectuate the policies of the Act. Having found that the Respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, the undersigned will recommend that the Respondent bargain collectively with the Union.

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. International Molders and Foundry Workers Union of North America, AFL, Local 106, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of the Respondent employed at its Quincy plant, exclusive of office, clerical, and professional employees, guards, and all supervisors as defined in Section 2 (11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. F. W. Green and J. A. Dunn were not, at all times material herein, supervisory employees and were eligible to vote in the election held on January 17, 1951.

4. On April 20, 1951, International Molders and Foundry Workers Union of North America, AFL, Local 106, was, and at all times since has been, and now is, the representative of a majority of the Respondent's employees in the appropriate unit described above for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing on April 23, 1951, and at all times thereafter, to bargain collectively with International Molders and Foundry Workers Union of North America, AFL, Local 106, as the exclusive representative of all its employees in the 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.

6. 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 (a) (1) of the Act.

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

[Recommended Order omitted from publication in this volume.]

ROBERTSON BROTHERS DEPARTMENT STORE, INC. *and* AMALGAMATED CLOTHING WORKERS OF AMERICA, CIO, PETITIONER. *Cases Nos. 13–RC–1840 and 13–RC–1773. December 4, 1951*

Supplemental Decision and Order

On July 18, 1951, the Board issued its Decision, Order, and Direction of Election in the above-captioned case[1] in which it found no merit in the contentions of Retail Workers International, Local No. 37, AFL, the Intervenor, and the Employer that a subsisting collective bargaining contract between them was a bar to this proceeding. The Board found that the contract urged as a bar had been prematurely extended, and therefore under its precedents was not a bar. It directed an election.

Thereafter, on July 27, 1951, the Intervenor filed its petition for reconsideration and rehearing in this case. It contended that the premature extension doctrine had not been raised either before or at the original hearing, and asserted that it had in its possession

[1] 95 NLRB 271.