On the entire record, we find that the alteration employees constitute a basically highly skilled, distinct, and homogeneous departmental group which, in the absence of any past or present representation on a broader basis, constitutes a unit appropriate for the purposes of collective bargaining.[6] Accordingly, we hereby set aside the Board's original Decision and Order and shall direct that an election be held.

We find that the employees in the men's and women's alteration departments at the Employer's Los Angeles, Long Beach, Hollywood, Huntingdon Park, San Diego, Pomona, Burbank, and San Bernardino, California, retail establishments including tailors, bushelmen-fitters, finishers, operators, rippers, and pressers but excluding all supervisors within the meaning of the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

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

MEMBER HOUSTON took no part in the consideration of the above Supplemental Decision and Direction of Election.

[6] See *Angelica Hosiery Mills, Inc.*, 95 NLRB 1284, and cases cited therein for comparable instances in which the Board has granted separate representation.

WHITE CONSTRUCTION AND ENGINEERING COMPANY, INC. *and* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA, AFL, LOCAL NO. 433. *Case No 10–CA–1312. January 17, 1952*

Decision and Order

On September 10, 1951, Trial Examiner Peter F. Ward 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.

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

The Board has reviewed the rulings of 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 the brief, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following addition and modification.

During the hearing the Respondent requested the Trial Examiner to take notice of the (Board's) administrative investigation of the Union's compliance with the registration and filing requirements of Section 9 (f), (g), and (h) of the Act at all times material to this case, and further requested that "such investigation be made." The Trial Examiner construed this, in part, as a request for an administrative determination by him as to the Union's compliance status, and indicated in his Intermediate Report that he, as the Trial Examiner in the case, was not empowered to make such determination; that under existing Rules and Regulations of the Board, only the Board may make and issue administrative determinations binding upon the parties. We are administratively satisfied that the Union and the labor organizations with which it is affiliated have at all times material to this case complied with Section 9 (f), (g), and (h) of the Act. Accordingly, we find it unnecessary to pass upon or adopt the Trial Examiner's conclusion that he was without authority himself to make any finding regarding the compliance status of the Union.

Order

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, White Construction and Engineering Company, Inc., St. Petersburg, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, AFL, Local No. 433, as the exclusive bargaining representative of all employees of the Respondent's fabricating shop at St. Petersburg, Florida, excluding professional employees, guards, all other employees, and supervisors as defined in the Act.

(b) In any manner interfering with the efforts of International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, AFL, Local No. 433, to bargain collectively with it on behalf of the employees in the aforesaid appropriate unit.

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

(a) Upon request, bargain collectively with International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, AFL, Local No. 433, as the exclusive representative of all 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 fabricating plant in St. Petersburg, Florida, copies of the notice attached hereto and marked "Appendix."[1] Copies of said notice, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed by a representative of the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

Appendix

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 BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA, AFL, LOCAL No. 433, as the exclusive representative of all employees in the following bargaining unit with respect to rates of pay, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement:
>
> > All employees in the fabricating shop of the White Construction and Engineering Company, Inc., St. Petersburg, Florida, excluding professional employees, guards, and all other employees, and supervisors as defined in the Act.

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

WE WILL NOT in any manner interfere with the efforts of INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA, AFL, LOCAL No. 433, to bargain with us, or refuse to bargain with said union as the exclusive representative of the employees in the bargaining unit set forth above.

WHITE CONSTRUCTION AND ENGINEERING COMPANY, INC.

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

STATEMENT OF THE CASE

Upon a charge duly filed by International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, AFL, Local No. 433, herein called the Union, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, by the Regional Director for the Tenth Region (Atlanta, Georgia), issued his complaint dated July 16, 1951, against White Construction and Engineering Company, Inc., 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, the charge, and notice of hearing were duly served upon the Respondent and the Union.

With respect to unfair labor practices, the complaint alleges in substance that: (1) All employees of the Respondent's fabricating shop at St. Petersburg, Florida, excluding professional employees, guards, and all other employees and supervisors as defined by the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act; (2) on December 8, 1950, in an election duly conducted under the supervision of the Regional Director for the Tenth Region of the Board a majority of the employees in the unit just above described, designated the Union as their representative for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment; (3) on June 21, 1951, the Board issued its Supplemental Decision and Certification of Representatives, certifying the Union as 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; (4) at all times since December 8, 1950, the Union has been and now is the exclusive representative of the employees in the aforesaid unit, and on or about June 25, 1951, the Union requested Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other conditions of employment with the Union as the exclusive representative of the employees in said unit; (5) on June 26, 1951, and at all times thereafter, Respondent refused and has

continued to refuse to bargain collectively with the Union as the representative of the employees in said unit; and (6) thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The Respondent's answer, duly filed, denies that it has engaged in the unfair practices alleged.[1]

Pursuant to notice, a hearing was held on July 31, 1951, at St. Petersburg, Florida, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel and the Union was represented by its business manager and financial secretary. All parties participated in the hearing and were offered full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. Other than argument in support of a motion to dismiss on behalf of the Respondent, and a motion by the General Counsel that the undersigned forthwith decide and announce a decision that Respondent had violated the Act as charged, no oral argument was had before the undersigned. Opportunity to file briefs and proposed findings and conclusions was afforded all parties. Counsel for the Respondent has filed a brief which has been duly considered by the undersigned.

At the close of the hearing the undersigned reserved ruling on the Respondent's motion to dismiss the complaint. Such motion and any other rulings reserved by the undersigned are disposed of in the undersigned's findings, conclusions, and recommendations hereinbelow.

From 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[2]

On September 26, 1950, upon a petition duly filed by the Union (Case No. 10–RC–923), a hearing was held before a hearing officer of the Board. Subsequently on November 14, 1950, the Board issued its Decision and Direction of Election (92 NLRB 53) wherein and upon the entire record in the representation case, the Board found:

> 1. The Employer (Respondent herein), with its main office at St. Petersburg, Florida, is engaged in that State in the building and construction business. During the 12-month period ending April 28, 1950, which is representative of the Employer's operations, it purchased equipment, structural steel, and other building materials valued at $170,441.65, of which amount $81,314.52 represents purchases of equipment and materials shipped directly to the Employer from outside the State of Florida. During the same period, the Employer's gross income totaled $352,000, of which approximately

[1] The Respondent's answer, which sets forth a number of contentions, will be referred to further below in connection with the "Contentions of Respondent"

[2] During the instant hearing, counsel for the parties stipulated as follows:

> It is hereby stipulated by and between General Counsel and counsel for the Company that the Company's business is substantially the same now as it was at the time of the prior representation hearing in Case No 10–RC–923 (92 NLRB No. 17), which is contained in the record of said representation hearing, Case No. 10–RC–923, and that record has been marked as General Counsel's Exhibit 5

$150,000 represents sales and services rendered to concerns, admittedly, engaged in interstate commerce.[2]

We therefore find, contrary to the Employer's contention, that it is engaged in commerce within the meaning of the Act, and in accord with our recently announced policy,[3] that it will effectuate the policies of the Act to assert jurisdiction in this case.

[2] These concerns are: (1) Florida Power Corporation, a public utility servicing, *inter alia*, the Atlantic Coast line and Seaboard Air Line Railroads; (2) Ridge Ciprus Concentrates, Inc., which ships approximately $3,000,000 worth of its products to customers outside of the State of Florida; and (3) Pinellas County Airport, which is serviced by the National Air Lines and two International Cargo Air Carriers.

[3] *Hollow Tree Lumber Company*, 91 NLRB 635.

From the foregoing it appears and the undersigned concludes and finds that Respondent is engaged in commerce within the meaning of the Act, and that the policies of the Act will be effectuated by the Board's asserting and excercising jurisdiction herein.[3]

II. THE ORGANIZATION INVOLVED

International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, AFL, Local No. 433, is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICE

A. *The refusal to bargain collectively*

1. The appropriate unit

The complaint alleges that all the employees of the Respondent's fabricating shop at St. Petersburg, Florida, excluding professional employees, guards, all other employees, and supervisors as defined in the Act, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. The Respondent's answer denies the appropriateness of the unit alleged in the complaint.

The record herein discloses *inter alia* that pursuant to a petition filed by the Union under date of April 26, 1950, a hearing was held before a hearing officer of the Board at Tampa, Florida, on September 26, 1950; that the transcript of the proceedings then heard in such hearing designated as "Case No. 10–RC–93," hereinafter referred to as the representation case.[4] In the Decision and Direction of Election issued by the Board under date of November 14, 1950, all pursuant to said petition and hearing thereon, the Board found *inter alia* with reference to the appropriate unit as follows:

> 4. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act: All employees of the Employer's fabricating shop at St. Peters-

[3] *Hollow Tree Lumber Company*, 91 NLRB 635.

[4] A transcript of proceedings, a Decision and Direction of Election, and the Supplemental Decision and Certification of Representatives were received as General Counsel's exhibits in the instant case. In addition, the undersigned upon the request of the parties expressly agreed to take additional judicial notice of proceedings in the representation case.

burg, Florida, excluding professional employees, guards, all other employees, and supervisors as defined by the Act. (Footnote omitted.)

Pursuant to said Decision and Direction of Election issued by the Board under date of November 14, 1950, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Tenth Region on December 8, 1950, with the result that a tally of the ballots disclosed that of approximately 20 eligible voters, 17 cast ballots, of which 12 were for the Petitioner, 5 were for no union, and there were 4 challenged ballots; under date of December 11, 1950, the Employer therein and the Respondent filed timely objections to the election. Thereafter the Regional Director conducted an investigation, and issued and caused to be served upon the parties a report on the objections, dated February 15, 1951, wherein he found that two of the Employer's 13 objections raised no substantial or material issues, and recommended that these two objections be overruled and referred to the Board for ruling thereupon the remaining 11 of the Employer's objections. The Employer in the representation case filed exception to the Regional Director's report and a brief in support of such exceptions.

Under date of June 21, 1951, the Board issued its Supplemental Decision and Certification of Representatives in which it considered Respondent's objections and found them to be without merit and certified as followed:

Certification of Representatives

IT IS HEREBY CERTIFIED that International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, AFL, Local No. 433, has been designated and selected by a majority of the employees of White Construction and Engineering Company, Inc., St. Petersburg, Florida, in the unit heretofore found by the Board to be appropriate, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

The undersigned accordingly finds that the above-described unit at all times material herein constituted and now constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2. Representation by the Union of the majority in the appropriate unit

As above found, pursuant to the Decision and Direction of Election issued by the Board in the representation case on November 14, 1950, an election was held on December 8, 1950, at which all the employees in the above-described appropriate unit, voted and by a majority vote, designated International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, AFL, Local No. 433, as bargaining agent and as is set out hereinabove, the Board, under date of June 21, 1951, issued its Supplemental Decision and Certification of Representatives designating the Union as the exclusive representative of all the employees in the unit, the above found to be the appropriate one. The undersigned accordingly finds that on December 8, 1950, the Union has been and now is 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 within the meaning of Section 9 (a) of the Act.

3. The refusal to bargain

a. *Sequence of events*

Under date of June 26, 1951, J. Tom Watson wrote the Board as follows:

J. TOM WATSON

Attorney at Law

TAMPA, FLORIDA, *June 26, 1951.*

NATIONAL LABOR RELATIONS BOARD,
Washington 25, D. C.

Re: White Construction & Engineering Co. Inc. and International Brotherhood of Boiler Makers, Iron Ship Builders and Helpers of America, A. F. L. Local #433. Case No. 10–RC–923

DEAR SIRS: *Attention: Mr. Ogden W. Fields, Asst. To Exec. Secy.*

In above matter, this acknowledges receipt of supplemental decision and certification of representatives of your Board, the date of which order is June 21, 1951.

The Employer in this case respectfully advises the Board that in view of the position it has taken all along in this case, of its non-engagement in interstate commerce, and therefore being outside of the jurisdiction of the Board in its operations in labor relations, it respectfully requests that its right to decline to recognize the bargaining agent so being certified in this case, be, by your Board duly acknowledged, pending the issuance of a court order supporting the Board's jurisdiction; and that your Board will accordingly advise the Employer what steps it will pursue in the light of this announcement, in order to obtain such court order.

The Employer, definitely, for the purpose of the record and the shaping of the future proceedings in this case, makes known that he respectfully declines the recognition of the bargaining agent under the order, that the order contemplates, and will continue to so decline until the proper judicial authority has been obtained for such bargaining representation.

Respectfully submitted,

(S) J. TOM WATSON,
J. Tom Watson,
Attorney for Employer.

JTW: nh.

cc: Regional Office, N. L. R. B., Atlanta, Ga., Local #433, International Brotherhood, etc., 202 Henderson St., Tampa, Fla.

The record discloses that copies of the above letter were sent to the Regional Director's office at Atlanta, Georgia, and to the Union.

Under date of June 25, 1951, the Union, by its business manager and financial secretary, wrote the Respondent Company as follows:

JUNE 25, 1951

433
5205 Florida Ave, Tampa 3, Fla.
WHITE CONSTRUCTION & ENGINEERING COMPANY, INC.,
300 22nd Street, South, St. Petersburg, Florida.

GENTLEMEN:

This is to advise you that on June 21, 1951, the National Labor Relations Board certified the International Brotherhood of Boilermakers, Iron Ship-

builders and Helpers of America, Local 433, AFL, to be the sole bargaining agent for all your fabrication shop employees, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

We would appreciate a conference with you at your earliest convenience for the purpose of negotiating an agreement.

With kindest regards, I remain,

Respectfully yours,

W. J. RAY, *Bus Mgr-Fin Sec.*

WJR:h

Under date of July 2, 1951, the Respondent wrote the Union as follows:

WHITE CONSTRUCTION & ENGINEERING CO., INC.

300 Twenty-Second Street South

St. Petersburg, Florida

Telephone 7-5970

July 2, 1951

Address your reply to
300 22nd St. S.
St. Petersburg, Fla.

Mr. W. J. RAY,
Business Mgr.-Fin. Sec., Lodge #433,
Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America,
5205 Florida Avenue, Tampa 3, Florida.

DEAR MR. RAY:

Replying to your letter of June 25, 1951, please be advised that our Attorney Mr. J. Tom Watson of Tampa, will answer it in due course for the Company.

In the meantime, you are further advised that this Company is not recognizing the National Labor Relations Board certification until the same has been confirmed by Court Order.

Yours very truly,

WHITE CONSTRUCTION & ENGINEERING CO. INC.,
By (S) W. M. WHITE,
W. M. White, *President.*

WMW/w.

Under date of July 5, 1951, Respondent's counsel wrote the Union's business manager as follows:

J. TOM WATSON

Attorney at Law

Phones 2-2540—8-3934

TAMPA, FLORIDA, *July 5, 1951.*

Mr. W. J. RAY,
Business Manager, Lodge #433, Brotherhood of Boilermakers, etc.
5205 Florida Avenue, Tampa 3, Florida.

DEAR MR. RAY:

Your letter of July 2nd, addressed to White Construction and Engineering Company, has been given to me by addressee, with a request that as their attorney, I make formal, legal reply thereto; and in so doing, I respectfully advise you that the White Construction and Engineering Company, having

taken the position that it is not engaged in interstate commerce, and therefore not subject to the jurisdiction of the National Labor Relations Board for collective bargaining, respectfully advises you that until the rendition of a court decree holding this legal status of the company not to be correct, and that it is in fact and law engaged in interstate commerce, and therefore subject to National Labor Relations Board jurisdiction, the company respectfully declines to recognize your union as a bargaining agent for its employees. I presume you know that at the present time, the membership of your union at the White Construction and Engineering Company, among its fabrication shop employees, is very limited.

Yours very truly,

(S) J. TOM WATSON,
J. Tom Watson,
Attorney for Employer.

JTW : nh.

The record discloses that under date of December 8, 1950, the day upon which the election above referred to was held, W. J. Ray, business manager and financial secretary of the Union, wrote the Respondent Company on the International's stationery as follows:

Subordinate Lodge No. 433

DECEMBER 8, 1950.

Address of writer 5205 Florida Ave., Tampa 3, Florida

WHITE CONSTRUCTION & ENGINEERING COMPANY, INC.,
300 22nd Street, South, St. Petersburg, Florida.

GENTLEMEN :

This is to advise that the majority of your employees in your fabricating shop at St. Petersburg, Florida, have authorized the International Brotherhood of Boilermakers Iron Ship Builders and Helpers of America, A. F. of L. Local No. 433, to be their sole bargaining agency and to represent them in all matters in connection with wages, hours of work, and other conditions of employment.

We will appreciate you giving us a conference at your earliest convenience for the purpose of negotiating an agreement.

Very truly yours,

(S) W. J. RAY,
W. J. Ray *Bus Mgr-Fin Sec.*

WJR : h

Respondent's Contentions;
Conclusions Thereon

Respondent contends in substance and effect that it may not be found to have refused to bargain collectively with the Union in violation of Section 8 (a) (5) and (1) of the Act by reason of the fact that the Board was and is without jurisdiction to hear and determine the issues arising in either the representation case, Case No. 10–RC–923, herein called the representation case,[5] or the RC case, or the instant case, herein at times referred to as the CA case[6] for reasons as follows: (1) That the Union's petition for certification filed on April 26, 1950, failed to allege a request by the Union to Respondent for recognition and a refusal by the latter to recognize and bargain with the Union, as required by Section 9 (c) (1) (A) of the Act; (2) that the Union's demand or request for recognition first made on December 8, 1950, and after a hearing on said petition

[5] 94 NLRB 1419
[6] 10–CA–1312.

held on September 26, 1950, and an election, held pursuant to the Board's Decision and Direction of Election[7] (issued November 14, 1950), on December 8, 1950, or more than 6 months prior to the filing of the complaint (sic) herein (July 16, 1951) in violation of the provisions of Section (10) (b) of the Act; (3) that Respondent was not shown to be engaged in interstate commerce as defined by the Act; and (4) that the bargaining unit certified by the Board was and is inappropriate and no proof made that a majority of the employees had chosen the Union as their bargaining representatives.

The record herein, as amplified by the record in the RC case and undersigned's action in taking judicial notice of all proceedings had in said RC case, discloses that all of the foregoing detailed contentions of Respondent except contention (2) were made in its sundry and divers motions, letters, briefs, and the iteration thereof, in connection with its objections to the election, the holding of such election and decisions in connection therewith, and as to each of said three contentions, the Board held adversely to Respondent.

As to contention (1), in its Supplemental Decision and Certification of Representatives the Board stated that it has considered the identical question in the past and found it without merit.[8] Contention (1) is without merit and is so found.

As to contention (2), the record does disclose that the Union in a letter dated December 8, 1950, apparently written in Tampa, Florida, was addressed to Respondent at St. Petersburg, Florida, requesting a conference for purpose of negotiating an agreement on behalf of the employees of Respondent, who had, on that day, by a majority vote selected the Union as their agent.

The record does not disclose the date of delivery of the letter to Respondent. December 8, 1950, came on a Friday and since many firms do no work on Saturdays, the letter may not have reached Respondent until the week of December 11. In any event the actual delivery date is not, in the undersigned's opinion, controlling. The record clearly discloses that Respondent's counsel took all available legal proceedings to have the Board vacate and set aside its Decision and Direction of Election,[9] with the result that it was not until June 21, 1951, that the Board issued its Supplemental Decision and Certification of Representatives[10] designating the Union as bargaining representative of all employees in the unit theretofore found by the Board to be an appropriate one. On June 25, 1951, the Union wrote Respondent calling its attention to the Board's certification of the Union and requested a conference. Under date of July 2, 1951, Respondent informed the Union that its letter of June 25, 1951, had been referred to its counsel for reply. On July 5, 1951, Respondent's counsel wrote the Union advising it in substance that the Respondent would not bargain with the Union until a court decree so required.

On June 26, 1951, Respondent's counsel wrote the Board in Washington, with carbon copies to the Regional Director for the Tenth Region, and the Union, to the effect that Respondent would not bargain with the Union until a court order issued supporting the Board's jurisdiction.

It is clear from the above and the record that but for the Respondent's sustained efforts to defeat certification of the Union, the latter would have been certified long prior to June 21, 1951, and in any event, the Union was justified in awaiting the Board certification before making further efforts to negotiate with Respondent or filing a charge. Moreover, the Respondent's duty to bargain

[7] 92 NLRB 53
[8] *Advance Pattern Company*, 80 NLRB 29
[9] 92 NLRB 53.
[10] 94 NLRB 1419.

with the Union was a continuing one, and Section 10 (b) of the Act was and is not applicable under the circumstances above. Contention (2) is without merit. It is so found.

As to contention (3), as to commerce, the Board in its Decision and Direction of Election found the Respondent to be engaged in commerce within the meaning of the Act. Upon objections of Respondent contesting such finding the Board found no reason for altering the decision theretofore made and rejected the objection.[11] Contention (3) is without merit. It is so found.

As to contention (4), as was the case on the commerce issue, the Board in its Decision and Direction of Election found the appropriate unit as is set forth hereinabove; and upon exceptions by Respondent reexamined the unit issue, and affirmed its initial determination made with respect to the unit. Contention (4) is without merit. It is so found.

During the hearing counsel for Respondent requested the undersigned to take judicial notice of whatever the administrative investigation discloses, and that a further administrative investigation be made as to the Union's compliance with Section 9 (f), (g), and (h) of the Act at all times material herein, in both the RC and the CA cases; and that if at any time the Union or its affiliates lost their qualification "or was not qualified completely under the law," Respondent claimed the benefit of such lack of or lapse of qualification.

The Respondent offered no proof to the effect that the Union was not in compliance with Section 9 (f), (g), and (h) of the Act. The undersigned is of the opinion that he, as Trial Examiner herein, may not make an administrative determination as to the compliance status of the Union, binding upon the Board; and that under existing Rules and Regulations of the Board, only the Board may make and issue administrative determinations binding upon the parties. It is so found.

Under the circumstances existing herein the undersigned is not required to make any finding and/or recommendations with reference to compliance status of the Union.

In a recent decision[12] the Board stated:

> Nor do we find merit in the Respondent's contention that the Trial Examiner should have sustained its motion to dismiss the complaint on the ground that the record contains no proof of compliance by the Union or its parent organization with the filing requirements of Section 9 (f), (g), and (h) of the Act at the time the complaint was issued. The Act does not, as a condition of the exercise of its jurisdiction, require pleading and proof by the Board that the union has complied with these requirements. *N. L. R. B.* v. *Greensboro Coca-Cola Co.*, 180 F. 2d 840 (C. A. 4), March 6, 1950, 25 LRRM 2499; *N. L. R. B.* v. *Red Rock Co.*, 187 F. 2d 76 (C. A. 5), February 15, 1951, 27 LRRM 2355; *N. L. R. B.* v. *Vulcan Forging Co*, 188 F. 2d 927 (C. A. 6), March 23, 1951, 27 LRRM 2534. Moreover, the Board is administratively satisfied that both the charging union and the A. F. of L., its

[11] In re *Continental Oil Company*, 95 NLRB 358, the Board, in part stated:

It has long been the policy of the Board, sanctioned by the courts, that in cases involving an alleged refusal to bargain the Board will not reconsider issues disposed of in earlier representation proceedings unless there is evidence which was unavailable at the time of the earlier proceedings. See *Pittsburgh Plate Glass Co.* v *N L R B.*, 313 U. S. 146, 162; *Allis-Chalmers Manufacturing Co* v. *N L R B*, 162 F 2d 435, 441 (C A. 7); *N. L. R B* v. *Botany Worsted Mills*, 133 F 2d 876, 882 (C. A. 3). *Clark-Shoe Company*, 88 NLRB 989, 996; *Goodyear Rubber Sundries, Inc.*, 92 NLRB 1382.

[12] *McComb Mfg Co*, 95 NLRB 596.

parent organization, have been in compliance at all times material hereto. See *Sunbeam Corporation*, 94 NLRB 844; *Swift & Company*, 94 NLRB 917; cf. *Highland Park Manufacturing Company*, 71 S. Ct. 489.

Conclusions

Upon the above and the entire record the undersigned concludes and finds that the Respondent, White Construction and Engineering Company, Inc., on or about June 26, 1951, July 5, 1951, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (a) (5) and (1) thereof.

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

Having found that the Respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent, there about June 25, 1951, and at all times thereafter refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the Respondent, upon request, bargain collectively with the Union. It will be further recommended that Respondent cease and desist from in any other manner interfering with the efforts of the Union to bargain collectively with it. Cf. *N. L. R. B.* v. *Express Publishing Company*, 321 U. S. 426.

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 Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, AFL, Local No. 433, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees of the Respondent's fabricating shop at St. Petersburg, Florida, excluding professional employees, guards, all other employees, 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 Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, AFL, Local No. 433, was on December 8, 1950, and June 21, 1951, and at all times since has been, the exclusive representative within the meaning of Section 9 (a) of the Act of all employees in the aforesaid unit for the purposes of collective bargaining

4. By refusing to bargain collectively with International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, AFL, Local No. 433, as exclusive bargaining representative of the 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.

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 (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.

[Recommended Order omitted from publication in this volume.]

MEYER'S BAKERY OF LITTLE ROCK, INC.[1] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION NO. 878, AFL, PETITIONER.[2] *Case No. 32-RC-371. January 18, 1952*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Anthony J. Sabella, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[3]

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, Murdock, and Styles].

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

1. Members of a single family own the controlling stock in a group of wholesale bakeries including seven in Arkansas and one in Texas. This case involves only Meyer's Bakery of Little Rock, Inc. The general offices of these companies are located in Little Rock, Arkansas, where the Meyer's Management Service Company does all out-of-State purchasing and performs accounting, advertising, and administrative services for the foregoing companies. About $700,000 worth of merchandise for the bakeries is purchased annually from points outside the State of Arkansas.

As the Employer is an integral part of a multistate enterprise, and as the purchases for the Arkansas bakeries of this enterprise made outside the State of Arkansas are in excess of $500,000 annually, we find that it is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction over the Employer.[4]

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[1] The name of the Employer appears as amended at the hearing.

[2] Herein called the Teamsters.

[3] The Teamsters objected to the intervention of the Little Rock Bakery Employers Labor Council, herein called the Council, for any purpose other than to state its position on the appropriateness of the unit sought by the Teamsters. As the Council is involved in the Employer's bargaining history discussed *infra*, we find that the hearing officer properly permitted its intervention

[4] *The Borden Company, Southern Division*, 91 NLRB 682; *Federal Dairy, Inc.*, 91 NLRB 638.