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.

4. '65' The Wholesale, Retail and Warehouse Workers Union of New York and New Jersey was on November 16, 1949, and at all times thereafter has been, the exclusive representative of all employees in the appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, the Company 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 rights guaranteed in Section 7 of the Act, the Company 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.

8. The Company has not engaged in unfair labor practices in violation of Section 8 (a) (3) in laying off or refusing to reinstate its employees.

[Recommendations omitted from publication in this volume.]

SUNBEAM CORPORATION *and* ANN SALABEC, EVE SALOPEK, LAURA RAE ATKINSON, AND EARL F. OSLIE

SUNBEAM CORPORATION *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA

SUNBEAM CORPORATION, PETITIONER *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1031 AND UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, CIO. *Cases Nos. 13–CA–365, 13–CA–541, and 13–RM–58.*[1] *March 11, 1952*

Supplemental Decision and Order

On April 5, 1951, the Board issued its Decision and Order (Case No. 13–CA–365, 541) finding that the Respondent, Sunbeam Corporation, had unlawfully refused to bargain with United Electrical, Radio and Machine Workers of America, herein called the UE International, in violation of Section 8 (a) (5) of the Act, and ordering that it bargain with that organization.[2] The Respondent's obligation to bargain with the UE International rested upon an earlier certification by the Board of the UE International, in Case No. 13–RM–58, as majority representative of the Respondent's production and maintenance employees.[3] When the certification issued, on April 14, 1950, and when the election preceding it was held, on December 13, 1949,

[1] For purposes of this Supplemental Decision and Order only, Case No. 13–RM–58 is hereby consolidated with Case No. 13–CA–365, 541.

[2] *Sunbeam Corporation*, 93 NLRB 1205.

[3] *Sunbeam Corporation*, 89 NLRB 469.

the Board was of the opinion that Local 1150 of the UE International was in compliance with the filing requirements of Section 9 (h) of the Act.

On October 24, 1951, after reconsidering the compliance status of Local 1150, the Board issued an administrative determination, finding that Local 1150 had never been in compliance, because certain persons found to be its "officers" had never filed non-communist affidavits as required by Section 9 (h).[4] At the same time, the Board issued its notice to show cause why the 8 (a) (5) finding and order to bargain in the CA case, and the 1950 certification issued in the RM case, should not be vacated. The UE International and its Local 1150 filed a response to the notice to show cause, and the Respondent filed an answer. The General Counsel filed no response.

The Board has considered the response and answer, and, on the basis of those documents and the entire records in the complaint and the representation cases, makes the following findings and conclusions.[5]

1. The evidence contained in the records of the two cases here consolidated reveals conclusively that both before the representation proceeding and after issuance of the certification in favor of the UE International, Local 1150 was active among the employees here involved and represented them in collective bargaining. Thus, at the hearing in the representation proceeding, Local 1150's business agent, Irving Krane, asked leave to intervene "both as to the International Union and as to Local 1150, . . . as the incumbent union in the situation. . . ." He then replied affirmatively to the hearing officer's inquiry as to whether he had a contract with the Employer. In its Decision and Direction of Election, the Board directed only that Local 1150 be placed on the ballot. The UE International and Local 1150 then asked the Regional Director that the UE International appear on the ballot in place of Local 1150, a request which he granted. Moreover, although the certification then issued to the UE International because it alone had been named on the ballot, the first request for bargaining addressed to the Respondent was made by Fred Dutner, the new business agent of Local 1150. It is clear on the foregoing facts, and we find, that Local 1150 was at all times actively interested in the representation of these employees, and that it participated in the collective bargaining carried on in their behalf at least to the same extent as did the UE International.

Under now well-established Board principles, neither the UE International nor its Local 1150 would have been placed on the ballot in the

[4] 96 NLRB 1029.

[5] The request of the UE International and its Local 1150 for oral argument is denied, as the response and answer adequately set forth the positions of the parties.

election, nor would either have been certified, had the Board known at that time that Local 1150 was not in compliance with the filing requirements of the Act.[6] It would be inconsistent both with the basic considerations which impelled the establishment of that principle, and with the spirit of Section 9 (h) itself, as indicated in the legislative history of the 1947 amendments to the Act, to hold that a certification inherently defective at the outset could confer on the Union the right of later recourse to the Board, or, conversely, expose the Employer to an unfair labor practice finding for refusing to honor that certification. Indeed, in view of the facts as now established, the Respondent's position throughout appears to have been comparable to that which a majority of the Board has heretofore indicated would be a proper defense to a charge of unlawful refusal to bargain.[7] Accordingly, as the certification which was the sole evidence of the majority status of the charging Union in the complaint proceeding ought never to have issued, the equitable arguments urged by the UE International are insufficient to dissuade us from unanimously now finding that we should set aside the finding in Case No. 13–CA–365, 541, that the Respondent violated Section 8 (a) (5) of the Act. We shall also set aside the concomitant order to bargain.

2. Apart from the unfair labor practice proceeding, there remains a question as to the present validity of the certification in favor of the UE International. The Employer now having been shown to have been right from the beginning, the same factors which lead to our conclusion to set aside the 8 (a) (5) finding and order require that the 2-year old certification be vacated. There is nothing, either in the records of the representation and the complaint cases, or in the documents considered in the subsequent compliance proceeding or in connection with the notice to show cause, which would warrant any other present action with respect to the certification. Accordingly, the Board will also set aside the certification in Case No. 13–RM–58.

Order

IT IS HEREBY ORDERED that the Decision and Order of the Board dated April 5, 1951, in Case No. 13–CA–365, 541, be, and it hereby is,

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[6] *Lane-Wells Co.*, 77 NLRB 1051; *Hudson Pulp & Paper Corp.*, 94 NLRB 1018.

In its response, Local 1150 moved for reconsideration of the Board's determination of compliance of October 24, 1951. The motion is denied, as it is not supported by any substantial matters not heretofore considered.

In its answer Respondent moved for an administrative determination that the UE International and its Division 11 are not in compliance. The motion is denied, because the Board's records show that the UE International has satisfied the filing requirements of Section 9 (f), (g), and (h) of the Act, and because our decision herein setting aside the certification in Case No. 13–RM–58 renders the compliance status of District 11 irrelevant.

[7] See *New Jersey Carpet Mills, Inc.*, 92 NLRB 604, and Chairman Herzog's concurring opinion therein.

set aside, and that the complaint therein be, and it hereby is, dismissed in its entirety.

IT IS FURTHER ORDERED that the election conducted on December 13, 1949, and the certification of representatives issued on April 14, 1950, in Case No. 13–RM–58, be, and they hereby are, set aside and that the petition filed therein be, and it hereby is, dismissed without prejudice.

SAFEWAY STORES, INCORPORATED *and* AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL, LOCAL NO. 537, FOOD HANDLERS DIVISION, PETITIONER.[1] *Case No. 20–RC–1700. March 11, 1952.*

Decision and Order

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

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

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

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

2. The labor organizations involved claim to represent employees of the Employer.[2]

3. No question affecting commerce exists 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, for the following reasons:

The Petitioner seeks a unit composed of all food handlers, stockers, baggers, full-time and part-time, employed by the Employer at its Price, Utah, store, excluding meat cutters and meat wrappers and supervisors. While not objecting to the composition of the unit, the Intervenor contends that the unit sought is inappropriate. The Employer is and has been a member of an area association of retail employers which, since 1942 or earlier, has bargained collectively with the Intervenor for all retail clerks in their establishments. Although the Employer initially took a neutral position on scope of the appropriate unit, it later contended that its Price, Utah, grocery employees

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

[2] United Retail Employees of America, CIO, Local Union No. 995, was permitted to intervene at the hearing on the basis of its past and present contracts.