

reason for denying separate representation to a relatively stable group of plant employees. In addition we note the lack of collective bargaining for this division in the past and the fact that no other bargaining agent seeks to represent the Employer's Rocky Mountain division employees as an over-all unit. For these reasons, and upon the record as a whole, we are satisfied that a unit limited to employees of the Elk Basin gas and repressuring plant is appropriate.¹¹

Accordingly, we find that all production and maintenance employees in the Employer's Elk Basin, Wyoming, plant, including employees in the process, mechanical, and maintenance classifications, but excluding professional employees, clerical employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

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

¹¹ See *Texas Pacific Coal and Oil Company*, 96 NLRB 1330, where the Board, for similar reasons, found a division unit appropriate although a company-wide unit, which no one sought to represent, was urged by the employer.

RAY BROOKS and INTERNATIONAL ASSOCIATION OF MACHINISTS FOR ITS DISTRICT LODGE No. 727. Case No. 21-CA-1117. April 1, 1952

Decision and Order

On October 29, 1951, Trial Examiner Martin S. Bennett issued his Intermediate Report in this proceeding, finding that the Respondent had engaged in and was engaging in conduct violative of Section 8 (a) (1) and 8 (a) (5) of the Act, 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. The Trial Examiner also found that the Respondent had not engaged in certain other violations of Section 8 (a) (1) alleged in the complaint, and recommended that such allegations be dismissed. Thereafter, the Respondent filed exceptions to the Intermediate Report, and a supporting brief.

The Board¹ 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 exceptions, the brief, and the entire record in this

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 Houston and Styles].

case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.²

Order

Upon the entire record in this 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, Ray Brooks, Van Nuys, California, his agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Association of Machinists, District Lodge No. 727, as the exclusive representative of all his employees, excluding salesmen, guards, professionals, and supervisors.

(b) In any manner interfering with the efforts of International Association of Machinists, District Lodge No. 727, to bargain collectively with him in behalf of the employees in the aforesaid appropriate unit.

(2) Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Association of Machinists, District No. 727, as the exclusive representative of all employees in the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at his place of business at Van Nuys, California, copies of the notice attached to the Intermediate Report and marked "Appendix A."³ Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by him for a period of sixty (60) consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

² In its brief, the Respondent contends that the Board is without jurisdiction in this matter because there is no allegation or proof that the charging Union is in compliance with Section 9 (f), (g), and (h). We find no merit in this contention. The Act does not, as a condition to 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); *N. L. R. B. v. Red Rock Co.*, 187 F. 2d 76 (C. A. 5). Moreover, we have administratively determined that the filing requirements of Section 9 (f), (g), and (h) of the Act were fully satisfied at all relevant times in this case.

³ This notice, however, shall be, and it hereby is, amended by striking from line 3 thereof the words "The Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order." In the event that this Order is enforced by a decree of the United States Court of Appeals, there shall be substituted for the words, "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, enforcing an Order."

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

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

The General Counsel of the National Labor Relations Board issued a complaint dated July 20, 1951, based upon a charge duly filed on May 29, 1951, by International Association of Machinists, District Lodge No. 727, herein called the Union, against Ray Brooks, herein called Respondent, alleging that Respondent had engaged in and was 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 charge, complaint, and notice of hearing thereon were duly served upon Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged that Respondent, on and after April 21, 1951, had (1) refused on request to bargain with the Union as the duly certified representative of a majority of his employees in an appropriate unit and (2) interfered with, restrained, and coerced his employees by (a) attempting to influence them against the Union and (b) threatening to withdraw rights and privileges enjoyed by the employees prior to the certification of the Union on April 20, 1951. Respondent's answer alleged that his employees had revoked the authority of the Union to represent them and denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held on October 8 and 9, 1951, at Los Angeles, California, before the undersigned Trial Examiner, Martin S. Bennett. The General Counsel and Respondent were represented by counsel and the Union by its representatives. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the close of the hearing, Respondent moved that the allegations of the complaint be dismissed; the undersigned denied that portion of the motion relating to the alleged refusal to bargain and reserved ruling on that portion relating to the alleged interference, restraint, and coercion. The latter is disposed of by the findings hereinafter made. The parties were afforded an opportunity to present oral argument and to submit briefs and/or proposed findings and conclusions to the undersigned. The General Counsel presented oral argument and a brief has been received from Respondent.

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 RESPONDENT

Ray Brooks, an individual doing business under that name, is a dealer franchised by the Chrysler Corporation who is engaged in the sale of new Chrysler and Plymouth automobiles at Van Nuys, California. During the year 1950, Respondent purchased and sold within the State of California new automobiles valued in excess of \$400,000. These automobiles were assembled within the State of California by the manufacturer from parts of which approximately 50 percent were manufactured in States of the United States other than the State of California and shipped to that State for assembly there. The

undersigned finds that Respondent is engaged in commerce within the meaning of the Act. *N. L. R. B. v. Townsend*, 185 F. 2d 378 (C. A. 9), cert. denied 341 U. S. 909; *Howell Chevrolet*, 95 NLRB 410, and *Baxter Brothers*, 91 NLRB 1480.

II. THE LABOR ORGANIZATION INVOLVED

International Association of Machinists, District Lodge No. 727, is a labor organization admitting to membership employees of Respondent

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1. Introduction ; the representation case

Presented for decision herein are the issues of whether Respondent has refused to bargain collectively with the Union subsequent to the certification of the latter as the result of a Board-conducted election, and whether, after said election, Respondent interfered with, restrained, and coerced its employees by threatening to deprive them of privileges previously enjoyed. As stated, Respondent's defense to the claimed refusal to bargain is that the employees in the unit have revoked the authority of the Union to represent them, thereby allegedly destroying the representative status claimed by the Union.

The history of the representation proceeding is as follows: Respondent and the Union entered into a consent election agreement on March 27, 1951, in Case No. 21-RC-1868. The election was duly held on April 12, 1951, with all 15 eligibles voting. Two ballots were challenged on the ground that they had been cast by supervisory employees; the challenges have not been resolved. Of the 13 valid votes counted, 8 were cast for the Union and 5 against. No objections to the election were filed and the Union was duly certified on April 20, 1951, by the Regional Director for the Twenty-first Region, as the representative of the employees of Respondent.

2. The appropriate unit

The complaint alleges that the unit agreed upon by the parties to the consent election agreement, including all employees of Respondent, but excluding salesmen, guards, professionals, and supervisors, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. The undersigned finds that the above-described unit, the appropriateness of which Respondent does not dispute herein, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3 Representation by the Union of a majority in the appropriate unit

As stated, the Union was duly certified on April 20, 1951, after winning the election held on April 12, as the exclusive representative for the purposes of collective bargaining of the employees in the above-described appropriate unit. Despite such certification, and the great weight uniformly attributed thereto, Respondent contends that the Union is no longer entitled to the benefits of this representative status, placing reliance on a document introduced in evidence herein. This document, consisting of 1 page in longhand, was received in the mail by Respondent on April 19, 1 week after the Union won the election and 1 day before the certification issued; a copy was also received by the Union at the same time.¹ The document bears the purported signatures of 9

¹ As will appear, the Union requested and Respondent refused a meeting after receipt of this document.

of the 13 employees of Respondent who cast valid ballots in the election and reads as follows:

We the undersigned majority of the employees of Ray Brooks Chrysler-Plymouth Dealer 6530 Van Nuys Blvd, Van Nuys Calif are not in favor of being represented by union local no. 727 as a bargaining (sic) agent. We respectfully submit this petition for your consideration.

Respondent argues that this document constitutes a repudiation of the Union by a majority of those in the unit and that as a result the Union has lost its representative status acquired in the election of April 12, 1951; reliance is placed upon the decision in *N. L. R. B. v. Vulcan Forging Co.*, 188 F. 2d 927 (C. A. 6).

The undersigned is of the belief that this argument must be resolved adversely to Respondent. Despite the cited decision, Board law and the great weight of court law adopt a contrary view. The policy of issuing a certificate as bargaining representative after an election conducted by the Board is based upon the desirable safeguard of a secret ballot under governmental authority free from all influence, thus obtaining the most reliable indication of the employee concerning his true views relative to union representation and collective bargaining. The statute, if a labor organization has been selected by a majority of the employees, then proceeds to bind the employees to their choice for a reasonable period, normally 1 year. *N. L. R. B. v. Geraldine Novelty Co.*, 173 F. 2d 14 (C. A. 2). A contrary view, not stabilizing the issue in this fashion, would create the very "litigious bedlam and judicial chaos" intended to be avoided by these salutary principles which imbue a certification with a reasonable amount of permanence. *N. L. R. B. v. Appalachian Electric Power Co.*, 140 F. 2d 385 (C. A. 4). See *N. L. R. B. v. Worcester Woolen Mills Corp.*, 170 F. 2d 13 (C. A. 1), cert. denied 336 U. S. 903 and *N. L. R. B. v. Prudential Insurance Co.*, 154 F. 2d 385 (C. A. 6).

This principle recognizes the inevitability in a democratic plan of employee representation of subordinating for a period of time any shifts in employee sentiment in favor of a reasonable period of stability in employer-employee relations. This view is recognized and discussed in *N. L. R. B. v. Century Oxford Mfg. Corp.*, 140 F. 2d 541 (C. A. 2), cert. denied 323 U. S. 714, where the court stated as follows:

The purpose of the act is to insure collective representation for employees, and to that end section 9 gives power to the Board to supervise elections and certify the winners as the authorized representatives. Inherent in any successful administration of such a system is some measure of permanence in the results; freedom to choose a representative does not imply freedom to turn him out of office with the next breath. As in the case of choosing a political representative, the justification for the franchise is some degree of sobriety and responsibility in its exercise. Unless the Board has power to hold the employees to their choice for a season, it must keep ordering new elections at the whim of any volatile caprice; for an election, conducted under the proper safeguards, provides the most reliable means of ascertaining the deliberate will of the employees.

The foregoing views of the courts, approving Board policy, are only strengthened when attention is given to the legislative history of the amendments to the Act in 1947. The Board's 1-year certification rule was one of long standing and was presumably well known to Congress prior to the changes in the Act. See *N. L. R. B. Twelfth Annual Report, 1947*, and *N. L. R. B. Eleventh Annual Report, 1946*. Moreover, Section 9 (c) (3) of the amended Act proscribes the holding of more than one valid election in an appropriate unit during a 12-month period; this is tantamount to approval and adoption of the Board's 1-year certification rule.

As stated by Senator Taft, "The bill also provides that elections shall be held only once a year, so that there shall not be a constant stirring up of excitement by continued elections. The men choose a bargaining agent for one year. He remains the bargaining agent until the end of that year." (93 Cong. Rec. 3838.) The Senate reports reflect a similar view. As stated in one,

In order to impress upon employees the solemnity of their choice, when the Government goes to the expense of conducting a secret ballot . . . elections in any given unit may not be held more frequently than once a year.

* * * * *

This amendment prevents the Board from holding elections more often than once a year in any given bargaining unit unless the results of the first election are inconclusive by reason of none of the competing unions having received a majority. At present, if the Union loses, it may on presentation of additional membership cards secure another election within a short time, but if it wins its majority cannot be challenged for a year. (S. Rep. No. 105, 80th Cong., 1st Sess. 12, 25.)

The desirability of this rule was expressly recognized by the courts in decisions handed down after the passage of the 1947 amendments. *N. L. R. B. v. Worcester Woolen Mills, supra*, and *N. L. R. B. v. Geraldine Novelty Co., supra*. Thus, applying these controlling views to the instant proceeding, it becomes apparent that they involve the application of a single rather than a double standard, as adherence to Respondent's contention herein would require. If the Union, or any union, had lost the election, it would then be precluded from achieving a representative status as a certified bargaining representative for 12 months. By the same token, if the employees, in the secrecy of the voting booth, and free from any outside interference, vote in favor of and select the Union as their bargaining agent, this selection, as Board policy recognizes, should last for an identical period, at least 12 months. *Majure Transport Co.*, 95 NLRB 311. Employees can scarcely be impressed with the solemnity of a choice which they are permitted to forthwith repudiate.

Still another basic consideration is, in view of the undersigned, controlling herein. Respondent has placed reliance, in disputing the union majority, on a document received in the mail which bears the names of nine employees as purported signers thereof. No evidence was offered that the nine employees whose names appear thereon had actually affixed their signatures thereto and none was offered with respect to any of the circumstances of the preparation or signing of the document. The record discloses no evidence that Respondent made a comparison of these signatures with those of the named employees which it presumably has on its payroll records. Not only were none of the nine called as witnesses by Respondent, but furthermore, when one of the nine, Verner Emrick, testified herein as a witness for the General Counsel, he was not questioned by Respondent concerning his purported signature on the document which was later introduced in evidence by Respondent.

In sum, there has been a failure to prove that the document merits the weight which Respondent would attribute to it.² There is no evidence concerning the circumstances of the signing, or as to who actually affixed the signatures. By way of significant contrast, in a proceeding where the General Counsel desires to prove a union majority on the basis of union designation cards, rather than a certification, he is generally required to have the signature on each card identified by the signer or by one who saw the card signed by the signer. *Schramm*

² The document was received in evidence solely as a document which Respondent received in the mail on April 19, 1951.

and *Schmieg Co.*, 67 NLRB 980, and *The Warren Co.*, 90 NLRB 689. Similar evidence of an authenticating nature is totally lacking here, and to attribute to this document the weight urged by Respondent would again mean the application of a double standard. This serves only to highlight the reasonableness of the Board's policy in attributing such great weight to the desires of employees when expressed in the privacy of the voting booth.

In view of the foregoing, the undersigned rejects Respondent's contention herein and finds that on April 12, 1951, and at all times thereafter, the Union, by virtue of Section 9 (a) of the Act, was and now is the duly designated representative of a majority of the employees in the above-described appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

4. The refusal to bargain

After the Union was duly certified on April 20, 1951, Representative D. A. Gordon addressed a letter to Respondent on April 27. He directed attention to the certification, asked for a meeting for the purpose of negotiating a contract covering Respondent's employees and requested a reply. On May 1, Respondent's counsel replied for Respondent. The reply stated that Respondent had "been given to understand that the majority of the employees of Ray Brooks have repudiated the union and no longer wish to be represented by it." The letter further stated that in a recent decision, the Court of Appeals for the Sixth Circuit, in analogous circumstances, had held it improper to compel employees to be represented by a repudiated labor organization; in conclusion, the letter stated that it would "be wiser to defer consideration of the proposed negotiations until such time as it might appear that the employees desire to have your union represent them." There is no evidence of any other communications between the parties.

As is apparent, there has been a refusal by Respondent to recognize the Union and negotiate a contract. This position is predicated on Respondent's rejection of and failure to honor the certification of the Union. However, this precise contention has hereinabove been decided adversely to Respondent. Accordingly, the undersigned finds that, on May 1, 1951, and at all times thereafter, Respondent has refused to bargain collectively with the Union and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by the Act.

5. Alleged interference, restraint, and coercion

In support of this allegation, the General Counsel offered evidence of two incidents. Three employees, Emrick, Cellucci, and White, testified concerning a talk made by Ray Brooks to the employees soon after it was learned that the Union had won the election. The versions of Emrick and Cellucci reflect nothing more than surprise and disappointment on the part of Brooks, expressed graphically, over the results of the election and an announcement that in the future, matters affecting working conditions were to be handled through the union representative. White's version is similar, but he also attributed to Brooks the statement that Brooks would be unable to advance money and grant certain privileges (unspecified) to the employees as in the past.

Emrick also testified concerning a statement allegedly made to him by Shop Foreman Jennings. Emrick regularly rode to work with Jennings and the latter's wife. On one such occasion, Jennings was speaking to his wife who was also in the front seat. Emrick, in the rear, allegedly heard Jennings state that

he would not work in a shop which a union had organized and that the employees of Respondent would be denied the existing privilege of working on their own cars (presumably in the event of union organization). Emrick, a vague witness, placed this talk as occurring either shortly before or shortly after the election. Brooks and Jennings did not testify herein.

In view of both the quality and quantity of the evidence presented herein, the undersigned is of the belief and concludes that the record does not warrant and will not support a finding of interference, restraint, and coercion based on the foregoing matters. It will be recommended that this allegation be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in Section III, above, occurring in connection with his business operations described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

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

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

CONCLUSIONS OF LAW

1. International Association of Machinists, District Lodge No. 727, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees of Respondent at his place of business at Van Nuys, California, excluding salesmen, guards, professionals, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. International Association of Machinists, District Lodge No. 727, was on April 12, 1951, and at all times thereafter has been and is, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on May 1, 1951, and at all times thereafter, to bargain collectively with International Association of Machinists, District Lodge No. 727, as the exclusive representative of his employees in the aforesaid appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed by Section 7 of the Act, and has thereby 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.

7. Respondent has not engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act by threatening to deprive his employees of rights and privileges enjoyed prior to certification of the Union.

[Recommendations omitted from publication in this volume.]

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, as amended, we hereby notify our employees that:

WE WILL bargain collectively upon request with INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE No. 727, as the exclusive representative of all employees in the bargaining unit described herein with respect to rate of pay, wages, hours, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees of RAY BROOKS, Van Nuys, California, but excluding salesmen, guards, professionals, and supervisors.

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

RAY BROOKS,

Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date hereof, and must not be altered, defaced, or covered by any other material.

WILLIAM I. MOFFETT, ANNE GOLDSTEIN, CARL B. GOLDSTEIN AND L. E. MOFFETT, INDIVIDUALLY AND AS CO-PARTNERS, D/B/A INYO LUMBER COMPANY and UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL. *Case No. 20-CA-360. April 1, 1952*

Decision and Order

On September 6, 1951, Trial Examiner James R. Hemingway issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondents and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board 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 briefs, and the entire record in the case and finds merit in the Respondent's exceptions for the reasons set forth below.