

true that this unit was established without Board sanction,<sup>7</sup> I am not prepared to concede that the majority's decision here involves no affirmative action on its part. Rather I believe that the majority by putting its stamp of approval on this type of unit is accomplishing indirectly what Congress has specifically forbidden it to do directly. Section 9 (b) (3) of the amended Act provides: "That the Board shall not . . . decide that any unit is appropriate for such purposes [collective bargaining] if it includes, together with other employees, any individual employed as a guard. . . ." Historically, the Board's contract bar rule has assumed that the union protected for a reasonable period in its bargaining relationship was representing an appropriate unit or, at least, one not clearly inappropriate.<sup>8</sup> Even though the majority has made no formal unit finding in this case, it has approved continued bargaining by the Intervenor and Employer for a unit including guards together with other employees. This is exactly the kind of unit that Congress, it seems to me, intended to eliminate from national collective bargaining by the language contained in Section 9 (b) (3). To say, as the majority does, that the Board should interpret this section as applicable only to units initially established by it and as inapplicable, at least policy-wise, to units coming under Board scrutiny seems to me to thwart the clearly expressed purpose of Congress. For it is apparent that Congress directed this prohibition at the Board alone simply because it is the Board which is entrusted with the exclusive function of defining appropriate units. Consistent with the Board's established policy,<sup>9</sup> I believe it to be the Board's duty to encourage labor contracts in accord with the policies of the amended Act and to discourage by every means in its power, including the Board's discretionary contract bar rule, those contracts that are directly contrary to such policies. I would therefore find that the contract in this case is not effective as a bar to a present direction of an election.

<sup>7</sup> As indicated *supra*, a consent election immediately preceded the execution of the instant contract. It is noteworthy that the unit set out in that election, conducted under Board auspices, specifically excluded guards from the appropriate unit. Apparently, the inclusion of guards in the contract unit was in flagrant disregard of the unit previously approved by the Board's Regional Director.

<sup>8</sup> *Savannah Electric and Power Company*, 48 NLRB 33.

<sup>9</sup> *C. Hager & Sons Hinge Manufacturing Company*, 80 NLRB 163.

LOUISVILLE CONTAINER CORPORATION *and* UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (UE). *Case No. 9-CA-411.*  
*May 13, 1952*

### Decision and Order

On November 2, 1951, Trial Examiner Lee J. Best issued his Intermediate Report in this case, finding that the Respondent had engaged

in and was engaging in certain unfair labor practices in violation of Sections 8 (a) (1) and (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. Thereafter the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board<sup>1</sup> 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.<sup>2</sup> The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications:

1. We agree with the Trial Examiner's finding that the Respondent has refused to recognize and bargain with the Union within the meaning of Section 8 (a) (5). However, we disagree with the Trial Examiner's findings that the refusal took place on and after April 13, 1951. We date the violation from on and after April 4, 1951.

As more fully set forth in the Intermediate Report, the Union represented a majority of the employees in the appropriate unit on April 3, 1951, when Wright, a field organizer of the Union, telephoned Dorsey, resident manager of Respondent's plant, and informed him that he had been designated to represent the employees. Dorsey referred Wright to Attorney Charles Ruzica in Baltimore, Maryland. Wright thereafter addressed a letter to Dorsey dated April 3, 1951, which was received by Dorsey on April 4, 1951. This letter confirmed the telephone conversation of April 3 with Dorsey and stated that the "Union stands ready to negotiate a written agreement with [the Respondent] at a time and place that is most convenient to [Respondent]." Whether or not the oral statements of April 3 constitute a clear request to bargain, there can be no doubt that the letter received on April 4 was such a request. Respondent made no reply to this letter. On April 5, 1951, the Union filed a representation petition with the Board, of which the Respondent was notified on April 6, 1951. A

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<sup>1</sup> Pursuant to the provisions of Section 3 (b) of the Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Styles and Peterson].

<sup>2</sup> The Trial Examiner rejected the Respondent's offer of "Hearings Before the Committee on Un-American Activities, House of Representatives, 81st Congress, First Session" and refused to permit interrogation directed to the validity of the affidavits actually filed by the charging union under Section 9 (h) of the Act. He also denied the Respondent's motions to dismiss the complaint on the ground that allegedly perjured affidavits do not constitute compliance with Section 9 (h), without which the Board has no jurisdiction to proceed. We have heretofore refused to go behind the affidavits filed under the provisions of 9 (h), pointing out that neither the statute itself nor its legislative history authorizes the Board to investigate the authenticity or truth of the affidavits which have been filed. These are matters for the Department of Justice. *Stationers Corporation*, 96 NLRB 196, and cases cited therein. Accordingly, we find no merit in any of the Respondent's exceptions concerning alleged perjury in relation to the affidavits filed under Section 9 (h).

conference between the parties and the Board was scheduled for April 23 or 24, 1951, at which time the parties tentatively agreed to dispose of the petition by a consent election. However, beginning on April 13, the Respondent, as detailed in the Intermediate Report, engaged in acts of interference and coercion which would have made a free election impossible.<sup>3</sup> We believe that the unfair labor practices, because of their nature and timing, color the Respondent's intent on April 4. They indicate the real reason for the failure to reply to the Union's letter was to gain time within which to undermine the Union's support, and that the Respondent, in fact, never intended to bargain with the Union. Accordingly, while we agree that on and after April 13, by dealing individually with its employees and unilaterally granting wage increases, the Respondent independently violated Section 8 (a) (5), we find that its initial refusal to bargain occurred on April 4.<sup>4</sup>

### 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, Louisville Container Corporation, and its officers, agents, and successors, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Electrical Radio & Machine Workers of America (UE), as the exclusive representative of all its employees in the unit found appropriate in the Intermediate Report, with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(b) Interrogating its employees concerning their union sympathies and affiliations; granting unilateral wage increases for the purpose of bypassing and undermining the duly authorized representative of its employees; circulating written statements to poll the desires of its

<sup>3</sup> Thus, on April 13, Vice President Morrison assembled employees during working hours for a general meeting at which he (1) interrogated employees on why they felt they wanted a union, (2) promised a wage increase in answer to employee explanations of the aspects of their employment which prompted their interest in a Union, (3) granted a general wage increase without consulting the Union (*N L R B v Falk Corp.*, 308 U. S. 453, 460-461, *Medo Photo Corp. v N L R B*, 321 U. S. 678, 685-686); and (4) assured employees that the Respondent would do more for the employees as individuals than it would do for them through the Union (*N L R B. v Beatrice Foods*, 183 F. 2d 726 (C. A. 10), enfg. 84 NLRB 493)

On or about April 23, each of the employees was summoned to an individual interview with Morrison, wherein he questioned each employee concerning his or her attitude toward the union, reported that he had heard that some of the girls felt they had been high pressured into signing up for the union and indicated that he was going to "fix a paper for them to sign." Morrison gave a petition prepared by Respondent's secretary-stenographer to the last employee interviewed, with instructions to circulate it among the others.

<sup>4</sup> See *Joy Silk Mills v. N. L. R. B.*, 185 F. 2d 732 (C. A. D. C.), cert. den. 341 U. S. 914, enfg. 85 NLRB 1263; *Sam Zall, an individual doing business as Sam Zall Milling Co.*, 94 NLRB 1749; *Charles R. Krimm Lumber Company and Northern Pine Corporation*, 97 NLRB 1574

employees on the question of representation by any labor organization; and promising benefits to discourage self-organization.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right of self-organization, to form labor organizations, to join or assist United Electrical, Radio & Machine Workers of America (UE), or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining, or other mutual aid or protection or to refrain from any or all such activities, as guaranteed in Section 7 of the Act.

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

(a) Upon request, bargain collectively with United Electrical, Radio & Machine Workers of America (UE), as the exclusive bargaining agent of all its employees in the bargaining unit described herein 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 plant in Louisville, Kentucky, copies of the notice attached to the Intermediate Report marked "Appendix A."<sup>5</sup> Copies of said notice to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by Respondent's representative, be posted by Respondent 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 Ninth Region (Cincinnati, Ohio) in writing, within ten (10) days from the date of this Order what steps Respondent has taken to comply therewith.

### Intermediate Report

#### STATEMENT OF THE CASE

By reason of a charge filed on April 25, 1951, and a first amended charge filed on May 24, 1951, by United Electrical, Radio & Machine Workers of America (UE), herein called the Union, the General Counsel of the National Labor Relations Board<sup>1</sup> by the Regional Director for the Ninth Region (Cincinnati, Ohio) issued a complaint dated June 28, 1951, against Louisville Container Corporation,

<sup>5</sup> 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."

<sup>1</sup> Herein separately designated as the General Counsel and the Board.

herein called the Respondent, alleging that 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.

With respect to the unfair labor practices the complaint, as amended, alleges in substance that: (1) The Respondent on and after April 3, 1951, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act by (a) interrogation concerning their union membership, sympathies, and activities; (b) promising that it would grant more benefits to its employees individually than it would grant to the Union; (c) promising wage increases as an inducement to resign from the Union; (d) granting wage increases in derogation of the Union's status as exclusive bargaining representative of its employees; and (e) preparing and causing to be circulated among its employees a poll or petition denoting that they did not desire representation by any labor organization. The complaint also alleges that the Respondent on and after April 3, 1951, failed and refused to bargain collectively in good faith with the Union as the exclusive representative of its employees in the appropriate unit in violation of Section 8 (a) (5) of the Act.

Copies of the charge, the first amended charge, the complaint, and the amended complaint were duly served on all parties concerned.

Prior to a hearing the Respondent filed motions for a bill of particulars; whereupon the General Counsel was required to furnish Respondent with information as to the names of its officers and agents, together with places and dates, engaged in the conduct alleged and complained of in each and every subparagraph of paragraph 7 of the complaint.

Motion of the Respondent was denied to require the Board to produce for inspection, copying, and photographing, all affidavits filed or purporting to have been filed pursuant to Section 9 (b) of the Act by any and all officers or anyone claiming or purporting to be an officer of United Electrical, Radio & Machine Workers of America (UE).

The Respondent filed an answer denying that it was engaged in commerce within the meaning of the Act and that it had engaged in any unfair labor practices. As an affirmative defense it alleged that the complaint was insufficient in law upon the face thereof in that it failed to set forth facts sufficient to constitute a violation of any provision of the Act. Motion to dismiss the complaint on said grounds was denied.

Pursuant to notice to all parties, a hearing was conducted before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner, at Louisville, Kentucky, on September 10, 11, 12, and 13, 1951. The General Counsel and the Respondent were represented by counsel and participated in the hearing. A representative of the Union was present. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties. When the General Counsel rested his case and at the conclusion of all the evidence, the Trial Examiner overruled Respondent's motion to dismiss the complaint in its entirety, but reserved his ruling on the question of jurisdiction and refusal to bargain. For reasons herein-after discussed the motion to dismiss is now denied in toto.

At the conclusion of the hearing a motion to conform the pleadings to the proof as to formal matters was granted without objection. Extended oral argument by counsel for all parties appears in the record. All parties were advised of their right to file written briefs and proposed findings of fact and conclusions of law. Written briefs filed by the General Counsel and the Respondent have been given due consideration.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF RESPONDENT

Louisville Container Corporation is a corporation organized and existing under and by virtue of the laws of the State of Kentucky, having its principal office and place of business at Louisville, Kentucky, where it is engaged in the manufacture and sale of cardboard containers.

During the calendar year 1950, the Respondent made direct shipments of merchandise to customers outside the State of Kentucky valued at \$14,540.36, which amount constitutes 58.1 percent of the minimum requirements established by the Board for the assertion of jurisdiction based upon "direct outflow" in intrastate commerce.<sup>2</sup> In the same period it purchased directly from vendors outside the State materials and supplies valued at \$41,076.56, constituting 8.2 percent of the minimum jurisdictional requirements based upon "direct inflow" in interstate commerce.<sup>3</sup> Within the same period it furnished containers valued at \$49,037.31 necessary to the operation of local enterprises engaged in processing, packing, distributing, handling, transporting, and selling goods having a value of \$25,000 per year and destined for shipment out of the State. These intrastate shipments constitute 98.7 percent of the minimum jurisdictional requirements based upon "indirect outflow" in interstate commerce.<sup>4</sup> It is not necessary to show that the materials furnished became an integral part of shipments forwarded outside the State.<sup>5</sup>

The Respondent's inflow and outflow of materials, when considered in ratio to the respective minimum inflow and outflow requirements, are together equivalent to the minimum requirement in either of the foregoing categories, and a total of the percentages amounts to 165 percent of the combined jurisdictional requirements to establish the Board's jurisdiction for the period in question. From a consideration of Respondent's business for the first 6 months of the year 1951, it is established by the evidence that the total percentages of inflow and outflow of materials in the same categories amounted to 127.7 percent of the minimum jurisdictional requirements. It is therefore concluded that the Respondent is engaged in commerce within the meaning of the Act, and it is clear that the Board will exercise jurisdiction in this case.<sup>6</sup>

#### II. THE LABOR ORGANIZATION INVOLVED

United Electrical, Radio & Machine Workers of America (UE) is a labor organization within the meaning of the Act, admitting to membership employees of the Respondent.

At the hearing the Respondent challenged the jurisdiction of the Board and filed a written motion to dismiss the complaint for failure to allege that the Union has complied with the provisions of Section 9 (f), (g), and (h) of the Act. Taking judicial notice of the administrative determination of the Board prior to issuance of the complaint that the Union was in compliance with Section 9 (f), (g), and (h) of the Act, and having since personally verified that fact

<sup>2</sup> *Stanislaus Implement & Hardware Co., Ltd.*, 91 NLRB 618.

<sup>3</sup> *Federal Dairy Co., Inc.*, 91 NLRB 638.

<sup>4</sup> *Hollow Tree Lumber Co.*, 91 NLRB 635.

<sup>5</sup> *Hart Concrete Products Co.*, 94 NLRB 1565.

<sup>6</sup> *The Rutledge Paper Products Co.*, 91 NLRB 625.

by reference to the Board's files, the Trial Examiner denied the motion to dismiss.<sup>1</sup> The records of compliance maintained by the affidavit compliance branch of the Board show that the charging union, United Electrical, Radio & Machine Workers of America (UE) came into compliance on October 20, 1949, and since that date has maintained continuous compliance, and was therefore in full compliance at the time the complaint was issued by the General Counsel on June 28, 1951.

### III. THE UNFAIR LABOR PRACTICES

#### 1. Background events

On or about February 1, 1951, Arthur Morris of Baltimore, Maryland, and associated investors, acquired control of Louisville Container Corporation, and installed a new management. Morris became president of the corporation and James M. Morrison, was designated as active vice president and general manager of the plant in Louisville, Kentucky. Paul M. Dorsey was employed as resident manager, and Raymond E. Wittenauer was retained as plant superintendent.

During the latter part of February 1951, Vice-President Morrison called a meeting of the 19 or 20 employees, mostly women, and explained to them that the corporation had lost money in past operations, but that he intended to expand and bring in new machinery and other improvements to build up production and sales with the hope of making it a profitable enterprise. He agreed to install a group insurance plan for the benefit of employees, and mentioned the fact that at other plants of his associates vacations with pay were granted, but that he would be unable to grant such benefits to the employees at Louisville for the present. The meeting was opened for discussion, and the employees proposed a change in working hours and other benefits for the workers which were not acted upon at that time. Sometime later the women employees submitted a petition for a change in working hours, and the Respondent agreed to try it. There were also inquiries with respect to wage increases.

On April 2 and 3, 1951, a substantial majority (14) of the Respondent's employees joined the Union. Thereupon, Field Organizer Charles Wright, notified Resident Manager Paul W. Dorsey that the Union had been designated as the exclusive representative of its employees for the purpose of collective bargaining, and requested that the Respondent bargain with the Union. Mr. Dorsey referred Wright to Charles Ruzica, chief counsel of the Respondent, Baltimore, Maryland, as Respondent's representative to handle labor matters. On the same day, April 3, 1951, Charles Wright addressed a letter to the Respondent, as follows:

This is to confirm our telephone conversation of April 3, 1951 at which time you were informed that the United Electrical, Radio and Machine Workers of America, FE-UE has been designated by your employees to represent them in collective bargaining with your Company. Please be advised that your Union stands ready to negotiate a written labor agreement with your Company at a time and place that is most convenient to yourself.

Upon receipt of the foregoing letter on April 4, 1951, Resident Manager Paul W. Dorsey, called Vice-President James M. Morrison, in Nashville, Tennessee, and sent copies of the letter to Morrison and Chief Counsel Ruzica. Morrison talked with President Arthur Morris over the telephone concerning the matter, and was instructed to handle it through Chief Counsel Ruzica.

<sup>1</sup> *Hibriten Chair Co., Inc*, 95 NLRB 1284.

On April 5, 1951, the Union filed a petition with the Regional Office of the Board, in Cincinnati, Ohio, for an election under the provisions of Section 9 of the Act. Copy of the petition was received by Resident Manager Dorsey in Louisville on April 6 or 7, 1951, who immediately notified Vice-President Morrison by telephone. Morrison was also called by Chief Counsel Ruzica and instructed to let Attorney Edward A. Dodd, of Louisville, Kentucky, handle the case. No reply was made to the written request of Field Organizer Charles Wright to bargain with the Union.

## 2. The appropriate unit

The complaint herein alleges that all production and maintenance employees of the Respondent, excepting all office and clerical employees, and all guards, professional 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. Within the plant operated by the Respondent, having not more than 20 employees with no specialized crafts or skills involved, it would be difficult to visualize a more cohesive group for the purposes of collective bargaining than plant-wide production and maintenance employees. From all the evidence and customary practices and procedures of the Board, I therefore find the appropriate unit to be as alleged in the complaint.

The record shows that a clear majority of Respondent's employees in the appropriate unit joined the Union on April 3, 1951, and designated it as their exclusive representative to negotiate and conclude all agreements as to hours of labor, wages, and all other conditions of employment. The majority status thus established has not been legally dissipated, and I therefore find that on April 3, 1951, and at all times thereafter pertinent to this case, the Union was and is the exclusive representative of Respondent's employees in the appropriate unit for the purposes of collective bargaining. No rights were waived by filing a petition for certification as such representative with the Board.

## 3. Interference, restraint, and coercion; refusal to bargain

During working hours on or about April 13, 1951, Vice-President James M. Morrison assembled Respondent's employees in the plant, and inquired why they wanted a union. He stated that if the employees wanted a union they should get a CIO box-paper union, and said that the FE (predecessor of the Union) was a communist union and was thrown out of the CIO on that account. The meeting was thrown open to a discussion of grievances. Morrison announced that he had agreed to install group insurance for employees at the Respondent's expense, but was unable to grant vacations with pay in addition thereto. Some employees complained that they were still receiving the minimum wage of 75 cents per hour, after more than 6 months' service with the Company. Thereupon, Morrison agreed to a wage increase of 5 cents per hour for all employees with more than 6 months' service. Other employees with service of more than 1 year requested wage increases, but the matter was deferred. He agreed to investigate individual cases and determine which employees were entitled to further increases in pay. Morrison stated that he could do more for the employees as individuals than he could for the Union. The record shows that wage increases of 5 cents per hour were granted to Anna Jean Baird, Geraldine Brooks, Minnie Francis Slusser, and Lillian Wolford on April 18, 1951. At the same time an increase of 4 cents per hour was granted to Phydella Poole. Marion W. Bracken received an increase of 10 cents per hour on April 25, 1951. Joe B. Sandy received an increase of 10 cents per hour on April 4,

1951, and a second increase for a like amount on July 11, 1951; Frances Newton received a 5-cent increase on June 20, 1951; and Nora Shelton received an increase of 5 cents per hour on July 25, 1951. All of the aforesaid increases in wages were granted unilaterally without notice to the Union, although the Respondent had received a demand from the Union for recognition as exclusive bargaining representative of its employees and had been requested to bargain collectively.

On or about April 23, 1951, Vice-President Morrison called the Respondent's employees to his office, one by one, and conducted an interrogatory interview with each individual concerning her affiliation with the Union and the nature of her grievances. All interviews followed the same pattern and is vividly illustrated by the uncontradicted testimony of Lillian Wolford as follows:

He asked me—he said, "You don't have to answer any question if you don't want to, but I want to get to the bottom of this affair," and asked me if I was for the Union and I said yes. And so he said, "Why do you, you have some complaints," and I said yes. And I told him again about the 80 cents and my period of employment and the way the other girls were getting a raise, the same thing I told him in the general meeting, and he said, "Yes, I believe you should have a raise"; that I had been there over a year and hadn't got but five cents raise, so he marked my name down. He had a list of names on a sheet of paper and he put a check mark by my name. And then he said that some of the girls felt like that they had been high pressured in signing for the Union and I said nobody high pressured me. I was given a card and I signed it, and that's all. And he said, well, some of them felt that way about it and that he—since they did—that he was going to fix a paper for them to sign. If they didn't want to have a Union any longer, that they could sign that paper saying so and then he asked me "Do you still feel like you need a Union" and I said yes. He said, "That's all right, that's all right," and told me to ask Elsie Young to come in the office.

Under the direction of Vice-President Morrison a typewritten statement was prepared, as follows:

**WE THE UNDERSIGNED, DO NOT WISH TO BE REPRESENTED BY ANY LABOR UNION AT THIS TIME.**

The date (3/17/51) appearing thereon is admittedly erroneous. Morrison presented the typewritten statement to the last employee interviewed (Norma Dunn) and instructed her to circulate it among the other employees. Norma Dunn presented it to Margaret King, who in turn passed it to other employees. When the statement had been signed by 11 employees, it was returned to Vice-President Morrison, who has retained it in his possession since that time. At the time, the Respondent had only 12 employees. Some had been laid off.

Thereafter, on or about April 24, 1951, Vice-President Morrison and his attorney attended a conference with representatives of the Union and the Board, and readily agreed to hold a consent election among the Respondent's employees to determine the question of representation. The conference adjourned to reconvene on the following day for the purpose of signing a written agreement fixing the date and terms for the consent election. Prior to the hour of reconvening on April 25, 1951, the Union filed a charge of unfair labor practices against the Respondent, and no agreement for a consent election was signed. On May 24, 1951, the Union requested withdrawal of its representation petition, which was approved by the Regional Director of the Board. The instant complaint by the General Counsel was filed on June 28, 1951, as aforesaid.

The foregoing findings of fact are based upon the uncontradicted composite testimony of all witnesses in the case, including testimony introduced by the Respondent. There is no dispute as to the facts.

#### Concluding Findings

The Respondent vigorously contends that the Board should not assert jurisdiction in this case because of alleged communistic sympathies and activities by the Union. When the Board has administratively determined that a labor organization has complied with Section 9 (h) by filing the required non-Communist affidavits, it is not a function of the Trial Examiner conducting a hearing on the charge and complaint of unfair labor practices, to determine whether the charging party is dominated by Communists. The question of deciding the truth or falsity of the non-Communist affidavits was clearly intended by Congress to be the concern of the Department of Justice.<sup>8</sup>

When the Union submitted its demand for recognition and requested the Respondent to bargain collectively, it did not waive its right to file charges of unfair labor practices by submitting to the Board a petition for certification as exclusive representative of Respondent's employees. This is especially true in the absence of a bona fide doubt as to the majority status of the Union.<sup>9</sup>

The Respondent refused to bargain by ignoring the Union's request for bargaining without any bona fide doubt of its majority status, and engaged in a vigorous antiunion campaign by calling a meeting of employees without notice to the Union for the adjustment of grievances and granting unilateral wage increases and other benefits for the purpose of undercutting the Union and to persuade the employees to renounce their union affiliations; stating that it could do more for the employees individually than for the Union.<sup>10</sup>

Where an Employer ignores the Union's request for recognition and bargaining, and promptly embarks on a campaign of unfair labor practices, it cannot be said that withholding of recognition and refusal to bargain is based upon good faith doubt of the union's majority status; and a desire to contest the Board's jurisdiction is no defense.<sup>11</sup>

The Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, by personal individual interviews, in which each employee was interrogated concerning affiliation with and sympathies for the Union. The fact that employees were warned that they were not compelled to answer any question propounded by Vice-President Morrison does not remove the evil that the Act was intended to prevent. The express purpose of the Act is to protect the "exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." The Act is violated when an Employer interrogates his employees concerning any aspect of union activity, inherent in the very nature of the rights protected by Section 7 is the concomitant right of privacy in their enjoyment—"full freedom" from employer intermeddling, intrusion, or even knowledge.<sup>12</sup>

As a climax to its campaign to destroy the majority status of the Union prior to an election, the Respondent prepared and caused to be circulated a

<sup>8</sup> *Sunbeam Corp.*, 93 NLRB 1205. 1

<sup>9</sup> *M. H. Davidson Co.*, 94 NLRB 142.

<sup>10</sup> *Dismuke Tire & Rubber Co., Inc.*, 93 NLRB 479; *Continental Nut Co.*, 91 NLRB 1058; *Intertown Corporation (Michigan)*, 90 NLRB 1145; *Paterson Fire Brick Co.*, 90 NLRB 660.

<sup>11</sup> *Howell Chevrolet Co.*, 94 NLRB 1779; *Everett Van Kleeck & Co., Inc.*, 88 NLRB 785.

<sup>12</sup> *Standard-Coosa-Thatcher Co.*, 85 NLRB 1858.

typewritten statement among its employees for the purpose of renouncing any desire for representation by a labor union for the present. Having been persuaded by the Respondent that they had acted hastily in joining the Union, and should give their Employer more time to demonstrate what benefits it would voluntarily grant them, 11 out of a total of 12 employees signed the typewritten statement presented by Vice-President Morrison. Within 2 days thereafter the Respondent readily agreed to hold a consent election. It is apparent that an election under such conditions would not provide a free and untrammelled expression of employees on the question of representation, and an election under such circumstances would be set aside.<sup>13</sup> The Board has consistently held that employer participation in the preparation and circulation of antiunion petitions is unlawful, whether done at the request of employees themselves, or otherwise.<sup>14</sup>

It is the contention of the Respondent that the Union elected to rely upon its petition for certification as bargaining representative of its employees without awaiting a reply to the bargaining demand of April 3, 1951; and that the Respondent expressed a willingness to settle the question by a consent election. Under the circumstances of this case, that contention cannot be sustained. In his speech to employees on or about April 13, 1951, Vice-President Morrison stated that the Union had asked for recognition to bargain with the Respondent. The subsequent unfair labor practices of the Respondent made a free election impossible, and the Respondent thereby refused to bargain with the Union.

It is therefore concluded that on and after April 13, 1951, the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of this Act in violation of Section 8 (a) (1) of the Act; and at the same time refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment in violation of Sections 8 (a) (1) and 8 (a) (5) 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 such of them as has been found to be unfair labor practices, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that the Respondent, Louisville Container Corporation, has engaged in unfair labor practices violative of Section 8 (a) (1) and (5) of the Act, I shall 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 has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, I shall recommend that the Respondent, upon request, bargain collectively with the Union as the representative of such employees, and if an agreement is reached to embody such understanding in a signed agreement.

It has also been found that the Respondent has engaged in certain acts of interference, restraint, and coercion by interrogating employees concerning their

<sup>13</sup> *Joy Silk Mills, Inc.*, 85 NLRB 1263.

<sup>14</sup> *Royal Palm Ice Co.*, 92 NLRB 1295.

union sympathies and affiliations; endeavoring to bypass and undermine the Union by granting unilateral wage increases; circulating for signatures of employees a typewritten statement disclaiming a desire for representation by any labor organization; and promising benefits for refraining from self-organization. It will, therefore, be recommended that the Respondent cease and desist therefrom.

Because of the Respondent's past unlawful conduct and the underlying purposes manifested thereby, additional unfair labor practices may be anticipated. It will therefore be recommended that the Respondent cease and desist from in any manner interfering with, restraining, and coercing its employees in the exercise of their right to self-organization.<sup>15</sup>

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

#### CONCLUSIONS OF LAW

1. United Electrical, Radio & Machine Workers of America (UE) is a labor organization within the meaning of Section 2 (5) of the Act.

2. All of Respondent's production and maintenance employees at its plant in Louisville, Kentucky, excepting all office and clerical employees and guards, professional 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. At all times since April 3, 1951, United Electrical, Radio & Machine Workers of America (UE) has been and now is the representative of a majority of the employees of the Respondent in the unit above described, for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on or about April 13, 1951, and at all times thereafter to bargain collectively with United Electrical, Radio & Machine Workers of America (UE), as the exclusive representative of all its employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (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 said Act.

[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 Labor Management Relations Act of 1947, we hereby notify our employees that :

**WE WILL NOT** refuse to bargain collectively with **UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (UE)**, as exclusive representative of all employees in the appropriate unit described below.

**WE WILL NOT** in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist **UNITED ELECTRICAL, RADIO & MACHINE WORK-**

<sup>15</sup> See *May Department Stores v. N. L. R. B.*, 326 U. S. 376.

ERS OF AMERICA (UE), or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the National Labor Relations Act, as amended.

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

All our production and maintenance employees at our plant in Louisville, Kentucky, excluding clerical and office employees and guards, professional employees, and supervisors as defined in the Act.

All our employees are free to become or remain members of this union, or any other labor organization.

LOUISVILLE CONTAINER CORPORATION,  
*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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

V. S. ANDERSON AND M. C. ANDERSON, COPARTNERS D/B/A PACIFIC MOULDED PRODUCTS COMPANY *and* UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, CIO. *Case No. 21-CA-1042. May 14, 1952*

**Decision and Order**

On September 14, 1951, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in 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 filed exceptions to the Intermediate Report and a supporting brief.

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].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds 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 this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications and exception.