

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 Respondents have engaged in certain unfair labor practices, the undersigned will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Inasmuch as the unfair labor practices found above reveal on the part of Respondents a fundamental antipathy to the objectives of the Act and therefore justify an inference that the commission of other unfair labor practices may be anticipated in the future, the undersigned will recommend that Respondents be ordered to cease and desist from in any manner interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed by 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. United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

[Recommendations omitted from publication in this volume.]

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WHITING CORPORATION, SPENCER AND MORRIS DIVISION *and* INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS AND HELPERS OF AMERICA, LODGE No. 92, A. F. OF L. *Case No. 21-CA-1081. May 14, 1952*

### Decision and Order

#### STATEMENT OF THE CASE

Upon a charge filed on April 3, 1951, by International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Lodge No. 92 A. F. of L., herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued his complaint dated May 10, 1951, against Whiting Corporation, Spencer and Morris Division, Los Angeles, California, 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 charge, complaint, and notice of hearing were served on the parties on May 11, 1951.

With respect to the unfair labor practices, the complaint alleged in substance that, on or about March 19, 1951, and at all times thereafter, the Respondent refused to bargain collectively with the Union, the duly designated bargaining representative of its employees in an appropriate unit.

The Respondent filed its answer on May 29, 1951, admitting the refusal to bargain, but asserting as affirmative defenses that (a) the Board erroneously determined that the Union represent a majority of its employees, and (b) on May 11, 1951, a majority of employees in the appropriate unit repudiated the Union as their bargaining representative.

Pursuant to notice, a hearing was held on July 2 and 3, 1951, at Los Angeles, California, before A. Bruce Hunt, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, the Respondent, and the Union were all represented by counsel. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. After the presentation of the evidence, the parties waived oral argument and the right to file briefs, proposed findings, and conclusions with the Trial Examiner.

With the agreement of the parties, the Trial Examiner on July 3, 1951, dictated his Intermediate Report into the record (transcript pages 103-116), finding that the Respondent had violated Section 8 (a) (1) and (5) of the Act, as alleged in the complaint, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report. Thereafter, the Respondent filed exceptions, a brief, and an addendum to the brief<sup>1</sup> in support of the exceptions.

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 Murdock].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed.<sup>2</sup>

<sup>1</sup> The General Counsel and the Union both moved to strike the addendum to the brief on the ground that it was filed too late. In its order transferring the case to itself, the Board specifically stated that exceptions could be filed on or before August 9, 1951. The addendum was received on August 8, 1951, within the time limitation set forth in the Board's order. The motions to strike the addendum are therefore denied.

<sup>2</sup> At the hearing the Respondent moved to dismiss the complaint. For reasons discussed *infra*, the motion is hereby denied.

The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and makes the following findings, conclusions, and order.<sup>3</sup>

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The Respondent, Whiting Corporation, an Illinois corporation having its principal place of business at Harvey, Illinois, is engaged in the manufacture of industrial machinery and equipment at a plant in Los Angeles, California, known as the Spencer and Morris Division. During the 12-month period ending April 30, 1950, the Respondent purchased raw materials, equipment, and supplies valued at more than \$250,000, of which approximately 48 percent was shipped to the Los Angeles plant from sources outside the State of California. During the same period, the Respondent sold finished products valued in excess of \$500,000, of which approximately 45 percent was shipped from the Los Angeles plant to points outside the State.

The Respondent admits, and we find, that it is engaged in commerce within the meaning of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Lodge No. 92, A. F. of L., is a labor organization admitting to membership employees of the Respondent.

#### III. THE UNFAIR LABOR PRACTICES

##### A. *The appropriate unit*

The parties agree, and we find, that all production, maintenance, and repair employees at the Respondent's Los Angeles, California, plant, including storekeepers, shipping and receiving clerks, and

<sup>3</sup> The Board agrees with the findings, conclusions, and recommendations of the Trial Examiner. However, as the Intermediate Report is included in the transcript and is not readily available, the Board makes its own findings in this Decision and Order.

One of the principal issues before the Trial Examiner concerned the adequacy of the Board's original investigation into the eligibility to vote of John D. Norgard and the right of the Respondent in this unfair labor practice proceeding to litigate this question. After issuance of the Intermediate Report, on motion of the Respondent, the Board reopened the record in the representation proceeding for the purpose of conducting a formal hearing on Norgard's eligibility. After such hearing, the Board reaffirmed its earlier finding that Norgard was eligible to vote in the election and that the Union was properly certified as bargaining representatives (99 NLRB 117.) In view of the above, and the further fact that the record in the representation proceeding is part of the record in the present unfair labor practice proceeding, we consider that the issue based on the sufficiency of the Board's earlier investigation of Norgard's eligibility and the right to relitigate this question has become moot and need not be discussed here.

working leadmen, but excluding electricians, clerical and professional 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.

### B. *The Union's majority status*

On October 18, 1950, pursuant to a Board Decision and Direction of election, an election by secret ballot was conducted among employees in the appropriate unit. Of 35 ballots cast, 17 were for the Union, 16 were against the Union, and 2 were challenged.<sup>4</sup> As the challenged ballots were sufficient in number to affect the results of the election, the Regional Director investigated the challenges and recommended that they be overruled. The Respondent excepted to the Regional Director's ruling as to one of the challenged voters, John D. Norgard (also known as Jack Norgard), contending that he was not an eligible voter. On February 2, 1951, the Board upheld the Regional Director's rulings and directed that both challenged votes be opened and counted.<sup>5</sup> The revised tally of ballots showed that 18 votes had been cast for, and 17 against, the Union. Thereupon, on February 16, 1951, the Board certified the Union as bargaining representative of the employees in the appropriate unit.

Subsequently, on August 6, 1951, after the issuance of the Intermediate Report in this case, the Respondent filed a motion to reopen the record in the representation proceeding and to conduct a hearing on the voting eligibility of Norgard. The Board granted the motion. After a hearing we have reaffirmed the earlier decision that Norgard was eligible to vote in the election.<sup>6</sup>

Accordingly, the Board finds that on February 16, 1951, and at all times thereafter, the Union was and now is the exclusive representative of all the employees in the above-described appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

### C. *The refusal to bargain*

On February 27, 1951, after the Board issued its certification, the Union requested a meeting with the Respondent for the purpose of negotiating an agreement covering employees in the appropriate unit. On March 28, 1951, after some intervening correspondence, the Respondent replied that it would not proceed with negotiations "until such time as it has been conclusively determined whether or not the

<sup>4</sup> Another labor organization, International Association of Bridge, Structural and Ornamental Iron Workers, Local 509, AFL, was also on the ballot, but received no votes.

<sup>5</sup> 92 NLRB 1851.

<sup>6</sup> *Whiting Corporation, Spencer and Morris Division*, 99 NLRB 117.

Board's ruling in regards to Norgard's vote is proper." The Respondent also invited the Union to file a refusal-to-bargain charge with the Board, in order that the validity of the Board's finding as to Norgard could be judicially determined.

We find that on March 28, 1951, and thereafter, the Respondent refused to bargain collectively with the Union in violation of Section 8 (a) (5) of the Act, thereby also interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

#### V. THE REMEDY

The Respondent contends that no remedial order should be entered in this case, because its refusal to bargain was only technical and because after that refusal a majority of employees repudiated the Union. In this connection, the Respondent offered to prove that on May 11, 1951, *after* it had refused to bargain with the Union, it received a petition signed by approximately 70 percent of the employees in the appropriate unit, repudiating the Union as bargaining representative. The Trial Examiner rejected the offer upon the ground that, as the repudiation occurred after the refusal to bargain, it was not the motivating factor in that refusal, and therefore could not render ineffective the certification of February 16, 1951.

On March 28, 1951, as we have found, the Respondent unlawfully refused to bargain with the Union. It is not material, as a matter of law, that the refusal was based on a desire to secure judicial review of a determination made in the earlier representation proceeding.<sup>8</sup>

<sup>7</sup> On May 18, 1951, after the receipt of the petition repudiating the Union, the Respondent wrote the Union that the petition "constitutes an additional reason for declining to bargain with your organization on behalf of our employees."

<sup>8</sup> In its brief, the Respondent attempts to draw a distinction between "technical" and "wrongful" refusals to bargain. In the first category it would put refusals designed to secure judicial review of Board determinations; in the second, refusals to bargain motivated by bad faith. It would apply the *Franks Bros.* (*infra*) doctrine to the latter, but not to the former category. As we have indicated above, we believe that the effect upon employees of a refusal to bargain is as great in one case as in the other. We perceive no basis therefore for limiting the *Franks Bros.* doctrine to so-called "wrongful" refusals to bargain.

The discouraging effect upon employees of a refusal to bargain is not likely to be different because of the motive animating the employer. As the Board has said:<sup>9</sup>

Employees join unions primarily in order to secure the benefits of collective bargaining. When an employer refuses to bargain with a union, especially when the refusal is protracted, employee support usually withers and dies. Old employees lose interest and resign; new employees refuse to join. The effect of an unremedied refusal to bargain with a union, even where standing alone and unaccompanied by any other unfair labor practices, is to discredit the union in the eyes of old and new employees, to drive them to a second choice, or to persuade them to abandon collective bargaining altogether.

Any loss of the Union's majority after March 28, 1951, must, therefore be attributed to the Respondent's unlawful refusal to bargain.<sup>10</sup>

We have found that the Respondent unlawfully refused to bargain with the Union. We believe that to effectuate the policies of the Act, we must order the Respondent to bargain with the Union for the employees in the appropriate unit.

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

#### CONCLUSIONS OF LAW

1. International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Lodge No. 92, A. F. of L., is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production, maintenance, and repair employees at the Respondent's Los Angeles, California, plant, including storekeepers, shipping and receiving clerks, and working leadmen, but excluding electricians, clerical and professional 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.

3. International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Lodge No. 92, A. F. of L., was on February

<sup>9</sup> *Lancaster Foundry Corporation*, 82 NLRB 1255.

<sup>10</sup> *Franks Bros. Company v. N. L. R. B.*, 321 U. S. 702; *N. L. R. B. v. Sanson Hosiery Mills, Inc.*, 195 F. 2d 350 (C. A. 5); *West Texas Utilities Co. v. N. L. R. B.*, 184 F. 2d 233 (C. A. D. C.); *N. L. R. B. v. Andrew Jergens Company*, 175 F. 2d 130 (C. A. 9).

The Respondent relies on *N. L. R. B. v. Vulcan Forging Co.*, 188 F. 2d 927 (C. A. 6), to excuse its refusal to bargain. In that case, shortly after certification, but before the conclusion of negotiations, the employees repudiated their union. The employer thereupon refused to bargain. The court held that the employer's refusal was lawful. However, unlike the present case, the repudiation occurred *before* the refusal to bargain and could not be attributed to that refusal. We do not therefore consider the *Vulcan Forging* case apposite.

16, 1951, and at all times since has been, the exclusive representative of all employees in the appropriate unit for purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on and after March 28, 1951, to bargain collectively with International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Lodge No. 92, A. F. of L., as the exclusive representative of its employees in an 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.

### Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Whiting Corporation, Spencer and Morris Division, Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Lodge No. 92, A. F. of L., as the exclusive representative of all its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(b) In any other manner interfering with the efforts of International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Lodge No. 92, A. F. of L., to negotiate for or represent the employees in the 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 Shipbuilders and Helpers of America, Lodge No. 92, A. F. of L., as the exclusive representative of all employees in the appropriate unit described above, and embody any understanding reached in a signed contract.

(b) Post in conspicuous places at its plant in Los Angeles, California, including all places where notices to employees are customarily posted, copies of the notice attached hereto as Appendix.<sup>11</sup> Copies

<sup>11</sup> In the event that this Order is enforced by a decree of a 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."

of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Twenty-first Region, Los Angeles, California, in writing of the steps taken to comply herewith.

**Appendix A**

**NOTICE TO ALL EMPLOYEES**

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL bargain collectively upon request with INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS AND HELPERS OF AMERICA, LODGE No. 92, A. F. OF L., as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours of employment, other conditions of employment and, if any understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production, maintenance, and repair employees at our Los Angeles, California, plant, including storekeepers, shipping and receiving clerks, and working leadmen, but excluding electricians, clerical and professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any manner interfere with the efforts of INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS AND HELPERS OF AMERICA, LODGE No. 92, A. F. OF L., to negotiate for or represent the employees in the aforesaid unit as their exclusive bargaining agent.

WHITING CORPORATION,  
SPENCER AND MORRIS DIVISION,  
*Employer.*

By -----  
(Representative) (Title)

Dated -----

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