The Board has previously emphasized that even a proper claim of majority representation, under these circumstances, must be supported by the filing of a petition within 10 days to be valid. This is so because the "mere naked claim of representation . . . places no onus on the claimant to substantiate its claim and *thus gives rise to no inference of substantial* interest." [Emphasis supplied.] [12] The fundamental interest of this Board is thus in ascertaining that contracts are not nullified without a clear and substantial contest between claimants to majority representation at the time of the execution of the agreement. In the instant case, however, the majority position of the Intervenor had not even been questioned by a bare assertion of majority status on the part of the Petitioner at the time of the contract execution. Under these facts, and when the challenging union fails to contest the majority position of the incumbent organization to even this limited extent, I do not believe that the processes of the Act or the stability of bargaining relationships is aided by striking down the contract and directing an election. Accordingly, I would dismiss the petition in Case No. 8–RC–1814.

[12] *General Electric X-Ray Corporation, supra.*

SPENGLER-LOOMIS MANUFACTURING COMPANY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O. *Cases Nos. 13–CA–915 and 13–RC–1732. January 19, 1953*

Decision and Order

On July 10, 1952, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also recommended that the petition in Case No. 13–RC–1732 be dismissed. Thereafter, the Union filed exceptions to the Intermediate Report and a supporting brief.[1]

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

[1] The Respondent did not file exceptions to the Intermediate Report. The Union excepted only to the failure of the Trial Examiner to recommend that the election be set aside.

The request of the Union for oral argument is denied, because, in our opinion, the record and briefs adequately set forth the issues and the positions of the parties.

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, with the following modification:

The Trial Examiner found that the Respondent violated Section 8 (a) (1) of the Act by announcing and granting increased vacations, a profit-sharing plan, higher minimum wage rates, various improvements in plant facilities, and other employee benefits, for the purpose of effecting the results of the elections held on April 11, 1951, and September 12, 1951. As no exceptions to these findings were filed by the Respondent, we adopt them.[2]

The first election in the representation proceeding, held on April 11, 1951, was set aside by the Board on July 17, 1951, as a result of objections filed by the Union to conduct which we have found herein to violate Section 8 (a) (1) of the Act.[3] Meanwhile, during June 1951, while the objections to the first election were pending, the Respondent authorized Joseph Roeder, a profit-sharing consultant, to draw up a profit-sharing plan for the employees at this plant. After the Board's action on July 17, 1951, setting aside the first election, the Respondent took the following steps to announce and effectuate the profit-sharing plan.

On August 1, 1951, Roeder explained the profit-sharing plan to the Respondent's employees through lectures given at the Respondent's plant. On August 15, 1951, the Respondent was notified that a meeting would be held by a representative of the Board on August 20, 1951, for the purpose of setting a date for a new representation election. On the same day an election was conducted among the employees to select employee candidates for an advisory committee of employee and management representatives, the function of this committee being to approve the form of the profit-sharing plan. At the meeting on August 20, 1951, the Respondent and the Union agreed upon September 12, 1951, as the date for holding the second Board election. On August 22, 1951, the Respondent conducted a runoff election among the employees at the plant for the purpose of choosing the two employee members of the advisory committee. On

[2] The Trial Examiner also found that a series of meetings with groups of employees in the Respondent's plant conducted by the Respondent's agent, Roeder, ending an hour before the election on September 12, 1951, were not in violation of Section 8 (a) (1) of the Act. As no exceptions were filed to this finding, we also adopt it.

[3] *Spengler-Loomis Mfg. Co.*, 95 NLRB 243.

August 23, 1951, a formal order setting the date of the new representation election was issued by the Board. On August 27 the advisory committee met and approved the profit-sharing plan and trust agreement necessary to implement the plan, and on the following day the trust agreement was signed. A few days later forms for the designation of a beneficiary under the profit-sharing plan were distributed to the employees. On August 20, after the election date was agreed upon, and on August 24 and 29, after the Board confirmed the date of the election, the Respondent sent letters to all the employees which referred to the profit-sharing plan as one of the benefits provided by the Respondent, and asked the employees to consider these benefits in deciding how to vote in the representation election. A letter sent by the Respondent on September 10 formally announced that the profit-sharing plan was in effect and reviewed its advantages. Another letter distributed on September 12, the day of the Board election, set forth that the profit-sharing plan was an example of the type of benefit that could be obtained without a union.

We have found, in agreement with the Trial Examiner, that the conduct of the Respondent in announcing and effectuating the profit-sharing plan was for the purpose of affecting the results of the second election. The Trial Examiner further found, however, that by proceeding to the election with knowledge of the foregoing conduct of the Respondent, the Union had waived such conduct as a basis for setting aside the election, and he therefore recommended that the representation petition be dismissed.[4]

We find merit in the Union's exceptions to this finding. The Board has consistently held that there can be no waiver of objections to an election where, as here, the conduct which improperly interferes with the employees' freedom of choice continues to the eve of the election.[5] We therefore find that Respondent's conduct improperly interfered with the employees' freedom of choice in the election. We will order that the election of September 12, 1951, be set aside and that a new election be conducted by the Regional Director at such time as he deems appropriate.

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, Spengler-Loomis Manufacturing Company, its officers, agents, successors, and assigns, shall:

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[4] In so finding, the Examiner relied on the Board decision in *Denton Sleeping Garment Mills, Inc.*, 93 NLRB 329. For the extent to which the holding in the *Denton* case has been overruled, see the Board's recent decision in *The Great Atlantic & Pacific Tea Company*, 101 NLRB 1118

[5] See, e. g., *F. W. Woolworth Co.*, 101 NLRB 1457.

1. Cease and desist from:

(a) Promising, granting, or announcing benefits to employees during the pendency of a representation proceeding for the purpose of causing employees to vote against International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, C. I. O.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the aforestated or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining, or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such rights 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 Act.

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

(a) Post at its plant at Rockford, Illinois, copies of the notice attached hereto as an appendix.[6] Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof and be maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. The Respondent shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the September 12, 1951, election be, and it hereby is, set aside; and that the proceeding in Case No. 13–RC–1732 be remanded to the Regional Director for the Thirteenth Region for the purpose of conducting a new election at such time as he deems the circumstances permit the free choice of a bargaining representative.

[6] 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."

Appendix

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT promise, grant, or announce benefits to employees during the pendency of representation proceedings for the purpose of causing employees to vote against INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O.

WE WILL NOT in any like or related 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 INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, 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, 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 Act.

SPENGLER-LOOMIS MANUFACTURING COMPANY,
Employer.

By _____
(Representative) (Title)

Dated_____

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

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon charges duly filed in Case No. 13–CA–915, by International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, C. I. O., herein called the Union, the General Counsel for the National Labor Relations Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued a complaint dated April 9, 1952, against Spengler-Loomis Manufacturing Company, herein called the Respondent. The complaint alleges that the Respondent has engaged in specified conduct violating Section 8 (a) (1) and Section 2 (6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the complaint and charges were duly served upon the Respondent, and the Respondent has filed an answer denying the commission of the unfair labor practices alleged.

On May 20, 1952, the Board directed that a hearing be held on objections filed by the Union respecting the Respondent's conduct in Case No. 13–RC–1732, and the Board also directed that the instant complaint and representation cases be consolidated for hearing. Pursuant to notice, a hearing in this consolidated matter was held at Rockford, Illinois, on June 9, 1952, before the undersigned Trial Examiner. The General Counsel, the Respondent, and the Union were represented by counsel, and all parties had full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing

on the issues. The parties had an opportunity to present oral argument at the conclusion of the hearing, and they were given opportunity to file briefs and proposed findings of fact and conclusions of law. The Respondent has filed a brief which has been considered.

Upon the entire record in the case, and from my observation of the demeanor of witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is an Illinois corporation engaged in manufacturing various mechanical products in Rockford, Illinois. The Respondent's shipments of finished products in interstate commerce exceed $250,000 annually.

I find that the Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The Union filed a representation petition on January 9, 1951. An election was held and was ultimately set aside when the Board sustained objections to the conduct of the election filed by the Union. A second election was held on September 12, 1951, pursuant to Board order, and objections were again filed by the Union. The present consolidated case involves conduct of the Respondent during the course of the representation proceedings, which conduct the General Counsel claims to have violated Section 8 (a) (1) of the Act and part of which the Union claims to have constituted interference with the second election of September 1951.

Following the filing of the representation petition in January 1951, Manager Arthur Gillespie advised the employees by letter that "We have been approached lately by Unions who want to organize and represent our people." The letter also stated, among other things, that the Company "feels that we can best solve our mutual problems by working directly with each other without outsiders" and the letter further announced that meetings would be arranged to "exchange ideas" about plant working conditions. Gillespie thereupon held meetings with all the employees, in small groups of 10 or 12, in which he invited their complaints and suggestions covering the entire range of their employment relationship. These meetings were held during the first 2 weeks of February, the hearing in the representation case being scheduled for February 15, 1951. This was the first time the Respondent had conducted such employee meetings. Gillespie testified that the Union had distributed literature at the time attributing "all kinds of disagreeable things" to the Respondent and that he called the meetings "to find out what these were."

On March 13, 1951, the Board issued its Decision and Direction of Election (unreported). Beginning March 14 and lasting through March 26, Gillespie held a second series of conferences with employees, similar to those of February. This time Gillespie reviewed with the employees the various complaints and suggestions they had made in the February meetings, which matters he had investigated meanwhile, and he announced at the meetings what action the Respondent had taken since the first meetings concerning some of the matters raised by them. Thus, Gillespie advised the employees, among other things,

that minimum starting rates had been raised; that specific piecework inequities were corrected; that vacation benefits would be increased for employees having more than 1 year and less than 5 years longevity, to be effective in June 1951; that various physical improvements, such as water fountain, additional smoking areas, and toilet facilities, had been installed; that the Respondent had discharged a supervisor for using abusive language, the employees having also complained about this matter in the February meetings. Gillespie also explained to the employees for the first time how the Respondent's existing seniority system operated, but without making any changes in the system; he also told employees that the Respondent had received a Government contract, this being the first time he had advised the employees of the Respondent's contracts.

On April 9, 1951, 2 days before the scheduled date of the first election, the Respondent sent its employees a second letter referring to the fact, among other things, that the Respondent had acted upon each suggestion made by the employees in the aforementioned February meetings.

The election was held on April 11, 1951, the Union receiving less than a majority of the valid votes cast, and on April 13, 1951, the Union filed objections to the conduct of the election. On May 17, 1951, the Regional Director issued his report on the objections, sustaining the Union's claim that the Respondent had interfered with the employees' free choice in the election and recommending that the election results be set aside and that a new election be conducted. A week later, on May 25, 1951, the Respondent filed exceptions to the Regional Director's report on objections, and on July 17, 1951, the Board issued a Supplemental Decision and Order sustaining the Regional Director's report on objections and adopting his recommendation to set aside the election results and to direct a new election at an appropriate time (95 NLRB 243).

Meanwhile, on or about June 15, 1951, the Respondent sought a meeting with Joseph A. Roeder, a profit-sharing consultant, for the purpose of establishing a profit-sharing plan for the Respondent's employees. And, within a week, the Respondent authorized Roeder to work out a "profit-sharing and retirement plan," which Roeder did. The plan adopted by the Respondent provided for employee and management contributions, with an officer of the Respondent to be trustee to administer the plan's fiscal operations. Coverage under the plan was optional for the present employees and compulsory for new employees and there also was a provision permitting the Respondent to discontinue the plan on 30 days' notice.

On or about August 1, 1951, the plan was presented to the employees through a series of lectures by Roeder. And the following day the Respondent distributed "Designation of Intent" slips upon which the individual employees might indicate their desires to participate in the program. A majority of the employees decided to join the plan. The plan provides for an "Advisory Committee" consisting of the trustee and two employees and two management representatives and Plant Manager Gillespie appointed an employee committee to conduct an election on company property for the purpose of selecting the employee representatives on the advisory committee. This election was held on August 22, 1951. On August 27 and 28, 1951, the advisory committee gave its final approval to the plan and the required trust agreement was executed.

Representatives of the Regional Office, the Respondent, and the Union arranged at a meeting on August 20, 1951, that the second election, which the Board had earlier stated it would direct at a then undetermined date, would be held on September 12, 1951. Immediately after this August 20 meeting, the Respondent mailed a leaflet to its employees. Referring to the new election date,

the leaflet stated that "it is the policy of your Company to seek improved benefits for its employees at all times." The leaflet thus mentioned such matters as "seniority," a "generous vacation plan," and the "profit-sharing plan," and it also stated that present benefits "will be maintained. Not only that—we confidently expect them to increase." In conclusion the leaflet announced that:

> The election on September 12 will decide whether a union is to be allowed to upset our relationships or whether we will remain free to go on building good things for ourselves without the meddling and interference of outsiders. We believe that everyone here can enjoy more happiness and greater profit without a union. We sincerely hope that you think the same.

On August 23, 1951, this Board issued its formal order directing that the second election be held and on the following day the Respondent mailed another leaflet to its employees, stating in part that:

> We have made definite arrangements for profit sharing and have set up a plan which is many times better than the pension plans which the Union is struggling to get [in union shops].

On August 29, 1951, the Respondent mailed its employees another leaflet, referring again to the forthcoming election and to the various benefits enjoyed by the employees, including the profit-sharing program. "All of these good things," the leaflet stated, "have been provided voluntarily by the company without strikes or loss of pay. . . . In considering how to vote, we hope you will think carefully about the many real benefits now provided by the company as compared with the loose promises made by Union. . . . If we face the truth squarely, it should be plain to us all that we are much better off without a union." And on September 10 and 12, 1951, the Respondent issued other bulletins to the employees stressing the salutary nature of their profit-sharing plan and expressing the Respondent's appreciation for the employees' "attitude and understanding in the past" and stating its knowledge that the Respondent "can count on your co-operation in working out the Profit Sharing program which lies ahead." The September 12 leaflet also stated that "Our wage and benefit and profit sharing program has been developed without the help of outsiders."

By letter on September 10, 1951, the Union requested Plant Manager Gillespie to debate the election issues with the Union on election day in a vacant lot near the plant. About this same time the Union distributed its own throwbill attacking the aforementioned profit-sharing plan. Gillespie did not reply to the Union's request for debate and the Union held its own one-sided debate on the day of the election. That same afternoon, in meetings ending about an hour before the election was scheduled to be held, Roeder addressed groups of employees in the plant to the effect that "he knew an election was coming up and that he had nothing to do with it in any way, but that he felt they should be fully informed about his plan after having been given misleading information about it." Roeder was referring to the Union's attack on the plan.

The Union again failed to obtain the necessary number of votes to prevail in the election of September 12, and it filed objections claiming interference by the Respondent in this second election.

The General Counsel adduced testimony to the effect that the Respondent also sponsored and defrayed the costs of a company picnic in August 1951 and that the Respondent also agreed for the first time to sponsor a bowling league, at an expenditure of about $40, with Gillespie inaugurating the season by bowling the first ball on the night of the September 12 election. Gillespie testified that the Respondent customarily had held Christmas parties for its employees but that, at the employees' request, it sponsored the picnic instead. As to bowling,

Gillespie testified that the Company had refused to sponsor a bowling team in previous years because of the limited participation by employees in the earlier situations, but that it went along with the employees' desires in 1951 because employee participation was substantially increased. Gillespie denied any connection between the pending representation proceeding and the Respondent's sponsorship of the picnic and bowling league.

Gillespie testified that the Respondent had considered various profit-sharing or pension plans in previous years[1] but that the Respondent had never before advised the employees that the matter was under consideration at the time. Gillespie also testified that the Respondent had actually decided in 1950 to grant the additional vacation benefits, although Gillespie admittedly did not advise employees of these additional benefits until his second series of employee meetings in March 1951. Concerning improvements in physical facilities, e. g., drinking fountains, toilet facilities, etc., Gillespie testified that the Respondent had always had a plant-improvement program, but he also stated that the employees' complaints concerning these matters at the February meetings caused the Respondent to expedite the installation of these particular items.

Conclusions

13–CA–915

The charge in this case was not filed and served until September 18, 1951, hence the operative period under Section 10 (b) does not cover the period more than 6 months before that date. However, the second series of meetings which began on March 14 did not end until March 26, and it was at these meetings that Gillespie first announced the additional benefits and changes which the Respondent had made and intended to put into effect. I am satisfied that the Respondent made these announcements and later put into effect various other items—the profit-sharing plan, increased vacation benefits, the picnic, the bowling team, etc.—all for the purpose of causing the employees to vote against the Union in the representation case.

Referring to the fact that the Union, during the organizational campaign, had itself charged the Respondent with "disagreeable [albeit unidentified] things," as Gillespie testified, the Respondent contends that it was particularly privileged to hold the aforementioned meetings and to issue the various letters and other communications to its employees, for the purpose of ascertaining the causes of employee dissatisfaction and in order to take whatever action it considered advisable to correct or eliminate such causes and then to advise the employees of corrective action taken. Were this a novel question under the Act, much might be said to support this contention, even respecting such conduct during the pendency of representation proceedings, and the argument could be developed to the effect that in situations like the present case both the union and the employer are seeking the employees' favor at the polls and that as a union is permitted to promise benefits through the prospect of future collective action—should the union prevail in an election, so should the employer be similarly permitted to show, by the granting of economic benefits, that a labor organization is not necessary to promote the employees' welfare. But the issue implicit in the Respondent's contention is hardly one of first impression and I accordingly find that by announcing and effecting employment benefits during the pendency of representation proceedings on and after March 18, 1951, for the purpose of

[1] The Respondent claims that its fiscal year ends August 31 and that it installed the profit-sharing plan before that date in 1951 in order to have such item included within its 1950–1951 tax year.

affecting the results of the elections, particularly in regard to its action concerning vacations, profit sharing, and minimum wage rates, the Respondent has violated Section 8 (a) (1) of the Act. *Pacific Moulded Products Company*, 99 NLRB 93; *Rehrig-Pacific Company*, 99 NLRB 163; *Mooresville Mills*, 99 NLRB 572.

I do not accept the General Counsel's contention that because the Respondent did not accept the Union's challenge to debate the election issues the Respondent additionally violated Section 8 (a) (1) by conducting the Roeder meetings with employees on the day of the September election. Apart from other considerations, there is no showing that the Union requested an opportunity to address the employees on company time and premises. *Silver Knit Hosiery Mills, Inc.*, 99 NLRB 422. Compare *Metropolitan Auto Parts, Inc.*, 99 NLRB 401; *Bonwit Teller, Inc.* v. *N. L. R. B.*, 197 F. 2d 640 (C. A. 2). This is not to say, however, that I would have found a violation even had such opportunity been denied.

13–RC–1732

Relying on the fact that the Respondent's conduct concerning the establishment and contemporaneous announcements of the profit-sharing program (which, the parties agreed at the hearing, was the principal objection in the representation case) was known to the employees and the parties well in advance of the election and that the Union in fact made this profit-sharing plan a major issue in the election, the Respondent claims, in effect, that the Union has waived such conduct as a basis for setting aside the election results. The Board's decision in *Denton Sleeping Garment Mills, Inc.*, 93 NLRB 329, cited by the Respondent, sustains this contention and I shall accordingly recommend dismissing the petition in the representation case.[2]

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent described in section III, above, occurring in connection with the Respondent's operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and territories, and such of them as have been found to constitute 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 has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

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. The Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

2. 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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[2] The "waiver" or "acquiescence" doctrine which removes certain conduct as a basis for objections in a representation case does not also operate to remove such conduct from the purview of an unfair labor practices proceeding and order.