

showed that Prescott himself ordered the work stopped permanently as the result of Hawks' representations, the General Counsel would be in no better circumstance. For Prescott, in the same sense as Hay, represented management and it was him only whom Hawks approached.

As another defense in its behalf, Respondent asserts that it did not commit an unfair labor practice within the meaning of Section 8 (b) (4) (A) of the Act because its object was not "to force or require" Dierks to cease doing business with Ferro-Co, but only to remedy what Respondent thought to be a violation of a valid collective-bargaining agreement with the Association. *Conway's Express*,<sup>6</sup> and other cases are cited in support. Inasmuch as I have found that Respondent did not direct pressure at Dierks' employees, I find it unnecessary to consider for what purpose or with what design it may have attempted to persuade Dierks.

#### CONCLUSIONS OF LAW

1. Ferro-Co Corporation and Dierks Heating Company, Inc, are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. Respondent Sheet Metal Workers International Association, Local Union No. 28, is a labor organization within the meaning of Section 2 (5) of the Act.
3. Respondent has not engaged in the unfair labor practices alleged in the complaint.

[Recommendations omitted from publication in this volume.]

<sup>6</sup> 87 NLRB 972.

C. C. LANG & SON, INC., and UNITED FOOD WORKERS, LOCAL UNION No. 530, RETAIL, WHOLESALE, AND DEPARTMENT STORE UNION, CIO.  
*Case No. 7-CA-565. February 26, 1953*

### Decision and Order

On July 9, 1952, Trial Examiner Albert P. Wheatley issued his Intermediate Report in this proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices in violation of the National Labor Relations 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 the Respondent filed a brief.<sup>1</sup>

The Board<sup>2</sup> has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the

<sup>1</sup> The Respondent also requests oral argument. In our opinion the record, exceptions, and brief fully present the issues and the positions of the parties. Accordingly, the request is denied.

<sup>2</sup> 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 Styles and Peterson].

exceptions, the brief, and the entire record in this case, and hereby adopts the findings,<sup>3</sup> conclusions, and recommendations of the Trial Examiner, with the following modification:

Unlike the Trial Examiner, we do not believe that the issue involved in *Dant and Russell*<sup>4</sup> is involved in the present case.<sup>5</sup> In any event, the Supreme Court on February 2, 1953, unanimously reversed the decision of the court of appeals in that case.<sup>6</sup>

### Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, C. C. Lang & Son, Inc., Fremont, Michigan, it officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Food Workers, Local Union No. 530, Retail, Wholesale, and Department Store Union, CIO, as the exclusive representative of all employees of Respondent at its Fremont, Michigan, plant excluding foremen, floorladies, office and clerical employees, truckdrivers, guards, and supervisors as defined in the Act, and casual employees, with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(b) Taking any unilateral action in derogation of the aforesaid Union's right to act as the exclusive representative of such employees, with respect to any matter properly subject to the collective-bargaining process.

(c) Interfering, in any other manner, with the efforts of the Union to bargain collectively with it, on behalf of the employees in the aforesaid appropriate unit, as their exclusive bargaining agent.

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

(a) Upon request, bargain collectively with the United Food Workers, Local Union No. 530, Retail, Wholesale, and Department Store Union, CIO, as the exclusive bargaining representative of the employees in the aforesaid bargaining unit, 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.

<sup>3</sup> We find that the record supports the Trial Examiner's finding that the Respondent gave no notice to the Union of receipt of the repudiation petition. We have examined the testimony relied on by the Respondent in its brief to controvert the Trial Examiner's finding, and find the Trial Examiner's conclusion based on such testimony to be accurate.

<sup>4</sup> *Dant & Russell, Ltd.*, 195 F. 2d 299 (C. A. 9).

<sup>5</sup> See *National Carbon Division, Union Carbide and Carbon Corporation, and National Carbon Company, Inc.*, 100 NLRB 689.

<sup>6</sup> *N. L. R. B. v. Dant & Russell, Ltd.*, 73 S. Ct. 375.

(b) Post at its establishment in Fremont, Michigan, copies of the notice attached to the Intermediate Report and marked "Appendix A."<sup>7</sup> Copies of such notice to be furnished by the Regional Director for the Seventh Region (Detroit, Michigan), shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are 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 Seventh Region, in writing, within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

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<sup>7</sup> This notice shall be amended by substituting for the words "The recommendations of a Trial Examiner," the words "A Decision and Order." 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."

### Intermediate Report

#### STATEMENT OF THE CASE

The above-captioned proceeding concerns allegations that C. C. Lang & Son, Inc., herein called Respondent, "on or about October 25, 1950" and at all times thereafter refused to bargain with United Food Workers, Local Union No. 530, Retail, Wholesale, and Department Store Union, CIO, herein referred to as the Union. Respondent's answer denies that it refused to bargain and avers that it bargained until a good-faith impasse was reached, that since shortly thereafter the Union has not represented a majority of the employees in the unit appropriate for bargaining purposes, and that it is under no further obligation to recognize or bargain with the Union.

A hearing was held before the undersigned on April 7, 8, and 9, 1952, in Grand Rapids, Michigan, at which the General Counsel and Respondent were represented by counsel and the Union by its international representative. Respondent's motion to dismiss the complaint in its entirety was taken under consideration. This motion is now disposed of in accordance with the following findings and conclusions. After the close of the hearing briefs were received from counsel for the General Counsel and from counsel for Respondent which have been considered in the preparation of this report.

There is no dispute concerning the following matters and the evidence reveals and the undersigned finds that: (1) Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the National Labor Relations Act, as amended, herein called the Act;<sup>1</sup> and (2) the Union is a labor organization within the meaning of Section 2 (5) of the Act.

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<sup>1</sup> Respondent is a Maryland corporation doing business in Michigan, Virginia, Maryland, North Carolina, and New York. This proceeding concerns Respondent's plant located in Fremont, Michigan. Purchases for use at this plant during 1950 totaled approximately \$300,000 of which approximately 33 percent was received directly from outside of Michigan. During the same period products valued at approximately \$500,000 were sold and approximately 70 percent thereof was shipped from the Fremont, Michigan, plant to points and places outside of Michigan.

## Motion to Dismiss

On July 14, 1950, the Union, following a consent election, which it won, was certified by the National Labor Relations Board as the collective-bargaining representative of "all employees of the Fremont plant of the Company, excluding foremen, floor ladies, office and clerical employees, truck drivers, guards and supervisors as defined in the Act, and casual employees." At the time of the representation proceeding, agents of the Board administratively determined that the petitioning party (charging party herein) was in compliance with Section 9 (f), (g), and (h) of the Act.

From July 31, 1950, through October 9, 1950, a total of five meetings were held by the parties wherein efforts were made to reach a collective-bargaining agreement.

On November 6, 1950, the Union filed a charge alleging violations of Section 8 (a) (1) and (5) of the Act. This charge was docketed as Case No. 7-CA-516. The Regional Office of the National Labor Relations Board notified Respondent of the filing of this charge by letter dated November 7, 1950. By letter dated December 11, 1950, the Board's Regional Office notified the Union, and sent Respondent a copy thereof, that because the Union was not in compliance with Section 9 (f), (g), and (h) of the Act the Regional Director was refusing to issue a complaint.

Thereafter the Union filed a request for review of the Regional Director's refusal to issue complaint. By letter dated March 15, 1951, the Board's Regional Director advised the parties that this charge had been withdrawn without prejudice. Meanwhile, on March 8, 1951, the Union filed another charge, identical with the charge in Case No. 7-CA-516. This charge was docketed as Case No. 7-CA-565 and is the charge involved herein. On or about March 9, 1951, the Board's Regional Office served a copy of the charge in Case No. 7-CA-565 by post-paid registered mail upon Respondent. In May of 1951 and January of 1952 the Board made unsuccessful efforts to settle the matter involved herein. On February 5, 1952, the complaint in the case was issued.

At the hearing before the undersigned Respondent moved to dismiss the complaint herein on the following grounds that: (1) The Union failed to serve a copy of the charge on Respondent as required by the Board's Rules and Regulations; (2) the Union's noncompliance with Section 9 (f), (g), and (h) of the Act in December 1950 must be presumed to have existed for a reasonable period prior to that date and should be presumed to have existed at the time of the election held July 6, 1950, and that therefore, the certification of the Union as the representative for collective-bargaining purposes was null and void; and (3) in view of the lapse of time since the filing of the original charge on November 6, 1950, and the issuance of the complaint on February 5, 1952, a doctrine similar to the doctrine of laches should apply herein. Also at the hearing an issue was raised as to whether the complaint was validly issued since the Union was not in compliance with Section 9 (f), (g), and (h) of the Act at the time the original charge (7-CA-516) was filed. Respondent stresses this latter point in its brief relying primarily on *National Labor Relations Board v. Dant and Russell, Ltd.*, 195 F. 2d 299 (C. A. 9). The undersigned agrees that if the theory involved in the *Dant and Russell* case was accepted by the Board that the complaint herein should be dismissed. However, the undersigned believes that the Board has indicated it is not in agreement with the court in the *Dant and Russell* case and that it feels that the Act requires only that the Union be in compliance at

the time of the issuance of a complaint.<sup>3</sup> The undersigned herein deems himself bound to follow the Board's interpretation with respect to this matter.

Respondent's contention that jurisdiction is lacking because service of a copy of the charge was made by the Board's Regional Director instead of by the Union lacks merit. See *N. L. R. B. v. Ann Arbor Press*, 188 F. 2d 917 (C. A. 6).

Respondent's request for a finding that at the time of the certification of the Union, the Union was not in compliance with Section 9 (f), (g), and (h) of the Act is not warranted on this record. Furthermore, as noted in Respondent's brief, compliance or noncompliance with these sections is purely an administrative matter for the Board to determine. This administrative determination is binding unless there is clear and positive proof to the contrary. See *N. L. R. B. v. Red Rock Co.*, 187 F. 2d 76 (C. A. 5). Furthermore, a question of compliance with the filing requirements of Section 9 of the Act is not litigable. See *Sunbeam Corp.*, 93 NLRB 1205; *Sunbeam Corp.*, 94 NLRB 844; *New Jersey Carpet Mills, Inc.*, 92 NLRB 604; *West Texas Utilities Co. v. N. L. R. B.*, 184 F. 2d 233 (C. A., D. C.), cert. den. 341 U. S. 939; *N. L. R. B. v. Wiltse*, 188 F. 2d 917 (C. A. 6); *N. L. R. B. v. I. F. Sales Co.*, 188 F. 2d 931 (C. A. 6); *Harcourt and Co., Inc.*, 98 NLRB 892.

Respondent's plea that the Board delayed an unreasonably long time filing a complaint and that accordingly an undue hardship was cast upon Respondent with respect to its preparation of a defense, is without merit. Respondent recognizes that the Act itself sets no limitation of time on the issuing of the complaint after the charge is filed but argues that "if a six months time limit was placed between the alleged act and the filing of the charge, surely a period no longer than that should be allowed between the time of filing the charge and issuing the complaint." The short answer is that Congress placed no such limitation. In addition, there are numerous cases indicating the delay in issuing the complaint herein was not so unreasonable as to warrant dismissal because of such delay.

For the foregoing reasons Respondent's motion to dismiss is hereby denied.

#### Refusal to Bargain

As previously noted herein, five meetings were held between Respondent's agents and the bargaining agents of the Union. The first of these meetings was held July 31, 1950, at which time the Union submitted its proposed contract. Respondent's agents asked for time to study the contract and another meeting was scheduled for August 9, 1950.

At the August 3, 1950, meeting the Union's proposed contract was discussed in detail. Specific provisions concerning, *inter alia*, union security, seniority, grievance procedure, night premium pay, and maternity leave were discussed. Another meeting was scheduled for August 25, 1950.

At the August 25, 1950, meeting Respondent submitted a proposed contract. This contract was discussed and tentative agreement on some subjects was reached, but in the main the Union rejected the Respondent's proposed contract and the next two meetings were devoted to the differences between the two proposals.

At the conclusion of the fourth meeting on August 31, 1950, the parties had not reached agreement on several items including union security, seniority, and management rights clause.

On September 11, 1950, two international representatives of the Union and Respondent's attorney met informally and sought means for reconciling the differences between the parties. At this meeting the union representatives indicated they were seeking a 10-cent wage increase. Respondent's attorney indicated he would discuss this with company officials.

<sup>3</sup> See Board's Reply Brief in *N. L. R. B. v. American Thread Company*, 198 F. 2d 137 (C. A. 5).

The last meeting of the negotiators was held on October 9, 1950. At this meeting Respondent's agents announced that the Company was not in a position to grant increases in wages. After considering this matter and the other matters still in dispute (some major and some minor) the Union suggested that Respondent prepare a contract which Respondent would sign embodying the tentative agreements reached since the submission of Respondent's original proposal. Respondent's agents indicated that any changes in the contract proposed by Respondent on August 25, 1950, would have to be approved by Respondent's main (Baltimore) office and that they would endeavor to obtain such approval and would send to Baltimore such a contract. A tentative meeting was scheduled for October 17, 1950, but was canceled to give Respondent's attorney additional time to contact the Baltimore office. Another meeting was tentatively scheduled for October 27, 1950. Thereafter Respondent's attorney contacted Respondent's Baltimore office about the revisions tentatively made in the company proposal of August 25, 1950. Shortly before October 25, 1950, one of Respondent's Baltimore officials telephoned the manager of Respondent's Fremont plant (the plant involved herein) and told him (the manager) that Respondent "couldn't possibly go along with" the changes and amendments which the Union wanted.

By letter dated October 25, 1950, Respondent informed the Union :

Since our last conversations with you, we have endeavored to re-write proposed contract clauses and have forwarded the same to Baltimore for their advice.

We have just heard that the Company's headquarters do not approve of the changes which you have proposed and which we have, from time to time, discussed.

Therefore, it appears that we have reached a complete impasse in our negotiations and that no purposes would be served by holding any further meetings. This is to advise that the meeting which was tentatively scheduled for Friday, October 27, is accordingly cancelled.

By letter dated October 27, 1950, Respondent sent a copy of the above-quoted letter to its employees and further advised them :

Under the law, we are required to hold meetings and bargain collectively in good faith. We have been doing this ever since last summer. However the law does not compel us to reach an agreement and we have found it impossible to do so with the Union. We believe that we have fully complied with our duty to bargain and that there is no use meeting further with the Union.

We want you to know the facts as we do not know what the Union will tell you. If the Union should resort to force (as Unions sometimes do) we want you to know that you have the right to work. You do not have to go out on a strike and lose your earnings because the Union, or a small minority in the plant, tell you to. Your right to work will be protected by law. Moreover, while you have the right to engage in Union activities, you have an equal right to refrain. You are not obliged by any card that you may have signed in the past. In other words, you have the right to resign from the Union. We shall never agree to force our employees to join the Union in order to work here.

We want you always to know the facts so that we may have a better understanding of each others problems. If you have any questions do not hesitate to ask us.

In early November 1950, an employee of Respondent, Raymond Wolters, told the Fremont plant manager that various employees wished "to circulate a petition to have the Union withdrawn from the plant." He was told that Respondent "could not help him in any way, shape or form" and if it was gotten up it would have to be on his own initiative. A few days later Wolters presented to the plant manager a petition listing names and purported signatures of a majority of the employees in the bargaining unit.<sup>3</sup> This petition stated:

We, the undersigned, being a majority of the employees in the bargaining unit at C. C. Lang and Son Inc., Fremont, Michigan hereby certify that we no longer wish to be represented by United Food Workers Local 530 C. I. O.

As noted elsewhere herein the Union, on November 6, 1950, filed the charge in Case No. 7-CA-516 and on March 8, 1951, filed the charge involved herein.

On December 28, 1950, Respondent, without notice to or consultation with the Union, unilaterally granted a general wage increase to all employees at the Fremont plant. Another general wage increase to all employees was similarly granted in August 1951 and in February 1952.

#### Contentions on Refusal to Bargain

The General Counsel contends that by bringing the negotiations to an abrupt halt in October 1950, Respondent violated the Act. Respondent asserts that it bargained with the Union until a genuine impasse was reached and that because of this impasse it could abstain from further negotiations and that its letters of October 25 and 27, 1950, were not violative of the Act.

It is apparent from the record as a whole that the authority of Respondent's representatives at the bargaining table, especially after the August 25, 1950, meeting, was limited to listening to the Union's proposals. Such is revealed by the testimony of Respondent's witnesses and by the fact that even minor tentative agreements were subject to review and approval by Respondent's main office, as revealed at the last meeting of the parties and by Respondent's brief herein. As indicated above, at the last meeting of the parties the Union receded from its position of inflexibility (receded from its position concerning differences) and sought merely a contract as proposed by Respondent and as revised by tentative agreements of the negotiators. This new factor evidenced a change in the position of the Union. In view of this position of the Union it is difficult to believe that further negotiations would have been futile. Nevertheless Respondent categorically rejected this proposal, brought the negotiations to an abrupt halt, and suggested to its employees that they resign from the Union. This attitude on the part of Respondent is not indicative of good-faith bargaining and the undersigned is unable to conclude, on this record, that an impasse had been reached.

Respondent seems to contend that its letter of October 25, 1950, to the Union was merely an expression of its opinion that an impasse had been reached and that after receipt thereof it was incumbent upon the Union to take issue therewith if it thought to the contrary. The undersigned does not agree. It is apparent that this letter when considered alone or when considered in conjunction with the entire record, including Respondent's letter to its employees, was more than such an expression and was an effectual termination of the negotiations.

<sup>3</sup> No evidence was offered that the employees whose names appear on the petition actually affixed their signatures thereto and none was offered with respect to any of the circumstances of the preparation or signing of the document. The record discloses no evidence that Respondent made a comparison of these signatures with those of the named employees which it presumably has on its payroll records. Cf. *Louisville Refining Co.*, 102 F. 2d 678 (C. A. 6).

and was an indication that any request by the Union to resume negotiations would be a futile gesture.

Respondent argues that the petition which was given to the plant manager in November 1950 constitutes a repudiation of the Union by a majority and that as a result the Union has lost its representative status acquired in the election in July 1950; reliance is placed upon the decision in *N. L. R. B. v. Vulcan Forging Co.*, 188 F. 2d 927 (C. A. 6). The undersigned is of the belief that this argument must be resolved adversely to Respondent. Subsequent Board law and the weight of court law adopt a contrary view. See *Ray Brooks*, 98 NLRB 976 and cases cited therein. Furthermore, there are two important distinctions between the instant matter and the *Vulcan Forging* case. In the latter case the Company notified the Union of its receipt of the repudiation petition and sought union acquiescence to a deferment of negotiations. Herein Respondent gave no such notice or excuse for refusing to bargain or ignoring the Union. Also in the *Vulcan Forging* case, the court decision indicates the repudiation petition was "signed" by the employees and that "the revocations were valid." Herein, as noted above, there is no evidence concerning the circumstances of the signing, or as to who actually affixed the signatures. In addition, it is noted herein that the defections from the Union occurred after October 25 and 27, 1950, the dates Respondent brought the negotiations to an abrupt halt and suggested to its employees that they resign from the Union. Accordingly, the defections were attributable to the unfair labor practices committed and did not terminate Respondent's continuing duty to bargain with the Union. See *Sue-Ann Manufacturing Company*, 98 NLRB 848.

The contention that there was no obligation to bargain because of loss of majority is entirely lacking in merit. See *N. L. R. B. v. Gittlin Bag Co.*, 196 F. 2d 158 (C. A. 4) and cases cited therein.

Respondent contends that the wage increases were permissible since they were given after the parties had reached an impasse following negotiations. However, as noted above, the undersigned is not persuaded that an impasse had been reached. Furthermore, the wage increases granted to the employees had not previously been offered to and rejected by the Union. The Union had sought a 10-cent wage increase and Respondent had stated it was not in a position to grant any wage increases. It is apparent from the record that the wage increases granted were less than 10-cent wage increases. Thus it appears that even if an impasse had been reached with respect to some issues it had not been reached with respect to wage increases. Under these circumstances Respondent's wage increases constituted a denial of effective participation by the bargaining representative of its employees in wage determinations and constituted a violation of Respondent's duty to bargain.<sup>4</sup>

#### CONCLUSIONS

In view of the foregoing and upon the entire record in this case, the undersigned makes the following findings of fact and conclusions of law.

1. Respondent is engaged in commerce within the meaning of the National Labor Relations Act, as amended.

2. United Food Workers, Local Union No. 530, Retail, Wholesale, and Department Store Union, CIO, is a labor organization within the meaning of the Act.

<sup>4</sup> *N. L. R. B. v. Crompton-Highland Mills, Inc.*, 337 U. S. 217; *Dixie Culvert Mfg. Co.*, 87 NLRB 554; and *Shannon and Simpson Casket Company*, 99 NLRB 430.

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 of the Act:

All employees of the Fremont plant of the Company, excluding foremen, floorladies, office and clerical employees, truckdrivers, guards, and supervisors as defined in the Act, and casual employees.

4. At all times since on or about July 14, 1950, the United Food Workers, Local Union No. 530, Retail, Wholesale, and Department Store Union, CIO, has been the exclusive representative of all employees in the aforementioned unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

5. On or about October 25, 1950, and at all times thereafter, Respondent refused and has continued to refuse to bargain collectively with the aforementioned Union as the representative of the employees in the unit heretofore found appropriate.

6. That by the aforesaid refusal to bargain Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Act.

#### THE REMEDY

Since it has been found that Respondent has engaged in unfair labor practices, in order to effectuate the policies of the Act it will be recommended that Respondent take the action hereinafter specified.

[Recommendations omitted from publication in this volume.]

### Appendix A

#### NOTICE TO ALL EMPLOYEES

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

WE WILL, upon request, bargain with UNITED FOOD WORKERS, LOCAL UNION No. 530, RETAIL, WHOLESALE, AND DEPARTMENT STORE UNION, CIO, as the exclusive representative of all employees in the bargaining unit described below with respect to wages, rates of pay, 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 employees of the Fremont plant of the Company, excluding foremen, floorladies, office and clerical employees, truckdrivers, guards, and supervisors as defined in the National Labor Relations Act, and casual employees.

WE WILL NOT take any unilateral action in derogation of the above-named union's right to act as the exclusive representative of our employees in the above-described unit, with respect to any matter properly subject to the collective-bargaining process.

WE WILL NOT interfere, in any other manner, with the efforts of the union to bargain collectively with us, in regard to the above-mentioned matters, as the exclusive representative of our employees in the appropriate unit described above.

All of our employees are free to become, remain, or refrain from becoming members of the above-named union or any other labor organization except to the extent that their right to refrain may be affected by a lawful agreement which requires membership in a labor organization as a condition of employment.

C. C. LANG & SON, INC.,  
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.

RADIO STATION WAPA and GREMIO DE PRENSA, RADIO Y TEATRO DE PUERTO RICO, INDEPENDIENTE, PETITIONER. *Case No. 24-RC-241. February 27, 1953*

### Supplemental Decision and Order

On November 19, 1951, the Board issued a Decision and Direction of Election in the above-entitled case.<sup>1</sup> Thereafter, on December 29, 1951, the Petitioner was certified as the representative of a unit of all radio actors, actresses, sound men, comedians, special program announcers, narrators, and commentators, scriptwriters, and all such employees who work on packaged programs sponsored by Procter & Gamble Commercial Company and other sponsors, but excluding all executive and administrative personnel, radio station announcers, control men, transmitter operators, guards, watchmen, and all supervisors as defined in the amended Act. On January 13, 1953, on motion of the Petitioner, the Board reopened the record and remanded this proceeding to the Regional Director for the Twenty-fourth Region for the purpose of conducting a hearing as to the unit status of employee Margarita Nazario.<sup>2</sup>

Pursuant to the Board's Order of January 13, a reopened hearing was held on January 23 before George L. Weasler, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board<sup>3</sup> makes the following supplemental findings:

<sup>1</sup> Not reported in printed volumes of Board decisions.

<sup>2</sup> On November 3, 1952, the Petitioner filed a motion to reopen hearing and clarify unit as to the status of employee Nazario. On December 17 the Board issued a notice to show cause why the Board should not grant the motion of the Petitioner. No responses having been filed to this notice, the order to reopen and remand ensued.

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