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

CONCLUSIONS OF LAW

1. International Woodworkers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.
2. 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.
3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.
4. The Respondent has not discriminated in regard to the hire and tenure of employment of Grady Jenkins and Edmond Cruson by discharging them on June 19, 1952, and by thereafter failing and refusing to reemploy them.

[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 NOT in any 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 WOODWORKERS OF AMERICA, CIO, 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 conduct 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. All our employees are free to become or remain members of this union, or any other labor organization.

CAPITAL LUMBER COMPANY, 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.

JACKSON DAILY NEWS *and* LOCAL NO. 215 OF INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, AFL. *Case No. 15–CA–515. March 2, 1953*

Decision and Order

On December 19, 1952, Trial Examiner George A. Downing issued his Intermediate Report in the above-entitled proceeding, finding that

the Respondent had engaged in and was engaging 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. Thereafter, the Respondent filed exceptions to the Intermediate Report with a supporting brief.

The Board [1] has reviewed the rulings made by the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed.[2] 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 additions and modifications as set forth below.

We agree with the Trial Examiner's finding that by refusing to honor the Board's certification of Local 215 and to bargain with that organization, the Respondent, after July 1, 1952, violated Section 8 (a) (5) and 8 (a) (1) of the Act.[3] In so finding, we, like the Trial Examiner, as fully set forth in the Intermediate Report, reject the Respondent's contention that it was entitled in this proceeding to a relitigation of the issues decided by the Board in the representation case.[4]

The Respondent defends its refusal to bargain on two grounds: (a) That the hearing on challenged ballots prior to certification in the representation case did not conform to the requirements of the Administrative Procedure Act, and (b) that regardless of that Act, the hearing deprived Respondent of a fair and impartial hearing as required by the fifth amendment, because the hearing officer refreshed his knowledge of the issues in the case by referring to the affidavits and data in the Board's Regional Office files, to which files the Respondent was denied access.

The first contention has already been determined by the Board in the representation case. Under the second contention, the Respondent argues that if it had been given access to the affidavits and other material in the files, the Respondent could have impeached the witnesses in question, thus forestalling the credibility findings made by the hearing officer upon which the Board relied for its final determination. We find no merit in this contention. The record is clear that the hearing officer used the data in the files to bring out facts for the record necessary for the Board's determination. The witnesses interrogated

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

[2] The Respondent's request for oral argument is hereby denied, because the record, exceptions, and briefs, in our opinion, adequately present the issues and positions of the parties.

[3] 99 NLRB No. 18.

[4] *Kearney & Trecker Corporation,* 101 NLRB 1577.

by the hearing officer were subject to full right of cross-examination by the Respondent. The credibility findings of the hearing officer and the findings of the Board on the issues of the challenged ballots are supported by evidence in the record. While we agree with the Trial Examiner that a hearing officer may assist himself and the Board in making credibility findings by referring to the investigative files of the Regional Office, there is no basis in this record for the statement that the hearing officer relied for such credibility findings on any material outside the record other than the witnesses' own appearance on the stand.[5] We therefore find no merit in the Respondent's contention that it was denied a fair hearing or that the hearing was lacking in due process required by the Constitution.

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, Jackson Daily News, Jackson, Mississippi, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

Refusing to bargain collectively with Local No. 215 of International Printing Pressmen and Assistants' Union of North America, AFL, as the exclusive representative of all pressmen and stereotypers at the Respondent's Jackson, Mississippi, plant, excluding all guards, watchmen, and supervisors as defined in 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 Local No. 215, International Printing Pressmen and Assistants' Union of North America, AFL, as the exclusive representative of its employees in the aforesaid appropriate unit.

(b) Post at its plant at Jackson, Mississippi, copies of the notice attached hereto and marked "Appendix A."[6] Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being 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.

[5] There is nothing in the record to suggest that the material in the files was shown to the witnesses to refresh their recollections. Had such material been shown to the witnesses and denied to counsel for purposes of cross-examination, there would have been presented a different situation, upon which we need express no opinion at this time.

[6] Said notice is hereby amended by deleting 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 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"

Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

This proceeding, brought under Section 10 (b) of the National Labor Relations Act as amended (61 Stat. 136), was heard in Jackson, Mississippi, on November 14, 1952, pursuant to due notice to all parties. The complaint, issued on October 21, 1952, by the General Counsel of the National Labor Relations Board,[1] and based on charges filed by the Union and served on Respondent, alleged in substance that Respondent had engaged in unfair labor practices proscribed by Section 8 (a) (1) and (5) of the Act by refusing, on about July 1, 1952, and since, to bargain with the Union, which had been certified by the Board in Case No. 15–RC–549 on June 3, 1952, as the exclusive representative of Respondent's employees in an appropriate unit.

Respondent answered on November 4, 1952, admitting that it refused to bargain with the Union, but pleading that the certification was in error, that it constituted a denial of due process, and that a majority of Respondent's employees had not selected the Union as their representative. Respondent pleaded additional defenses alleging irregularity of the proceedings in Case No. 15–RC–549 which may be summarized as follows: (a) That the hearing officer, Andrew P. Carter, was not a qualified hearing examiner under the Administrative Procedure Act (herein called A. P. A.), and that Respondent had made a timely motion to disqualify him on that ground during the hearing in the representation case; (b) that pursuant to the Board's Order of January 5, 1952, Carter proceeded to report on the credibility of witnesses and to make findings of fact and recommendations to the Board based on his determination of credibility; and (c) that in questioning witnesses at that hearing Carter improperly consulted affidavits and other information secured by the investigative staff of the Board and refused to exhibit said matter to counsel for the parties. Respondent filed at the hearing herein an amended answer which elaborated on its foregoing defenses and which urged that under A. P. A. a qualified and impartial hearing officer was required to pass on credibility and to make the findings of fact and recommendations which were directed by the Board.

All parties were represented at the hearing by counsel, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally, and to file briefs and proposed findings and conclusions. The case was argued briefly by the General Counsel and the Respondent. The Respondent has filed a brief.

Upon the entire record in the case the undersigned makes the following:

FINDINGS OF FACT

1. The evidence

This is a refusal-to-bargain case in which the only issues concern the regularity of the prior representation proceedings in Case No. 15–RC–549, and the validity

[1] The General Counsel and his representatives at the hearing are referred to herein as the General Counsel and the National Labor Relations Board as the Board. The above-named Respondent is referred to as Respondent and the charging union as the Union.

of the Board's certification issued therein, the Respondent admitting that it has refused to bargain with the Union. Furthermore, Respondent's contentions in the present proceeding are substantially the same as those which it made in the representation case and which were there specifically considered and overruled by the Board. By stipulation, the record and proceedings in the representation case were judicially noted, and no additional evidence was offered by the parties, though Respondent endeavored to subpena the hearing officer and certain records of the Board, as later more fully alluded to. The findings of fact here made are based on the records in this and in the prior proceeding, including the Board's findings in its Decision and Direction, 99 NLRB No. 18.

As found by the Board in the representation case, the Respondent is engaged in commerce, and the Union is a labor organization, within the meaning of the Act; and all pressmen and stereotypers of the Respondent at its Jackson, Mississippi, plant, excluding all guards, watchmen, 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.

On July 25, 1951, pursuant to a stipulation for certification upon consent election, the Board conducted a secret election among Respondent's employees in the foregoing unit. The facts concerning the election and the contest over the challenged ballots, the hearing thereon, and the disposition thereof are fully stated in the Board's Decision and Direction, *supra*, and need not be here repeated. It is sufficient to note that on Respondent's exceptions to the Regional Director's report on challenged ballots, the Board, on December 17, 1951, remanded the case to the Regional Director with direction to hold a hearing on specified issues concerning the challenged ballots, and that on January 5, 1952, it amended that order to provide that the hearing officer to be designated for said hearing should "prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the issues involved."

The hearing was held on January 22 and 24, 1952, before Andrew P. Carter, an attorney on the Regional Office staff, who appeared as the hearing officer for the Board. The 480-page transcript of the record of that hearing reflects that the issues specified by the Board were fully explored and litigated. The record also establishes that on the first day of the hearing after the representatives for the parties had completed their examination of a certain witness and after the hearing officer had also questioned the witness at some length, counsel for the Respondent objected on grounds which may be summarized as follows: That for the second time during the hearing the hearing officer was questioning a witness from a document contained in the Board's investigative file, not available to the parties, and about matters not brought out on either direct or cross-examination; that such procedure was in violation of the Administrative Procedure Act because, among other things, Carter was in effect acting both as hearing officer and as an attorney; and that Carter could not render an impartial report or make impartial findings, particularly on the credibility of witnesses, after resorting to the private and confidential memoranda and reports of his associates in the Regional Office which Carter could not exhibit to the parties, which could not be put in evidence, and which the Respondent had no opportunity to answer because it could not see them.

The hearing officer stated on the record that his questioning at that point was about matters not developed by either party and that it was based on matters in the Board's investigative file, specifically on excerpts from the witness' affidavit which had been given to a field examiner of the Board. The hearing officer also stated that he could not exhibit the matter to counsel and that it was

otherwise unavailable to them. With regard to the question of his impartiality, the hearing officer stated that he had previously resorted equally to affidavits and documents submitted during the investigation both by the Company and by the Union. He stated, however, that although he would himself pass on the credibility of witnesses pursuant to the Board's direction, the contents of the investigative file to which he had referred would not constitute a part of the record before the Board for its determination of the election issues, nor would they be available to the Trial Examiner in any subsequent complaint case, unless perchance the Trial Examiner were to rule for some reason that such file or its contents should be admitted in evidence.

The hearing officer thereupon denied Respondent's motion to adjourn the hearing to a date when a duly qualified hearing examiner would be present; and the hearing proceeded without further incident.

The hearing officer issued his report on February 29, 1952, basing his findings and his recommendations to the Board in substantial part on his resolution of the credibility of witnesses. Respondent filed exceptions in which, among other things, it renewed its objections to the manner in which the hearing had been conducted and renewed its motion that the proceedings conform to the requirements of A. P. A.

On May 13, the Board issued its Decision and Direction in which it accepted in large part the hearing officer's credibility findings and affirmed his rulings at the hearing, finding them to be free of prejudicial error. The Decision also referred specifically to Respondent's objections to the conduct of the hearing and disposed of them in the following language:

> In addition, it renewed its motion for adjournment which it had urged at the hearing on the ground that the provisions of the Administrative Procedure Act were not being complied with because the Hearing Officer had access to the Board's investigative files.[1]

[1] We deny the "Renewal of Motion of Employer that Proceedings Conform to the Requirements of Administrative Procedure Act" inasmuch as proceedings for "the certification of employee representatives"—such as this proceeding is—are specifically exempted from the provisions of the Administrative Procedure Act. See Section 5 (6) thereof, 5 U. S. C. A. Sec. 1004.

The Board also considered the Respondent's exceptions to the hearing officer's findings as to the challenged ballots and concurred in those findings. Its Decision concluded with a direction that the Regional Director open and count four ballots, as to which challenges had been overruled, and to prepare and serve a supplemental tally of ballots. Upon counting those ballots, the Regional Director found that a majority of all ballots cast were in favor of the Union, and on June 3, 1952, issued, on behalf of the Board, the usual formal certification.

In the present proceeding Respondent renewed, with elaborations, its contentions as to the irregularities in the hearing before the hearing officer. The General Counsel offered no evidence other than stipulations that the proceedings and record in the representation case be judicially noted and as to the finding by the Regional Director of a majority of ballots for the Union and its certification. On its part, Respondent had sought and obtained from the Regional Director, prior to the hearing, a *subpena duces tecum* directed to Carter, which required the production of the entire Board file in the representation case, expressly including

> [A]ll ex parte affidavits secured and placed in said file by the investigative officer or agent of the National Labor Relations Board together with all conclusions of fact or law prepared by said National Labor Relations Board

in said file, and expressly every document in connection with the aforesaid case which was examined by Andrew P. Carter during a hearing conducted by him in that matter as Hearing Officer on or about January 22 and January 24, 1952 and not a part of the official transcript submitted to the National Labor Relations Board on appeal, whether or not said documents were examined by Mr. Carter before trial above referred to, during trial or after the trial.

Contemporaneously, Respondent applied to the General Counsel in Washington for his written consent to the production of said documents on the grounds that:

> [T]he matter has become important in that a question has arisen as to whether or not the Hearing Officer, through his consultation before, during and after the hearing, of ex parte affidavits and investigative reports of the National Labor Relations Board, has not violated [the] Administrative Procedure Act and failed to give due process to Respondent.
>
> At the previous trial, Case No. 15–RC–549, we made demand for the production and examination of these ex parte matters, to which the Hearing Officer was then and there referring in our presence, and we were refused, contrary, we believe, to law.
>
> We have taken the position that such a procedure is totally devoid of the elements of an impartial hearing and desire that the records show that which Mr. Carter consulted, which can only be done under the subpoena duces tecum.

Respondent's request was denied, prior to the hearing, by George J. Bott, General Counsel, by the following telegram:

> Re: Jackson Daily News, 15–CA–515. Attorney and documents subpoenaed are under supervision of General Counsel. Reasons cited in support of your request that permission be granted in this matter to Andrew P. Carter to produce Regional Office file in Jackson Daily News 15–RC–549 and testifying with respect thereto are insufficient to warrant deviation from well established Board policy that such records or testimony on them may not be made available for such purposes. Therefore your request must be respectfully denied at this time.

On November 12, Richard C. Keenan, chief law officer of the Board's Fifteenth Region, filed a petition with the Regional Director on behalf of Carter, to revoke the subpena on the grounds that Carter was an attorney employed by the Board and assigned by the General Counsel to the Fifteenth Region; that the documents sought by the subpena were official Board documents and not in Carter's custody and control; and that, written consent not having been obtained from the appropriate authority, Carter was forbidden to disclose official information under Section 102.87 of the Board's Rules and Regulations. The Regional Director, by order, referred that petition to the Trial Examiner, who, after hearing argument, granted the petition on the authority of the Board's Regulations.[2]

Respondent also sought during the hearing to call to the stand Carter, who was present in the hearing room, but Keenan declined to permit Carter to take the stand because he had been denied permission to testify; and the Trial Examiner denied Respondent's request that Carter be ordered to take the stand.

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[2] The validity of similar regulations has been upheld by the courts. See, e. g., *Touhy* v. *Ragen*, 340 U S. 462; *Boske* v *Comingore*, 177 U. S. 459.

Thereafter, though conceding that on the merits of the issues involved in the representation case they had no new evidence to present which was unavailable at the time of the earlier hearing, or any newly discovered evidence, Respondent's counsel contended that in order to cure the alleged irregularities and lack of due process in the former hearing, it was necessary for the Trial Examiner, despite the stipulation regarding the record in that case, to hear *de novo* the evidence which was taken in that case. Respondent contended also that the records which would have been produced under the subpena, had it not been quashed, as well as Carter's testimony as to what he consulted before, during, and after the hearing in the representation case, would have constituted further relevant evidence supporting and establishing its contentions as to Carter's disqualification and as to the lack of due process in the hearing which he conducted.

2. Concluding findings

Respondent urges in its brief two main contentions: (1) That the representation hearing was void because it did not comply with A. P. A. requirements; and (2) that regardless of statute, Respondent was entitled, under constitutional requirements of due process, to a fair and impartial hearing on the issues on which the Board had directed the hearing. Those contentions will be considered in order.

(1) Though representation proceedings under Section 9 of the Act are not directly reviewable by the courts of appeal, as are unfair labor practice cases brought under Section 10, yet in a case like the present, the record in the representation proceeding becomes a part of the record in the complaint case. Section 9 (d); *American Federation of Labor* v. *N. L. R. B.*, 308 U. S. 401. The result is, as the Supreme Court observed in *Pittsburgh Plate Glass Company* v. *N. L. R. B.*, 315 U. S. 146, that "the unit proceeding and this complaint on unfair labor practices are really one."

It is also well settled that issues which have been litigated in the prior representation proceeding may not be relitigated thereafter in the complaint case unless it can be shown that facts not then known had subsequently become available and were of substantial materiality to the resolution of the issues involved *Pittsburgh Plate Glass Company* v. *N. L. R. B*, *supra* at pp. 161–2; *N. L. R. B* v. *West Kentucky Coal Company*, 152 F 2d 198, 200–1 (C. A 6), cert. den. 328 U. S. 866; *Allis-Chalmers Mfg. Company* v. *N. L. R. B*, 162 F. 2d 435, 440–1 (C. A. 7); *N. L. R. B.* v. *Worcester Woolen Mills*, 170 F. 2d 13 (C. A. 1); *North Carolina Granite Company*, 98 NLRB 1197; *Goodyear Rubber Sundries, Inc.*, 92 NLRB 1382; *S. H. Kress & Company*, 88 NLRB 292, 298–9.

Indeed, it is held that the determination in the representation case is *conclusive* where the objections raised by the employer as ground for its refusal to bargain were raised and considered in the representation case, *Postex Cotton Mills*, 80 NLRB 1187 (set aside on other grounds, 181 F. 2d 919), and that it is neither necessary *or proper* for the Trial Examiner to permit the relitigation of such matters,[3] *Grede Foundries*, 83 NLRB 201; *North Carolina Granite Company, supra; Southwestern Electric Service Company*, 94 NLRB 859 (set aside on other grounds, 194 F. 2d 939). Thus, the Board's disposition of such issues becomes, so far as the Trial Examiner is concerned, the law of the case. Cf. *J. H. Rutter-Rex Manufacturing Company*, 86 NLRB 470, at p. 497.

The foregoing principles have been reaffirmed in the face of contentions (such as Respondent makes here) that under A. P. A. the Trial Examiner cannot hold

[3] "A single trial of the issue was enough," as the Supreme Court observed in the *Pittsburgh Plate Glass* case, *supra*.

himself bound by the Board's findings in the prior representation case, but must make an independent determination of the issues therein decided. *Clark Shoe Company*, 88 NLRB 989 (set aside on other grounds, 189 F. 2d 731); *American Finishing Company*, 90 NLRB 1786, 1794.

It is true that, absent a showing of newly discovered or previously unavailable evidence, the complaint hearing becomes but a formality—albeit a necessary one in view of the statutory structure for judicial review. But in its present posture, this case is clearly controlled by the principles and authorities cited above. As appears from the preceding section, no newly discovered evidence was offered on the merits of the questions which were referred to the hearing officer and which were determined by the Board. On the question of alleged irregularities in the representation hearing, though the General Counsel's refusal of Respondent's request for the production of the Board's files and for the testimony of the hearing officer precluded Respondent from presenting more detailed evidence yet the record in that case divulges the manner in which the hearing officer conducted the hearing and the nature of the material to which he referred.

Respondent's contentions that the hearing did not conform to the requirements of A. P. A. have therefore been disposed of by the Board's decision that such proceedings are specifically exempt from said Act,[4] and the Trial Examiner is without authority to review that action,[5] though Respondent is free, of course, to urge before the Board reconsideration of its contentions.

(2) Respondent's second contention that, regardless of statute, it was entitled under constitutional requirements of due process to a fair and impartial hearing, was not made to the Board in the representation proceeding, but is argued at great length in its brief to the Trial Examiner. The fundamental fallacy in that argument is that it is premised on a misconception of the nature of representation proceedings and of the Board's functions under Section 9 (c). For what the Board conducts under that section are *investigations* of questions concerning representation, and in doing so it acts purely in an investigative and nonadversary capacity. *Inland Empire District Council* v. *Millis*, 323 U. S. 697.

Though hearings are required at the preelection stage, they are specifically exempt from A. P. A.; and there is no requirement for hearings on questions concerning the election or on challenged ballots, or at any postelection stage of the Board's investigation. Indeed, all that precedes the certification is preliminary and tentative; the Board is free to hold an election or to utilize other suitable methods, and such other methods, often employed, are frequently of an informal character. *Inland Empire District Council* v. *Millis*, *supra*.[6]

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[4] See also *Talladega Cotton Factory, Inc*, 91 NLRB 470, where the Board held that the limitation in Section 9 (c) (1) on the powers of hearing officers applies only to the hearing normally conducted *before* an election is ordered, and not to a postelection hearing on objections or exceptions to a Regional Director's report on challenged ballots.

[5] See, in addition to case previously cited, *Grace Company*, 84 NLRB 435, where the Board expressed its disagreement "with the Trial Examiner's conclusion that it was incumbent upon him to pass upon whether the Board acted arbitrarily and capriciously in the representation case."

[6] The constitutional requirements of due process do not, of course, require that hearings be held in all cases *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297, 304. *United States* v. *Babcock*, 250 U. S. 328; *Butfield* v. *Stranahan*, 192 U. S. 470, 497; *Bi-Metallic Co.* v. *Colorado*, 239 U. S. 441, cf. *Origet* v. *Hedden*, 155 U. S. 228, 235–7. Nor is this a case where because of constitutional compulsions, the requirement for a hearing has been read into the statute to save it from invalidity. *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 50. Being instead such a hearing as administrative agencies may hold by *regulation*, rule, custom, or special dispensation, it is excluded from the coverage of A. P. A. by the limitation in Section 5 to hearings "required by statute." *Ibid.*

The Board's regulations have long provided that it may decide election and postelection questions forthwith upon the basis of the prior investigation where it appears that exceptions to the Regional Director's report do not raise substantial or material issues. Rules and Regulations, Series 6, Sec. 102.61. Though the Regulations provided further that the Board *may* direct a hearing if the exceptions do raise such issues, that hearing is only supplementary to and in continuation of the Board's *investigation* of the question concerning representation.[7] Cf. *Rite-Form Corset Co. Inc.*, 75 NLRB 174, and *Inland Empire* case, *supra*.

In such a hearing the Regional Director may himself act as the hearing officer, or he may designate some other employee of the Regional Office, including, of course, any who may have conducted or participated in the prior portion of the investigation or any who may have assisted in the preparation of his former report to the Board. Cf. *Huntsville Manufacturing Co.*, 99 NLRB 713.[8] It would, of course, be entirely proper for any such hearing officer to utilize the knowledge he had obtained at the preceding stage of the investigation (cf. *Pittsburgh Plate Glass Co.* v. *N. L. R. B.*, *supra*, at pp. 157–8) ; and only so could the Board obtain the fullest possible assistance from its hearing officer in a situation where questions of credibility are so important. *Talladega Cotton Factory, Inc.*, *supra*. No impropriety therefore appeared from Carter's act, in assisting himself and the Board in the resolution of credibility questions, of referring to affidavits obtained at the preceding stage of the investigation.

The lengthy record shows that the hearing officer accorded the parties full opportunity for exploration of the issues, for the full cross-examination of all witnesses, and for re-cross-examination following all instances in which he had himself questioned the witnesses. In view of the nature of the proceedings involved (*Inland Empire* case; and see footnote 6, *supra*), the constitutional requirements of due process were, therefore, fully met.[9]

It is, therefore, concluded and found that on July 1, 1952, and since, Respondent refused to bargain with the Union as the exclusive representative of Re-

[7] Such provisions antedate both the A. P. A. and the Taft-Hartley amendments, and were, of course, known to Congress, since in the course of adopting the latter amendments it considered in great detail the provisions of the earlier legislation and the procedures which the Board had adopted and followed in applying that legislation. Yet, though Congress by the amendment contained in Section 9 (c) (1) expressly limited the powers formerly exercised by hearing officers at the preelection stage (see Sen. Rep. No. 105, 80th Cong., p. 25 ; and see *Talladega Cotton Factory, supra*), it made no change in the Board's detailed postelection procedures, thereby demonstrating its approval of them. *N L. R. B.* v. *Gullett Gin Co., Inc.*, 340 U. S. 361 ; cf. *Apex Hosiery Company* v. *Leader*, 310 U. S. 469.

[8] Respondent had expressly agreed in the stipulation for consent election that the Board's postelection procedures should govern. Thus, Section 5 of that document provided.

> All procedure subsequent to the conclusion of counting ballots, including the issuance by the Board of a Decision and Certification of Representatives, if appropriate, shall be in conformity with Sections 203.61 and 203 62 [presently 102.61 and 102 62] of the Board's Rules and Regulations.

[9] Nor could Carter properly be called to testify as to the basis of his recommendations to the Board, for as the Supreme Court has said (*United States* v. *Morgan*, 313 U. S. 409, 422) ·

> We have explicitly held . . . that "it was not the function of the court to probe the mental processes of the Secretary." 304 U. S. 1, 18. Just as a judge cannot be subjected to such a scrutiny, compare *Fayerweather* v. *Ritch*, 195 U. S. 276, 306–07, so the integrity of the administrative process must be equally respected See *Chicago B. & O. Ry. Co.* v. *Babcock*, 204 U. S. 585, 593.

spondent's employees in an appropriate unit, and has thereby engaged in unfair labor practices proscribed by Section 8 (a) (5) and (1) of the Act.

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

CONCLUSIONS OF LAW

1. Respondent's activities occurring in connection with Respondent's operations, as described above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

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

3. All pressmen and stereotypers of the Respondent at its Jackson, Mississippi, plant, excluding all guards, watchmen, 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.

4. At all times since June 3, 1952, the Union has been and now is the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By failing and refusing at all times on and after July 1, 1952, to bargain collectively with the Union as the exclusive representative of the employees in the aforesaid unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and (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.

[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 bargain collectively, upon request, with LOCAL NO. 215 OF INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, AFL, as the exclusive representative of all our employees in the bargaining unit described below, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an agreement is reached, embody such understanding in a signed contract. The bargaining unit is:
>
> > All pressmen and stereotypers employed at our Jackson, Mississippi, plant, excluding all guards, watchmen, and supervisors as defined in the Act.
>
> JACKSON DAILY NEWS,
> *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.