possibility, however, that Wynne may sustain a disabling recurrence of his injury, I shall recommend that the Board retain jurisdiction in this case by expressly reserving the right to modify, as to Wynne, any back-pay and reinstatement provisions that may become necessary by reason of change in his physical condition and to make such supplements thereto as may hereafter become necessary in order to define or clarify their application to circumstances not now appearing.

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. International Woodworkers of America, CIO, is a labor organization admitting to membership employees of the Respondent.

2. By discriminating in regard to the hire and tenure of Roy E. Fulcher and Lee A. Wynne, thereby discouraging membership in International Woodworkers of America, CIO, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

3. By assaulting and incapacitating Lee A. Wynne, and by threatening its employees with loss of employment should they engage in and continue to engage in concerted collective-bargaining and union activities, Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. By the above unfair labor practices, Respondent has interfered with, restrained, and coerced its employees in the rights guaranteed in Section 7 of the Act.

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

6. Respondent did not independently interfere with, restrain, and coerce its employees by questioning its employees concerning their membership in and activities on behalf of the Union.

7. Respondent did not increase or make more onerous the workload of Roy E. Fulcher and Lee A. Wynne and did not deny Roy E. Fulcher regular employment because either of them joined or assisted the Union or engaged in concerted activities for purposes of collective bargaining or other mutual aid and protection.

[Recommendations omitted from publication in this volume.]

AMERICAN BAKERIES COMPANY (MERITA BAKERY) *and* EMPLOYEES OF AMERICAN BAKERIES COMPANY (MERITA BAKERY), PETITIONER *and* BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL NO. 380, AFL. *Case No. 5–RD–75. March 10, 1953*

Decision and Order

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Louis S. Wallerstein, 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 finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The Petitioner asserts that the Union is no longer the bargaining representative of the employees of the Employer as defined in Section 9 (a) of the Act. The Union, a labor organization, is the currently recognized representative of the Employer's employees, who are part of a multiemployer bargaining unit.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

The Petitioner seeks decertification of the Union in a unit composed of the Employer's production and maintenance employees. The Petitioner's principal contention relates to an alleged defunctness of the Union at the Employer's plant, in reliance upon which the Petitioner would surmount two barriers, an existing contract and an existing multiemployer bargaining unit, either of which would, under normal circumstances, operate as a bar to this proceeding. The Employer contends among other things [1] that the Union is not defunct and that, accordingly, the existing contract bars this proceeding, and that the Petitioner's proposed unit is too limited in scope.

The Employer and the Rainbo Bread Company, herein called Rainbo, are separate companies engaged in the commercial production and sale of bread and cakes at Roanoke, Virginia.

The Board, as recently as June 25, 1952,[2] found that ". . . for a period of approximately two years the Employer and Rainbo have clearly evinced an intention to bargain jointly with respect to their employees and have considered themselves bound by the results of their joint negotiations." The Board further stated that ". . . the [Employer and Rainbo] constituted an informal employer association similar to those which we have frequently recognized in the past. . . ." On June 28, 1952, the contracts between the Union and the Employer, and the Union and Rainbo terminated. Negotiations were resumed with the Union on a joint basis in early July 1952 and culminated in the execution of separate but identical contracts on July 12, 1952. These contracts, which were made retroactive to June 29, 1952, will terminate on May 1, 1954. The instant petition was filed on July 25, 1952.

The Union is an amalgamated local, representing the employees of both the Employer and Rainbo. The defection within the Union of the Employer's employees apparently began sometime in the summer

[1] The Employer contends that the Petitioner is fronting for the United Construction Workers, a noncomplying labor organization. Although there is some evidence to support this contention, we find it unnecessary to decide that question in view of our Order, *infra*, that the instant petition be dismissed for the reasons hereinafter set forth

[2] *American Bakeries Co.*, 5–RC–1085 (unpublished). The International Brotherhood of Teamsters, Local 171, AFL, sought a unit of all inside employees of the Employer. The petition was dismissed because the unit sought was too limited in scope, the appropriate unit being multiemployer in nature and encompassing Rainbo's employees.

of 1951. The record clearly establishes that since at least January 1952, the Employer's employees have not been members of the Union, have not attended any union meetings, have not taken any part in the negotiations preceding the execution of the July 12 contract, and were not present at the contract ratification meeting. All officers of the Union, elected in January 1952, are employees of Rainbo. Notices of regular union meetings were posted at the Employer's plant through November 1951, but there is no proof that notices were posted thereafter. As to the ratification meeting, there was conflicting testimony as to whether a notice of such meeting had been posted at the Employer's premises. No employee of the Employer has authorized a checkoff of dues pursuant to the July 12 contract. Neither a union steward nor a grievance committee has been functioning at the Employer's plant and the Union's business agent admitted that he has had no direct contact with the Employer's employees. The employees, on three separate occasions,[3] advised the Employer that they were no longer affiliated with the Union and requested the Employer not to enter into any agreement in their behalf with the Union. The employees also notified the Union on July 10, 1952, that they no longer desired the Union to act as their bargaining representative.

Notwithstanding the above facts indicating defunctness on the part of the Union, the latter has negotiated contracts for the employees of both the Employer and Rainbo from which all employees received benefits. The Union still considers itself to be the bargaining representative of the Employer's employees. There is evidence that the Union's representatives visited the Employer's plant on occasion both before and after the signing of the July 12 contract. Although the Union apparently was suspended temporarily by its international, it presently is in good standing and its charter has not been lifted. Moreover, the Union appears to be actively functioning at Rainbo's plant.[4]

With all these circumstances in mind, we find that, as it is able to administer its contracts, the Union is not defunct at the Employer's plant.[5] In so finding, we rely particularly upon the fact that the Union has, as recently as July 1952, engaged in negotiations with the Employer and Rainbo which culminated in contracts covering the

[3] On February 15, 1952, 65 employees signed a petition which was later submitted to the Employer, advising the Employer of the employees' desires. On July 12, 1952, the Employer received a letter from the employees' committee. On July 14, 1952, the employees' committee called on the Employer's general manager. On each occasion the employees communicated their desire to rid themselves of the Union as their bargaining representative.

[4] Of the 50 employees at Rainbo, 30 are dues-paying members of the Union. A union grievance committee and shop steward are both active at Rainbo's plant.

[5] *L. O. Koven & Brothers, Inc.*, 77 NLRB 1253; *Maurice A. Knight Sons' Co.*, 84 NLRB 816; *Harrisburg Railways Company*, 94 NLRB 1028; *Acme Quality Paints, Inc.*, 95 NLRB 1025; *Allied Container Corporation*, 98 NLRB 580; *Phoenix Manufacturing Co.*, 98 NLRB 803; *Sylvania Electric Products, Inc.*, 100 NLRB 357; *Marshall Field & Co.*, 101 NLRB 512.

instant employees. We also rely upon the Union's apparent willingness to represent the Employer's employees,[6] and the Employer's recognition of the Union as the bargaining representative of its employees.[7] Furthermore, in view of the foregoing facts, the Union's active existence at Rainbo is an indication that it is not a defunct organization, and that it is capable of functioning at the Employer's plant.[8]

In view of our determination that the Union is not defunct at the Employer's plant, we find that the existing contract which will not expire until May 1, 1954, is a bar to the present petition. We further find that the petition must also be dismissed upon the ground that the unit sought herein is inappropriate. As already noted, the multi-employer bargaining pattern encompassing the Employer and Rainbo continued into July 1952, resulting in the negotiation of separate but identical contracts. Neither the Employer nor Rainbo has evinced an intent to pursue a course of individual action with regard to its labor relations. Instead, their continued bargaining together manifests a desire to be bound by group rather than by individual action. Accordingly, we find that the proposed unit, encompassing solely the employees of the Employer, is too limited in scope.[9]

For the reasons above stated, we shall dismiss the petition.

Order

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

MEMBER PETERSON, concurring:

I join in the Board's conclusion that the instant petition be dismissed, but I do so on the ground that the Petitioner is "fronting" for the United Construction Workers, a noncomplying labor organization.

The record shows that between July 15 and 19, 1952, before the filing of the instant petition on July 25, 1952, a strike was conducted by the UCW at the Employer's plant. The Petitioner, a group of the Employer's employees, was led by Daniel B. Hodges who, as chairman of the employees' committee, filed the instant petition. Hodges was an active participant in that strike, both on the picket line and as a member of a strike settlement committee. During this period, Hodges signed a UCW authorization card and spoke with UCW representatives in regard to the incumbent Union's status at the Employer's plant. Moreover, Hodges requested and obtained

[6] *Pacific-Gamble Robinson Co.*, 89 NLRB 293; see *Baker Ice Machine Co.*, 86 NLRB 385.
[7] *Maurice A. Knight Sons' Co., supra.*
[8] *Pacific-Gamble Robinson Co., supra.*
[9] *Sullivan Mining Company, et al.*, 101 NLRB 1366.

blank decertification forms from a UCW representative. Even after the filing of the instant petition, the UCW contacted the Employer and claimed the right to negotiate with the Employer on issues involving the latter's employees. On July 11, 1952, the UCW's regional office apparently typed a letter for Hodges to the Employer's manager. In denying that he received assistance from the UCW in the execution of the petition, Hodges was an evasive and unreliable witness, his testimony a web of contradictions and confusions.

While no one of the above facts standing alone constitutes clear proof that the Petitioner is "fronting" for the UCW, I believe that in the aggregate they give rise to a strong inference of "fronting." At the very least, the evidence plainly was sufficient to shift to the Petitioner the burden of going forward with additional evidence to rebut such inference and to establish the fact that the Petitioner was acting independently of the UCW.[10] This failure to proceed in this respect may be taken as indicative of an inability to do so. Accordingly, I find from the record as a whole that the Petitioner is acting as a "front" for the UCW, and agree with my colleagues that the petition herein be dismissed.[11]

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

[10] *R. J. Reynolds Tobacco Co.*, 83 NLRB 348.

[11] See *Knife River Coal Mining Co.*, 91 NLRB 176; *Hammond Bag & Paper Co.*, 94 NLRB 905; *Wood Parts, Inc.*, 101 NLRB 445; *N. L. R. B.* v. *Happ Bros. Co., Inc.*, 196 F. 2d 195 (C. A. 5).

NATIONAL SHOES, INC., AND NATIONAL SYRACUSE CORPORATION *and* UNITED WHOLESALE, RETAIL AND DEPARTMENT STORE UNION OF AMERICA, CIO, LOCAL 586. *Case No. 3–CA–562. March 11, 1953*

Decision and Order

On November 25, 1952, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief.

The Board[1] has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The

[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].