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, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose 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 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 National Labor Relations Act, as amended.

WE WILL make the employees named below, and all other nonunion employees who were similarly situated, whole for any loss of pay they may have suffered as a result of our discrimination against them:

David Carbone	Frank Scannapieco
Walter Clark	Edward McNamara
Joseph Villapiano	Eugene Louis Camoosa
Thomas DiFranco	Alphonse Santanello
James Martelli	Edward Westlake
Ralph Ruggiero	Joseph Donofrio
Steve Santaniello	George Strong

John Siliato

All our employees are free to become, remain, or refrain from becoming members of any labor organization, except to the extent that this right may be affected by agreements in conformity with Section 8 (a) (3) of the National Labor Relations Act, as amended.

JERSEY COAST NEWS COMPANY, INC.,
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.

NATIONAL CARBON DIVISION, UNION CARBIDE AND CARBON CORPORATION AND NATIONAL CARBON COMPANY, INC. *and* LOCAL 85, UNITED GAS, COKE AND CHEMICAL WORKERS, CIO. Case No. 3-CA-177. June 8, 1953

AMENDMENT TO DECISION AND ORDER

On August 22, 1952, the Board issued its Decision and Order in the above-entitled case (100 NLRB 689). Upon further consideration, it appeared to the Board that said Decision and Order should be amended. Accordingly, on April 27, 1953, the Board issued a Notice to Show Cause (104 NLRB 416), returnable on or before May 11, 1953, which return date was thereafter extended to May 25, 1953, why the Proposed Amendment to Decision and Order attached to said Notice should not issue as an Amendment to Decision and Order. None of the parties has responded to said Notice.

IT IS HEREBY ORDERED that said Decision and Order be, and it hereby is, amended by deleting the second paragraph thereof, and by substituting therefor the following:

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.[1] The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent that they are consistent with our dismissal herein of the complaint in its entirety.

IT IS HEREBY FURTHER ORDERED that said Decision and Order be, and it hereby is, amended by deleting the entire balance thereof commencing with the subsection captioned "Refusal to Bargain after August 25, 1949," appearing on page 698 and ending with Appendix A, inclusive, and by substituting therefor the following:

(4) Refusal to Bargain after August 25, 1949

The Trial Examiner found that at various times after August 25, 1949, the Respondent violated Section 8 (a) (5) and (1) of the Act, by refusing to resume negotiations with the Union and by unilaterally increasing wages and employee benefit plans. We do not agree.

On August 25 the Respondent informed the Union that it had just received a representation claim from the Independent Union and that it had not had time to determine what its "proper position" should be, but that until the situation could be "clarified" it nevertheless intended to continue to bargain with the Union. On September 12 the Independent filed a representation petition with the Board, whereupon the Respondent refused, on request, to continue negotiations with the Union. On March 30, 1950, the Regional Director dismissed the petition because of the pending unfair labor practice charges.[16] On April 21 this dismissal was sustained by the Board. Thereafter, the Respondent again refused, upon request, to resume bargaining with the Union and unilaterally made certain changes as to wages and employee benefit plans.

We agree with the Respondent that the filing of the petition raised a prima facie question concerning representation which, under the "Midwest Piping" doctrine,[17] pre-

[1] As noted in the Intermediate Report, the Respondent moved, at the outset of the hearing, that the complaint be dismissed This motion, which the Trial Examiner denied, was predicated upon the fact that the initial charges were filed by the Union at a time when its parent organization, the CIO, was not in compliance with the provisions of Section 9 (f), (g), and (h) of the Act. However, the CIO was in compliance at the time the complaint issued See Dant & Russell, Ltd., 73 S Ct. 375.

[16] These charges were litigated in the instant proceeding and, as herein found, were without merit.

[17] The doctrine derived its name from the case entitled Midwest Piping and Supply Co , Inc., 63 NLRB 1060.

cluded it from bargaining further with the incumbent union during the pendency of the petition. The Board has held that the mere filing of a petition by a rival union seeking to dislodge an incumbent union, such as that here, does not itself require an employer to refrain from continuing to recognize the incumbent statutory representative.[18]

But we also pointed out that, in continuing the established relationship with an incumbent union, an employer runs the risk of an unfair labor practice finding if the Board later determines that the petition raised a "real question concerning representation." It would therefore be manifestly unfair to require an employer who has engaged in no antecedent unfair labor practice to bargain at his peril during the pendency of a timely petition.

Nor do we believe, as does our dissenting colleague, Member Houston, that Respondent unlawfully refused to bargain after the Board had affirmed the dismissal of the petition. True, after such dismissal the Respondent was no longer under possible legal jeopardy within the meaning of the Midwest Piping doctrine. However, that fact is not necessarily dispositive of another aspect of the Respondent's defense involving application of the Board's settled rule that after the end of the certification year, an employer may with impunity refuse to continue recognition of a certified union where there exists a good-faith doubt as to its continued majority status.[19]

We are convinced by the record as a whole that during the pendency of the petition and after its dismissal by the Board there was a reasonable basis for the Respondent to have believed that the Union no longer represented a majority of the employees. Thus, the Union's certification was about 5 years old. It had just terminated an unsuccessful strike which resulted in the replacement of a large number of union adherents. The Independent had made a rival claim of representation upon the Respondent, and implemented it by filing a representation petition. As stated above, the Independent's petition was administratively dismissed by the Board, not because its claim was unfounded, but because of the pendency of certain charges filed by the Union which have been found herein to be without merit. We are convinced that the dismissal of the petition in these circumstances did not alleviate the Respondent's otherwise reasonable and preexisting doubt as to the Union's majority status but only delayed its resolution. Any other view would, in our opinion, permit an incumbent union to perpetuate its majority status by filing charges which after litigation were found to be groundless.

[18] William Penn Broadcasting Company, 93 NLRB 1104.

[19] Celanese Corporation of America, 95 NLRB 664, 671-672

We accordingly find, contrary to the Trial Examiner, that after August 25, 1949, the Respondent was justified in refusing to resume negotiations with the Union as the exclusive bargaining agent and that its subsequent unilateral action with respect to insurance, pensions, and wage rates was not violative of Section 8 (a) (5) and (1) of the Act.

As we have adopted that portion of the Intermediate Report dismissing certain allegations of the complaint and as we have reversed all unfair labor practice findings made by the Trial Examiner, we shall dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

Member Houston, dissenting in part and concurring in part:

I agree with the opinion of Chairman Herzog and Member Murdock that there was no refusal to bargain before the representation petition was dismissed. But I cannot agree insofar as it fails to find that the Respondent did not unlawfully refuse to bargain after April 21, 1950, the date on which the Board dismissed the Independent's petition. In my opinion that dismissal was tantamount to a holding that there was then no question concerning the representation of the Respondent's employees. Consequently, the Respondent could not rely on any asserted doubt of the Union's majority so as to excuse its admitted refusal to resume bargaining. The Union's majority status, established by Board certification in 1945, must be presumed under these circumstances to have continued unaffected.

Member Peterson, concurring specially:

Although I agree with the dissenting view of Member Styles, that the Respondent unlawfully refused to bargain at the outset of negotiations, such view cannot here prevail, as a majority of the Board (Chairman Herzog and Members Houston and Murdock) hold to the contrary. Therefore, and in order to obtain a majority determination of all issues raised by the complaint, I shall regard the majority holding on the above point to be the law of the case. This leaves for my consideration the separate issue on which there is a divergence of opinion, i.e., whether there was an independent unlawful refusal to bargain after the dismissal of the petition. On that issue, I am in accord with the view of Chairman Herzog and Member Murdock that there was no such violation, and therefore join them in dismissing the complaint in its entirety.

Member Styles, dissenting:

For the reasons set forth by the Trial Examiner, I would find, contrary to the majority, that the Respondent failed and refused to bargain in good faith on the subject of pensions and employee benefits from the outset of the negotiations which began March 28, 1949. It follows therefore that the strike of May 8, 1949, was an unfair labor practice strike, and that, to the extent found by the Trial Examiner, the Respondent's refusal to reinstate the strikers upon request was discriminatory.

Because of the occurrence of these unfair labor practices, I would find, further, that the Respondent was not privileged to refuse to bargain with the Union at any time following the strike despite the pendency of the rival union's petition. For, under well-established principles, no valid question concerning representation could exist while the Respondent's unfair labor practices remained unremedied,[20] and any loss of majority which might have occurred could be attributed to the Respondent's unlawful conduct. In the light of this holding as to the continuing duty of the Respondent to bargain, I would also find, in accord with the conclusion of the Trial Examiner, that the Respondent's unilateral increases in rates of pay and in employee benefits, constitute per se violations of Section 8 (a) (5) and (1) of the Act.

In view of the foregoing, I need not and do not pass upon the other unfair labor practices issues considered by my colleagues.

[20] See N.L.R.B. v. Franks Bros., 321 U.S. 702; John Deere Plow Company, 82 NLRB 69; Pacific-Gamble Robinson Co., 88 NLRB 482; Metropolitan Life Insurance Co., 91 NLRB 473.

JOHN D. ROCHE, INC. *and* LOS ANGELES PRINTING PRESSMEN & ASSISTANTS' UNION NO. 78, INTERNATIONAL PRINTING PRESSMEN & ASSISTANTS' UNION OF NORTH AMERICA, AFL, Petitioner. Case No. 21-RC-2913. June 8, 1953

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election[1] issued by the Board on March 17, 1953, an election by secret ballot was conducted, under the supervision and direction of the Regional Director for the Twenty-first Region, on April 13, 1953, among letterpressmen and assistants employed by the Employer. The tally of ballots shows that, of approximately 12 eligible voters,

[1] Not reported in printed volumes of Board decisions.