

within the State, including General Electric, Westinghouse Electric, and Graybar Companies. During this same period, all the Respondent's sales, valued in excess of \$125,000 during 1951, were made to its members, most of whom are local rural consumers.

While the Board has heretofore asserted jurisdiction over the Respondent on the basis of commerce facts then before it,<sup>1</sup> we believe, upon consideration of the above-mentioned facts and the entire record herein, that the Respondent's operations are essentially local in character and that, while not entirely unrelated thereto, they do not have a sufficient impact upon interstate commerce to warrant the exercise of jurisdiction.<sup>2</sup> Accordingly, we find that it will not effectuate the policies of the Act to assert jurisdiction in the instant proceeding, and we shall therefore dismiss the complaint in its entirety.<sup>3</sup>

[The Board dismissed the complaint.]

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<sup>1</sup>Case No. 16-RC-810. (Not reported in printed volumes of Board Decisions.)

<sup>2</sup>Inter-County Rural Electric Cooperative Corporation, 106 NLRB 1316; Coles-Moultrie Electric Cooperative, 107 NLRB No. 18.

<sup>3</sup>Member Murdock disagrees with the dismissal on jurisdictional grounds for the reasons stated in his dissent in the Inter-County Rural Electric Cooperative case but, considering himself bound by the majority decision therein, has signed this opinion.

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## MACK MANUFACTURING CORPORATION *and* INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA

MACK MANUFACTURING CORPORATION *and* AMALGAMATED PLANT GUARDS, LOCAL 504, AFFILIATED WITH INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, Petitioner. Cases Nos. 4-CA-854 and 4-RC-1665.<sup>1</sup> November 25, 1953

### DECISION AND ORDER

On August 10, 1953, Trial Examiner Sidney Lindner issued his Intermediate Report in the complaint 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 and a supporting brief.

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<sup>1</sup>In the representation case, involving the same categories of employees concerned in the complaint case, a Decision and Direction of Election issued on October 17, 1952 (not reported in printed volumes of Board Decisions) and a certification on November 6, 1952. The representation case was incorporated by reference in the complaint proceeding. It is herewith further consolidated for purposes of supplemental decision and order.

The Board 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. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the limited extent that they are consistent with this Decision and Order.

The complaint alleges, and the Trial Examiner found, that the Respondent, on and after March 16, 1953, unlawfully refused to bargain with Amalgamated Plant Guards, Local 504, UPGWA, the certified bargaining representative of the Respondent's guards. The Respondent contends in its exceptions, as it did in the representation case, that Local 504 UPGWA is "directly or indirectly" affiliated with Local 677 UAW-CIO, which admits nonguards to membership, and asserts that the Board's certification of Local 504 UPGWA is therefore invalid under Section 9 (b) (3) of the Act.<sup>2</sup>

Upon reexamination of the entire record in the representation proceeding and full consideration of the supplemental facts stipulated in the complaint case, we find merit in the Respondent's exceptions. The pertinent facts are set forth below.

Local 167 UAW-CIO represents the Respondent's production and maintenance employees at the Allentown, Pennsylvania, plant here involved. By letter, dated May 29, 1952, Gerber, regional director of UAW, wrote McGahey, president of UPGWA, that the guards had expressed a desire to organize within UPGWA<sup>3</sup> and that Gallina, a Local 677 committeeman, had offered full cooperation in the organization of the guards. Gerber requested that application cards be forwarded to Gallina and suggested direct communication with Gallina and the arranging for an immediate meeting of UPGWA.

On June 2 McGahey wrote Gallina, referring to Gerber's letter and stating that, as immediate action appeared imperative, he (McGahey) was advising Pacosz (regional director of UPGWA) to contact Gallina. McGahey's letter also enclosed application cards and some union publications, set forth certain structural facts about the Union, and advised Gallina to contact him if anything arose before Gallina heard from Pacosz.

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<sup>2</sup>Section 9 (b) (3) provides in pertinent part:

... no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

<sup>3</sup>For the origin of UPGWA, see Chrysler Corporation, 79 NLRB 462, and International Harvester Company, 81 NLRB 374. As more fully described in those decisions, various UAW locals representing guards disaffiliated from the UAW in February 1948 and formed a separate International called Plant Guard Organizing Committee, directly affiliated with CIO. On June 2, 1948, after a Board decision disqualifying PGOC, the locals comprising the latter union voted to disaffiliate from the CIO, which was effectuated by returning the charter and adopting the present name of UPGWA.

Pacosz was thereafter sent to Allentown to direct the organizing of the guards. However, it appears that Gallina, committeeman and alternate shop chairman of Local 677 UAW-CIO, conducted most if not all of the actual soliciting. Thus, Gallina admitted to Respondent's representatives that he was helping to organize the guards and claimed that he had them all signed up. Moreover, the 16 applications for membership submitted to the Board in connection with the representation case petition on July 17, 1952, were witnessed by Gallina.

On July 10, 1952, preliminary to a layoff at the plant, and before a request for recognition by UPGWA, the Respondent met with representatives of Local 677 UAW-CIO to consider methods of layoff. The union representatives brought up the question of supervisors working while the shop was closed. According to Wenner, Respondent's industrial relations director, Gallina, who was also present at the meeting, said that the Respondent "better not have the supervision doing any work in the shops because he had organized the guards and if our supervision did any work the guards were (sic) inform him and in turn would bring charges against him." This testimony was substantially corroborated by Miller, Wenner's assistant, and by Respondent's contemporaneous notes on the meeting; it was undenied by any other testimony.

Local 504 UPGWA was chartered early in July 1952, the application cards and money having been received and the charter issued by Clarke, secretary-treasurer of UPGWA. On July 14, 1952, McGahey wrote Sweeney, the Local's president, welcoming him and the other guards into the Union, and stating that he was advising the Respondent of the Local's majority and that a petition for election was being prepared for filing on that date. The petition, filed on July 17, was signed by McGahey.

On about July 27, 1952, according to the testimony of Horn, the Respondent's chief guard, he was informed by another guard that a meeting of the guards was being held in the Local 677 UAW-CIO headquarters. Horn observed this meeting and saw six guards enter the building after Gallina. The headquarters of Local 504 UPGWA are in the home of its president, Sweeney.

Local 504 UPGWA was thereafter certified following a Board election.<sup>4</sup> The subsequent requests for bargaining were made by Pacosz and McGahey, and Pacosz filed the charges herein.

Although the Board, in the previous representation decision, found Local 504 UPGWA merely received temporary assistance during its organizational period from Local 677 UAW-CIO, we are now of the opinion that the nature and extent of that assistance, which so far as the record indicates has not terminated, resulted in an "indirect" affiliation of those organizations within the meaning of Section 9 (b) (3) of the Act.

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<sup>4</sup>There was a total of 32 eligible employees in the unit, of whom 31 participated in the election conducted on October 20, 1952, 29 voting for and 1 against the Union, and 1 ballot was challenged.

Congress clearly intended by Section 9 (b) (3) that the union representing guards should be completely divorced from that representing nonguard employees.<sup>5</sup> While this would not appear to preclude a nonguard union from informing a guard union of the guards desire for organization, here Local 677 UAW-CIO not only informed UPGWA but also conducted most, if not all, of the actual organizing of the guards. Moreover, a meeting of Local 504 UPGWA was held, even after the demand for recognition, at UAW-CIO headquarters, apparently attended by at least one official of the nonguard union. These activities of the nonguard union were such that one of its officials could assert, with considerable validity and assurance, that he organized the guards and they would report to him.

We believe that the actions of Local 677 UAW-CIO on behalf of Local 504 UPGWA prevent a finding of that separation between the nonguard and guard unions required by Congress under Section 9 (b) (3). We find that Local 504 UPGWA was indirectly affiliated with a nonguard union and therefore that the Respondent's refusal to bargain was not violative of Section 8 (a) (5) and (1) of the Act. Accordingly, we shall dismiss the present complaint. We shall also revoke the certification of Local 504 UPGWA issued in Case No. 4-RC-1665 and dismiss the petition in that case.

### ORDER

IT IS HEREBY ORDERED that the complaint in Case No. 4-CA-854 be, and it hereby is, dismissed in its entirety.

IT IS FURTHER ORDERED that the certification heretofore issued in Case No. 4-RC-1665 to Amalgamated Plant Guards, Local 504, affiliated with International Union, United Plant Guard Workers of America, as the collective-bargaining representative of the guards of Mack Manufacturing Corporation, Allentown, Pennsylvania, be, and it hereby is, revoked and the petition in that case is dismissed.

Member Murdock took no part in the consideration of the above Decision and Order.

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<sup>5</sup>Legislative History of the Labor Management Relations Act, 1947, volume 2, pp 1541, 1544.

## Intermediate Report and Recommended Order

### STATEMENT OF THE CASE

Upon a charge duly filed by International Union, United Plant Guard Workers of America, herein referred to as the International, the General Counsel of the National Labor Relations Board by the Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued a complaint dated May 21, 1953, against Mack Manufacturing Corporation hereinafter called

the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U. S. C., Sub 1, Sec 141 et seq, hereinafter referred to as the Act.

With respect to the unfair labor practices, the complaint alleged in substance that the Respondent on or about March 16, 1953, and thereafter, refused to bargain collectively with Amalgamated Plant Guards, Local 504, affiliated with International Union, United Plant Guard Workers of America, referred to herein as the Union, as the exclusive bargaining representative of the Respondent's employees within an appropriate bargaining unit, although a majority of the employees in such unit in a secret election conducted under the supervision of the Board on October 29, 1952, had designated or selected the Union as their representative for the purposes of collective bargaining, thereby interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

The Respondent's answer duly filed admitted certain allegations of the complaint but denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Allentown, Pennsylvania, on July 15, 1953, before the undersigned Trial Examiner The General Counsel, the Respondent, and the Union were represented at the hearing and all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The parties were given the opportunity to present oral argument before the Trial Examiner, and to file briefs, proposed findings of fact, and conclusions of law.

Upon the entire record in the case, the Trial Examiner makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

Mack Manufacturing Corporation is engaged at its Allentown, Pennsylvania, plant in the manufacture and sale of trucks, buses, and other motor vehicles. Annually, the Respondent causes raw materials valued at more than \$5,000,000 to be shipped and transported to its Allentown, Pennsylvania, plant to and through States of the United States other than the Commonwealth of Pennsylvania. Annually, the Respondent ships motor vehicles valued at more than \$25,000,000 to and through States of the United States other than the Commonwealth of Pennsylvania. It was stipulated at the hearing, and it is hereby found, that the Respondent is engaged in commerce within the meaning of the Act

### II. THE LABOR ORGANIZATION INVOLVED

Amalgamated Plant Guards, Local 504, affiliated with International Union, United Plant Guard Workers of America, is a labor organization admitting to membership employees of the Respondent

### III. THE UNFAIR LABOR PRACTICES

#### 1. The appropriate unit; representation by the Union of a majority therein

On October 17, 1952, after the usual proceedings, which included a full hearing on the representation petition filed by the Union, and participated in by all of the parties involved in the instant proceeding, the Board issued a Decision and Direction of Election in Case No. 4-RC-1665 (unpublished) in which it found that "all plant guards and other guards as defined in the Act employed at the Employer's Allentown, Pennsylvania, plant but excluding professional employees, all other employees, 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.

In arriving at its decision the Board considered the following contentions of the Respondent raised at the hearing on the representation petition or in its brief subsequently filed that: (1) The Union, which restricts its membership to guards, is directly or indirectly affiliated with a labor organization admitting to membership employees other than guards and is therefore ineligible to be certified as the bargaining representative of the Respondent's guards; (2) Frank Gallina, committeeman and alternate shop chairman of Local 677, UAW-CIO, which represents the Respondent's production and maintenance employees, actively assisted

in organizing the guards by distributing and witnessing their application cards; (3) Gallina stated the guards would inform him if any supervisors worked during a plant layoff, and (4) on one occasion certain guards attended a meeting in the CIO hall where Gallina was also present. The Board found these contentions without merit, stating in its decision "although a certain degree of comity may exist between the Petitioner (Union) and the CIO Local, we are of the opinion that the Petitioner (Union) merely received temporary assistance during its organizational period and remains free to formulate its own policies and determine its own actions as part of an International which is not affiliated with any other labor organization. Accordingly, we find the Petitioner (Union) is not affiliated, directly or indirectly, with any labor organization admitting to membership employees other than guards and is therefore eligible to represent the Employer's (Respondent) guards Westinghouse Electric Corporation (Lima, Ohio, plant), 96 NLRB 1250, International Harvester Company, 81 NLRB 374.

An election pursuant to the said direction was held on October 29, 1952. Of the 31 employees<sup>1</sup> who participated therein, 30 cast votes for the Union, 1 cast a vote against the Union.

On November 6, 1952, the Regional Director for the Fourth Region on behalf of the Board certified the Union as the representative of a majority of the employees of the Respondent in the unit theretofore found by the Board to be appropriate.

In accordance with the Board's Decision and the stipulation of the parties herein, I find that "all plant guards and other guards as defined in the Act employed at the Respondent's Allentown, Pennsylvania, plant but excluding professional employees, all other employees, 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. It is further found that on and at all times after October 29, 1952, the Union was, and now is, the duly designated bargaining representative of all of the employees in the appropriate bargaining unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

## 2. The refusal to bargain

It was stipulated at the hearing that on or about March 16, 1953, and on or about March 25, 1953, the Union requested the Respondent to bargain with it as the exclusive representative of the employees in the unit herein found appropriate and the Respondent refused to bargain.

Thus the issue for determination is, in effect, whether the Respondent's refusal to bargain with the Union constituted a violation of the Act or as the Respondent contends it properly refused to bargain because it believed that the Board's certification of the Union was not correct under the provisions of the Act, in that the Union is directly or indirectly affiliated with an organization which admits to membership employees other than guards.

In furtherance of its position, the Respondent at the hearing herein offered evidence which was incorporated in a stipulation entered into by the parties that Frank Gallina, a committeeman and alternate shop chairman of Local 677, UAW-CIO, which represents the Respondent's production and maintenance employees, witnessed the signatures on the 16 application cards presented by the Union to the Board when it filed its petition for representation in Case No. 4-RC-1665.<sup>2</sup> It is noted, however, that while the record in the representation proceeding does not specifically reveal that Gallina's name appears as witness on the 16 application cards, counsel for the Union stated on the record that the Union "was willing to concede the possibility that these cards presented to the Board may have been witnessed by Gallina." Moreover, the Board had before it in the representation proceeding the fact that Gallina actively assisted in organizing the guards and in distributing and witnessing their application cards. In its Decision and Direction of Election, the Board noted Gallina's activities and found them to be "temporary" during the Union's organizational period.

<sup>1</sup> The record reveals that there were 32 eligible voters.

<sup>2</sup> While this evidence cannot be said to be newly discovered, and it appears from the record in the representation proceeding that it was then available to the Respondent, it was nevertheless received in order to have a complete picture of Gallina's activities at the time of the organization of the Union. Cf. *Pittsburgh Plate Glass Company v. N. L. R. B.*, 313 U. S. 146, 161-162; *N. L. R. B. v. West Kentucky Coal Company*, 152 F. 2d 198 (C. A. 6), cert. denied 328 U. S. 866; *Allis-Chalmers Manufacturing Company v. N. L. R. B.*, 162 F. 2d 435 (C. A. 7).

I do not consider that this evidence added to the evidence regarding Gallina's assistance to the Union already considered by the Board sufficient to make a finding that the Union is affiliated with an organization which admits to membership employees other than guards. I find, as did the Board, that Gallina's activities during the organizational period were merely "temporary assistance" to the Union, and that the Union is not affiliated, directly or indirectly, with any labor organization admitting to membership employees other than guards.

Upon the foregoing and the record as a whole, it is found that the Respondent on March 16, 1953, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, 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 of commerce.

#### V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Since it has been found that the Respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the Respondent, upon request, bargain collectively with the Union as the exclusive bargaining representative of all employees in the bargaining unit described herein with respect to wages, rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

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

### CONCLUSIONS OF LAW

1. Amalgamated Plant Guards, Local 504, affiliated with International Union, United Plant Guard Workers of America, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All plant guards and other guards as defined in the Act employed at the Respondent's Allentown, Pennsylvania, plant but excluding professional employees, all other employees, and supervisors as defined in the Act.

3. Amalgamated Plant Guards, Local 504, affiliated with International Union, United Plant Guard Workers of America, was on October 29, 1952, and at all times thereafter has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on March 16, 1953, and at all times thereafter, to bargain collectively with Amalgamated Plant Guards, Local 504, affiliated with International Union, United Plant Guard Workers of America, as the exclusive representative of all of its employees in the aforesaid unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By said acts the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (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.]

## APPENDIX

## 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 Amalgamated Plant Guards, Local 504, affiliated with International Union, United Plant Guard Workers of America, as the exclusive representative of all employees in the bargaining unit described below with respect to wages, rates of pay, hours of employment or other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All plant guards and other guards as defined in the Act, employed at our Allentown, Pennsylvania, plant but excluding professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named union, 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. All our employees are free to become or remain members of this union or any other labor organization.

MACK MANUFACTURING CORPORATION,  
Employer.

Dated ..... By.....  
(Representative) (Title)

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

SOUTHERN RADIO AND TELEVISION EQUIPMENT COMPANY,  
TELEVISION STATION WTVJ *and* INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO.  
349, AFL, Petitioner. Case No. 10-RC-2398. November 25,  
1953

## DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before John S. Patton, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

<sup>1</sup> The Intervenor, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL, contends that the hearing officer erred in granting the Employer's motion to revoke a subpoena requiring the Employer to produce certain records. We find no merit in this contention. We agree with the hearing officer that the records sought relate to matters fully covered by the record and would be merely cumulative in nature.