

4. By such discrimination and causing a strike in protest against it, 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 thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

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

[Recommendations omitted from publication.]

RENE BENVENUTTI AND BERNARDO RIVERA, CO-PARTNERS d/b/a FABRICA DE MUEBLES PUERTO RICO and UNITED PACKINGHOUSE WORKERS OF AMERICA, CIO. Case No. 24-CA-422. January 20, 1954

DECISION AND ORDER

On August 5, 1953, Trial Examiner Stephen S. Bean issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain 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.

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 Respondents' exceptions, and the entire record in this case.

As indicated in the Intermediate Report, in 1951, Confederacion General de Trabajadores de Puerto Rico, CIO, and its local affiliate, Union de Trabajadores la Fabrica de Muebles Puerto Rico in Yauco, Puerto Rico, acting jointly, executed a collective-bargaining agreement with the Respondents covering the Respondents' employees. The 1951 contract was to be effective until August 23, 1952, and for yearly periods thereafter unless terminated by appropriate notice. No such notice was given in 1952.

In late 1952, the Respondents' employees, dissatisfied with the representation they were receiving, signed a petition authorizing the Union (United Packinghouse Workers of America, CIO) to represent them. The Union then filed a representation petition, and, after a consent election, was certified by the Board.

In January 1953, the Union presented a proposal to the Respondents with respect to a bargaining contract. After several bargaining meetings the Respondents informed the Union that the 1951 contract would remain in force until August 23, 1953, and consequently that the Respondents would not, in the meanwhile, deal further with the Union with respect to a new contract. The Respondents stated, however,

that they would be willing to negotiate a new contract when the existing one expired.

The Trial Examiner concluded that the 1951 contract did not afford the Respondents a lawful reason for discontinuing their bargaining negotiations with the Union, and that the Respondents had refused to bargain with the Union within the meaning of Section 8 (a) (5) of the Act.

After the issuance of the Intermediate Report, the Regional Director informed the Board that, as the Respondents in effect had promised the Union, the Respondents resumed bargaining negotiations with the Union after the terminal date of the 1951 contract had passed. The negotiations resulted in the recent signing of a bargaining contract covering the Respondents' employees.

As the record is barren of any evidence of antiunion motivation, and as no independent violations of the Act were either charged to or committed by the Respondents, the resumption of bargaining negotiations by the parties and the signing of a bargaining contract have convinced us that it would not effectuate the purposes of the Act to issue an 8 (a) (5) order in this case. Accordingly, without passing upon the Trial Examiner's findings, conclusions, or recommendations, we shall dismiss the complaint herein.

[The Board dismissed the complaint.]

Member Murdock, dissenting:

The only issue in this case is whether the Respondent was justified in refusing to bargain with a newly certified union in early 1953 because of the existence of a contract between Respondents and another union which had a terminal date of August 23, 1953. I am unable to agree with my colleagues that because the Respondents bargained with the certified Union after August 23, 1953, as it had said it would do, and signed a contract, that we should conclude that it would not effectuate the Act to process this case to the issuance of an 8 (a) (5) order. The basic issue in this case has not become moot; it is an important legal issue on which it is desirable not only that the parties to this case but employers and labor organizations generally know what their legal obligations are. The dismissal of cases simply because an employer resumes bargaining at the conclusion of the contract which he asserts as a bar to bargaining will mean that his obligation to bargain during the pendency of the contract will never be determined.

On the merits of the case I believe the Trial Examiner correctly concluded that the 1951 contract did not afford the Respondents a lawful reason for refusing to bargain with the certified union and that the Respondents accordingly refused to bargain with the Union in violation of Section 8 (a) (5) of the Act.

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

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon a charge filed on February 28, 1953, by United Packinghouse Workers of America, CIO, herein called the Union or UPWA, the General Counsel for the National Labor Relations Board, herein respectively called the General Counsel and the Board, issued and duly filed a complaint dated April 6, 1953, against the above-named employer, herein called Respondent or the Employer, alleging it had engaged in specified conduct violating Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act.

Pursuant to notice, a hearing was held in Santurce, Puerto Rico, before me, the duly designated Trial Examiner, on May 6 and 7, 1953. The General Counsel, Respondent, and Union were represented at the hearing and all parties were afforded full opportunity to examine and cross-examine witnesses, to introduce evidence bearing on the issues, to present oral argument, and to file briefs as well as proposed findings of fact and conclusions of law. Respondent's motion to dismiss the complaint is disposed of in accordance with the following findings of fact and conclusions of law.

Upon the entire record in the case and my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent admits, and I find, that Rene Benvenuti and Bernardo Rivera at all material times are and were copartners conducting the business of manufacturing and selling furniture and related products under the trade name of "Fabrica de Muebles Puerto Rico" with a principal place of business in Yauco, Puerto Rico; that they cause the purchase, transportation, and delivery of a substantial quantity of materials in interstate commerce from and through States and territories of the United States to their plant in Puerto Rico and sell, ship, and deliver throughout Puerto Rico substantial quantities of manufactured products, and that they are engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent denies, but I find, that United Packinghouse Workers of America, CIO is a labor organization admitting to membership employees of Respondent.

III. THE UNFAIR LABOR PRACTICES

A. Background

On September 9, 1949, the Board certified Confederacion General de Trabajadores de Puerto Rico, CIO, herein called CGT for a production and maintenance unit at Respondent's operations. CGT possessed similarity to a council affiliated with, but not itself, an international organization CGT, acting for its local affiliate, Union de Trabajadores de la Fabrica de Muebles Puerto Rico, in Yauco, Puerto Rico, herein called the Local, and Respondent executed a collective-bargaining agreement on August 23, 1951. The agreement prescribed a term until the month of August 1952 and for automatic renewal in the absence of notice of intention to amend given more than 90 days before the expiration date.¹

¹I reject the General Counsel's interesting contention that notice given any time before the expiration date was sufficient to terminate the contract. Undisputedly, the Local at some time wrote Respondent it desired a new agreement. Respondent replied it considered the letter "out of order" because the request had not been made 90 or more days prior to the expiration date of the old contract. Partner Benvenuti testified the Local brought its letter to Respondent "more or less around the 25th of August." The General Counsel's evidence was that the letter was sent "more or less around the beginning of July 1952." As translated by counsel for Respondent the notice of intention to amend provision in question reads as follows:

ARTICLE XVII

This agreement shall be in full force and effect from the date of its execution and until

Prior to February 2, 1952, a labor organization called Sindicato Azucarero which represented the sugar industry in Puerto Rico was affiliated with CGT which in turn was affiliated with the Congress of Industrial Organizations. At a convention of the CIO in New York, a basis was set up for an affiliation between Sindicato Azucarero and UPWA, an international organization, another affiliate of the CIO, representing employees in the latter organization's sugar industry division. Subsequently a general convention attended by delegations of all the sugar workers in Puerto Rico was held in Guyama, Puerto Rico. There, the affiliation of Sindicato Azucarero to UPWA was accepted on February 2, 1952. A charter was given UPWA by CIO and contracts were entered into between the two. UPWA then established an office in Puerto de Tierra, Puerto Rico, and commenced organizational work. On April 19, 1952, Alexander Summers, a director of UPWA, came to Puerto Rico for the purpose of setting up the Union in conformity to mainland practices and to assist in the organizational work for UPWA already being undertaken by Messrs. Sanchez, president of Sindicato Azucarero, Grajales, Kulan, Arroyo, Serrano, and Gumersindo, some of whom were still representatives of CGT. At a meeting in, or shortly after, May 1952, a split arose in the ranks of the CGT executive board, over the idea of affiliation with UPWA. A resolution was passed over the opposition of CGT's three highest ranking officers to create an industrial council to function directly with UPWA in Puerto Rico in a manner that would eliminate CGT. CGT's president called a meeting in June. Due to lack of a quorum the meeting did not take place. Thereafter CGT collected no dues from its member locals. Nor does it appear that subsequent to this time CGT communicated with the Local or assisted in administering the contract it had negotiated the previous August. After this time, CGT did not participate in processing grievances of members of the Local. In November 1952, when the Union had filed a petition for certification of representatives--giving rise to a situation which will be discussed in greater detail below--CGT, which was not in compliance with Section 9(h) of the Act, failed to reply to a registered letter from the Regional Director stating that any interest it might have in the petition could not be considered if compliance were not achieved. On November 24, 1952, CGT was notified that a representation hearing would be held on December 18, 1952, on UPWA's petition. It was stipulated that CGT did not appear at the hearing and made no attempt to intervene in the proceeding.

B. The supplanting of CGT

On Sunday, September 28, 1952, upon notice, a meeting of employees of the Employer presided over by Pedro D. Velez, who had succeeded Antonio Torres, who resigned that day,

the month of August 1952; Provided that ninety (90) days prior to its expiration date any of the contracting parties shall notify the other in writing of their intention to amend same. If any of the parties fail to notify the other of their intention of amending this agreement within the ninety (90) days period, the same shall be in effect for another year.

Because of the obvious ambiguity latent in this article, I received over the objection of the General Counsel evidence as to the intention of the parties, which satisfies me that during the negotiations preceding the signing of the contract on August 23, 1951, the union representatives proposed automatic renewal in absence of the giving notice of intention to amend no less than 30 days before the expiration date. Respondent took the position that 30 days was too short a time within which to conclude negotiations on a possible new contract and upon its insistence that 90 days notice should be given, the union negotiators accepted Respondent's proposal. Under these circumstances it is quite obvious that the parties intended to agree to the quite usual provision that notice should be given prior to 90 days before the expiration date, as appears in the proviso, rather than to agree to an impracticable provision that notice might be given at any time, even up to the last day--which would be an allowable construction of the last sentence of the article were it to be considered standing alone. Somewhat equivocally, the article provided only that the agreement should remain in full force and effect "until the month of August, 1952." The case was tried on the theory that the contract ran for a year from August 23, 1951, and properly so, I believe. It is reasonably apparent that the contracting parties understood such to be the case. It would be unrealistic to assume that it was intended to run for 1 year plus 8 days--which would be the situation were it to remain in force until August 31--or that it was intended to run for 1 year minus 23 days--which would be the situation were it to remain in force only until August 1. Insofar as it may be important in considering another aspect of this case, I find that the term of the original agreement was from August 23, 1951, to August 23, 1952.

as president of the Local, was held at the premises of the Borinquen Biscuit Company Union. The main object of the meeting was to disaffiliate from CGT because it had not taken care of Respondent's employees' problems and to affiliate with UPWA. After accusations against CGT for not having responsibly attended to the employees needs had been heard, a vote to cease belonging to CGT and to be represented by UPWA was unanimously carried. A paper authorizing UPWA to represent them was signed by 74 of the approximately 85 of Respondent's employees. The officers of the Local of CGT remained as officers of the local union, which as will appear, received a charter from UPWA shortly after January 14, 1953, when it became known as Local #905 de Trabajadores de la Industria de Muebles de Yauco, Puerto Rico.²

On November 20, 1952, UPWA through its business agent at Puerto de Tierra filed the earlier mentioned representation petition (Case No. 24-RC-489). The day before the hearing was to be held on this petition at a conference attended by partners Benvenuti and Rivera, their lawyer Jose Diaz, and a Board field examiner took place at Respondent's plant. Benvenuti testified that he told the examiner that the August 23, 1951, contract was still in effect and that Respondent was complying with it to the letter; that it seems to him that the examiner said that the Local was asking for affiliation to UPWA; that an election was to be held to see if the workers wanted to thus affiliate and that the purpose of the hearing was so that the Board would certify UPWA as representative of Respondent's workers; that he thereafter consulted his lawyer as to what importance his presence at the hearing in Mayaguez would have; that his lawyer told him there was no problem because the hearing was to be held merely in order that if the workers wanted to affiliate with UPWA, the Board would certify the affiliation and, that, he then told the examiner that there was no problem and that Respondent did not object to the Board certifying a change of affiliation. On the following day, Benvenuti signed a consent-election agreement.³

² To distinguish this local from CGT's local differently named as Union de Trabajadores de la Fabrica de Muebles Puerto Rico, in Yauco, Puerto Rico, which I have previously denominated "The Local," I will call UPWA's local, "905."

³ The record discloses that in cross-examination Benvenuti was asked: "Did (the field examiner) or did he not tell you in that conversation that the contract was in no way affected by the election?" and, that after objections by counsel, the witness responded that the field examiner "informed me that there would be the matter of the election of the workers of the factory at the meeting to be held." Then the Trial Examiner intervened with an unproductive question as to whether "the contract was a bar," following which the witness testified that the partners decided not to appear at the hearing because they thought it would not in any way affect the contract. After Benvenuti's direct and cross-examinations, he was interrogated 4 times in redirect and 4 times in recross. In his last redirect examination he definitely stated, for the first time, in response to a question which suggested the answer, that the field examiner told him the election of UPWA would have no effect on Respondent's existing contract. He then further testified that when he found out later that the Union wanted a new contract, he did not inform the Regional Director of what the field examiner had told him before the election. On January 19, 1953, Respondent replied to a letter from the Union dated January 17 asking for the setting of a day for beginning bargaining negotiations on a new contract, without raising any question concerning the August 23, 1951, CGT contract, by requesting a copy of a proposal. When the draft was later handed to him, Benvenuti made no comment concerning the old contract. Before the election, Respondent discontinued the payroll deduction of dues and dealing with an employees grievance committee set up in the old contract.

Benvenuti also testified that at the two sessions held between the Union and Respondent on January 21, 1953, at the plant, and on February 21, 1953, at the offices of The Insular Department of Labor in Yauco, he did not make mention to the representatives of the workers of any claim that he considered the terms of the old contract still remained in force. He still further testified that Respondent's present attorney stated at the latter meeting that if he found the August 23, 1951, contract was inoperative he would be willing to negotiate on the new proposal. Respondent contends that it was misled by information received from, and an opinion expressed by, the field examiner into not opposing the Union's petition for certification, but rather into agreeing by consent to an election. Although it could be found on this record that Respondent was told that the certification of a new bargaining representative would have no effect upon the unexpired extension of the August 23, 1951, contract, many of the circumstances adumbrated above would cause me to hesitate to form such a conclusion. In any event, I do not consider it necessary to so resolve this question as to arrive at a find-

On January 14, 1953, at the consent election, a majority of Respondent's employees in a unit comprising all production and maintenance employees at Respondent's factory in Yauco, excluding executive, administrative, and professional employees, foremen, clerical-office personnel, guards, watchmen, and supervisors within the meaning of the Act, designated the Union as their collective-bargaining representative. On January 22, 1953, the Board formally certified the Union. The Union then issued a charter to 905.

C. The refusal to bargain

On January 17, 1953, 3 days after the election, the Union wrote Respondent requesting the holding of bargaining negotiations on January 21. Respondent replied on January 19 that it could not discuss an agreement until 10 days after receiving a written proposal from the Union. Two days later, Summers and Baez, field representatives of the Union, personally presented a proposal to the partners at Respondent's factory. The partners pleaded for time to study the contract, stating that in the past contracts had been sent by mail. Summers asserted that companies sometimes took too long to go over a contract thus forwarded and that he was meeting the partners personally in order to explain the Union's proposal. The parties then entered into a stipulation, which was signed by Benvenuti and Rivera, for Respondent, Summers for the Union, and Velez, whom it will be recalled became president of the Local on September 28, 1952, for 905, that all matters to be agreed upon in any contract to be arrived at by the parties would have retroactive effect to January 14, 1953. It was arranged that a further meeting should be held on February 18, 1953. This meeting was later postponed until February 21 and took place at the offices of the Department of Labor at Yauco. It was attended by Benvenuti, Rivera, and Attorney Philip Licari, representing the Respondent, and Arroyo (Villafane), an organizer for the Union, and employee Negron Rivera as well as by Velez and Jose Padilla, president and treasurer respectively of 905, and Flor Medina of Sindicato Azucarero. There was some general discussion of the Union's proposal but Attorney Licari pointed out that he had been but recently retained by Respondent and that in fairness to his client he needed some time to study it. He suggested a stipulation for retroactivity, apparently similar to that already entered into on January 21. The Union requested that any new stipulation should include the immediate adoption of the grievance procedure incorporated in the union proposal and the resumption of deduction of dues--both of which matters were included in the August 23, 1951, contract with CGT but had been discontinued by Respondent since a time before the election. Although Attorney Licari was neither in favor of or opposed to including the provisions requested by the Union in a new stipulation, Benvenuti violently objected to them and told the union representatives that Respondent was not willing to accept these demands, that they had better abandon them and all negotiations and leave.⁴

After things had sufficiently quieted down, Attorney Licari stated that on the mainland employers received proposed contracts from unions and then requested a period within which to submit counterproposals. Respondent then asked for 60 days time. The Union objected. Respondent pointed out it had signed a stipulation making salary increases, if any should be granted, retroactive to the day of the election. The parties came to no agreement.

ing in this respect. Assuming arguendo, that the field examiner did make representations to Respondent and assuming that, relying upon same, it failed to oppose the petition, such a mistaken understanding of the law should not absolve it from responsibility for its conduct or release it from its obligation to bargain. Whether or not it accepted the advice of its original attorney, as Benvenuti first testified, and signed the consent-election agreement or signed it as a result of something said by the field examiner, as Benvenuti subsequently testified, is immaterial. The task of making binding interpretations of the meaning of the Act is a judicial function, vested in the Board members alone, with ultimate power of review in the courts.

⁴Benvenuti, who as appears in footnote 3, testified at one point that he did not tell the union representatives at this meeting that Respondent had a contract in force, testified at another point, with respect to what transpired in connection with this suggested second stipulation, that: "Then I got up and said that we would not sign anything, that we had a contract that was in full force and that the law would take care of the matter" and at still another point "when we realized that Mr Villafane and Mr. Negron, the representatives of the workers, wanted to bind us in such a way that was not convenient for us, I said that in that way I would not sign "

During the course of this meeting there was no discussion about the existence of a contract with CGT. Attorney Licari, Benvenuto, and Rivera took the Union's proposal for study and promised that they would send a counterproposal within a week. None was received. Instead, Attorney Licari wrote the Union as follows on February 25, 1953:

In reference to the above mentioned matter after a thorough study of the dispositions of the Agreement signed on 23 August 1951 between the CGT-CIO and the Company, and also after a thorough study of the dispositions of the Taft-Hartley Act applicable to this agreement, I am convinced that the 1951 Agreement is still in force for the following reasons:

The labor organization that signed the agreement in 1951 is the same labor organization functioning now with the exception of a change in name, i.e., the labor organization is now known as "United Packinghouse Workers of America-CIO". Under the law, a mere change of name does not invalidate the Union obligations in the Agreement, as likewise, a change in name of the company does not relieve some of the responsibilities already incurred under the agreement.

Besides, the National Labor Relations Board certification does not affect the life of the 1951 agreement because same was in force all the time when the Union was requesting a new certification.

And so, under the Contract Law and the Taft-Hartley Act, the 1951 agreement will remain in force until the 23rd August 1953, inasmuch as the Union did not fulfil the dispositions in Article XVII of the Agreement, under the heading Life of the Agreement which states as follows:

This agreement shall be in full force and effect from the date of its executions and until the month of August 1952; Provided that ninety (90) days prior to its expiration date any of the contracting parties shall notify the other in writing of their intention to amend same. If any of the parties fail to notify the other of their intention of amending this agreement within the ninety (90) days period, the same shall be in effect for another year.

Under these circumstances it is evident that the 1951 agreement is still in force.

Messrs. Benvenuto & Rivera (Fabrica de Muebles "Puerto Rico") inform me that it will be a pleasure to deal with you in relation to a new agreement when the one in force expires. If you are desirous of discussing this matter personally with me I am always at your disposal, and in this case, please phone or write to make an appointment at your earliest convenience.

Expecting the pleasure of your call, I am

As stated at the head of this report, the charge was filed February 28, 1953. Since the receipt of Attorney Licari's letter there has been no bargaining.

D. Conclusions

In determining whether under the facts in this case, the policies of the Act will best be effectuated by directing that Respondent should bargain with the Union respecting the terms of the proposal submitted on January 21, 1953, or any other proposal, or by dismissing the complaint on the ground that the rights of the parties are fixed by the agreement, entered into by Respondent and CGT on August 23, 1951, the Board must weigh the interest of the parties and the public in preserving the industrial stability implicit in a bargaining relationship that had once been established, against the right of employees not only to be represented by a union of their own choosing but also one competent to seek the acceptance of their legitimate demands. It has not been shown that CGT was incapable before on or about May 23, 1952 (90 or more days before the August 23 expiration date) of giving notice of intention to amend the 1951 contract. But there is evidence that after the latter part of May, this union ceased to function as a representative of the employees of Respondent. Thus it has been found that at a meeting in or shortly after May 1952, a split arose in the ranks of the CGT executive board, and a resolution was passed eliminating CGT and creating an industrial council to function directly with the Union, that a meeting of CGT sought to be held in June 1952 failed of eventuation due to lack of quorum, that thereafter CGT collected no dues from the Local of any of its member locals and did not participate in processing grievances of the Local, that at a

meeting on September 28, 1952, the main objective of which was to disaffiliate the Local from CGT because it had not taken care of the employees problems, and to affiliate with the Union, the employees unanimously voted to cease belonging to CGT and to be represented by the Union and an authorization to the Union to represent them was signed by about 90 percent of all Employer's employees, that although formally notified in November 1952 that it was not in compliance with Section 9 (h) of the Act, CGT did not then or thereafter take action to comply with said requisite, that although formally notified later in November 1952 of the filing of the Union's representation petition and of the date of hearing thereon to be held in December, CGT did not appear at the hearing and made no attempt to intervene in the proceeding, and that, beginning at a time well before January 1953, Respondent discontinued the payroll deduction of dues

In a number of representation cases presenting facts not generally dissimilar from those existing in the instant proceeding, the Board has held that labor organizations have become defunct insofar as the employees involved in the particular cases are concerned

As an example, in Standard Brass Manufacturing Company, 101 NLRB 1032, the Board concluded that a union from which the employees voted to disaffiliate, which thereafter held no meetings, which collected no dues for the month after the disaffiliation, which did not attempt to intervene in a representation proceeding, and which made no effort to conform to Section 9 (h) of the Act after its compliance had lapsed, was no longer a functioning labor organization capable of administering its contract with the employer.

But these decisions in representation cases are not entirely decisive of the main question in this case, for the Board for several years had taken the position that it is neither necessary nor proper in such a case to rule upon the question as to whether a newly certified representative should assume an existing contract Boston Machine Works Company, 89 NLRB 59 Representation cases are more concerned with who may bargain for employees than what they shall bargain about. However, those decisions do supply us with standards by which to measure the important subsidiary question as to whether at a given time, a labor organization who was a party to an original collective-bargaining agreement is functioning or capable of functioning as the true representative of employees who were its members when the agreement was originally negotiated The "given time" in the instant case is January 14, 1953, when the Union presented its proposal to Respondent and requested bargaining thereon On this record, I am convinced that on and continuously after that date CGT was a defunct organization insofar as the employees of Respondent are concerned and that it did not represent them.

We thus arrive at the decisive question: Is the unit of employees and their new statutory representative bound by the terms of the agreement executed by the former but no longer existent statutory representative? For the answer to this question we must balance the desirabilities previously alluded to in arriving at a determination of how the policies of the Act may be best effectuated It was not until the Board just issued its decision in American Seating Company, 106 NLRB 250, of which more later, that any complaint case decision furnished a clue to the answer But it is of significance that in those early representation cases where a minority of the Board felt the employer and a certified union should be required to engage in collective bargaining on the basis of a preexisting contract entered into by a former union, the former union was an active rival of the certified union, continued in existence, and claimed to represent the employees, whereas in this case we have a situation where there had been a union, no longer active, which not only had made no such claim and in fact had become defunct for all practical purposes before the new certification had issued That the stability of labor relations which has been formalized by a valid collective-bargaining agreement in the usual case should not be disrupted by the caprice of the parties thereto, cannot be gainsaid But how can it be said that here we have a valid agreement when one of the parties thereto had ceased to exist? Is this the usual case? Is it unrealistic to say that the agreement expired with one of its makers? Was the employees' action whimsical? I feel the answers to these questions should be in the negative. The Union became CGT's supplanter and not its successor in the legal sense that it assumed either CGT's rights or its obligations It scarcely seems that contract criteria of the common law, with all its abhorrence to employee collectivism, should be controlling in the interpretation of a statutory enactment regulating the relationships between labor and management. It was through no whim that the employees joined 905, but rather through the actual necessity, if they wished any representation, of allying themselves with an organization that could and would truly represent them To allow either the manner or the substance of this representation to be controlled by the dead hand of the past would not, I believe, tend to avoid or minimize in-

dustrial strife, or to serve the public interest or to protect the rights of the public. It seems to me that the effect of such action would be more likely than otherwise to produce the opposite result. This avoidance, minimization, service, and protection are the prime purposes of the Act.

The complaint case of American Seating Company, 106 NLRB 250, *supra*, is not precisely apposite, for there the Board held merely that a contract of unreasonable duration⁵ may not bar full statutory collective bargaining as to any group of employees in an appropriate unit covered by such contract, upon the certification of a new collective-bargaining representative for them.

But the reasons, apart from those premised on the rationale of the no-bar principle, which led the Board to adopt the rule in American Seating, are of moment here and apply with force to the situation disclosed by the evidence in this case. They are--that the assumption that common law principles of agency control the relationship of exclusive bargaining representative to employees in an appropriate unit, is unwarranted and overlooks the unique character of that relationship under the Act, that under the common law, agency is a consensual relationship whereas the status of exclusive bargaining representative is a special one created and governed by statute, that a duly selected statutory agent represents a shifting group of employees including not only those who approve but also those who disapprove and those who never had an opportunity to express their choice: that unlike in ordinary agency cases, a principal has no power to terminate the authority of a statutory bargaining agent at any time, that the problem must be solved in the light of the unique and special character of the statutory representative rather than by applying without change principles of law evolved to govern entirely different situations; that in solving the problem, the Board has to balance two separate interests, the interest of employees and society in the stability that is essential to the effective encouragement of collective bargaining, and the sometimes conflicting interest of employees being free to change their representatives at will, that if the contention that the certification of a new bargaining representative merely results in the substitution of a new lamp for an old with the substantive terms of an existing contract remaining unchanged, is sound, a certified bargaining representative might be long deprived of effective power as to the most important subjects of collective bargaining as the result of an agreement negotiated by an unwanted and repudiated bargaining representative thereby producing a situation hardly calculated to accomplish the Act's declared purpose of reducing industrial strife by encouraging the practice and procedure of collective bargaining, and, that there is no provision in the Act for this kind of emasculated certified bargaining representative.

In view of the above considerations and because there is no doubt that Respondent on February 25, 1953, refused to bargain with the Union until August 23, 1953, I conclude that it thereby violated Section 8 (a) (5) and (1) of the Act and I am convinced, under all the circumstances of this particular case, that the policies of the Act will best be effectuated by directing that Respondent should bargain with the Union.⁶

In view of the reasons and bases upon which this finding is premised, it becomes unnecessary to treat with the General Counsel's various or alternative contentions that Respondent on and after February 21, 1953, raised in bad faith the question of the continued existence of the CGT contract in order to avoid its statutory bargaining obligation, that Respondent had abandoned that contract, or that Respondent had by its conduct waived the existence of the contract as a bar to bargaining.

⁵ The contract in the instant case was of less than 2 years' duration and, under Board rulings was not of unreasonable length. However, if CGT, as an active labor organization, were to have opposed UPWA's petition, the Board would not have been circumscribed by, nor precluded under the principles of, such cases as General Motors Corporation, 102 NLRB 1140 from finding that the not quite 2-year old contract of August 23, 1951, was not a bar to a new determination of representatives. Rather, it could have found, under the principles of such cases as Standard Brass Manufacturing Company, 101 NLRB 1032, *supra*, that this contract with an inert representative constituted no such bar.

⁶ It is not the Board's province to prescribe the terms of any proposal concerning which the parties should bargain in good faith. It may well be that due to the lapse of time and possible change in circumstance, the parties now have in mind the desirability of making proposals and counterproposals differing in degree or character from those which were under consideration 6 or more months ago. An order to bargain, then, should not, and does not purport to, restrict good-faith bargaining to the substantive matters in the proposal submitted by the Union on January 21, 1953, or to the subjects that may have been discussed by the parties then and on February 21.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent as set forth in section III, above, occurring in connection with the activities of Respondent set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and territories and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce

V. THE REMEDY

It having been found that Respondent has refused to bargain collectively with the Union, I will therefore recommend that Respondent upon request bargain with it. It not having been found that Respondent's action in refusing to bargain was taken in bad faith, I do not recommend the issuance of a broad order.

CONCLUSIONS OF LAW

The Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8 (a) (1) and (5) and 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 United Packinghouse Workers of America, CIO, as the exclusive representative of all production and maintenance employees in this plant, excluding executive, administrative, and professional employees, foremen, clerical-office personnel, guards, watchmen, and supervisors as defined in the Act, 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

RENE BENVENUTTI AND BERNARDO RIVERA,
CO-PARTNERS d/b/a FABRICA DE MUEBLES
DE PUERTO RICO,

Employer.

Dated By
(Representative) (Title)

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