

by secret ballot was conducted under the direction and supervision of the Regional Director for the Fifteenth Region among the employees of the Employer in the unit found appropriate by the Board. Upon the conclusion of the election, the parties were furnished a tally of ballots, which showed that of 3 valid votes counted, 2 were for, and 1 was against, the Joint Petitioners. All individuals who were employed at the time of the election voted and had their votes counted. On December 11, 1953, the Employer filed timely objections to the election. After an investigation, the Regional Director, on January 22, 1954, issued and duly served upon the parties his report on objections, finding that the Employer's objections that the election was not representative lacked merit and recommending that they be overruled and an appropriate certification issued. The Employer filed timely exceptions to the Regional Director's report on objections. The Petitioners filed an answer to the Employer's objection.

In its objections, the Employer alleged that the election was not representative because the normal complement of employees is 5 and there were only 3 employed on the date of the election. All 3 voted. In view of the total number of employees possibly involved, we find no merit to the Employer's contentions.²

As it appears from the tally of ballots that the Petitioners have secured a majority of the valid votes cast in the election, we shall certify the Petitioners as the bargaining representative of the employees in the appropriate unit.

[The Board certified Pine Tree Lodge 1983, International Association of Machinists, AFL, and Local Union No. 5, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, as the designated collective-bargaining representative of the employees of the Employer in the unit found appropriate.]

²Northwest Packing Co., 65 NLRB 890, on which the Employer relies is clearly distinguishable. In that case the Board held that an election was not representative when only 18 percent of the eligible voters participated and the margin between 2 rival unions was only 1 percent. Here, all eligible voters participated and the number of those eligible represents a majority of the possible number of employees.

SEATTLE BAKERS BUREAU, INC. *and* CONGRESS OF INDUSTRIAL ORGANIZATIONS. Case No. 19-CA-810. March 30, 1954

DECISION AND ORDER

On June 18, 1953, Trial Examiner James R. Hemingway issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and de-

sist 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.

On August 25, 1953, the Board remanded the case for further hearing on specified issues.¹ On December 1, 1953, Trial Examiner Wallace E. Royster issued his Supplemental Report, a copy of which is attached, in which he made additional findings of fact. Thereafter, the Respondent filed exceptions to the Supplemental Report and a supporting brief. The Union also filed a brief.²

The Board has reviewed the rulings made by the Trial Examiners at the hearings and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report and Supplemental Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiners with the following modifications:³

On April 21, 1953, the Board issued its Supplemental Decision, Order, and Certification of Representatives⁴ in which the Union was certified, pursuant to an election,⁵ as the exclusive bargaining representative of the employees employed by the Respondent in an appropriate unit. On April 28, 1953, the Respondent refused to bargain, upon request, with the Union with respect to the employees in this unit, asserting as a defense that the election was erroneously directed because a contract between the Respondent and Bakers Union Local No. 9, AFL, which was in effect at the time of the filing of the petition in the representation case, should have been held a bar to the petition. The Board has reexamined its decision in the representation case and finds that at the time of its issuance that decision was consistent with the contract-bar policies of the Board then in effect. Inasmuch as the election was properly directed at the time such Decision and Direction of Election was issued, we find that the certification of the Union is valid,⁶ and that the Union was at all times since April 21, 1953, the exclusive representative of the Respondent's employees in the unit found appropriate in the representation case. We find, further, in agreement

¹On November 5, 1953, the Board issued an amendment to its order remanding the case for further hearing, which amendment directed that the Trial Examiner conducting the hearing on remand make findings of fact with regard to the issues specified in such order.

²The Respondent has filed a motion to strike the Union's brief, alleging, inter alia, that it refers to evidence not contained in the record. We will deny the motion to strike but will disregard the brief to the extent that it refers to evidence not in the record.

³The Union's request for oral argument is hereby denied, as the record, the exceptions, and briefs, in our opinion, adequately present the issues and the positions of the parties.

⁴Seattle Bakers Bureau, Inc., 104 NLRB 270.

⁵This election was held pursuant to a Decision and Direction of Election issued on December 23, 1952. 101 NLRB 1344.

⁶The Board finds it unnecessary at this time to decide whether it would reach a different result on the contract-bar issue were the representation case before it for initial decision at this time.

with the Trial Examiner, that the Respondent refused to bargain with the Union on and after April 28, 1953, thereby violating Section 8 (a) (1) and (5) of the Act.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Seattle Bakers Bureau, Inc., its members, officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Congress of Industrial Organizations as the exclusive representative of all employees in the bargaining unit described below with respect to rates of pay, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees employed as foremen, dough mixers, ovenmen, mouldermen, machinemen, benchhands, control-roommen, jobbers, bakers, and helpers; but excluding guards, professional employees, and supervisors as defined in the National Labor Relations Act, as amended, machinists, engineers, clericals, office employees, driver-salesmen, special delivery drivers, over-the-road transport drivers, deliverymen, semi-truck-and-trailer drivers, loaders, checkers, wrappers, deliverymen for retail bakeries, stockmen and flour blenders, assistant stockmen and flour blenders, men in charge of miscellaneous help, miscellaneous help, floorladies, assistant floorladies, machine operators, experienced girls, beginners, and all other employees.

(b) In any manner interfering with the efforts of Congress of Industrial Organizations to bargain collectively with it on behalf of the employees in the aforesaid unit.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Congress of Industrial Organizations as the exclusive representative of its employees in the appropriate unit described above, and, in the event that an understanding is reached, embody such understanding in a signed agreement.

(b) Post at the places of business of each of its members in the Seattle, Washington, area copies of the notice attached hereto marked "Appendix A."⁷ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after having been signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) con-

⁷In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

secutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

APPENDIX A

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL bargain collectively upon request with the Congress of Industrial Organizations as the exclusive representative of all employees in the bargaining unit described below with respect to rates of pay, hours of employment, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees employed as foremen, dough mixers, ovenmen, mouldermen, machinemen, benchhands, control-room men, jobbers, bakers, and helpers; but excluding guards, professional employees, and supervisors as defined in the National Labor Relations Act, as amended, machinists, engineers, clericals, office employees, driver-salesmen, special delivery drivers, over-the-road transport drivers, delivery men, semi-truck-and-trailer drivers, loaders, checkers, wrappers, deliverymen for retail bakeries, stockmen and flour blenders, assistant stockmen and flour blenders, men in charge of miscellaneous help, miscellaneous help, floorladies, assistant floorladies, machine operators, experienced girls, beginners and all other employees.

WE WILL NOT interfere in any manner with the efforts of Congress of Industrial Organizations to bargain collectively on behalf of the employees in the aforesaid unit.

SEATTLE BAKERS BUREAU, INC., on
 behalf of
 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.

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Congress of Industrial Organizations, herein called the Union, filed a charge on April 30, 1953, against Seattle Bakers Bureau, Inc., herein called the Respondent. Upon such charge, the Regional Director for the Nineteenth Region of the National Labor Relations Board, herein called the Board, on behalf of the General Counsel for the Board, issued a complaint on May 5, 1953, 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, herein called the Act. Copies of the charge, complaint, and notice of hearing were served on the parties.

Pursuant to such notice, a hearing was held in Seattle, Washington, on May 21, 1953, before me as the duly designated Trial Examiner. At the opening of the hearing, counsel for the General Counsel, hereinafter called General Counsel, moved to amend the wording of the first paragraph of the complaint in minor respects. The motion was granted. He also moved to amend the sixth paragraph of the complaint by insertion of three additional words. This motion was likewise granted. At the conclusion of the hearing the parties waived oral argument, but the Respondent asked and was granted until June 10, 1953, to file a brief. A brief was received on that date and has been considered.

The complaint, as amended, in substance alleged that during the period between January 21 and 30, 1953, a majority of the Respondent's employees¹ in an appropriate unit who voted in a secret-ballot election conducted by the said Regional Director in Case No. 19-RC-1186 designated the Union as their representative for the purposes of collective bargaining, that, by virtue thereof, the Union from that time has been and now is the exclusive bargaining representative of all the employees in the appropriate unit, but that from April 30, 1953, to the date of the complaint the Respondent had refused to bargain collectively with the Union.

The Respondent's answer, filed on May 14, 1953, admitted the refusal to bargain but denied that the Union was designated as bargaining representative by said majority.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is, and at all times material herein has been, a nonprofit corporation duly organized and existing under the laws of the State of Washington for the purpose of representing employer-members in negotiating labor agreements with unions representing employees of its membership. Members of the Respondent produce a substantial part of the perishable bakery products produced in the Seattle, Washington, area. Members of the Respondent in the conduct of their business in the Seattle area make purchases and cause to be shipped to the State of Washington from points outside the State of Washington raw materials valued in excess of \$500,000 annually. Members of the Respondent make sales which exceed \$1,000,000 annually, of which \$200,000 is shipped direct to States of the United States other than the State of Washington. The Respondent concedes that certain of its members are and have been at all times material herein engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization which admits to membership employees of the Respondent Members.

III. THE UNFAIR LABOR PRACTICES

A. The appropriate unit

The complaint alleges, the Respondent's answer admits, and I find that the following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act

¹As the Respondent was acting on behalf of member bakeries, the reference in the complaint to the Respondent's employees is taken to mean employees of members of the Respondent.

All employees of the member bakeries of Seattle Bakers Bureau, Inc., employed as foremen,² dough mixers, ovenmen, mouldermen, machinemen, benchhands, control-room men, jobbers, bakers, helpers, but excluding guards, professional employees, and supervisors as defined in the Act, machinists, engineers, clericals, office employees, driver-salesmen, special delivery drivers, over-the-road transport drivers, delivery men, semi-truck-and-trailer drivers, loaders, checkers, wrappers, deliverymen for retail bakeries, stockmen and flour blenders, assistant stockmen and flour blenders, men in charge of miscellaneous help, miscellaneous help, floorladies, assistant floorladies, machine operators, experienced girls, beginners, and all other employees.

B. The Union's majority

On December 23, 1952, the Board issued its Decision and Direction of Election among the Respondent's employees in the appropriate unit heretofore found.³ Pursuant thereto an election by secret ballot was conducted during the period between January 21 and 30, 1953. According to the tally of ballots, a majority of the employees in the unit who voted in this election designated the Union the collective-bargaining representative of all the employees in said unit.⁴ On February 5, 1953, the competing labor organization, hereinafter called AFL, which lost the election, filed objections to the conduct of the election and conduct affecting the results of the election. On February 27, 1953, the Regional Director, who conducted an investigation of the aforesaid objections, issued and served upon the parties his report upon objections, in which he found that the objections raised no substantial and material issues with respect to the conduct of the election and conduct affecting the results of the election, and he recommended that the objections be overruled and dismissed. Following this the AFL and the Employer filed exceptions to the report on objections and each petitioned the Board to reconsider its Decision and Direction of Elections. On April 21, 1953, the Board issued its Supplemental Decision, Order, and Certification of Representatives in which it overruled the exceptions to the Regional Director's report on objections and certified the Union as the collective-bargaining representative of the employees in the aforesaid unit.

It is the contention of the Respondent that the decision of the Board both in directing the election and in overruling the exceptions to the report on objections to the election was erroneous as a matter of law and also that the Board was guilty of arbitrary and capricious conduct in rendering its decision. The Respondent offered nothing specific in support of its charge of arbitrary and capricious conduct. I find no evidence of any in this case.

The Respondent takes the position that it is entitled to a review in the courts of the Board's Decision. So far as these proceedings are concerned, the issues decided administratively in the representation case are not reviewable.⁵ It follows therefore that on April 21, 1953, the Union was and at all times thereafter has been the collective-bargaining representative of all the employees in the appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment within the meaning of Section 9 (a) of the Act.

C. The refusal to bargain

On April 23, 1953, the Union wrote a letter to the Respondent requesting that the Respondent negotiate with it concerning the terms of a labor agreement governing hours, wages, and working conditions of the employees in the appropriate unit, and requested that the Respondent fix a time and place for the commencement of negotiations.

On April 28, 1953, the Respondent replied to the Union's letter stating that the Respondent desired to test the legality of the proceeding resulting in the certification of the Union,⁶ that the only way in which a review of the Board's decision could be obtained would be by a refusal to bargain, and that it declined the request of the Union to commence negotiations. The Re-

² The Board in its Decision and Direction of Election found that the foremen were not supervisors within the meaning of the Act.

³ 101 NLRB 1344.

⁴ The tally of ballots showed 251 votes for the Union, 224 votes for Bakers Union Local No. 9, AFL, 5 against any labor organization, with 18 ballots challenged.

⁵ Kearney & Trecker Corp., 101 NLRB 1577.

⁶ The Respondent's principal contentions were that the Board erred in not finding that a contract between the Respondent and the AFL was a bar to an election and that an election of combined mail and manual ballot was improper and illegal.

spondent in its answer admits the refusal to bargain. Accordingly, I find that on April 28, 1953, the Respondent refused to bargain collectively with the Union within the meaning of Section 8 (a) (5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

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. The Union is a labor organization within the meaning of Section 2 (5) of the Act
2. All employees of the member bakeries of Seattle Bakers Bureau, Inc., employed as foremen, dough mixers, ovenmen, mouldermen, machinemen, benchhands, control-room men, jobbers, bakers, helpers; but excluding all of the following: guards, professional employees, and supervisors as defined in the Act, machinists, engineers, clericals, office employees, driver-salesmen, special delivery drivers, over-the-road transport drivers, deliverymen, semi-truck-and-trailer drivers, loaders, checkers, wrappers, deliverymen for retail bakeries, stockmen and flour blenders, assistant stockmen and flour blenders, men in charge of miscellaneous help, miscellaneous help, floorladies, assistant floorladies, machine operators, experienced girls, beginners, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.
3. On and at all times after April 21, 1953, the Union has been the exclusive representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, within the meaning of Section 9 (a) of the Act.
4. By refusing on and after April 28, 1953, to bargain collectively with the Union, the Respondent has committed an unfair labor practice within the meaning of Section 8 (a) (5) and (1) of the Act.
5. The aforesaid unfair labor practice is an unfair labor practice 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, as amended, we hereby notify our employees that:

WE WILL bargain collectively upon request with the Congress of Industrial Organizations as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees employed as foremen, dough mixers, ovenmen, mouldermen, machinemen, benchhands, control-room men, jobbers, bakers, and helpers, but excluding guards, professional employees, and supervisors as defined in the National Labor Relations Act, as amended, machinists, engineers, clericals, office employees, driver-salesmen, special delivery drivers, over-the-road transport drivers, deliverymen, semi-truck-and-trailer drivers, loaders, checkers, wrappers, deliverymen for retail bakeries, stockmen and flour blenders, assistant stockmen and flour blenders, men in charge of miscellaneous help, miscellaneous help, floorladies, assistant floorladies, machine operators, experienced girls, beginners, and all other employees.

WE WILL NOT 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 Congress of Industrial Organizations or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act, as amended.

SEATTLE BAKERS BUREAU, INC., on
behalf of
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.

Supplemental Report

After a hearing before a Trial Examiner of the National Labor Relations Board on May 21, 1953, and after the issuance of an Intermediate Report and Recommended Order based upon the record then made, the National Labor Relations Board, herein called the Board, by its order dated August 25, 1953, as amended November 5, 1953, remanded the proceeding to the Regional Director for the Nineteenth Region for further hearing for the purpose of obtaining evidence with regard to: (1) The terms of all past and present union-security contracts between Respondent and Bakers Union Local No. 9, AFL, (2) whether all employees employed on June 21, 1952, and covered by the contract executed on that date between Respondent and Bakers Union Local No. 9, AFL were members of that union on that date; and (3) if any such employees were nonmembers on that date, whether they were at any time afforded a 30-day grace period before being required to join said union

Pursuant to notice a hearing was held before the undersigned in Seattle, Washington, on October 26, 1953. The parties were represented by counsel and participated in the hearing. All parties were afforded opportunity to file briefs, and a brief has been received from the Union.

In accordance with the direction of the Board's order of November 5, based upon the evidence taken at the reopened hearing, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

A. Concerning union-security contracts

The contract between the Respondent and Bakers Union Local No. 9, AFL, herein called Local No. 9, for the period May 1, 1947, to May 1, 1948, in respect to union security, provided:

Only members of the Bakers' Union No. 9 and Helpers shall be employed, the same to be secured through the office of the Union.

The contract for the period May 1, 1948, to May 1, 1949, provided:

Membership in good standing in the Union shall be a condition of employment. For the purpose of this section, tender of the initiation fee on or immediately following the thirtieth day of employment and tender of the periodic dues uniformly required as a condition of retaining membership shall constitute good standing in the Union. This shall become effective upon certification by the National Labor Relations Board as provided in Sections 8 (a) (3), and 9 (e) of the Labor-Management Relations Act of 1947.

All subsequent contracts, and specifically the one signed on June 26, 1952, have provided, and now provide:

Membership in good standing in the Union shall be a condition of employment. For the purpose of this section, tender of the initiation fee on or immediately following the thirtieth day of employment and tender of the periodic dues uniformly required as a condition of retaining membership shall constitute good standing in the Union.

B. Concerning membership in Local No. 9

A list of employees of Respondent's members as of June 21 and 22, 1952, but including some not in the bargaining unit, was sufficiently identified and received in evidence. The number of such employees is approximately 520. Charles Meredith, secretary-treasurer of Local No. 9, identified a list of names which he testified constituted the roster of members of Local No. 9 as of June 21, 1952. All but about 20 of the employees appear as members on the Local No. 9 roster. Meredith testified that one is considered a member of Local No. 9 if he has made application for membership and has not been suspended or expelled. A member may, without penalty of suspension or expulsion, fail to pay dues for 6 months or longer; as much time as the applicant requires is allowed to complete payment of the initiation fee. I find that as of June 21, 1952, the records of Local No. 9 indicate that about 500 of the 520 employees were its members. Some doubt upon the accuracy of the records is cast by the credited testimony of Delbert Dahl, an employee of Langendorf United Bakeries, Cake-Cookie Division. Dahl testified that he has been employed by Langendorf since September 1951 and has never at any time been a member of Local No. 9 although carried as one on the roster received in evidence.

Because the evidence does not establish how recently those claimed as members of Local No. 9 have paid dues or how many, if any, have not completed applications for membership, and because the order of remand does not appear to require such a finding, I do not decide whether on June 21 employees of Respondent's members had designated Local No. 9 as their representative.

C. Concerning the 30-day grace period to nonmembers of Local No. 9

The evidence is, and I find, that no employee suffered loss of employment because of nonmembership in Local No. 9 in the 30-day period following June 21, 1952.

RIVIERA MINES COMPANY *and* INTERNATIONAL UNION
MINE, MILL & SMELTER WORKERS, IND., Petitioner. Case
No. 21-RC-3276. March 30, 1954

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 H. C. Bumgarner, 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 labor organization involved claims to represent certain employees of the Employer.
3. A 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.
4. We find that the following employees constitute a unit appropriate for purposes of collective bargaining within the