

In the Matter of ENSHER, ALEXANDER & BARSOOM, INC. and FOOD, TOBACCO, AGRICULTURAL AND ALLIED WORKERS UNION OF AMERICA, CIO and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND CALIFORNIA STATE COUNCIL OF CANNERY UNIONS, AFL, AND CANNERY WORKERS UNION LOCAL 857, AFL, PARTIES TO THE CONTRACT

Case No. 20-C-1445.—Decided August 21, 1947

Mr. Louis R. Mercado, for the Board.

Henry & Bedeau, by *Mr. Grover W. Bedeau*, of Sacramento, Calif., for the respondent.

Tobriner & Lazarus, by *Messrs. Mathew O. Tobriner* and *Albert Brundage*, of San Francisco, Calif., for the AFL.

Mr. Joseph Forer, of Washington, D. C., and *Miss Pat Verble*, of Sacramento, Calif., for the CIO.

Mr. Seymour Cohen, of counsel to the Board.

DECISION

AND

ORDER

On October 18, 1946, Trial Examiner Victor Hirshfield 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 desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the respondent had not engaged in certain other unfair labor practices alleged in the complaint. Thereafter, the respondent and the AFL filed exceptions to the Intermediate Report and supporting briefs. On May 27, 1947, the Board at Washington, D. C., heard oral argument, in which the respondent, the AFL, and the CIO participated.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs filed by the respondent and the AFL, the oral argument, and the entire record in the case, and hereby adopts only those findings of fact of the Trial Examiner that

are consistent with this decision.¹ For the reasons set forth below, the Board does not adopt the Trial Examiner's conclusions and recommendations.

The sole issue to be determined in this proceeding is whether the execution of the closed-shop contract of February 27, 1946, by the respondent and the AFL, under the circumstances set forth in the Intermediate Report, violated the Act. By applying the doctrine of the *Midwest Piping* case,² the Trial Examiner concluded that the execution of the contract was unlawful. We do not agree, inasmuch as we are of the opinion that the *Midwest Piping* doctrine is inapplicable to the particular facts in this case.

In *Midwest Piping*, and in other like cases which followed it,³ the Board held that the employer usurped the Board's exclusive function to determine questions concerning representation of employees by executing an exclusive bargaining contract with one of two rival unions while a proceeding was pending before the Board to determine representatives for collective bargaining. In those cases, the employer knew at the time he entered into such a contract that there existed a real question as to whether the contracting union represented a majority of his employees in an appropriate bargaining unit.

Such is not the situation in the case now before us. Here, as the record shows, the Independent, the only union other than the AFL which appeared on the ballot in the election conducted by the Board at the respondent's plant in October 1945, became defunct shortly after that date. So far as appears, the *only* labor organization claiming to represent its employees on February 27, 1946, when the respondent entered into the allegedly invalid contract, was the AFL.⁴ There were no actual conflicting claims. There is no allegation in the complaint and no evidence that the AFL did not represent a majority of the respondent's employees at that time, or that the unit covered by the contract was inappropriate. The respondent asserts that, because of the victory of the AFL in the election of October 1945,⁵ and

¹ The Trial Examiner stated in his Intermediate Report that the respondent conceded that it is engaged in commerce within the meaning of the Act. No such admission appears in the record. However, it is clear from the facts as to the nature of its business, and we find, that the respondent is engaged in commerce within the meaning of the Act.

² *Matter of Midwest Piping & Supply Co., Inc.*, 63 N. L. R. B. 1060.

³ See, for example, *Matter of Flotill Products, Inc.*, 70 N. L. R. B. 119; *Matter of Linc'n Packing Co.*, 70 N. L. R. B. 135; *Matter of G. W. Hume Company*, 71 N. L. R. B. 533.

⁴ The CIO, the successor of the Independent, did not make a substantial showing as to representation among the respondent's employees until August 16, 1946, long after execution of the AFL's allegedly invalid contract.

⁵ Of 96 valid votes counted, 64 votes were cast for the AFL, 28 votes were cast for the Independent, and 4 votes for neither labor organization. In our Supplemental Decision and Order, issued on February 15, 1946, the Board vacated this election, as well as other elections involving employer members of the CP & G unit and other independent companies, at the instance of the AFL, because of certain procedural defects concerning eligibility to vote. *Matter of Bercut-Richards Packing Co., et al.*, 65 N. L. R. B. 1052.

the respondent's bargaining history with the AFL,⁶ it believed in good faith that the AFL continued to represent a majority of the respondent's employees on February 27, 1946. Under these circumstances, we do not believe that the respondent's execution of the contract with the AFL on February 27, 1946, should be regarded as an unfair labor practice, even though it be technically true that the representation proceeding was still pending before the Board.⁷ There was then, in actual fact, no real question concerning representation of the respondent's employees to be resolved. We are, therefore, of the opinion that the contract should not fall within the condemnation of the *Midwest Piping* doctrine.⁸ That doctrine, necessary though it is to protect freedom of choice in certain situations, can easily operate in derogation of the practice of continuous collective bargaining, and should, therefore, be strictly construed and sparingly applied.

It not having been established that the contract of February 27, 1946, is invalid under the principles of the *Midwest Piping* case or for any other reason, we conclude that the respondent did not violate the Act in executing the contract, as the complaint alleges. Accordingly, we shall dismiss the complaint.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint issued herein against the respondent, Ensher, Alexander & Barsoom, Inc., Isleton, California, be, and it hereby is, dismissed.

MR. JOHN M. HOUSTON, dissenting:

My colleagues have dismissed this complaint although the Employer's conduct in executing his closed-shop contract with the AFL on February 27, 1946, was in direct defiance of a Board order not to do so issued only 12 days before.⁹ If there is anything more calculated to bring into ridicule the processes of this Board than this abdication in the face of such contumacy, I cannot conceive of it.

INTERMEDIATE REPORT

Louis R. Mercado, Esq., for the Board.

Henry & Bedeau, by Grover W. Bedeau, Esq., of Sacramento, Calif, for the respondent.

⁶ The respondent had had exclusive bargaining agreements with the AFL continuously at least since 1941.

⁷ The *Bercut-Richards* decision of February 15, 1946, 65 N. L. R. B. 1052, setting aside the earlier elections, contained no "order" not to make new contracts, as the dissent suggests, but only a statement of the law and an admonition not to do so.

⁸ For the same reason, our warning in our Supplemental Decision and Order to the employers involved therein not to grant preferential treatment to any of the labor organizations seeking representative status was not applicable to the respondent.

⁹ See the *Bercut-Richards* case in 65 N. L. R. B. 1052.

Tobriner & Lazarus, by *Albert Brundage, Esq.*, of San Francisco, Calif., for the AFL.

Miss Pat Verble, of Sacramento, Calif., for the CIO.

STATEMENT OF THE CASE

Upon charges duly filed by the Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, herein called the CIO, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twentieth Region (San Francisco, California), issued its complaint dated August 16, 1946, against Ensher, Alexander & Barsoom, Inc., herein 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 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served upon respondent, the CIO and upon International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, the California State Council of Cannery Unions, AFL, and Cannery Workers Union, Local 857, AFL, herein jointly called the AFL, parties to the contract.

With respect to the unfair labor practices, the complaint alleged that respondent: (1) urged, persuaded and warned its employees not to become members of the CIO, demanded that they become and remain members of the AFL, threatening them with discharge if they failed to do so, granted access to its plant to representatives of the AFL and refused access to its plant to representatives of the CIO; and (2) during the pendency of a collective bargaining election at respondent's plant in Isleton, California, between the AFL and CIO, on February 27, 1946, executed an exclusive bargaining agreement with the AFL despite a provision in the Board's Supplemental Decision and Order, dated February 15, 1946, which stated that respondent should not grant exclusive recognition either to the CIO or to the AFL, that because of all the alleged acts set forth above, the agreement was illegal and void, and respondent interfered with, restrained, and coerced its employees in violation of Section 8 (1) and (3) of the Act.

Thereafter, the respondent and the AFL filed answers denying the commission of any unfair labor practices.

Pursuant to notice a hearing was held at Sacramento, California, on September 17, 1946, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. At the opening of the hearing the AFL and respondent moved to dismiss the complaint on various alternative grounds. Ruling on these motions were reserved and the motions are hereby denied for the reasons set forth in Section III, below. The Board, the respondent, and the AFL were represented by counsel, and the CIO by a representative. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues. Oral argument, in which counsel for the Board, the respondent, and the AFL participated, was heard and is part of the record. The parties were granted leave to file proposed findings of fact and conclusions of law, as well as briefs, with the undersigned. The AFL, the Board and the respondent have filed briefs.

Upon the entire record in the case and upon his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, Ensher, Alexander & Barsoom, Inc., is a California corporation operating a plant at Isleton, California, where it is engaged in the canning and

processing of fruits and vegetables. In the course and conduct of its business, respondent causes in excess of 50 percent of the products of its Isleton plant, valued in excess of \$750,000 annually, to be sold and transported in interstate and foreign commerce from its Isleton plant to states and territories of the United States other than the State of California and to foreign countries.

The respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATIONS INVOLVED

Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, California State Council of Cannery Union, AFL, and Cannery Workers Union, Local 857, AFL, are labor organizations admitting to membership employees of respondent's Isleton plant.

III. THE UNFAIR LABOR PRACTICES

A. *Sequence of Events*

1. Events preceding the election

Respondent has had contractual relations with the AFL since approximately 1936 with the latest contract expiring March 1, 1946. Although not a member of the California Processors and Growers, Inc., herein called CP & G, respondent has always "subscribed" to the contract between that organization and the AFL by so notifying the AFL by letter, and would also sign a contract or memorandum embodying matters not covered in the so-called "Master" agreement. The contract expiring March 1, 1946, between the AFL and respondent included a closed-shop provision, and credible and uncontradicted testimony indicated that the respondent and the AFL had "always had a closed shop agreement."¹

During the summer of 1945, several petitions were filed alleging that a question affecting commerce had arisen concerning the representation of the employees of respondent's Isleton plant. Petitions alleging the same questions were filed against numerous other companies in the same geographical area, some of the companies being members of the CP & G, and many, like respondent, not being members of this association. Upon an appropriate order of the Board, consolidated hearings were held during July, August and September 1945, in which these various companies, including respondent, were represented.

On October 5, 1945, the Board issued a telegraphic order of direction of election in the consolidated case,² in which all production and maintenance employees in respondent's Isleton plant were found to constitute an appropriate unit and the election was scheduled by the Board's Regional Director for October 15. The election was held as scheduled.³

2. Events subsequent to the election

The AFL filed objections to all the elections held pursuant to the *Bercut Richards* decision, including the election held among respondent's Isleton plant

¹ Testimony of Homer E. Ensher, president and general manager of the respondent.

² This case has become known as the "Bercut-Richards" case.

³ The vote in the Isleton plant of respondent was as follows :

Approximate number of eligible voters.....	225
Valid votes counted.....	96
Votes cast for [AFL].....	64
Votes cast for [Independent].....	28
Votes cast against participating labor organizations.....	4
Challenged ballots.....	4
Void ballots.....	3

The CIO was not on the ballot, for reasons which will appear below.

employees. On January 16, 1946, the Regional Director of the Board issued his Report on Objections to the election and on February 15, 1946, the Board issued a "Supplemental Decision and Order" in the consolidated case wherein all the elections were vacated and set aside. The Board anticipated conducting new elections in the near future and said:

While we view the record as requiring this result we reach it with considerable reluctance because it means that the employees will have no bargaining representative to negotiate an exclusive collective agreement to cover the coming season, until a new election can be held which may result in one of the rival unions being certified. The current AFL contract will expire on March 1 and since the legal effect of the foregoing determination is to keep the question of representation pending before the Board, none of the unions is entitled to an exclusive status as the bargaining agent after that date. In accordance with well established principles, the employers may not, pending a new election, give preferential treatment to any of the labor organizations involved, although they may recognize each one as a representative of its members. In this state of the record no legal effect may be given the closed-shop provision contained in the current collective agreements after their expiration date; the inclusion of any such provision in any new agreements, or action pursuant thereto would clearly be contrary to the proviso in subsection 8 (3). Nothing in our decision, however, should be construed as requiring any change in the substantive conditions now existing by virtue of the foregoing agreements.

The respondent received a copy of this "Supplemental Decision and Order"⁴ but nevertheless on February 27, 1946, entered into a contract with the AFL recognizing the AFL as the exclusive representative of its employees at its Isleton plant for the purposes of collective bargaining with the respondent and requiring as a condition of employment membership in the AFL. The respondent admits that since February 27, 1946, it has enforced and given effect to said agreement.

Sometime in March, 1946, two representatives of the C. I. O. appeared at the plant and conferred with Ensher. They asked him to bargain with them with respect to a contract for 1946. Ensher replied that he had already signed a contract with the AFL some two weeks before, and that "if they . . . wished to bargain with me they should have seen me prior to the signing of the contract." Although Pat Verble, a witness for the Board, testified that she had seen a rough draft of a letter which was alleged to have been sent to the respondent by the CIO prior to February 27, 1946, requesting that it negotiate with the CIO, there was no conclusive testimony that this letter was ever mailed to, or was received by, the respondent, and the undersigned makes no finding relative thereto.

⁴ Although Ensher denied receiving a copy of this decision his own testimony indicates that he was in error in this. His testimony follows:

Q. Subsequent to the election did you receive an Order from the Board with respect to the outcome of that election?

A. Yes, we did.

Q. Do you know in general what the Decision of the Board was in that Decision?

A. Our employees were all AFL, with the exception of a few that went Independent.

It should be noted that the Board's Supplemental Decision and Order of February 15, 1946, contained a tally of the ballots. The Board's official public files in Washington in the *Bercut-Richards* case reveal that on February 15, 1946, the Board forwarded to the respondent herein a copy of its Supplemental Decision and Order of that date, and that this respondent received said copy.

In the Second Supplemental Decision in the *Matter of Bercut Richards Packing Company*, issued on June 13, 1946, the Board noted with respect to the situation at the respondent's plant, that:

There remains the further question as to whether the name of the Independent or its constituent locals should appear on any of the ballots, and also whether in the election at the plant of Ensher, Alexander & Barsoom, Inc., herein called the Ensher plant, the C. I. O. should be permitted a place on the ballot. So far as the Independent is concerned, the evidence indicates that the Independent is either defunct or no longer interested in the present proceedings. Inasmuch as it did not appear at the reopened hearing or request that it be allowed to participate in the elections, we shall omit its name from the ballot in all further elections.

With respect to the request of the C. I. O. that its name be included on the ballot at the Ensher plant, the *Board in its earlier Decision and Direction of Election denied the C. I. O. a place on the ballot at the Ensher plant upon the ground that it had made an inadequate showing of interest among the employees therein*. As the basis of its request, the C. I. O. now relies on the fact that the local of the Independent which made a substantial showing both prior to and at the recent election at the Ensher plant, has become an affiliate of the C. I. O. The request of the C. I. O. is opposed in the present instance by the A. F. L. The C. I. O. has produced no additional cards in its own name aside from seven cards which were submitted after the close of the hearing which preceded the Board's original Decision and Direction of Elections. Under the circumstances, we shall not at this time include the name of the C. I. O. upon the ballot at the Ensher plant. We shall, however, permit the name of the C. I. O. to appear on the ballot providing the C. I. O. submits adequate and timely evidence of its interest to the Regional Director. [Italics added.]

In the Third Supplemental Decision in the above-named matter, issued on August 16, 1946, the Board granted the CIO a place on the Ensher ballot in the election, noting:

The CIO has requested that its name be included on the ballot in the election at the plant of Ensher, Alexander & Barsoom, Inc. In our Second Supplemental Decision herein, we declined to allow the name of the CIO to appear on the ballot, because of its failure to submit an adequate showing of membership among the company's employees. We said, however, that we would permit the name of the CIO to appear on the ballot, provided the CIO thereafter submitted competent evidence of a substantial interest to the Regional Director. We have since been advised by the Regional Director that the CIO has made a showing of membership among the Company's employees sufficient to warrant its participation in the election to be held at the plant in question. We shall therefore, accord the CIO a place on the Ensher ballot.

Since the signing of the agreement between the respondent and the AFL, there have been no discharges or threatened discharges, no refusal to hire and no discrimination against any of the employees because of their labor or non-labor affiliation. This was admitted in the argument of Board's counsel. The only alleged unfair practice, therefore, is the agreement of February 27, 1946, entered into between the respondent and the AFL.

3. The 1946 contract

The Board in its opinion in the *Bercut Richards* case, rendered February 15, 1946, specifically stated as quoted heretofore, that "In accordance with well

established principles, the employers may not, pending a new election, give preferential treatment to any of the labor organizations involved . . ." This decision was received by the respondent herein prior to February 27, 1946, on which date it signed a closed-shop contract with the AFL. Even had the Board in its *Bercut Richards* decision not called attention to the "well established principles," respondent would have been bound thereby.

The instant case is directly in line with the *Midwest Piping* case⁵ decided September 21, 1945, where the Board held that the employer therein violated the Act by entering into a "union shop" agreement with one union when respondent knew at the time the contract was executed "that there existed a real question concerning the representation of the employees in question." In the present case, knowledge of the existence of the question concerning representation could not be in doubt; the election itself was inconclusive, it had been set aside and a new election was pending. All this respondent knew prior to its signing the 1946 contract.

The AFL and respondent contend, in effect, that since the AFL won the election in the respondent's plant by a clear-cut majority, the parties had the right to enter into the contract in issue herein. In the election at the Isleton plant a majority voted for the AFL, the CIO was not on the ballot, and as late as four months later the CIO did not attain a representative interest among the respondent's employees. Thus, in effect, it is contended that the CIO cannot now come to the Board as the charging party, since it had no interest, either in the election or among the employees, sufficient to warrant a finding that the AFL should not have entered into a closed shop contract.

The Ensher plant was polled together with other plants in a Board ordered election. This election was set aside by the Board on the objections of the AFL. Ensher was not excepted; the facts as to Ensher was not litigated separately; and the AFL did not seek to have the original petition herein dismissed as to this particular respondent. Instead the AFL objected to the conduct of the election as a whole, and asked that the election as a whole be set aside. The AFL and the respondent cannot now come to the Board and argue that since the AFL won the election in this particular plant, it had the right to unilaterally enter a closed shop contract with the respondent.

Any person or union may bring an unfair labor practice to the attention of the Board. That the CIO was not on the ballot in the election and that it did not possess a sufficiently representative interest to be put on the ballot is not material here. Essentially the case rests on the fact that the contract between respondent and the AFL was entered upon and enforced after the election had been set aside and despite the pendency of another election.

Respondent and the AFL also contended that having contracted together for several years, until a new bargaining agency is found to represent the employees, the AFL continues to represent them and respondent not only can but is obligated, according to the Board decisions, to negotiate and contract with the AFL. This contention misconstrues Board decisions. Truly, the Board has held consistently that a certified bargaining agent must be accorded a due opportunity to function before a new bargaining agent may be chosen but that issue is not present here. Rather the instant case is covered by the *Phelps Dodge* decision wherein the Board stated:

We are of the opinion that if, during the pendency of an election directed by the Board to resolve a question concerning representation, and employer

⁵ 63 N. L. R. B. 1060. See also *Elastic Stop Nut Corporation v. N. L. R. B.*, 142 F. (2d) 371 (C. C. A. 8), cert. denied 323 U. S. 722.

extends or renews an existing contract with a labor organization, or makes a new one, he violates the Act insofar as that organization is accorded recognition as exclusive bargaining representatives of employees are required to become or remain members thereof as a condition of employment.⁶ Certainly, there is no presumption of continuing majority where, as here, the Board has rules, that a question concerning representation exists.

Another contention brought forward by the AFL and adopted by the respondent was that by stating in the *Bercut Richards* decision of February 15, 1946, the respondent should not grant exclusive representation to the CIO or the AFL the Board had issued an "order" and that the appropriate remedy was for the Board to file a petition in the Circuit Court of Appeals, and not schedule a hearing before a Trial Examiner, and further, that by so "providing" the respondent should not contract with the AFL the Board had prejudged the instant case. These contentions are also without merit. The Board in its Supplemental Decision in the *Bercut Richards* case merely called attention to the "well established principles" of the Board and neither issued an "order" in that respect nor prejudged the present case.⁷

The undersigned finds that by entering into the closed-shop contract with the AFL on February 27, 1946, with knowledge of the pending proceedings for the determination of representatives, the respondent indicated its approval of the AFL, accorded it unwarranted prestige, encouraged membership therein, discouraged membership in the CIO, and thereby rendered unlawful assistance to the AFL, which 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 (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON 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 certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondent has unlawfully assisted the AFL, and interfered with the CIO by recognizing and entering into a closed-shop contract with the AFL, as the exclusive representative of its employees in its Isleton plant. Obviously a free selection of a bargaining representative cannot be made where recognition in a contract, requiring membership of all the employees, has been accorded to one of the competing unions. The undersigned, accordingly,

⁶ In the *Matter of Phelps Dodge Copper Products Corporation, Habirshaw Cable and Wire Division*, 63 N. L. R. B. 686. See also *N. L. R. B. v. Southern Wood Preserving Co.*, 135 F. (2d) 606 (C. C. A. 5); *N. L. R. B. v. John Engelhorn and Sons*, 134 F. (2d) 553 (C. C. A. 3).

⁷ See *Matter of Flotill Products, Inc.*, 70 N. L. R. B. 119. See also *Matter of Lincoln Packing Company*, 70 N. L. R. B. 135.

will recommend that the respondent cease and desist from recognizing the AFL as such exclusive representative unless and until it shall have been certified as such by the Board. Since the contract of February 27, 1946, perpetuates the respondent's unlawful assistance to the AFL and precludes the employees from presently exercising their right to select a bargaining representative of their own choice, the undersigned will further recommend that the respondent cease giving effect to the contract of February 27, 1946, or to any extension, renewal, modification or supplement thereof, unless and until it shall have been certified by the Board as the exclusive representative of the employees in its Isleton plant. Nothing herein, however, should be construed as requiring the respondent to vary any wage, hour, seniority or other substantive features of its relations with the employees themselves, which the respondent has established in the performance of this contract, or to prejudice the assertion by the employees of any rights they may have under such agreement.

The complaint alleged in effect that the respondent had violated Section 8 (3) of the Act by entering into a closed shop contract which affected the terms and conditions of employment of the respondent's employees. In the *Lincoln Packing* case,⁸ as well as in the *Flotill Products, Inc.*, case,⁹ the Board found it unnecessary in effectuating the purposes of the Act to determine whether the execution of a similar contract violated Section 8 (3). The undersigned will therefore recommend that this allegation of the complaint be dismissed.

CONCLUSIONS OF LAW

1. Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, California State Council of Cannery Workers Union, Local 857, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

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

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent Ensher, Alexander & Barsoom, Inc., Isleton, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Recognizing the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, California State Council of Cannery Workers Union, AFL, and Cannery Workers Union, Local 857, AFL, as the exclusive representative of any of its employees, in its Isleton plant, for the purposes of collective bargaining unless and until said organizations, or any of them, shall have been certified by the National Labor Relations Board as the exclusive representative of such employees;

(b) Giving effect to its contract dated February 27, 1946, with International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America,

⁸ See footnote 7, *supra*.

⁹ See footnote 7, *supra*.

AFL, and the California State Council of Cannery Unions, AFL, and Cannery Workers Union, Local 857, AFL, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract with those labor organizations or any labor organizations or affiliate thereof, unless and until said organizations, or any of them, shall have been certified by the Board as the representative of the employees in its Isleton plant;

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, 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 as guaranteed in Section 7 of the Act.

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

(a) Withdraw and withhold all recognition from the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Union, AFL, and Cannery Workers Union, Local 857, AFL, as the exclusive representative of any of its employees in its Isleton plant, for the purpose of collective bargaining, with respect to rates of pay, wages, hours of employment, and other conditions of employment unless and until said organizations, or any of them, shall have been certified by the National Labor Relations Board as the representative of such employees;

(b) Post at its plant at Isleton, California, copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive 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) File with the Regional Director for the Twentieth Region on or before ten (10) days from the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that, unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof, and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the

party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service on the parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

VICTOR HIRSHFIELD,
Trial Examiner.

Dated October 18, 1946.

"APPENDIX A"

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 NOT recognize International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Unions, AFL, and Cannery Workers Union, Local 857, AFL, as the exclusive representative of any of our employees in our Isleton plant, for the purposes of collective bargaining, unless and until said organizations, or any of them, shall have been certified by the Board as the representative of such employees.

WE WILL NOT give effect to our contract dated February 27, 1946, with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and California State Council of Cannery Union, AFL, and Cannery Workers Union, Local 857, AFL, or to any extension, renewal, modification or supplement thereof, or to any superseding contract with said labor organizations, or any of them, unless and until said organizations, or any of them, shall have been certified by the Board as the representative of the employees in our Stocton plant.

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 Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, 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 the Food, Tobacco, Agricultural and Allied Workers Union of America, CIO, or any other labor organization.

ENSHER, ALEXANDER & BARSOOM, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

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