

E. H. BLUM AND MRS. E. H. BLUM, EXECUTRIX FOR THE ESTATE OF E. H. BLUM, D/B/A E. H. BLUM *and* AMALGAMATED CLOTHING WORKERS OF AMERICA, CIO. *Case No. 15-CA-735. January 6, 1955*

### Decision and Order

On September 22, 1954, Trial Examiner Sidney L. Feiler 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 the Respondent cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

We agree with the Trial Examiner's conclusion that the Respondent's refusal to honor our certification of the Charging Union as majority representative of the employees here involved constitutes a violation of Section 8 (a) (5) of the Act. The Respondent's defense to the unfair labor practice allegation in this proceeding rests principally on the same contentions urged to the Board in the representation proceeding (Case No. 15-RC-1000) which culminated in certification of the Union. It is now, as it was then, the Respondent's contention that the Charging Union, in the course of the election ordered by the Board in the representation proceeding, engaged in improper conduct affecting the results of the election such as to invalidate the results. The Board considered the Respondent's assertions in this respect upon evaluation of the Regional Director's report after investigation of the Respondent's objections to the election. After considering the Regional Director's report and the Respondent's subsequent exceptions thereto, the Board determined that the objections did not raise any material or substantial issues with respect to the election and overruled the objections.<sup>1</sup> Thereafter, the Respondent filed a motion for reconsideration, and the Board, after fully considering the objections a second time, denied the Respondent's motion.

Consistent with well-established Board precedent, the Trial Examiner properly rejected the Respondent's offer at the hearing in this proceeding to prove its assertion of improper conduct by the Union

<sup>1</sup> *E H Blum*, 108 NLRB 312.

in the election.<sup>2</sup> Issues relating to the validity of a Board certification resulting from a representation proceeding and decided in that proceeding are not litigable anew in a subsequent complaint case.<sup>3</sup> The Trial Examiner's ruling on the Respondent's offer of proof is therefore affirmed.

In this case the rejected offer of proof contains, in the form of documentary evidence and testimony given under oath in direct and cross-examination, the complete picture of the facts which, according to the Respondent, required that the election be set aside. We have evaluated the Respondent's entire offer of proof and we find, upon full appraisal thereof, that we correctly determined in the representation proceeding that the Respondent's objections to the election do not raise any substantial or material issues and have no merit.

The evidence adduced in this proceeding on the objections to the election contains certain factual conflicts. However, in the consideration of the evidence which follows we find it unnecessary to resolve any credibility issues because the facts stated are based on the disputed testimony of the Respondent's witnesses and even so do not give the objections substance.

In support of its objections to the election the Respondent reiterates these contentions: (1) The Union "interfered with, restrained and coerced [the Respondent's employees] in the exercise of their free choice of bargaining representatives" from October 22, 1953, to the time of the election; (2) the Union actively electioneered in the vicinity of the election in violation of the Board's election rules (a) by the presence of union representatives on the sidewalk in front of the entrance to the Respondent's plant and by their distribution of leaflets, (b) by the appearance of 1 employee at the polling area with a union leaflet in her hand, (c) by the Union's transportation of 1 voter to the polls, (d) by a 2-minute conversation between a union representative and an employee just before the employee entered the Respondent's plant to vote, and (e) by the statement of a union representative, while handling a leaflet to an employee, "How do you stand, because all that's not with use we are going to pop on their head."

With respect to objection (1), employee Tranchina testified she was told by union member Nuccio, prior to Nuccio's discharge on October 29, 1953, "if I didn't sign the [union membership] card and it became a union factory I wouldn't be able to work there unless I joined the union." Plant Superintendent Gooch testified that, when he discharged Nuccio on October 29, she said, "I did not threaten the employees, I only told them if they did not join the union they would not be allowed to work here." Employee Hulette testified that within 24 hours before the election, held on November 20, 1953, he heard a

<sup>2</sup> *S. H. Kress and Company*, 88 NLRB 292, *enfd.* 194 F. 2d 444 (C. A. 6).

<sup>3</sup> *Pittsburgh Plate Glass Co. v. N. L. R. B.*, 313 U. S. 146, 161-162.

rumor from Dupuis, Rodobich,<sup>4</sup> Tranchina, and Gonzalez, "That in order to hold your job you would have to be a member of the union." About four<sup>5</sup> other witnesses testified that they heard a similar rumor at one time or another before the election. We find, as did the Regional Director, that any threats which Nuccio may have made prior to her discharge on October 29 were too remote from the election held on November 20 to have had any effect upon the results of the election. This is so particularly in the light of the discharges, on October 29, of Nuccio and Braud, the two employees alleged to have made threats.<sup>6</sup> As to the rumors, we find there is no need to decide whether they were threats, because the Respondent did not allege any facts to show that the rumormongers were other than rank-and-file employees or unknown persons, whose actions are not attributable to the Union.<sup>7</sup>

With respect to objections (2) (a) and (b), the leaflet stated:

ONLY YOU  
CAN HELP US  
GET OUR JOBS BACK  
VOTE YES!

(signed)

ETTA BRAUD

MARY NUCCIO

The union representatives distributing the leaflets were approximately 75 feet from the voting area. We have held that union distribution of noncoercive handbills at a distance of about 60 feet from a voting area is no more than propagandizing and does not interfere with the conduct of an election.<sup>8</sup> Clearly the leaflet distributed by the Union in this case had no coercive thrust.

As to objection 2 (c), we do not consider union transportation of a single employee to a plant for the purpose of voting in a Board election as interference with the election.<sup>9</sup>

With respect to objection (2) (d), we have held that conversation between a union representative and an employee within a plant during the course of an election does not interfere with the election where there is no showing of coercive statements and the objecting party had signed a Board form certifying the fairness of the election conduct.<sup>10</sup> In this case the employee involved testified that her conversation outside the plant consisted of no more than an exchange of greetings with

<sup>4</sup> The Respondent stipulated that Dupuis and Rodobich were supervisors.

<sup>5</sup> Tranchina, Moore, Gonzalez, and Bourret.

<sup>6</sup> Ordinarily we would not look to the facts of the alleged threats which occurred prior to October 29, 1953; we would instead reject the objection based thereon because the same facts were the subject of a charge in Case No 15-CB-113 which the Regional Director dismissed on November 11, 1953. *Times Square Stores Corporation*, 79 NLRB 361.

<sup>7</sup> *The Gruen Watch Company*, 108 NLRB 610; cf. *Diamond State Poultry Co., Inc.*, 107 NLRB 3.

<sup>8</sup> *Higgins, Inc.*, 106 NLRB 845.

<sup>9</sup> *Reidbord Bros. Co.*, 99 NLRB 127.

<sup>10</sup> *Emerson Electric Company*, 106 NLRB 149.

a couple of union representatives. Also, the Respondent executed a Board form certifying the fairness of the election conduct.

Finally, as to objection (2) (e), Magee, the employee to whom the alleged threat was made, testified that the remark did not affect her vote and that, before the election, she repeated the statement to only one other employee, Moore. Moore testified that when Magee repeated the union representative's remark, she told Magee to think for herself. In these circumstances, it is doubtful that the alleged remark constituted a threat, and, even if considered a threat, the statement was clearly an isolated incident which had no material effect on the employees in the election.

We accordingly find that the Respondent's objections have no merit and do not warrant invalidation of the election or of our certification of the Union.

### 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 Respondent, E. H. Blum and Mrs. E. H. Blum, Executrix for the Estate of E. H. Blum, d/b/a E. H. Blum, New Orleans, Louisiana, her agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Amalgamated Clothing Workers of America, CIO, as the exclusive representative of all production and maintenance employees at the Employer's New Orleans, Louisiana, plant, including shipping room employees, the mechanic, machine operators, inspectors, pressers, the porter and janitor, and nonsupervisory employees in the cutting room, but excluding office clerical employees, executive and administrative employees, guards, the cutting room supervisor, foreladies, and all other supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing the Respondent's employees in the exercise of their right to self-organization, to form or join labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

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

(a) Upon request, bargain collectively with Amalgamated Clothing Workers of America, CIO, as the exclusive representative of the Re-

spondent's employees in the appropriate unit described above, with respect to grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at the Respondent's place of business at New Orleans, Louisiana, copies of the notice attached hereto marked "Appendix."<sup>11</sup> Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by the Respondent 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) Notify the Regional Director for the Fifteenth Region, in writing, within ten (10) days from the date of this Order, as to the steps the Respondent has taken to comply herewith.

<sup>11</sup> In the event 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."

## Appendix

### NOTICE TO ALL EMPLOYEES

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, I hereby notify my employees that:

I WILL NOT refuse to bargain collectively with Amalgamated Clothing Workers of America, CIO, as the exclusive representative of all employees in the following bargaining unit:

All production and maintenance employees at my New Orleans, Louisiana, plant, including shipping room employees, the mechanic, machine operators, inspectors, pressers, the porter and janitor, and nonsupervisory employees in the cutting room, but excluding office clerical employees, executive and administrative employees, guards, the cutting room supervisors, foreladies, and all other supervisors as defined in the Act.

I WILL NOT in any like or related manner interfere with, restrain, or coerce my employees in the exercise of their right to self-organization, to form or join labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining

or other mutual aid or protection, as guaranteed in Section 7 of the Act, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

I WILL, upon request, bargain collectively with Amalgamated Clothing Workers of America, CIO, as the exclusive representative of all employees in the bargaining unit described above, with respect to grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

MRS. E. H. BLUM, EXECUTRIX FOR  
THE ESTATE OF E. H. BLUM, D/B/A  
E. H. BLUM,

*Employer.*

Dated----- By-----  
(Representative) (Title)

This notice must remain posted for sixty (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

Upon a charge and first amended charge filed by Amalgamated Clothing Workers of America, CIO, herein referred to as the Union, the General Counsel of the National Labor Relations Board<sup>1</sup> by the Regional Director for the Fifteenth Region (New Orleans, Louisiana), on June 28, 1954, issued a complaint against E. H. Blum and Mrs. E. H. Blum, Executrix for the Estate of E. H. Blum, d/b/a E. H. Blum<sup>2</sup> alleging that the Respondent had engaged in and was engaging in unfair labor practices 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, 65 Stat. 601, herein called the Act. Copies of the charges, complaint, and notice of hearing were served upon the Respondent and the Union.

With respect to unfair labor practices the complaint alleges in substance that from on or about April 29, 1954, the Respondent refused to bargain with the Union as the duly designated collective-bargaining representative of employees of the Respondent in an appropriate unit, in violation of the Act.

The Respondent, in an answer dated July 13, 1954, admits certain jurisdictional allegations including the appropriateness of the unit as alleged in the complaint but denies the commission of any unfair labor practices. The answer specifically alleges that there is no obligation upon the Respondent to bargain collectively with the Union because the Union was not freely selected by employees of the Respondent but that they were interfered with, restrained, and coerced by the Union in their selection of a representative. The answer further alleges that the Respondent has been deprived of due process by action of the Board in failing and refusing to grant a hearing on certain objections to the Board-conducted election which resulted in a

<sup>1</sup>The term General Counsel as used herein includes the attorney representing the General Counsel at the hearing. The National Labor Relations Board is referred to as the Board.

<sup>2</sup>At all times here relevant operations of the firm known as E. H. Blum were under the direction and control of Mrs. E. H. Blum and she is referred to herein as the Respondent.

certification of the Union as collective-bargaining representative and its subsequent request of the Respondent to engage in collective-bargaining negotiations.

Pursuant to notice, a hearing was held at New Orleans, Louisiana, before a duly designated Trial Examiner. All parties were represented at the hearing and were afforded full opportunity to be heard and to examine and to cross-examine witnesses. At the conclusion of the presentation of evidence the Respondent moved to dismiss the complaint on the merits. Decision was reserved on this motion and it is disposed of by the findings and conclusions contained in this report. Opportunity was then afforded for oral argument. No further argument was presented other than during the presentation of the aforesaid motion of the Respondent. The General Counsel moved to conform the pleadings to the proof as to formal matters. This motion was granted as to all pleadings without objection. Opportunity was also afforded for the filing of briefs and/or proposed findings of fact or conclusions of law or both. Counsel stated on the record that none would be filed and none were received.

Upon the entire record, and from his observation of the witnesses, the Trial Examiner makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

E. H. Blum, an individual proprietorship owned and operated until his death on June 19, 1953, by E. H. Blum and since that date operated by his widow, Mrs. E. H. Blum, as executrix of the estate of E. H. Blum, has its principal office and place of business in New Orleans, Louisiana, where it is engaged in the manufacture of men's and boys' slacks and trousers. During the year 1953, which period is representative of all times material herein, the said Respondent purchased raw materials consisting principally of cut goods, thread, buttons, zippers, waistbands, needles, and related materials valued in excess of \$100,000, approximately 80 percent of which was purchased from points outside the State of Louisiana. During the same period, of Respondent's sales of finished products totaling in excess of \$150,000, more than \$60,000 in value was shipped in interstate commerce to points outside the State of Louisiana.

The Trial Examiner finds that at all times here relevant the Respondent has been engaged in commerce within the meaning of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of the Act.

##### III. THE UNFAIR LABOR PRACTICES

###### A. *The sequence of events*

The instant case stems from a proceeding instituted by the Union in which it sought certification as collective-bargaining representative of employees in the Respondent's plant. The original petition was filed with the Board on August 14, 1953 (Case No. 15-RC-1000).<sup>3</sup> On October 16, 1953, the Board issued its Decision and Direction of Election (not reported in printed volumes of Board Decisions and Orders) in which it directed that an election should be conducted among employees in the following unit found appropriate in order to determine whether employees in that unit wished to be represented for purposes of collective bargaining by the Union: All production and maintenance employees at the employer's New Orleans, Louisiana, plant, including shipping room employees, the mechanic, machine operators, inspectors, pressers, the porter and janitor, and nonsupervisory employees in the cutting room, but excluding office clerical employees, executive and administrative employees, guards, the cutting room supervisor, foreladies, and all other supervisors as defined in the Act. The election was conducted on November 20, 1953, at the Respondent's plant between the hours of 8 a. m. and 9:30 a. m. The official tally of ballots shows that out of approximately 59 eligible voters 34 votes were cast for the Union, 17 against it, and 9 ballots were challenged.

<sup>3</sup> The original petition was filed by the New Orleans Joint Board of the Union. At the hearing, the petition and other formal papers were amended to show the International Union and not the New Orleans Joint Board as the Petitioner.

The tally contains the printed statement, "The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally." This statement was signed by Mrs. E. H. Blum and a representative of the Union. There also is in evidence a certification on conduct of election signed by representatives of the Respondent and the Union certifying that the balloting was fairly conducted, that all eligible voters were given an opportunity to vote in secret, and that the ballot box was protected.

On November 21, 1953, counsel for the Respondent filed with the Board certain objections to the election. Two general grounds were alleged. First, that employees were interfered with, restrained, and coerced by certain actions of the Union which had been made the subject of unfair labor practice charges filed by the Respondent against the Union on November 3, 1953. Secondly, it was alleged that the Union had electioneered in the vicinity of the election while the election was taking place in violation of the Board's Rules.

An investigation of the objections was conducted by the Regional Director for the Fifteenth Region who, on February 1, 1954, issued a detailed report on objections in which he recommended that the objections be overruled and that an appropriate certification be issued.

On February 10, 1954, counsel for the Respondent filed exceptions to report on objections.

On April 20, 1954, the Board issued a Supplemental Decision and Certification of Representatives in which it stated:

We have considered the objections to the elections (sic), the Regional Director's report, and the Employer's exceptions thereto. In agreement with the Regional Director, we find that the objections raise no substantial or material issues with respect to the conduct of the election and we overrule them.

Because the tally of ballots shows that the Petitioner received a majority of the valid votes cast, we shall certify the Petitioner as the bargaining representative of the employees in the appropriate unit.<sup>4</sup>

On April 26, 1954, the Respondent filed a "Motion for Reconsideration" in which counsel alleged that the Respondent had no opportunity to participate in any investigation other than to make routine suggestions as to possible witnesses, that she had had no opportunity to confront, examine, and cross-examine witnesses or to produce any evidence in her own behalf which might tend to impeach or contradict the findings of the Regional Director; and that without a hearing the investigation of the objections and the ruling regarding the exceptions was totally *ex parte* and a deprivation of a proper hearing in violation of the requirements of due process. Reconsideration was requested and also the ordering of a hearing on the exceptions previously filed. On May 14, 1954, the motion for reconsideration was denied ". . . for the reason that it presents no issues which were not previously considered by the Board."

After the issuance of the certification attempts were made by the Union to enter into collective-bargaining negotiations with the Respondent. On April 28, 1954, Nathan Kazin, manager of the New Orleans Joint Board of the Union, sent a letter to the Respondent calling attention to the certification and requesting an early date at which representatives and a negotiating committee could meet with the Respondent in order to negotiate a collective-bargaining agreement. He further stated that he was attaching for consideration by the Respondent a draft copy of contract proposals. The draft contract did not have the name of the employer inserted and referred to the Amalgamated Clothing Workers of America as the "Union."

On May 10, 1954, Kazin sent a further letter to Respondent in which he declared that he had not received any reply to the letter of April 28 and he therefore proposed to set a date for a meeting for collective-bargaining negotiations. He set the date as May 19 at the offices of the New Orleans Joint Board.

On May 11, 1954, the Respondent wrote Kazin that her motion for reconsideration was still pending and that she would give her response to his letter when the Board issued its decision.

On May 18, 1954, after the Board's decision denying the motion for reconsideration, Kazin again wrote the Respondent suggesting the date of May 26 for a meeting. However, on May 19, 1954, the Respondent wrote Kazin the following letter:

We have just received an order of the National Labor Relations Board denying our motion for reconsideration in Case No. 15-RC-1000. Thus, it appears that we have as yet been unable to obtain a hearing on the validity of the elec-

<sup>4</sup> 108 NLRB 312.

tion of last November. Since we sincerely believe that that election was not a reflection of the employees' free choice we, therefore, decline to bargain with you as the representative of our employees.

The Union then instituted the present proceeding by filing its charge on June 10, 1954.

### B. Contentions of the parties; conclusions

#### 1. The appropriate unit; the refusal to bargain

The complaint alleges as an appropriate unit of employees of the Respondent the unit found by the Board in the prior representation case. This allegation is admitted in the answer.

However, the Respondent contends that she cannot be held to have refused to bargain with the Union because a condition precedent to such a finding does not exist; namely, a prior request by the certified collective-bargaining representative to the Respondent to enter into collective-bargaining negotiations. The Respondent points out that the certified collective-bargaining representative is the Amalgamated Clothing Workers of America, CIO. She further points to the admitted fact that after the certification all correspondence received by the Respondent relating to collective-bargaining negotiations was signed by Nathan Kazin as manager of the New Orleans Joint Board of the Union and was sent on stationery of the New Orleans Joint Board.

The constitution of the Union contains detailed provisions concerning joint boards (articles VII and VIII). The general executive board (composed of the national officers of the Union) has authority to organize two or more local unions located in the same city or area into a joint board. This board is made up of delegates elected by each affiliated local union. The joint boards, it is provided, "shall organize, coordinate and supervise the activities of their affiliated local unions." Provision is made for the election of officers of joint boards and their adoption of appropriate bylaws.

Nathan Kazin testified in detail as to his connection with the national organization and the New Orleans Joint Board. He is a national representative of the Union and receives his compensation from national headquarters. He also was assigned to the position of manager of the New Orleans Joint Board by a national officer of the Union. His duties in the New Orleans area are to administer the affairs of the Joint Board and the locals affiliated with it and in addition to assist other locals in the area not affiliated with the Joint Board. He testified that he was specifically authorized by the national vice president of the Union to write the Respondent and request negotiations for a contract and that it was pursuant to that authority that he sent letters to the Respondent requesting a meeting. He used stationery of the New Orleans Joint Board and signed his name as manager but testified that it was his custom to use this stationery for all correspondence and that he considered the authority to negotiate a contract with the respondent was given to him in his capacity as national representative and that the New Orleans Joint Board itself did not have authority to negotiate such a contract.

The New Orleans Joint Board has no formal document of organization but operates under the constitution of the national organization. It does have its own bank account, its own officers, and a business agent.

The Respondent, while conceding that she never raised any question as to Kazin's authority or that of the New Orleans Joint Board and admitting, as her letter of May 19, 1954, shows, that the refusal to bargain was based on her asserted inability to obtain a hearing on the validity of the representation election, still maintains that the burden of proof was on the General Counsel to establish that a demand for collective bargaining was made by the certified Union and that that burden has not been carried. She maintains that demand was made by the Joint Board as a separate entity and not by the Amalgamated Clothing Workers of America, the certified collective-bargaining representative.

The Trial Examiner does not agree with the contention. It is clear that the Union had designated an agent to represent it in the negotiation of a collective-bargaining contract with Respondent. In fact that was the only way in which it could have acted. It was logical for it to designate as a representative its chief employee in the New Orleans area. Actually Kazin held two positions in the union organization. There was no bar to the Union's designating him in his capacity as a national representative or as manager of the New Orleans Joint Board or both. The New Orleans Joint Board was not a stranger to the union organization. Its affiliation was clearly shown on the letterhead which Kazin used in his letters to the Respondent. Any question that might exist with respect to the party for whom Kazin was acting was certainly cleared up by the contract he submitted to the Respondent which

named the Union as the party to the contract together with the Employer. The Trial Examiner therefore concludes that a proper demand for collective bargaining was made upon the Respondent and that this demand was rejected in the Respondent's letter of May 19, 1954.

## 2. The majority status of the Union; the validity of the representation election

In the answer to the complaint it is specifically alleged that the Respondent was not obligated to bargain with the Union because it was not freely selected by the employees but that, on the other hand, the Union interfered with, restrained, and coerced the employees in their selection and designation of the collective-bargaining representative. It is further alleged that the failure and refusal to grant Respondent a formal hearing on the objections to the election filed by the Respondent was a deprivation of due process. Counsel for the Respondent contended at the hearing that the failure to grant a formal hearing on the objections to the election constituted a deprivation of due process. He argued that these objections raised substantial and material issues and that the Respondent should not have had to rely solely on reports by Board agents to the Board on the objections but should have had an opportunity to present witnesses and to examine and cross-examine witnesses in a formal hearing. The General Counsel contends, in substance, that all evidence submitted by the Respondent in support of its objections to the election was considered carefully by the Board, in addition there was an independent investigation by Board representatives of the objections, and there was no denial of due process in the instant case by the refusal to order a formal hearing.

Representation proceedings are conducted pursuant to Section 9 (c) of the Act which provides that where an appropriate petition has been filed "the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. . . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

A representation proceeding is "not technical. It is an investigation, essentially informal, not adversary." *Inland Empire Council v. Millis*, 325 U. S. 697, 706. "The preliminary investigation and the hearing in the representation proceeding are not contentious litigation but investigation." *N. L. R. B. v. Botany Worsted Mills*, 133 F. 2d 876, 882 (C. A. 3). See also, *Foreman & Clark, Inc. v. N. L. R. B.*, 215 F. 2d 396 (C. A. 9).

Section 102.61 of the Board's Rules and Regulations prescribes election procedure in representation cases. It sets forth procedure for the filing of objections to an election, investigation and report on objections, and exceptions to such a report. It is further provided that "if it appears to the Board that such exceptions do not raise substantial and material issues with respect to the conduct or results of the election, the Board may decide the matter forthwith upon the record, or may make other disposition of the case." It has been held that there is no right as a matter of law to a formal hearing on objections and the party filing objections may be requested to submit *prima facie* evidence in affidavit form of persons having first-hand knowledge of matters raised by the objections. *N. L. R. B. v. Huntsville Mfg. Co.*, 203 F. 2d 430, 433 (C. A. 5). A ruling by the Board that certain objections do not raise substantial or material issues is reviewable in later court proceedings.<sup>5</sup>

The evidence establishes that the Respondent was given full opportunity to present objections to the election and evidence in support of these objections. Actually, a substantial portion of the objections related to material presented by the Respondent in support of charges filed against the Union in Case No. 15-CB-113. In the course of the investigation of the charges, the Respondent submitted affidavits, and letters from her counsel. An investigation of the objections was made by the Regional Director for the Fifteenth Region and a field investigator interviewed counsel for the Respondent, Mrs. Blum, and employees at the plant. A detailed report on the objections was filed by the Regional Director and this report, together with the Respondent's exceptions to it, were considered by the Board before it issued its Supplemental Decision and Certification of Representatives. Respondent's motion for reconsideration was subsequently denied.

The Respondent contends that there was a denial of due process because a formal hearing on the objections to the election was refused. The tally of ballots and the

<sup>5</sup> *N. L. R. B. v. Huntsville Mfg Co.*, *supra*; *N. L. R. B. v. Vulcan Furniture Mfg Corp.*, 214 F. 2d 369 (C. A. 5); *N. L. R. B. v. Trinity Steel Co.*, 214 F. 2d 120 (C. A. 5); *N. L. R. B. v. West Texas Utilities Co.*, 214 F. 2d 732 (C. A. 5).

certification on conduct of election were signed by the Respondent and her representatives. Under these circumstances, it was the responsibility of the Respondent, as the objecting party, to come forward with evidence warranting a formal hearing. Some evidence was presented, all of which was considered in the report. At the hearing herein, the Respondent made a detailed offer of proof in support of the position that the election should be set aside. Yet the Respondent did not contend that the witnesses whose testimony she wished to incorporate into the record were not available at the time when the investigation of the objections was taking place. She could have obtained evidence from all of them to document her claims. In fact, she did submit affidavits executed by two of them. The Trial Examiner, under these circumstances, sustained an objection to the offer of evidence which could have been presented in the representation case.<sup>6</sup>

The record in this case shows that detailed consideration was given by the Regional Director, in his report, to all the objections urged by the Respondent. It is clear that a careful investigation was made of the objections, which investigation included not only a study of material submitted by the Respondent, but also independent interviews with employees in the unit and others who might have knowledge of material facts. The Board, after study of the report and the exceptions, came to the conclusion that no substantial and material issues had been raised. The Trial Examiner denies the motion made by the Respondent at the conclusion of the hearing to dismiss the complaint because it had been deprived of due process by the failure to grant a hearing on objections it maintains were substantial and material. It is further found that the Union was the duly designated collective-bargaining representative of a majority of the Respondent's employees in an appropriate unit. The refusal to bargain with it was violative of the Act.

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

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

#### V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that she cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent in violation of the Act failed and refused to bargain collectively with the Union as the duly designated collective-bargaining representative of her employees in an appropriate unit. It will be recommended that the Respondent cease and desist from such activities and on request bargain collectively with the Union.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

#### CONCLUSIONS OF LAW

1. The Respondent, E. H. Blum and Mrs. E. H. Blum, executrix for the estate of E. H. Blum, d/b/a E. H. Blum, is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Amalgamated Clothing Workers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

3. All production and maintenance employees at the Respondent's New Orleans, Louisiana, plant including shipping room employees, the mechanic, machine operators, inspectors, pressers, the porter and janitor, and nonsupervisory employees in the cutting room, but excluding office clerical employees, executive and administrative employees, guards, the cutting room supervisor, foreladies, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. The aforementioned Union was at all times material and now is the exclusive representative of the employees in said unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

<sup>6</sup> *Poinsett Lumber and Manufacturing Company*, 109 NLRB 1079; *Esquire, Inc.*, 109 NLRB 530; *The Baker and Taylor Co.*, 109 NLRB 245; *Superior Sleeprite Corporation*, 109 NLRB 322.

5. By refusing on May 19, 1954, and at all times thereafter to bargain collectively with the Union as the exclusive representative of her employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. By said refusal to bargain the Respondent has interfered with, restrained, and coerced her employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

7. 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.]

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PLASTIC AGE COMPANY, PLASTIC AGE REINFORCED PRODUCTS, INC., PLASTIC AGE AIRCRAFT CORPORATION, AND PLASTIC AGE SALES, INC. *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE NO. 727, FOR LOCAL LODGE 758. *Case No. 21-CA-1822. January 6, 1955*

### Decision and Order

On July 21, 1954, Trial Examiner William E. Spencer 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 Intermediate Report attached hereto. The Trial Examiner further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that the complaint be dismissed in that respect. Thereafter, the Respondent, General Counsel, and the Union filed exceptions to the Intermediate Report together with supporting briefs.

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,<sup>1</sup> the exceptions and briefs, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>2</sup>

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<sup>1</sup>The Intermediate Report contains certain minor misstatements of fact which do not materially affect the correctness of the Trial Examiner's conclusions. They are as follows: (a) The second meeting of the Plastic Age Employees Association was held on October 17 rather than, as the record shows, on October 20; (b) Lane stated that "Mr. Kramer" rather than "Mr. Harper" had satisfactorily answered a certain question at the second meeting of the Association; (c) Lane, prior to the second meeting, had advised Kramer to have nothing to do with the Association whereas Lane merely advised Kramer not to permit the Association to have any further meetings on company time or premises; (d) the Union demanded a 2-year contract from the date of its certification whereas the record shows that the Union demanded a 2-year contract but did not specify its proposed effective date.

<sup>2</sup>Without necessarily endorsing all the Trial Examiner's rationale as to the elements of "domination," we agree that Respondent's support to the Association here did not constitute domination of that organization.