

strained to find that the discharge was ill-advised and effectuated by reason of Blalack's protected concerted activities with other employees for the purpose of collective bargaining or other mutual aid or protection. The Respondent thereby discriminated in regard to the tenure of employment of its employees to discourage membership in a labor organization.

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

The activities of Respondent set forth in section III, above, occurring in connection with its operations set forth 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 Respondent engaged in and is engaging in certain unfair labor practices, I shall recommend that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent offer immediate and full reinstatement to Harold R. Blalack to his former or substantially equivalent position<sup>2</sup> without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay resulting from the discrimination against him by paying to him a sum of money equal to the amount he would have earned from the date of his discharge to the date when a proper offer of reinstatement is made by Respondent, less his net earnings<sup>3</sup> to be computed on a quarterly basis in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289, and *N. L. R. B. v. Seven-Up Bottling Company of Miami, Inc.*, 344 U. S. 344. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other such period. It will be further recommended that Respondent make available to the Board and its agents, upon request, all timecards, payrolls, and other records necessary to analyze, compute, and determine the back pay and other emoluments herein awarded.

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 Ohio Aviation Company is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. District Lodge No. 13, International Association of Machinists, A. F. L., is a labor organization within the meaning of Section 2 (5) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
4. By discriminating in regard to the hire and tenure of employment of Harold R. Blalack, thereby discouraging membership in a labor organization, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

<sup>2</sup> See: *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

<sup>3</sup> See: *Crossett Lumber Company*, 8 NLRB 440, 497, 498.

**American Radiator & Standard Sanitary Corporation, Louisville Plant, Plumbing & Heating Division and General Drivers, Local Union No. 89, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, Petitioner. Case No. 9-RC-2538. November 16, 1955**

#### DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before William G. Wilkerson,

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 these cases, 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. No 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 for the following reasons:

The Employer is engaged in the manufacture and sale of plumbing and heating fixtures. Involved in the present proceeding is its plant located at Louisville, Kentucky. The Petitioner seeks a unit of all employees in the shipping and warehouse offices. The Employer contends that the unit requested is inappropriate because the clericals in the shipping and warehouse offices are primarily office clericals as distinguished from plant clericals. More specifically, it contends that the shipping and warehouse offices are segments of the main office and located as they are because of the large area the factory occupies; and that the employees requested by the Petitioner perform work only of a clerical nature similar to the duties performed by clericals in the main office, and are, in fact, despite their location, an appendage of the main office.

Following a consent election, on July 29, 1941, the Board certified the AFL Standard Trades Council as the bargaining representative for "all employees excluding supervisory employees in main office and all employees covered by written contracts now in effect between the company and several AFL organizations." On December 18, 1948, a certification was issued by the Board to the AFL Office Employees, Local 61 (Case No. 9-RC-254, not reported in printed volumes of Board Decisions and Orders), for a unit of "all employees engaged in checking, weighing, and tabulating the brass production of the piece work employees," which unit included production clerks and checkers of the brass division who performed the major part of their work on the production floor. The Pattern Makers League is a separately certified representative of another group of employees at this plant.

Despite the overall coverage of the 1941 certification, the Council has apparently not represented office workers or certain other clerical employees. At present there are 14 individual unions which comprise the AFL Standard Allied Trades Council, recognized by the Employer as the exclusive bargaining agent for the production and maintenance employees, excepting the group represented by the Pattern Makers League, the employees requested by Petitioner, and certain other

clerical employees referred to hereinafter. The Employer and the Council are parties to a master agreement which covers general and certain fringe items. Wages, seniority, special working conditions, hours of work peculiar to a craft, and other fringe benefits are left to the individual unions to negotiate with the Employer. Each of the individual unions is at liberty to strike on the issue of wages, hours, or other benefits. The Petitioner under this bargaining arrangement now represents 482 employees who are classified as janitorial employees, warehouse employees, and operators of mechanical equipment (truckers, tractor drivers, and forklift operators).

The Employer's plant is within a fenced enclosure, covering 57 acres, and comprises numerous buildings. There are two main operating divisions in the plant: the brass division where the Employer produces chrome plated and brass fittings, and the iron division where it produces enamel cast iron fixtures, bathtubs, and kitchen sinks. The main office is located in the front part of the brass building where production work is carried on, and fronts on the main street. At the extreme end of this enclosure are located the shipping and warehousing operations. It is in one of the larger warehouses that the warehouse and shipping offices are located. Each office is a separate enclosed room—one on each side of the office of the production superintendent who exercises general supervision over these offices, the related employees in the warehouse, the employees in the box shop where crates are made, and a certain part of the iron division.

The warehouse office operations are divided into five sections each under a foreman: export section, miscellaneous section, tub section, sink and lavatory section, and inventory control section. Each foreman also has supervision over certain employees who belong to his section but are located in the warehouse and are warehouse employees. This office handles the clerical work after shipment has been made. The shipping office is divided into 2 sections: the traffic manager who supervises 8 employees, and the order handling supervisor who has 12 employees under his direction. The shipping office handles clerical work relative to shipping.

The shipping and warehouse offices are under the general supervision of the production superintendent whose office is situated between the two offices. The chief clerk of the main office testified that he issues orders to the employees in the shipping and warehouse offices—to the production superintendent superiors and to the clericals through the supervisory chain.

Personnel in the shipping and warehouse offices handle all clerical and administrative detail relative to processing orders and shipping merchandise—preparation of shipping and charge sheets, customer's sheets, packing sheets, and bills of lading and maintenance of Kardex

file and other information for the billing department. All employees perform their duties within the offices, except that occasionally an employee under the traffic manager will need to go to the shipping dock to make a correction or to ascertain car numbers, but at no time do any of these clerical employees perform any manual labor.

Although the production superintendent could not recall any transfer of main office clericals into the shipping and warehouse offices, hourly contact is maintained with the main office through the services of mail boys who carry shipping sheets and other information between the shipping and warehouse offices and the main office—a distance of 800 to 1,000 feet—every hour. Seniority is applied within the shipping and warehouse offices, although not strictly enforced, and practically all the employees for these offices have been hired as new employees. Part of the shipping and warehouse clericals are salaried and others are hourly paid without any apparent reason for the difference except in one instance—all girls in the shipping and warehouse offices are salaried (as are some men), whereas all employees in the main office are salaried. Working hours for employees in the main office are from 7:30 a. m. to 4 p. m.; for eight of the employees in the warehouse and shipping offices, from 7:30 a. m. to 4:15 p. m., and for the remainder of the employees in these offices, from 7 a. m. to 3:45 p. m., the same as warehouse employees. Main office employees are permitted 30-minute lunch periods and warehouse and shipping offices employees, 45 minutes.

In the brass building where the main office is located there is a small group of employees, not a part of the main office, who handle parcel post packaging. After the small items of the brass division are packaged and ticketed, they are stored in the brass building and mailed out by these employees as ordered. This group is known as the parcel post unit and a few of these employees are members of Local 61, Office Employees International Union.

Approximately 187 plant clericals from both divisions of the plant are represented by Local 61, Office Employees International Union. There are about 150 to 170 remaining clerical employees who work outside the main office; the clericals who perform their duties in the shipping and warehouse offices and whom the Petitioner seeks in the instant proceeding constitute about 40 of these remaining clericals.

It appears from the above facts that the Employer has many unrepresented clerical employees, both plant and office, in addition to those sought by the Petitioner. So, whether the clericals in the shipping and warehouse offices are considered plant clerical employees or office clerical employees, they constitute only a segment of related, unrepresented clerical employees. We see no basis for a unit limited

to such a segment, and find it inappropriate.<sup>1</sup> Accordingly, we will dismiss the petition.

In view of our decision to dismiss the petition because of the inappropriateness of the unit requested, it is unnecessary to pass upon the Employer's contention that the Petitioner is barred from representing the employees involved because of their exclusion from the contract covering production and warehouse employees.

[The Board dismissed the petition.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Order.

<sup>1</sup> See *E. I. Dupont de Nemours and Company, Inc., Construction Division, Savannah River Plant*, 107 NLRB 734, 747; *P. H. McGraw & Company*, 106 NLRB 624, 626.

**Montgomery Ward & Co. and Department and Specialty Store Employees Union Local 1265, Retail Clerks International Association, AFL, Petitioner.** *Case No. 20-RC-2770. November 16, 1955*

#### SUPPLEMENTAL DECISION AND DIRECTION

Pursuant to a Decision and Direction of Election issued by the Board herein on August 17, 1955,<sup>1</sup> an election by secret ballot was conducted on September 12, 1955, under the direction and supervision of the Regional Director for the Twentieth Region, among the employees of the Employer in the unit found appropriate in the Decision. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that of approximately 354 eligible voters, 253 cast ballots, of which 125 were for the Petitioner, 81 were for the Intervenor,<sup>2</sup> 42 were against both labor organizations, 4 were challenged, and 1 was void.

As the challenged ballots were sufficient in number to affect the results of the election, the Regional Director, pursuant to the Board's Rules and Regulations, investigated them and on October 16, 1955, issued and duly served upon the parties a report on challenged ballots, in which he recommended that the Board sustain the challenges to the ballots of Phyllis Plastrik and Anita George, overrule those to the ballots of Florence Florey and Gloria Reitan, open and count the latter two ballots, and issue a revised tally of ballots. The Petitioner

<sup>1</sup> 113 NLRB 798.

<sup>2</sup> Warehousemen's Union Local 853, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL.

114 NLRB No. 167.