statements concerning the making of such remarks, while Chaffin and Jones repudiated pertinent parts of their statements and conceded they had no independent recollection of what transpired at the union meeting. Undoubtedly, the testimony of these witnesses as given at the hearing, on both direct and cross-examination, is in serious conflict with their written statements, but such conflicts do nothing more than discredit the individuals, who were called as employer witnesses. In passing upon the weight to be given statements of witnesses which are in direct conflict with their testimony, the Court of Appeals for the Second Circuit, in the *Quest-Shon Mark Brassiere* case (185 F. 2d 285, 289), held that:

> "It is universally maintained by the Courts that Prior Self-Contradictions are not to be treated as having any *substantive* or *independent testimonial value*"; and this we can properly accept as the district court rule. . . . 3 Wigmore on Evidence 688, § 1018, 3d Ed. 1940. Hence prior inconsistent statements are admissible not as affirmative evidence to prove the truth of what they affirm, but only as matter tending to show that the witness is not credible, because he has changed his story.[4]

Under the circumstances, and if the evidence did not go beyond this point, the Trial Examiner would find that the Employer has failed to establish its objections by credible evidence, as required in cases of this character. (See cases cited *supra.*) But the testimony goes beyond this point and the Union's witnesses, Wallace, Thomas, Johnson, and Brooks categorically denied that any coercive or threatening statements were made at either of the meetings, as urged by the Employer. It is true that these individuals cannot be considered as disinterested witnesses, but, in the opinion of the Trial Examiner, that fact did not detract from their desire and ability to answer fully all questions propounded to them and to present their testimony in an intelligent, fair, and honest manner. Accordingly, on the straight issue of credibility, as to whether to accept the repudiated or qualified statements of the Employer's witnesses, or the positive denials of the allegations therein by the Union's witnesses, the Trial Examiner has no difficulty in reaching the conclusion that the testimony of the Union's witnesses is far more persuasive and convincing and is, therefore, accepted and credited. The Trial Examiner finds that neither Wallace nor Thomas, nor anyone else, made the statements to the employees as contended by the Employer in its objections.

[Recommendations omitted from publication.]

[4] *Seaboard Terminal and Refrigeration Company*, 114 NLRB 754, footnote 1.

Bluefield Produce & Provision Company *and* Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO. *Case No. 9–CA–1043. May 20, 1957*

DECISION AND ORDER

Upon charges duly filed by Chauffeurs, Teamsters and Helpers, Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Ninth Region, issued a complaint dated October 17, 1956, against Bluefield Produce & Provision Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (a) (5) and (1) and Section 2 (6) and (7) of the National Labor Relations Act, as amended (61 Stat.

136). Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served upon the Respondent and the Union.

With respect to unfair labor practices the complaint alleged, in substance, that since about May 11, 1956, the Respondent has refused to bargain collectively with the Union as the exclusive representative of all employees in an appropriate unit in violation of Section 8 (a) (5) and (1) of the Act.

On November 13, 1956, all parties to this proceeding entered into a stipulation setting forth an agreed statement of facts. The stipulation states that the parties have waived their rights to a hearing before a Trial Examiner of the Board and the issuance of a Trial Examiner's Intermediate Report. The stipulation provides further that the stipulation, the exhibits attached thereto, the charge, the complaint, the notice of hearing, and the affidavits of service of the charge, complaint, and notice of hearing shall constitute the entire record in the case. After the execution of the stipulation, the General Counsel filed a request that the Board issue a Decision and Order finding that the Respondent had violated the Act as alleged in the complaint together with a supporting brief, and the Respondent filed a motion to dismiss the complaint and a supporting brief. For the reasons stated hereinafter, the motion to dismiss is hereby denied.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Bean and Jenkins].

The stipulation is hereby approved and accepted and made part of the record of this case. In accordance with Section 102.45 of the Board's Rules and Regulations, Series 6, as amended, this proceeding is duly transferred to, and continued before, the Board. Upon the basis of the stipulation and the entire record in this case, the Board, having duly considered the briefs submitted by the parties, makes the following:

Findings of Fact

I. THE BUSINESS OF THE RESPONDENT

Bluefield Produce & Provision Company is a West Virginia corporation engaged in Bluefield, West Virginia, in the wholesale distribution and sale of produce and canned goods. During 1955 the Respondent sold and delivered goods valued in excess of $750,000 directly to points outside of the State of West Virginia.

The Respondent admits, and we find, that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and

Helpers of America, AFL–CIO, is a labor organization as defined in Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The appropriate unit*

The parties stipulated, and we find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All truckdrivers and warehousemen of the Respondent at its operations in Bluefield, West Virginia, excluding office personnel, guards, night watchman, and supervisors within the meaning of the Act.

B. *The Union's majority*

On March 5, 1956, the Department of Labor for the State of West Virginia conducted an election in the unit set forth above. The results of that election were 21 votes for the Union and 7 votes against the Union. Representatives of the Respondent, the Union, and the West Virginia Labor Department certified the results of the election.

We find that since March 5, 1956, the Union has represented a majority of the employees in the appropriate unit.

C. *The refusal to bargain*

Following the election the Respondent entered into collective-bargaining negotiations with the Union and continued such negotiations until about May 11, 1956. At that time certain employees in the appropriate unit notified the Respondent they no longer desired the Union to represent them. After the subsequent filing of decertification petitions in Cases Nos. 9–RD–160 and 9–RD–164, the Respondent, about July 2, 1956, withdrew recognition from the Union as the majority representative of the employees in the appropriate unit. Since that date the Respondent has failed and refused to recognize the Union as the exclusive bargaining representative of the employees in the appropriate unit and to bargain collectively with the Union, although the Union has requested the Respondent to do so.

On July 5, 1956, the Regional Director dismissed the decertification petition filed by the Respondent in Case No. 9–RD–160, and, on August 20, 1956, he dismissed that filed by the employees in Case No. 9–RD–164. Upon an appeal from the dismissal of the latter petition, the Board, on September 27, 1956, sustained the Regional Director's action. In affirming the Regional Director, the Board relied upon Section 9 (c) (3) of the Act which provides, in pertinent part:

> No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

D. *Conclusion*

The Board has held, with the approval of the Supreme Court,[1] that a certification based upon a Board-conducted election must be honored for a reasonable period—ordinarily 1 year—in the absence of unusual circumstances. The Board has also decided that the same effect should be given to certifications based upon secret ballot elections conducted under the auspices of responsible State Government agencies as to Board certifications.[2] There is no contention in this case that the election conducted by the West Virginia Department of Labor involved any irregularity. In these circumstances we find that the Respondent was required to honor the certification issued to the Union by the State of West Virginia for 1 year, because the change of mind by employees within a few months after the election is not the type of unusual circumstance warranting suspension of the 1-year rule.[3]

The Respondent contends that Section 9 (c) (3) of the Act is unconstitutional insofar as it may be construed as depriving employees of the privilege of changing bargaining representatives at will. The Board has often held that, as an administrative agency created by Congress, it cannot question the constitutionality of any part of the Act that created it but must leave such questions to the courts. Unless and until the courts determine otherwise, the Board will assume that all parts of the Act are constitutional.[4]

Upon the foregoing and the entire record, we find that the Respondent's refusal, since about May 11, 1956, to bargain collectively with the Union violated Section 8 (a) (5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the Respondent set forth in section III, above, occurring in connection with its operations as 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 or obstructing commerce or the free flow thereof.

V. THE REMEDY

Having found that the Respondent has violated Section 8 (a) (5) and (1) of the Act, we shall order it to cease and desist therefrom and take certain affirmative action which we deem necessary to effectuate the policies of the Act.

It has been found that since about May 11, 1956, the Respondent has unlawfully refused to bargain collectively with the Union. We shall,

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[1] *Ray Brooks* v. *N. L. R. B.*, 348 U. S. 96.

[2] *Olin Mathieson Chemical Corporation, Calabama Plant at McIntosh, Alabama,* 115 NLRB 1501, 1502; *T–H Products Company, et al.,* 113 NLRB 1246, 1247.

[3] *Ray Brooks* v. *N. L. R. B., supra.*

[4] *I. L. A. No. 1351, Steamship Clerks and Checkers, Independent (Rothermel Brothers),* 108 NLRB 712, 715

therefore, in order to effectuate the policies of the Act, require the Respondent, upon request, to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit with respect to wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

Upon the basis of the above findings of fact, and the entire record in this case, the Board makes the following:

CONCLUSIONS OF LAW

1. Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All truckdrivers and warehousemen of the Respondent at its operations in Bluefield, West Virginia, excluding office personnel, guards, night watchman, and supervisors within the meaning of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, was on March 5, 1956, and at all times thereafter has been, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining.

4. By refusing about May 11, 1956, and at all times thereafter to bargain collectively with Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, as the exclusive representative of the 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.

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

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

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Bluefield Produce & Provision Company, Bluefield, West Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, as the exclusive representative of all truckdrivers and warehousemen at its operations in Bluefield, West Virginia, excluding office personnel, guards, night watchman, and supervisors within the meaning of the Act.

(b) In any like or related manner interfering with the efforts of Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, to bargain collectively with it in behalf of the employees in the aforesaid unit.

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

(a) Upon request, bargain collectively with Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, as the exclusive representative of all the employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its place of business at Bluefield, West Virginia, copies of the notice attached hereto marked "Appendix."[5] Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by an official representative of the Respondent, be posted by the Respondent immediately upon receipt thereof and be maintained by it for a period of 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 Ninth Region in writing, within ten (10) days from the date of this Order, as to the steps Respondent has taken to comply herewith.

[5] In the event that this Order is enforced by a decree of the 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, as amended, we hereby notify our employees that:

WE WILL, upon request, bargain collectively with Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All truckdrivers and warehousemen of Bluefield Produce & Provision Company, Bluefield, West Virginia, excluding office personnel, guards, night watchman, and supervisors within the meaning of the Act.

WE WILL NOT in any like or related manner interfere with the efforts of Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, to bargain collectively with us as the exclusive representative of the employees in the bargaining unit set forth above.

BLUEFIELD PRODUCE & PROVISION COMPANY,
Employer.

Dated_____ By_____
(Representative) (Title)

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

Local 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO *and* R. O. Wetz, d/b/a R. O. Wetz Transportation. *Case No. 9–CC–84. May 20, 1957*

DECISION AND ORDER

On January 17, 1957, Trial Examiner James A. Shaw 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. Thereafter the Respondent filed exceptions to the Intermediate Report.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Bean and Jenkins].