

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 violated Section 8 (b) (4) (A) and (B) of the Act, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Local 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. By inducing or encouraging employees of B & G Olsen Company, Darin & Armstrong, Inc., The Airolite Company, Howard P. Foley Co., and Surface Combustion Corp., to engage in a strike or concerted refusal in the course of their employment to perform any services, where an object thereof was: (a) forcing or requiring B & G Olsen Company, Darin & Armstrong, Inc., The Airolite Company, Howard P. Foley Co., and Surface Combustion Corp. to cease using the services of Wetz or to cease doing business with Wetz; (b) forcing or requiring Wetz to recognize or bargain with Local 175 as the representative of its employees when Local 175 had not been certified as the representative of such employees under the provisions of Section 9 of the Act; Respondent Local 175 thereby violated Section 8 (b) (4) (A) and (B) 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 omitted from publication.]

APPENDIX A

Acme Construction Company	Hiehle Co.
Allied Structural Steel	Howard P. Foley Co.
Automatic Sprinkler Company	Howard Steel
Bour Electric Company	Howard Steel Erectors
B & G Olsen Company	Hunt, Hearing & Supply
Brewer & Company	Kawneer Co.
Chas. Floor Co.	Limbach Co.
C. H. Heist Co.	Patterson-Emerson-Comstock
Conditioned Air, Inc.	Pittsburgh Plate Glass
Darin & Armstrong, Inc.	Ross Concrete & Mortar, Inc.
General Construction Co.	Shoolfield-Harvey Elect. Co.
General Glass Co.	Southeastern Construction Company
Graves Tank & Mfg. Co.	Surface Combustion Corp.
Gustav Hirsch Org. Inc.	Tri State Roofing Co.
Hampshire Corp.	United Sheet Metal Co.
Hauserman Co.	Westinghouse Electric Corporation
H. C. Edwards Co.	W. Q. Watters Co.
Henry J. Kaiser Construction Co.	

United States Gypsum Company, Petitioner and International Brotherhood of Paper Makers and its Local Union 624, AFL-CIO. Case No. 6-RM-138. May 20, 1957

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Joseph C. Thackery, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organization named below claims to represent certain employees of the Employer.

3. The Union contends that no question concerning representation exists because a current collective-bargaining agreement is a bar to this petition. The Employer asserts that this collective-bargaining agreement specifically reserves the question of representation created by the filing of the petition and therefore is not a bar.

Since its certification by the Board on May 6, 1952,¹ as collective-bargaining representative of the employees, the Union has had successive bargaining agreements with the Employer-Petitioner, the last of which expired on February 20, 1957. On December 19, 1956, in accordance with the 60-day notice provisions of the last-named contract, the Union notified the Employer-Petitioner of its desire to start negotiations for a new agreement. The Employer-Petitioner replied on February 1, 1957, that it doubted the majority status of the Union and would require a Board determination of representation, pending which negotiations for a conditional contract could proceed. On February 5, 1957, the Employer-Petitioner filed the instant petition. Subsequently, the parties met in a series of bargaining sessions, and on February 20, 1957, entered into a collective-bargaining agreement effective until February 1958.

This contract contains the following provisions:

SECTION 1. The employer has filed a petition for an election which is now pending with the National Labor Relations Board. If this petition results in an election and the Union loses the election, this contract becomes null and void. If the Union wins the election, then this contract shall continue in effect for its full term and shall be applicable to whatever appropriate unit the Board certifies. If the Board finally dismisses the petition for any reason so that no election is held, then this contract shall continue in effect on the basis of the 1952 certification for its negotiated term.

The Company, on this condition, recognizes the Union as the sole collective bargaining agency for all employees in the Bargaining Unit shown in Section 2, of the Company's Oakmont Plant with respect to rates of pay, wages, hours and other conditions of employment. All employees in the Unit shall be bound by the terms of this Agreement.

¹Case No. 6-RC-953, not reported in printed volumes of Board Decisions and Orders.

SEC. 2. Subject to the determination of the Board as stated in Section 1 for the purposes of this agreement, the term "Employee" shall be deemed to mean the following: All production and maintenance employees employed at the Company's Oakmont, Pennsylvania Plant, including head beatermen, head loaders, bottomer operators, tuber operators, machine tenders and inspectors, but excluding office and clerical employees, testers and all supervisors and persons acting in an executive capacity in behalf of the Company.

The Union now moves to dismiss the petition contending that the Employer-Petitioner's participation in collective-bargaining negotiations and its entering into the current collective-bargaining agreement is inconsistent with its attempt herein to establish that a question concerning representation presently exists. We do not agree with this contention.

The language of the contract's recognition clause is clear and unambiguous: that the Employer-Petitioner recognized the Union only conditionally, subject to a final disposition by the Board of the instant petition. The Employer-Petitioner thereby, with the consent of the Union, clearly reserved the question of representation. We see no reason under these circumstances why the Employer-Petitioner, notwithstanding its further pursuit of the instant proceeding, should not have engaged in collective-bargaining negotiations, so as not to leave a gap between the contract which expired on February 20, 1957, and a new contract that might have to be negotiated, if the Union should win the election in this case. Accordingly, we find no inconsistency in the Employer's position. As the current contract is conditioned upon the results of an election that the Board might direct in this case, we find that it is not a bar. The Union's motion to dismiss, therefore, is denied.²

We find that a question affecting commerce exists concerning the representation of certain employees of the Employer-Petitioner within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The parties are substantially in agreement as to the composition of the unit except for the following disputed categories:

Quality inspectors: Contrary to the Union, the Employer-Petitioner would exclude quality inspectors as technical employees. The primary duty of these employees is to inspect the quality of bags coming off the production line. In addition, they physically remove bags from

² Cf. *United States Gypsum Company*, 116 NLRB 1771. In that case the Board found the Employer's petition inconsistent with a prior collective-bargaining agreement which contained the following clause

The unit is subject to any changes made by the Board in its final decision in the current representation case

This clause obviously referred only to a question of unit composition and not to the question of representation. Accordingly, the Board dismissed the petition, but treated it as a motion to amend a prior certification and proceeded to determine the status of certain disputed employee categories

conveyor belts and sometimes substitute for production employees who are sick or on vacation.

In the performance of their inspection duties, which are repetitive and of a routine character, they check the printing on the bags, check the tubes and the paste, and inspect the finished bags and their bundling and stacking. They conduct hydrometer, tension, and perforation tests which are simple manipulations capable of being learned in a few days. Only 1 of the 4 employees involved is a high school graduate. Their training requires 2 weeks by which time they are able to perform their duties satisfactorily. They are separately supervised by the quality superintendent, but work in the production area and share the working conditions and benefits of production employees. Under prior Board certifications³ and collective-bargaining agreements, the quality inspectors have been included in the production and maintenance unit. We find that they are not technical employees. Accordingly, we shall include them in the unit.

Testers: Contrary to the Employer-Petitioner, the Union contends that these employees should be included in the unit. Under prior Board certifications⁴ and collective-bargaining agreements these employees have been excluded from the production and maintenance unit as technical employees. The testers work in the plant's laboratory under the supervision of the quality superintendent. They are separated from the production and maintenance employees and do not come in contact with the latter in the ordinary course of their duties. They regularly perform the following types of tests: Bursting strengths, porosity, smoothness, tensile strengths, tear strengths, moisture, acidity of water, and thickness of paper. In addition, they check the rate of water flow (Freeman test) and conduct tests to measure waste and pulp that goes into the sewer. In the performance of these functions, they use a variety of machinery and testing equipment. The testers are high school graduates and are required to have a knowledge of mathematics. Although their training does not require extended periods of time, they clearly possess skills and education, and perform work of a technical nature, that set them apart from the production and maintenance employees. We find that they are technical employees and shall exclude them from the unit.

We find that the following employees of the Employer-Petitioner constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All production and maintenance employees at the Employer's Oakmont, Pennsylvania, plant, including head beaterman, head loaders, bottomer operators,

³ *U. S. Gypsum Company*, 81 NLRB 310, 312, as amended by 85 NLRB 162; and *U. S. Gypsum Company*, Case No. 6-RC-953, not reported in printed volumes of Board Decisions and Orders.

⁴ See footnote 3

tuber operators, machine tenders, and quality inspectors, but excluding office and clerical employees, administrative and professional employees, testers, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Commercial Castings Company, Engineering Division¹ and Contract Tool Engineers, Local 179, American Federation of Technical Engineers, AFL-CIO, Petitioner. *Case No. 21-RC-4543.*
May 21, 1957

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Norman H. Greer, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 Murdock and Jenkins].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent 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, with offices at 8855 Santa Monica Boulevard, Los Angeles, California, is engaged in rendering contract drafting and engineering services to other concerns primarily in the airframe and guided missile field. The Employer maintains its own premises for the performance of such contract work at the Santa Monica Boulevard location in Los Angeles, at 2 locations in Culver City, at 1 location in Burbank, all within Los Angeles County, and at Tucson, Arizona. In addition, employees of the Employer are assigned to work at the plant locations of various companies who have contracted for such service.²

¹ Edward Reaume and Charles Davis are partners registered under the name appearing in the caption as amended at the hearing.

² Included among such customer locations are the plants of Magnavox, Fletcher Aviation, Marquardt Aircraft, Benson-Leachner, Santa Anita Engineering, Hughes Aircraft, Northrop Aircraft (both Hawthorne and Anaheim plants), Applied Physics, Hiller Aircraft, Parsons Engineering, Thompson Products, and Menasco Manufacturing, all in Los Angeles County, and those of Beech Aircraft at Wichita, Kansas, Grand Central Rocket at Redlands, California, and A. C. Sparkplug in Milwaukee, Wisconsin.