

V. THE REMEDY

Having found that Respondent had engaged in certain unfair labor practices violative of Section 8 (1) (A) and (4) 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.

Having found that Respondent discriminatorily restrained Mendelsohn from being employed for a certain period commencing on June 14, 1956, the Trial Examiner recommends that Respondent make him whole for any loss of pay suffered by him as a result of its unlawful conduct, by payment to him of a sum of money equal to the amount he normally would have earned as wages from June 14, 1956, until he would have been laid off, absent unfair labor practices. In computing the amount of back pay due Mendelsohn, the customary formula of the Board set forth in *F. W. Woolworth Company*, 90 NLRB 289, shall be followed.

The unfair labor practices found to have been engaged in by the Respondent are of such a character and scope that in order to insure the employees and prospective employees of the members of Respondent their full rights guaranteed by the Act, it will be recommended that Respondent cease and desist from in any manner interfering with, restraining, and coercing said employees and prospective employees in their right to self-organization.

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

CONCLUSIONS OF LAW

1. International Longshoremen's and Warehousemen's Union, Local #37 is a labor organization within the meaning of Section 2 (5) of the Act.

2. Respondent and its employer-members are engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Peter Patrick Mendelsohn because he had filed with the Board a charge against a member of the Respondent, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a), (3) of the Act.

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

[Recommendations omitted from publication.]

A. O. Smith Corporation, Kankakee Works and Local 311, Office Employees International Union, AFL-CIO, Petitioner. Cases Nos. 13-RC-5554 and 13-RC-4201. November 27, 1957

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Robert G. Mayberry, hearing officer.¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

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

2. Local 311, Office Employees International Union, AFL-CIO, the Petitioner in Case No. 13-RC-5554, herein called Local 311, and Office Employees International Union, AFL-CIO,² the petitioner in Case No. 13-RC-4201, herein called the International, the labor or-

¹ For purposes of this Decision, Cases Nos. 13-RC-5554 and 13-RC-4201 are hereby consolidated.

² Affiliated only with AFL at the time the petition in Case No. 13-RC-4201 was filed.

ganizations involved herein, claim 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 in Case No. 13-RC-5554 for the following reasons:

Local 311 seeks an election in a unit previously certified by the Board³ comprising all office and clerical employees at the Employer's Kankakee, Illinois, plant. It would include 18 unrepresented clericals in the Smithway sales, Harvestore service, Harvestore sales, credit, administration, and inspection departments of the Employer who were included in the Board's original certification but who were neither permitted to vote in the earlier election nor thereafter represented. In the alternative, it desires to have its certification clarified to include the 18 clericals.

The record shows that, on a petition filed by the International in Case No. 13-RC-4201, the Board found appropriate a unit of all the Employer's office and clerical employees at the Kankakee plant.⁴ Thereafter, on April 4, 1955, the parties entered into a stipulation to clarify the Board's unit, describing the unit in terms of specific departments rather than as found by the Board. The eligibility list, prepared in accordance with the stipulation, failed to include the 18 clericals involved herein, who, as a result, were not permitted to vote in the election held April 18, 1955. Although the International was certified thereafter on April 26, 1955, for the unit of all office and clerical employees as described in the Board's decision, two subsequent contracts between the Employer and Local 311, not raised as bars to the proceeding in Case No. 13-RC-5554, covered the employees in the unit stipulated to by the parties rather than in the unit certified by the Board. Thus, the 18 clerical employees, who were included in the Board's certification, have at all times since been deprived of their franchise and of their right to representation. Because Local 311 and the International have failed to represent 18 of the clericals, contrary to the 1955 certification covering all of them, we find such conduct to be contrary to the policies and purposes of the Act and that it would therefore be inconsistent with good practice to permit such certification to remain in effect. We shall, accordingly, revoke the certification granted by the Board on April 26, 1955, in Case No. 13-RC-4201 with prejudice to filing a new petition.⁵ In these circumstances, we also shall dismiss the petition in Case No. 13-RC-5554.

³ *A. O. Smith Corporation, Kankakee Works*, 111 NLRB 1042.

⁴ *A. O. Smith Corporation, Kankakee Works*, *supra*.

⁵ *Somerville Iron Works, Inc.*, 117 NLRB 1702; *Nathan Warren & Sons, Inc.*, 116 NLRB 1662.

[The Board revoked the certification issued on April 26, 1955, in Case No. 13-RC-4201, dismissed the petition filed in Case No. 13-RC-5554 and ordered that revocation of the certification in Case No. 13-RC-4201 and dismissal of the petition in Case No. 13-RC-5554 be with prejudice to the filing of a new petition by Local 311, Office Employees International Union, AFL-CIO, or by Office Employees International Union, AFL-CIO, for a period of 6 months from the date of this Order, unless good cause is shown why the Board should entertain a new petition filed prior to the expiration of such period.]

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

Armour and Company and United Packinghouse Workers of America, AFL-CIO, Petitioner. *Case No. 18-RC-3266. November 27, 1957*

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before William D. Boetticher, 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 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 Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. A 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.

4. The Petitioner, whose Local 73 represents the Employer's production and maintenance employees, seeks to represent a unit of office and clerical employees. In the alternative, it is willing to represent the employees involved in any unit or units found appropriate by the Board, but requests that, if any of them are found to be plant clericals, such employees be added to the existing production and maintenance unit. The Employer does not object to a unit of office clericals, but contends that plant clericals should be represented separately from both office clericals and production and maintenance employees. In addition, it contends that a number of the employees whom the