

[The Board directed that the Regional Director for the Sixteenth Region shall, within ten (10) days from the date of this Direction, open and count the ballot of Raymond Campbell and serve upon the parties a supplemental tally of ballots]

Pittsburgh Plate Glass Company and International Brotherhood of Electrical Workers, AFL-CIO. *Case No. 5-CA-1208 September 4, 1958*

DECISION AND ORDER

On March 6, 1958, Trial Examiner Alba B. Martin 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 and the Intervenor, United Glass and Ceramic Workers of North America, AFL-CIO-CLC, filed exceptions to the Intermediate Report and supporting briefs¹. The Respondent also requested oral argument. The request is hereby denied, as the record and briefs, in our opinion, adequately present the issues and positions of the parties.

The Board² 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.³ The Board has considered the

¹ On April 7, 1958, the Board issued an order granting the Intervenor an opportunity to file exceptions and a brief. We hereby deny the Intervenor's request to reopen the record to adduce evidence with respect to the status of the charging union as a "traditional representative" of craft employees, an issue which was fully litigated in Case No 5-RC-2088, 117 NLRB 1728, which proceeding is part of the record in the instant case. Moreover, the Intervenor was a party to that proceeding and participated fully therein.

² 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].

³ At the hearing in this case, as in the representation proceeding in Case No 5-RC-2088, the Respondent sought to introduce evidence concerning the compliance status of Local 307 of the International Brotherhood of Electrical Workers, AFL-CIO, with the filing requirements of Section 9 (f), (g), and (h) of the Act. In Case No 5-RC-2088, the Respondent and the Intervenor had moved for dismissal of the petition, alleging that Local 307 was not in compliance. The Board denied the motion upon the ground that the compliance issue is litigable in an independent proceeding and not in a representation proceeding, citing *Standard Cigar Co*, 117 NLRB 852. The Trial Examiner refused to take the proffered testimony in the instant case, relying on the Board's decisions in the representation proceeding in Case No 5-RC-2088 and in *Standard Cigar Co*, *supra*. We agree with the Trial Examiner's ruling, which is in accord with established Board practice, that factual issues pertaining to the compliance status of Local 307, such as the Respondent sought to raise at the hearing herein and the Intervenor raised in its brief, were matters for administrative determination and not litigable in Board representation or complaint proceedings. *Standard Cigar Co*, *supra*, at pp 854-855, *Langlade Veneer Products Corporation*, 118 NLRB 985, 986, footnote 2, *Shoreline Enterprises of America*,

Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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, Pittsburgh Plate Glass Company, Cumberland, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing or failing to bargain collectively in good faith with International Brotherhood of Electrical Workers, AFL-CIO, as the exclusive representative of Respondent's employees in the unit heretofore found appropriate.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and 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.

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

(a) Upon request, bargain collectively with the above-named Union as the exclusive bargaining agent of all its employees in the appropriate bargaining unit with respect to 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 its plant in Cumberland, Maryland, Works No. 7, copies of the notice attached to the Intermediate Report marked "Appendix A."⁴ Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being signed by the Respondent's

Inc., 117 NLRB 1619 Neither party availed itself of the opportunity to present the compliance issue to the Board in a collateral proceeding. Furthermore, the Board is administratively satisfied that Local 307 is, and at all times material to this proceeding has been, in compliance with the filing requirements of the Act.

⁴ This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" the words "A Decision and Order." In the event that 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."

representative, be posted by the Respondent and maintained by it 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 Fifth Region in writing, within ten (10) days from the date of this Order, as to what steps the Respondent has taken to comply herewith.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This proceeding brought under Section 10 (b) of the Labor Management Relations Act of 1947, 61 Stat. 136 (herein called the Act), was heard in Baltimore, Maryland, on December 3, 1957, pursuant to notice to all parties. The complaint, issued on October 14, 1957, by the General Counsel of the National Labor Relations Board¹ and based on a charge duly filed and served, alleged that the Respondent, Pittsburgh Plate Glass Company, had engaged in unfair labor practices proscribed by Section 8 (a) (1) and (5) of the Act. The complaint alleged that although the Board had formally certified the Union, International Brotherhood of Electrical Workers, AFL-CIO, as the representative of the employees in an appropriate unit, the Respondent has at all times since about September 9, 1957, refused to bargain collectively in good faith with the Union. In its answer Respondent admitted the commerce allegations in the complaint and admitted that the Union is a labor organization. In its answer Respondent contended that it was in no way obligated under the Act to bargain with the Union because the representation proceedings were conducted at a time when a certain local of the International Union—Local 307—which local assisted the Union in the organization of the employees in the appropriate unit and admitted into membership the employees in said unit, was not in compliance with Section 9 (f), (g), and (h) of the Act. Respondent contended further in its answer that it was not obligated to bargain with the Union because the Board's decision represented an arbitrary and capricious exercise of administrative power and was violative of the due process provisions of the fifth amendment to the Constitution. In its answer Respondent moved that this proceeding be remanded to the Board with directions that it discharge its obligation under the Act. In the alternative Respondent prayed that this proceeding be dismissed. This motion and this prayer are hereby acted upon in accordance with the conclusions and recommendations of this Intermediate Report.

Prior to the hearing Respondent obtained and served upon the Regional Director a *subpoena duces tecum* calling upon the Regional Director to produce documents relating to the compliance status of Local 307 of the International Union, and moved the General Counsel for permission for the said Regional Director to respond to the subpoena, which motion was treated by the General Counsel as a request to have a Board employee testify pursuant to Section 102.87 of the Board's Rules and Regulations, Series 6, as amended, and which request was denied by the General Counsel. Thereafter and prior to the hearing the said Regional Director moved to quash and petitioned to revoke the *subpoena duces tecum*, which motion and petition I granted on November 27 prior to the hearing.

Prior to the hearing United Glass and Ceramic Workers of North America, AFL-CIO-CLC, filed with the Regional Director a motion to intervene as a respondent together with a proposed answer, and prior to the hearing this motion was denied by the Regional Director. At the hearing this motion was renewed before me and was again denied. At the hearing I denied Respondent's motion to incorporate by reference the transcript and exhibits in the representation case herein—Case No. 5-RC-2088. As this ruling may have been in error and as the Board in any case will take official or judicial notice of the prior proceeding, I hereby reverse my previous ruling and grant the motion to incorporate herein by reference the transcript and exhibits in the representation case.

On January 9, 1958, after the close of the hearing, Respondent sought to correct an inadvertent omission from paragraph VIII, line 4 of its answer by filing a

¹The General Counsel and the staff attorney appearing for him at the hearing are referred to herein as the General Counsel.

motion to amend its answer and serving a copy thereof upon each of the other parties. No objections have been filed to this motion, and under all the circumstances, the motion is hereby granted. This motion has been placed in the exhibit file as Respondent's Exhibit No. 7.

At the hearing Respondent sought to introduce evidence concerning the compliance status of Local 307. This testimony was not taken. *Standard Cigar Company*, 117 NLRB 852; see representation case herein, 117 NLRB 1728, footnote 4.

The Respondent, the Union, and the General Counsel were all represented at the hearing and were afforded opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally, and to file briefs.

Upon the entire record in the case I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, Pittsburgh Plate Glass Company, a Pennsylvania corporation with its principal office in Pittsburgh, Pennsylvania, has plants, warehouses, and stores in 45 States where it is engaged in the manufacture, distribution, and sale of glass, paint, chemicals, brushes, and related products. This proceeding involves its plant at Cumberland, Maryland, where it is engaged in the manufacture and sale of plate glass. In the course and conduct of its business operations as described above, Respondent annually manufactures goods and materials of a value in excess of \$500,000,000, of which an amount valued in excess of \$100,000,000 is shipped across State lines in interstate commerce. Respondent admitted, and I find, that Respondent has been at all times material herein engaged in commerce within the meaning of Section 2 (6) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1. The appropriate unit

Pursuant to a hearing in the representation case the Board in its Decision and Direction of Election² found 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 electricians, including shift, shop, and electronics electricians, instrument repairmen, and apprentices for such classifications, employed at the Employer's plate glass manufacturing plant in Cumberland, Maryland, excluding all other employees, guards, and supervisors as defined in the Act.

This unit finding is binding upon the Trial Examiner. *Morganton Full Fashioned Hosiery Company*, 115 NLRB 1267, 1268 (footnote 1), 1272.

In its answer Respondent contended that the Board's unit finding in the representation case

was the direct result of the Board's discriminatory refusal to apply to Respondent's operations the same objective standards that it applied in *National Tube Company*, 76 NLRB 1199. The Board's decision thus represents an arbitrary and capricious exercise of administrative power within the meaning of Section 9 of the Act and it is violative of the due process provisions of the Fifth Amendment to the Constitution of the United States. Therefore, Respondent is not now nor has it ever been under any obligation to bargain collectively with the Union.

In its answer Respondent asserted further,

Section 9 (b) of the Act requires the Board to "decide in each case" the unit appropriate for collective bargaining. In Case No. 5-RC-2088 the Board failed to decide upon the record before it the appropriate unit for purposes of collective bargaining. Instead, the Board granted the Union's petition for the sole reason that it had declared its intention in *American Potash & Chemical*

² 117 NLRB 1728.

Corporation, 107 NLRB 1418, to apply a different doctrine to all but four industries. . . .

Analysis of the Board's Decision and Direction of Election in Case No. 5-RC-2088 (117 NLRB 1728) establishes that Respondent's defense is not well founded. Thus the Board considered Respondent's contention before it there that "the refusal to apply the principles of that case (*National Tube*) would be arbitrary and unreasonable," and found the contention without merit. Then the Board set forth its general policy, first announced in *American Potash*, of not extending the *National Tube* doctrine beyond those industries in which it has already been applied. Then the Board said,

Moreover, there is nothing raised herein concerning integration or pattern of collective bargaining within the glass industry which has not been heretofore considered by the Board, or which warrants a change of our established policy.

At this point the Board, in a footnote, cited cases, decided since *American Potash*, in which the Board had considered the questions of integration or pattern of collective bargaining within the glass industry.

After considering the composition of the unit, the Board, in a footnote, showed that it considered—and found without merit—the Intervenor's³ contention in that case that the Cumberland plant was a mere accretion to an existing unit of other flat-glass plants of the Employer, and that therefore the unit should include all similar employees at all the Employer's plate and window glass plants.

In its Decision and Direction of Election in the representation case, the Board rested its appropriate unit finding upon the points specifically treated in the Decision and upon "the record as a whole." As has been seen above, on its face this Decision reflected the fact that, in accordance with the requirement of Section 9 (b) of the Act, the Board there reached its decision concerning the appropriate unit after considering all the facts in the record of the representation case and after considering the Employer's contentions regarding these facts. Among the points it considered was the question of integration or pattern of collective bargaining within the glass industry, and having considered all matters raised which were related to that question, the Board found that none of those matters had not been considered by it before or warranted a change in its established policy. The Board therefore rested its appropriate unit finding not solely upon its established policy as first announced in *American Potash*, but as well upon the entire record in the representation case and after consideration of integration or pattern of collective bargaining in the industry, which was the controlling consideration in *National Tube*.

2. The Union's representation of a majority in the appropriate unit

Following the Board-directed secret balloting on June 19, 1957, at which a majority of those voting in the appropriate unit cast votes in favor of International Brotherhood of Electrical Workers, AFL-CIO, on June 27, 1957, the Board, through its Regional Director for the Fifth Region, certified that this Union was the exclusive representative of all the employees in the appropriate unit.

3. The refusal to bargain

On or about July 5, 1957, the manager of Respondent's plant in Cumberland, Maryland, received the following letter from Frank W. Adams, an International representative of the certified Union:

On June 27, 1957, the International Brotherhood of Electrical Workers, AFL-CIO was certified by the National Labor Relations Board to represent all the company's electricians, including shift, shop and electronics electricians, instrument repair men and apprentices for such classifications employed at the Cumberland, Maryland Plant, Works No. 7.

As the certified collective bargaining agency for all such employees we are hereby requesting that there be no changes made in their wages, hours of work or any other condition of employment except and unless by mutual agreement prior to the execution of a written working agreement between the Company and the IBEW.

³ The Intervenor was United Glass & Ceramic Workers of North America, AFL-CIO-CLC.

We expect to request a negotiating conference in the near future. In the meantime we have some preliminaries to take care of.

On or about August 23, 1957, the plant manager of the Cumberland, Maryland, plant, Mr. R. M. Hainsfurther, received the following further letter from Frank W. Adams, dated August 22, 1957:

On June 27, 1957, the I. B. E. W., AFL-CIO was certified by the National Labor Relations Board to represent the electrical workers employed at Works No. 7, Cumberland, Maryland.

Therefore, we respectfully request of the Company to designate authorized representatives to meet with the writer and a committee for the purpose of entering into negotiations on the earliest possible date to attempt an amicable understanding on a contract covering wages, hours and all other conditions of employment for such employees.

We suggest that negotiations be opened on September 10, 1957 at some place in Cumberland, Maryland designated by the Company.

We await your reply.

On or about August 28, 1957, Plant Manager Hainsfurther wrote Frank W. Adams as follows:

Your letter of August 22, 1957, was received.

I have referred the matter of your request to our General Office in Pittsburgh. As soon as I receive word from there, I will advise you.

On September 9, 1957, Plant Manager Hainsfurther wrote a further letter to Frank W. Adams as follows, which was duly received by Adams:

Please be advised that the Pittsburgh Plate Glass Company, Works No. 7, Cumberland, Maryland, does not recognize the International Brotherhood of Electrical Workers as the collective bargaining representative for any of its employees.

On or about September 15, 1957, Adams sent the following night letter by Western Union to Plant Manager Hainsfurther which was received by Hainsfurther the following day:

We are very much disturbed over your reply of September 10, 1957, to our request for a bargaining conference.

It is our opinion that the Company is legally obligated to bargaining for those employees included in the unit for which our Union was recently certified to represent by the National Labor Relations Board.

Therefore, we again urgently request of the Company collective bargaining conferences beginning on the earliest possible date at which we would propose adoption of all applicable provisions of the Contract currently in effect covering employees in the plant who are represented by another Union, and that any such provisions adopted and set forth in a Contract properly identified as being between our Union and the Company covering only those employees for whom our Union has been certified.

Failure of the Company to give a favorable reply on or before September 19, 1957, will leave us no alternative except to immediately file refusal to bargaining charges with the National Labor Relations Board.

At the hearing herein, Respondent's counsel was asked if he would stipulate that the Company has not met with any representative of the Union in any bargaining session to date. While disinclined to stipulate, Respondent's counsel conceded that "I am not aware of any such meeting."

On the above evidence and on the entire record I find that on Septemebr 9, 1957, and at all times thereafter, Respondent refused to bargain collectively with the Union in violation of Section 8 (a) (5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

It having been found that Respondent refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, I recommend that Respondent upon request bargain collectively with the Union as the exclusive representative of such employees with respect to rates of pay, wages, hours, and other terms and conditions of employment.

CONCLUSIONS OF LAW

1. Pittsburgh Plate Glass Company is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. International Brotherhood of Electrical Workers, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

3. At all times material herein, the following employees of Pittsburgh Plate Glass Company at its Cumberland, Maryland, plant, Works No. 7, have constituted and now constitute a unit appropriate for the purposes of collective bargaining: All electricians, including shift, shop, and electronics electricians, instrument repairmen, and apprentices for such classifications, excluding all other employees, guards, and supervisors as defined in the Act.

4. At all times since June 27, 1957, International Brotherhood of Electrical Workers, AFL-CIO, has been the exclusive bargaining representative of the employees in the aforesaid appropriate unit in accordance with the provisions of Section 9. of the Act.

5. By refusing, at all times since September 9, 1957, to bargain collectively with the above-named Union as the exclusive representative of all its employees in the aforesaid appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and (1) of the Act.

[Recommendations omitted from publication.]

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with International Brotherhood of Electrical Workers, AFL-CIO, as the representative of all our employees in the appropriate unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Brotherhood of Electrical Workers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and 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.

WE WILL bargain collectively upon request with the above-named Union as the exclusive representative of all our employees in the appropriate unit with respect to 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. The appropriate unit is:

All electricians, including shift, shop, and electronics electricians, instrument repairmen, and apprentices for such classifications, at our Cumberland, Maryland, plant, Works No. 7, excluding all other employees, guards, and supervisors as defined in the National Labor Relations Act.

All our employees are free to become, remain, or refrain from becoming members of the above-named Union or any other labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

PITTSBURGH PLATE GLASS 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.

The Cincinnati Transit Company, Petitioner and Amalgamated Association of Street and Electric Railway Employees of America, Division 627, AFL-CIO. Case No. 9-RM-161. September 4, 1958

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 William C. Humphrey, 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 [Members Rodgers, 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.¹
4. The Union seeks to add, to its existing unit of operating and maintenance employees in the Employer's public passenger transportation system in metropolitan Cincinnati, Ohio, a group of 32 hitherto

¹The Union's bylaws forbid participation in meetings and bargaining negotiations to certain employees. The Employer contends that the Union is not a labor organization as defined in Section 2 (5) of the Act because the division clerks herein are covered by such provisions. We find the contention without merit. Employees do participate in the Union. Further, the degree of participation of some employees is immaterial as to its status as a labor organization, because the authority of a bargaining agent to represent employees must be sought in the consent of the employees and not in the bylaws. *Capital Transit Company*, 98 NLRB 141.