

It has been found that Respondent has discriminated with respect to the hire and tenure of employment of the 21 complainants. I shall therefore recommend that Respondent offer them immediate and full reinstatement to their former or substantially equivalent positions without prejudice to seniority or other rights and privileges. See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827. The number of complainants involved herein is far less than the number of new hires and there appears to be no need for setting up a preferential hiring list. If, on the other hand, the plant happens to be temporarily shut down due to seasonal or other factors, it is the sense of this remedy that the complainants shall be offered employment at such time as the plant opens for operations. I shall further recommend that Respondent make these complainants whole for any loss of pay suffered by reason of the discrimination against them. Said loss of pay, based upon earnings which each normally would have earned from the date of the discrimination to the date of offer of reinstatement, less net earnings, shall be computed in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289. See *N.L.R.B. v. Seven-Up Bottling Co.*, 344 U.S. 344.

While Respondent has abandoned the use of the unlawful employment application form, a provision in the recommended order is deemed necessary in order to prevent a return to the old form.

Because of Respondent's demonstration of its willingness if not eagerness to resort to unlawful methods to counteract an attempt by its employees to achieve self-organization through a labor organization of their own choosing, the inference is strongly warranted that the commission of other unfair labor practices may be anticipated. It will therefore be recommended that Respondent be ordered to cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by the Act.

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. Teamsters, Chauffeurs, Warehousemen & Helpers Local No. 87, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

2. Bakersfield Foods Co., Inc., is an employer within the meaning of Section 2(2) of the Act.

3. By discriminating in regard to the hire and tenure of the 21 complainants, thereby discouraging membership in a labor organization, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

4. By the foregoing; by utilizing application forms which inquire concerning union affiliation; by engaging in surveillance of union activities; by interrogation of employees concerning their union activities; and by threats of reprisal for engaging in union activities; Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) 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.

6. Respondent has not discriminated with respect to the hire and tenure of employment of Vincent Sanchez, Emigean Sanchez, Mary Smith, and Joe Castaneda.

[Recommendations omitted from publication.]

**Plant City Welding and Tank Company and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO.** *Case No. 12-CA-262.*  
*May 14, 1959*

#### DECISION AND ORDER

Upon a charge duly filed on November 29, 1957, by International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, herein called the

General Counsel, by the Regional Director for the Twelfth Region, issued a complaint dated January 31, 1958, against Plant City Welding and Tank Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8(a) (1) and (5) and Section 2(6) and (7) of the Act. Copies of the complaint, the charge, and notice of hearing were duly served upon the Respondent and the Union on or about January 31, 1958.

With respect to the unfair labor practices, the complaint alleges, in substance, that on or about November 9, 1957, and at all times thereafter, the Respondent refused to bargain collectively with the Union as the exclusive representative of all employees in an appropriate unit, although on October 24, 1957, in Case No. 12-RC-30, the Board had certified the Union as the exclusive representative of all employees in the unit for the purposes of collective bargaining.<sup>1</sup>

On or about February 7, 1958, Respondent filed a motion to dismiss the complaint and a motion to strike portions of the complaint, both of which were referred to Trial Examiner Louis Plost, who denied both motions by an order dated February 14, 1958. In the meantime, on or about February 12, 1958, Respondent filed an answer to the complaint admitting only certain allegations of the complaint relating to the general nature of Respondent's business and further admitting that on or about October 30, 1957, Respondent received a letter from the Union requesting a meeting for negotiation purposes and that on November 9, 1957, it sent a reply to the Union refusing to negotiate and to meet on the ground that the Company intended "to test the NLRB certification in Federal Court." Respondent denied that it had violated the above sections of the Act on the grounds, in summary, that the certification of the Union was invalid because the Union and Local 609 thereof<sup>2</sup> had failed to satisfy the requirements of Section 9(f), (g), and (h) of the Act; there was no substantial evidence in the record of the hearing in the representation case or in the instant case upon which the Board could assert jurisdiction over the Respondent;<sup>3</sup> and the election should have been set aside on the basis of the Respondent's objections thereto.<sup>4</sup>

Pursuant to notice, a hearing was held before Albert P. Wheatley as duly designated Trial Examiner, on February 25, 1958, at Tampa, Florida. The General Counsel, the Union, and the Respondent were each represented by counsel and participated in the hearing. All parties were afforded a full opportunity to be heard, to examine and

<sup>1</sup> See Supplemental Decision and Certification of Representatives, *Plant City Welding and Tank Company*, 119 NLRB 131.

<sup>2</sup> Local 609 was named in the petition in Case No. 12-RC-30 as an affiliate having or soliciting members in the unit or which would serve such employees in the event the Union were certified.

<sup>3</sup> See *Plant City Welding and Tank Company*, 118 NLRB 280.

<sup>4</sup> Footnote 1, *supra*.

cross-examine witnesses, to adduce evidence, to submit oral argument, and to file briefs. The parties stipulated on the record that the proceeding be referred to the Board for decision without the issuance of an Intermediate Report by the Trial Examiner. The agreement of the parties provided for the filing of briefs with the Board.

The Board has construed this agreement as a waiver by all parties of any right which they might have to receive proposed findings and conclusions or a proposed decision under Section 8 of the Administrative Procedure Act or Section 10 of the National Labor Relations Act, as amended. The Board, having duly considered the matter, by Order dated March 6, 1958, after setting forth the above stipulation and construction thereof, transferred this proceeding to, and continued it before, the Board for the purpose of making findings of fact and conclusions of law and the issuance of a Decision and Order, and provided that the parties might file briefs with the Board in Washington on or before March 31, 1958. Time for filing briefs was thereafter extended to April 14, 1958. On April 12, 1958, the Respondent filed a motion in the instant case, and a brief in support thereof, requesting that the Board find that the Trial Examiner erred in refusing to permit Respondent to litigate the compliance status of the Union and Local 609<sup>5</sup> and to admit evidence concerning the objections to the election. It also moved that the Board dismiss the complaint in the instant proceeding on the basis of such noncompliance, order a hearing to determine compliance status, or withhold action in the instant case pending disposition of the Employer's motion for administrative determination filed simultaneously therewith.

In view of the fact that we have considered the Respondent's motion for administrative determination and have held the instant proceeding in abeyance pending our ruling on such motion,<sup>6</sup> we grant the Respondent's motion in that respect. In our administrative determination of compliance status we have found that a hearing was unnecessary because the facts were not in substantial dispute and that the Union has been in full compliance with the requirements of Section 9(f), (g), and (h) at all times. Further, Local 609 was in full compliance at all material times.<sup>7</sup> Accordingly, we deny the Respondent's motion to dismiss the complaint on the ground of noncompliance with Section 9(f), (g), and (h), or to hold a hearing on that issue.

<sup>5</sup> The Respondent also moved that the Board find that the Board erred in revoking *subpoenas duces tecum* directed to two officials of the Union for the production of records relating to the compliance issue. This motion is denied.

<sup>6</sup> *Compliance Status of International Brotherhood of Boilermakers, etc.*, 123 NLRB 492.

<sup>7</sup> We have found that Local 609 was not in compliance following the expiration of its fiscal year 1955, i.e., during the calendar year 1956 and until such time as it complied following the expiration of its fiscal year 1956. However, the Board's records reveal that such full compliance was achieved on February 4, 1957, prior to the date of the closing of the hearing in Case No. 12-RC-80, and was maintained continuously thereafter throughout the processing of the representation case and the instant unfair labor practice proceeding. See *Lane-Wells Company*, 77 NLRB 1051 and 79 NLRB 252.

Upon the basis of the aforesaid stipulation, the record and proceedings in Case No. 12-RC-30, and the entire record in the instant case,<sup>8</sup> the Board, having duly considered the brief filed by the Respondent, makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

In our decision in the representation case, we set forth in detail the unsuccessful efforts of the Regional Office to secure testimony by an official of Respondent concerning its operations. Because of Respondent's failure to cooperate, the hearing officer received other jurisdictional evidence in the record, on the basis of which the Board there found that the Employer was engaged in interstate commerce, that the Board could legally assert jurisdiction in that proceeding, and that the evidence established that the Respondent's business satisfied the Board's then existing jurisdictional standards in that Respondent furnished material and services valued at in excess of \$100,000 to an enterprise which in turn shipped materials valued at over \$50,000 out of State annually and to an electric utility having gross revenue in excess of \$3,000,000.

Prior to the opening of the hearing in the instant case, a *subpoena duces tecum* and a *subpoena ad testificandum* were served upon the Respondent's president and upon its secretary-treasurer calling for their attendance at the hearing on February 25, 1958, with commerce information. Thereafter, counsel for the General Counsel served upon Respondent a notice of the General Counsel's intention, unless either of these officials responded to the subpoenas or, in lieu thereof, Respondent filed an amended answer admitting the allegations of the complaint concerning the Board's jurisdiction over Respondent, to request the Trial Examiner and the Board to take official notice of the facts found in the Decision and Direction of Election in Case No. 12-RC-30 and to offer no further evidence in connection with this aspect of the case.

When neither officer appeared at the hearing<sup>9</sup> and Respondent continued to refuse to stipulate or supply commerce information,

<sup>8</sup> The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

<sup>9</sup> After the close of the hearing, Respondent filed a petition to revoke the subpoenas addressed to these officers, which was denied by the Board by order dated March 6, 1958.

Upon request of Respondent, a *subpoenas duces tecum* was issued prior to the hearing calling for the production by Claude H. Surratt, president of Local 609, of certain documents and other material. Also prior to the hearing, counsel for the Union filed with the Regional Director a petition to revoke such subpoena and another *subpoena duces tecum* served upon the president of the International. The Regional Director referred the petition to revoke to the Board by an order dated February 19, 1958. On March 6, 1958, the Board granted the petition and revoked both of those subpoenas.

Subsequent to the transfer of the case to the Board, the Respondent filed a motion requesting that the subpoena to Claude Surratt, the petition to revoke, the Board's ruling thereon, and all other parts of the record relating thereto be made a part of the record

counsel for the General Counsel made his request to the Trial Examiner, who granted the motion. Respondent protests this action on the grounds that: (1) the Board may not take official notice in this unfair labor practice proceeding of evidence on jurisdiction appearing in the representation proceeding; and (2) Section 10(b) of the Act precludes the use of evidence such as that relied on in the presentation case; but (3) if the Board may do so, the evidence here is incompetent and insufficient to assert jurisdiction in the instant case because (a) it is hearsay and hence inadmissible, (b) there is no presumption that jurisdictional facts once established continue to exist unless rebutted by new evidence, or (c) if there is such a presumption, the evidence in the record before the Board is not such as to suggest facts of a continuing nature here. However, we find the Respondent's position without merit.

It is well established that the Board may take official notice of its own proceedings and decisions, and rely thereon,<sup>10</sup> including the use in an unfair labor practice case of evidence adduced in a prior representation case,<sup>11</sup> especially where, as here, the evidence was submitted on the identical issue and the same parties were present and participated.<sup>12</sup> It is equally well settled that under Section 10(b) of the Act, which provides that unfair labor practice proceedings "shall, *so far as practicable*, be conducted in accordance with the rules of evidence applicable in the district courts of the United States . . ." (emphasis supplied), adherence to evidentiary rules is not always required.<sup>13</sup> Moreover, the evidence in question is of the type customarily relied on by the Board where an employer refuses to cooperate in supplying relevant information, and there is both a presumption of continuing facts<sup>14</sup> and, as we find below, a basis in the record for finding that the facts are of a continuing nature. Furthermore, even if this were not true, the Board's jurisdictional criteria expressed in terms of annual dollar volume of business do not require evidentiary data respecting any certain 12-month period of operations, but may be satisfied, for example, by projecting or estimat-

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in this case. The subpoena to Surratt was introduced into evidence as Respondent's Exhibit No. 33A and is already part of the record. However, we grant Respondent's motion with respect to the other documents insofar as they relate to the subpoena to Surratt. Accordingly, pursuant to Section 102.31(b) of the Board's Rules and Regulations, the documents described above are hereby made a part of the record in this proceeding to that extent.

<sup>10</sup> See, e.g., *E. V. Prentice Machine Works, Inc.*, 120 NLRB 1691, footnote 2; *Paint, Varnish & Lacquer Makers Union, Local 1232, AFL-CIO, et al. (Andrew Brown Company)*, 120 NLRB 1425.

<sup>11</sup> See *Paint, Varnish & Lacquer Makers Union, Local 1232, AFL-CIO, et al., supra*; *M. L. Townsend*, 81 NLRB 739, enfd. 185 F. 2d 378 (C.A. 9), cert. denied 341 U.S. 909.

<sup>12</sup> Cf. *N.L.R.B. v. Talladega Cotton Factory, Inc.*, 213 F. 2d 208, 215-216 (C.A. 5); *N.L.R.B. v. M. L. Townsend*, 185 F. 2d 378 (C.A. 9), cert. denied 341 U.S. 909.

<sup>13</sup> See *W. B. Jones Lumber Company, Inc.*, 114 NLRB 415, at 415 and 421, enfd. 245 F. 2d 388 (C.A. 9).

<sup>14</sup> As Respondent in fact recognizes in its brief, this presumption and its application to questions of this type are well established.

ing commerce data for an appropriate annual period.<sup>15</sup> Accordingly, we may and do assert jurisdiction herein on the basis of our finding in Case No. 12-RC-30.

But even if we were to find merit in and apply Respondent's hearsay test to the evidence on jurisdiction in the representation proceeding, we would reach the same result, since the direct testimony in that case and the Respondent's admissions in the instant case conclusively demonstrate that the Respondent's operations are within the legal jurisdiction accorded the Board by statute. Thus, Respondent in its answer to the complaint, admitted that it is a corporation duly organized under and existing by virtue of the laws of the State of Florida, with its principal office and place of business in Plant City, Florida, and that it is engaged in the design, fabricating, and erecting of steel. Hence, it appears clear that the basic raw material which Respondent must utilize in its operations is steel. The testimony in the prior case by the representative of Bethlehem Steel Company was indisputably direct, probative evidence, at least insofar as he stated that he knew of his own knowledge of shipments of steel from out of the State to the Employer by Bethlehem during 1956 and insofar as he testified from information contained in a document compiled and delivered to him by the trade record division of his employer that 961 net tons of steel were delivered during that year.<sup>16</sup> The record therefore establishes beyond doubt that in 1956 Respondent was securing a substantial amount of its basic raw material from outside the State. And since the amount of steel produced in Florida is minimal,<sup>17</sup> we must conclude that Respondent, in order to continue

<sup>15</sup> *United Mine Workers of America, District 2, et al. (Mercury Mining and Construction Corp.)*, 96 NLRB 1389, 1390. As to what may be an appropriate period, see *Frank P. Slater d/b/a Acme Equipment Company*, 102 NLRB 153, 161-162; *Montex Drilling Company*, 122 NLRB 139.

<sup>16</sup> See *W. B. Jones Lumber Company, Inc., supra*, and *International Union of Operating Engineers, Local 12 (Crook Company)*, 115 NLRB 23, enfd. 243 F. 2d 134 (C.A. 9).

<sup>17</sup> According to a survey by the U.S. Bureau of the Census, as of 1954 there was a total of 40 establishments in the entire State of Florida which were engaged in primary metal industries, defined as "establishments engaged in the smelting and refining of ferrous and nonferrous metals from ore, pig, or scrap; in the rolling, drawing, and alloying of ferrous and nonferrous metals; and in the manufacture of castings, forgings, and other basic products of ferrous and nonferrous metals." Of these 40, only 8 establishments had 20 or more employees. On the other hand, there were 332 establishments in the State engaged in the production of fabricated metal products. U.S. Bureau of the Census. U.S. Census of Manufacturers: 1954. Vol. III, Area Statistics. U.S. Government Printing Office, Washington, D.C., 1957, Table 7. Distribution of Establishments by Employment Size Class and by Major Industry Group for Counties: 1954, p. 109-10; and see Table 4. General Statistics by Industry Group and Industry: 1954 and 1947, at p. 109-7, both relating to Florida. See also Appendix A thereto for the definition quoted above. We take official notice of this publication, as an official release of a Department of the United States Government. See, e.g., *Virginia Railway Company v. System Federation No. 40*, 300 U.S. 515, 545, 546, footnotes 4 and 5; *N.L.R.B. v. Jones & Laughlin Steel Corporation*, 301 U.S. 1, 43, footnote 8; *N.L.R.B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261, 267, footnote 2; *Calera Mining Company*, 97 NLRB 950, 952.

In accordance with Section 101.10(b)(3) of the Board's Statements of Procedure, the parties will, upon filing a motion, within 10 days from the date hereof, requesting re-

its operations, must of necessity continue to secure a substantial quantity of its basic raw material either directly or indirectly from outside the State of Florida.

As indicated above, we have assumed, for purposes of the instant finding, that certain evidence in the prior case has been rejected, i.e., the correspondence from Respondent's customers concerning the sales and services to them by Respondent and setting forth their own dollar volume of business and the further testimony of the Bethlehem Steel Company representative estimating the value of his employer's 1956 sales to Respondent. In this view of the record, the Respondent's operations are shown to be within the Board's legal jurisdiction but the dollar volume of Respondent's business is not revealed in order to satisfy the Board's jurisdictional standards. However, as we recently stated,<sup>18</sup> these standards were adopted by the Board, *inter alia*, as an administrative aid to facilitate its jurisdictional determinations in the investigation of jurisdictional questions so that the Board might concentrate its energies on substantive issues in the many important cases coming before it and thus increase its case-handling capacity. The adoption of such standards in no way precludes the Board from exercising its statutory authority, in any properly filed case, where legal jurisdiction alone is proven, if the Board is satisfied that such action will best effectuate the policies of the Act. The Board has determined that it best effectuates the policies of the Act, and promotes the prompt handling of cases, to assert jurisdiction in any case in which, as here, an employer has refused, upon reasonable request by Board agents, to provide the Board or its agents with information relevant to the Board's jurisdictional determinations, where the record developed at a hearing, duly noticed, scheduled, and held, demonstrates the Board's statutory jurisdiction, irrespective of whether the record demonstrates that the employer's operations satisfy the Board's jurisdictional standards.<sup>19</sup>

Applying this policy to the instant case, the Board finds that it will also effectuate the policies of the Act to assert jurisdiction over the Respondent on this alternative basis. The record evidence clearly establishes, and we find, that the Respondent's operations substantially affect commerce within the meaning of the Act and are therefore within the Board's statutory jurisdiction. Further, the Respondent plainly has consistently refused to cooperate in the production of evidence concerning the effect of its operations on commerce, indicating that it would not supply such information except upon enforcement

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consideration and setting forth sufficient information to warrant further action by the Board, be given an opportunity to show the contrary of the facts of which we take official notice.

<sup>18</sup> *Tropicana Products, Inc.*, 122 NLRB 121. And see *Seaboard Warehouse Terminals, Inc.*, 123 NLRB 378.

<sup>19</sup> See *Tropicana Products, Inc.*, *supra*, for a statement as to the considerations on which this determination is based.

by a Federal court of any subpoena issued to secure such information, and has chosen to take the position that it need not produce such evidence because the burden is on the General Counsel to establish the Board's jurisdiction over Respondent. But since we find that a *prima facie* showing of such jurisdiction was established by the evidence, it was incumbent on Respondent to adduce some evidence to refute that showing,<sup>20</sup> and it cannot be heard to complain if its failure to do so results in a finding which it believes could have been rebutted.

## II. THE LABOR ORGANIZATIONS INVOLVED

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, and its Local 609 are labor organizations as defined in Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

### A. *The appropriate unit and representation by the Union of a majority therein*

We find that all production and maintenance employees of the Respondent at its Plant City, Florida, plant, including truckdrivers and helpers, checkers, and expeditors, but excluding all office employees, guards, watchmen, professional employees, and supervisors as defined in the Act, presently constitute, and have at all times since June 21, 1957, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

We also find that since July 19, 1957, on which date a majority of the employees in the appropriate unit designated the Union as the exclusive representative of all employees in the above unit for the purposes of collective bargaining,<sup>21</sup> the Union has been the exclusive representative of all employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

### B. *The refusal to bargain*

The Respondent admits that on October 29, 1957, the Union, by a letter received by the Respondent on or about October 30, made a request upon the Respondent to bargain collectively, with respect to rates of pay, wages, hours of employment, and other conditions of

<sup>20</sup> *Bryan Manufacturing Company*, 119 NLRB 502, 507, enfd. 264 F. 2d 575 (C.A., D.C.).

<sup>21</sup> Respondent takes the position that it is entitled as a matter of right to a hearing on the objections to the election, even though the Board accepted as facts the occurrences as alleged by Respondent, to show that the conduct complained of *in fact* affected the results of the election. However, the test is not a subjective one, but rather whether or not the conduct charged reasonably tends to interfere with the voters' free choice. *Dallas City Packing Company*, 116 NLRB 1609 (and cases cited therein), enfd. 251 F. 2d 663 (C.A. 5). Therefore, the evidence which Respondent seeks an opportunity to adduce would be inadmissible in any hearing we might order. Since there is no issue as to what occurred, no hearing is necessary or warranted.

employment, with the Union as the exclusive representative of all employees in the unit, and that the Respondent, by letter dated November 9, 1957, declined that request. Accordingly, we find that the Respondent thereby violated Section 8(a) (5) and (1) of the Act.

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

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 and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.<sup>22</sup>

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

#### CONCLUSIONS OF LAW

1. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, and its Local 609 are labor organizations as defined in Section 2(5) of the Act.

2. All production and maintenance employees of the Respondent at its Plant City, Florida, plant, including truckdrivers and helpers, checkers, and expeditors, but excluding all office employees, guards, watchmen, professional employees, and supervisors as defined in the Act, presently constitute, and have at all times since June 21, 1957, constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

3. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, was on July 19, 1957, and at all times thereafter has been, the exclusive representative of all employees in the aforesaid unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

4. By refusing on or about November 9, 1957, and at all times thereafter, to bargain collectively with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, as the exclusive representative of all employees in the aforesaid appropriate unit, the Respondent has engaged in and is en-

<sup>22</sup> Petitioner's motion that the Board invoke Section 12 of the Act and that the Board also seek an injunction under Section 10(j) of the Act is hereby denied.

gaging in unfair labor practices within the meaning of Section 8(a) (5) and (1) 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.

### ORDER

Upon the entire record in this 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, Plant City Welding and Tank Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, as the exclusive representative of all production and maintenance employees of the Respondent at its Plant City, Florida, plant, including truckdrivers and helpers, checkers, and expeditors, but excluding all office employees, guards, watchmen, professional employees, and supervisors as defined in the Act.

(b) Interfering in any other manner with the efforts of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, to negotiate for, or to represent the employees in the aforesaid bargaining unit as their exclusive bargaining agent.

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

(a) Upon request, bargain collectively with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, as the exclusive representative of all production and maintenance employees of Respondent at its Plant City, Florida, plant, including truckdrivers and helpers, checkers, and expeditors, but excluding all office employees, guards, watchmen, professional employees, and supervisors as defined in the Act, with respect to rates of pay, wages, hours, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant at Plant City, Florida, copies of the notice attached hereto, marked "Appendix A."<sup>23</sup> Copies of said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of 60 consecutive days thereafter, in conspicuous places,

<sup>23</sup> 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."

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 Twelfth Region in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

MEMBER FANNING, dissenting:

For the reasons given in my opinion in *Compliance Status of International Brotherhood of Boilermakers, etc.*, 123 NLRB 492, I would find that the Charging Union in this case has not been in compliance with Section 9(f)(B)(2) of the Act at times material hereto and, accordingly, I would dismiss the complaint in this proceeding.

APPENDIX A

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 bargain collectively upon request with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, as the exclusive representative of employees in the bargaining unit described herein with respect to rates of pay, wages, hours, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All production and maintenance employees at our Plant City, Florida, plant, including truckdrivers and helpers, checkers, and expediters, but excluding all office employees, guards, watchmen, professional employees, and supervisors as defined in the Act.

WE WILL NOT in any manner interfere with the efforts of the above-named Union to bargain collectively with us, or refuse to bargain with said Union as the exclusive representative of the employees in the bargaining unit set forth above.

PLANT CITY WELDING AND TANK 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.