

3. Amalgamated Lithographers of America was, on July 14, 1958, and at all times since has been, the exclusive representative of all employees in the appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

4. By refusing to bargain collectively with Amalgamated Lithographers of America as the exclusive bargaining 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 said acts the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby 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.

[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 interfere with the efforts of Amalgamated Lithographers of America to bargain collectively with us. All our employees are free to become or remain members of this union, or any other labor organization.

WE WILL bargain collectively upon request with Amalgamated Lithographers of America, as the exclusive representative of all employees in the appropriate bargaining unit described hereinafter, with respect to rates of pay, wages, hours of employment, or other condition of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All pressmen, apprentice pressmen, feeder, helpers, and floormen engaged in offset work at our Middlebury, Indiana, plant, excluding all other employees and supervisors as defined in the National Labor Relations Act.

ACE FOLDING BOX CORPORATION,
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.

**Charles F. Reichert and Charles F. Reichert, 3rd, Co-Partners
d/b/a Charles F. Reichert and Local 470, International
Brotherhood of Teamsters, Chauffeurs, Warehousemen and
Helpers of America. Case No. 4-CA-1754. July 10, 1959**

DECISION AND ORDER

On January 30, 1959, Trial Examiner Louis Libbin issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged and was engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, 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 and briefs in support thereof.

The Board 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. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and finds merit in some of the Respondent's exceptions. Accordingly, the Board adopts the findings of the Trial Examiner only insofar as consistent with this Decision and Order.

The complaint alleges, and the Trial Examiner found, that at all times since March 25, 1958, the Respondent has refused to bargain with the Union as representative of the Respondent's employees in an appropriate unit of truckdrivers and helpers, excluding all other employees. In its exceptions, the Respondent contends that the unit is inappropriate because it does not include all employees performing truckdriving duties, and that the General Counsel has failed to sustain his burden of proof as to the appropriate unit. We find merit in this exception.

The Board has recently stated that a union which seeks to enforce its rights under Section 8(a)(5) of the Act "must establish that it has been designated by an uncoerced majority of the employees, that a unit is appropriate, and that there has been both a demand and a refusal. If there is failure of proof in any one of these conditions, its resort to the Board will have been in vain."¹

The only evidence of appropriate unit in this case is a certification of representatives issued by the Pennsylvania Labor Relations Board on March 25, 1958, and later revoked by the same agency on September 23, 1958, for lack of jurisdiction. At the hearing before the Trial Examiner on November 11, 1958, the General Counsel took the position that a State Board certification is *prima facie* evidence of appropriate unit and a union's majority status therein. The General Counsel therefore contended that he had sustained his burden of proof, and that the Respondent had the burden of going forward with evidence in rebuttal. On the other hand, the Respondent contended that the State Board's unit determination was incorrect, that the unit was inappropriate, that the State Board certification was invalid for jurisdictional reasons, and that under these circumstances the General Counsel had not made out a *prima facie* case. Neither the General Counsel nor the Respondent presented any other evidence on the question of the appropriate unit. Accordingly, the Trial Examiner relied solely on the State Board certification in making his own unit determination, and in effect agreed with the General Counsel that the State Board certification in this case was *prima facie* evidence of appropriate unit.

In an 8(a)(5) proceeding, the burden of proof as to the appropriate unit is upon the General Counsel. In this regard, it is well established

¹ *Tom Thumb Stores, Inc.*, 123 NLRB 833.

that an NLRB certification is conclusive evidence of an appropriate unit—and majority status—because these issues have already been determined by the Board in a prior representation proceeding. The Board has uniformly declined to redetermine these issues in an unfair labor practice proceeding in the absence of new evidence, or evidence of a change in the facts surrounding a prior unit determination, or the presentation of evidence unavailable in such prior proceeding.² This principle presupposes, however, that the NLRB certificate offered as evidence is a valid document. Where a Board certificate has been revoked because of a fundamental disability in the representation proceeding, and “failure to honor” it can therefore not be charged against any party under Board precedent, such certificate is a nullity *ab initio*.³ It cannot serve as evidence in a subsequent complaint proceeding for any proposition.

In the instant proceeding the General Counsel has rested his case on a State Board certification which, at the time of the hearing herein, had been revoked by the State Board because of lack of jurisdiction. That certificate was therefore null and void and could not serve as evidence to establish a *prima facie* case against the Respondent herein. As the General Counsel has produced no other evidence to show that the Respondent refused to bargain in an appropriate unit, there is nothing in the record to support this indispensable complaint allegation. Accordingly, we shall dismiss the complaint.

[The Board dismissed the complaint.]

² *The Baker and Taylor Co.*, 109 NLRB 245.

³ Compare *Union Bus Terminal of Dallas, Inc.*, 97 NLRB 206, where the Board found a certificate to be invalid, and dismissed a complaint based thereon, because of the failure of the CIO to comply with the filing requirements of the Act; *Mack Manufacturing Corporation*, 107 NLRB 209, 212, where a certificate was revoked, and a complaint based thereon dismissed, because a union of guards was shown to be affiliated with a nonguard union.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon charges filed by Local 470, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued his complaint, dated November 10, 1958, and amended November 25, 1958, against Charles F. Reichert and Charles F. Reichert, 3rd, Co-Partners d/b/a Charles F. Reichert, herein called the Respondents. With respect to the unfair labor practices, the complaint as amended alleges, in substance, that: (1) All truckdrivers and helpers employed by the Respondents, excluding clerical employees, countermen, stockmen, guards, and supervisors as defined in the Act, and all other employees, constitute a unit appropriate for collective bargaining; (2) on March 20, 1958, a majority of the employees in said unit, by a secret ballot election conducted by the Pennsylvania Labor Relations Board, selected the Union as their bargaining representative, and on March 25, 1958, the State Board certified the Union as the bargaining representative of the employees in said unit; (3) on or about March 25, 1958, and thereafter, including September 3 and October 29, the Union requested the Respondents to bargain collectively with respect to the terms of a contract; (4) at all times since on or about March 25, 1958, Respondents have refused to bargain with the Union as the representative of the employees in the aforesaid unit; (5) by the foregoing conduct Respondents have

engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act; and (6) on or about May 1, 1958, certain employees at Respondents' plant engaged in a strike which was caused and prolonged by the Respondents' unfair labor practices, as aforesaid.

In its duly filed answer, as amended, Respondents, in substance, (1) admit the allegations pertaining to the Board's jurisdiction and the status of the Union as a labor organization; (2) deny the appropriateness of the unit alleged in the complaint and found by the State Board; (3) aver that the State Board had no jurisdiction and its certification of the Union is invalid; (4) deny the commission of any unfair labor practice or that the strike was caused or prolonged by Respondents' conduct; and (5) allege that said strike was illegal.

Pursuant to due notice, a hearing was held on December 11, 1958, at Philadelphia, Pennsylvania. All parties were represented at the hearing by counsel, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to present oral argument at the close of the hearing, and thereafter to file briefs as well as proposed findings of fact and conclusions of law. The Respondents' motion to dismiss the complaint, made before the close of the hearing and upon which I reserved ruling, is disposed of in accordance with the findings and conclusions herein made. After the close of the hearing, Respondents filed a brief, which I have fully considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

The Respondents, Charles F. Reichert and Charles F. Reichert, 3rd, are co-partners doing business as Charles F. Reichert at a plant in Philadelphia, Pennsylvania, where they are engaged in the selling of plumbing supplies at wholesale. During the calendar year 1957, Respondents made purchases of products and supplies for resale, valued at approximately \$260,000, which products were purchased and shipped from points located outside the Commonwealth of Pennsylvania, to the Respondents' plant in Philadelphia, Pennsylvania.

Upon the above admitted facts, I find, as Respondents admit in their answer and brief, that Respondents are engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find, that Local 470, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Sequence of relevant events*

There is no serious dispute as to the relevant events giving rise to the issues raised in this proceeding.

The Respondents first learned of the Union's claim to represent their truckdrivers and helpers in November 1957, when Union Business Agent Jericho went to the plant and handed Charles F. Reichert, 3rd, one of the partners, a form contract covering drivers and helpers with a request to "sign it." When Jericho returned a few days later to see about the contract, Reichert, 3rd, referred him to Respondents' attorney, Max C. Baylinson. Respondent gave Baylinson full authority to represent them in all matters pertaining to the Union's representation claim and efforts to bargain with Respondents.

Thereafter, on November 25, 1957, Respondents, upon advice of Attorney Baylinson, filed with the Pennsylvania Labor Relations Board an employer petition for an investigation of the question which had arisen concerning the representation of their employees and for certification of the representatives selected by a majority of the employees in an appropriate unit. A hearing at which testimony was taken was held on this petition by the State Board on December 9, 1957. Thereafter, pursuant to Respondents' request to reopen the record to adduce newly discovered evidence, a further hearing was held on February 6, 1958. At these hearings, Respondents took the position that the only appropriate unit consisted of one comprising all its employees. The Union contended for a unit confined to Respondents' truckdrivers and helpers.

On March 13, 1958, the State Board issued its Order Directing Election. In this document, the State Board reviewed the duties performed by all the employees; found that two employees spent the greatest portion of their time in loading, unloading, and driving trucks and that one employee spent the greater portion of his working time in helping on trucks; further found that, under the circumstances, these three employees constitute "a functionally distinct group" entitled to separate representation, citing two decisions of the National Labor Relations Board;¹ concluded that the appropriate unit for purposes of collective bargaining was a subdivision of the employer unit, comprised of truckdrivers and helpers; and ordered an election in that unit to be held on March 20, 1958. Said election was held as ordered and thereafter, on March 25, 1958, the State Board issued a Nisi Order of Certification, in which it found that the Union had been selected as bargaining representative by a majority of the employees in the appropriate unit and that "the duly appointed watchers in attendance at the election have certified that the election was fairly and impartially conducted and that a true and perfect return thereof has been made by the designated Agent of the Board"; concluded that the Union was "the exclusive representative of all the employees of the Employer, within the heretofore defined appropriate unit, for the purposes of collective bargaining, with respect to rates of pay, wages, hours of employment and other conditions of employment"; and certified the Union as such exclusive representative.

Thereafter, on April 1, 1958, Respondents filed Exceptions to Nisi Order of Certification, in which they contended, in substance, that the unit was inappropriate and invalid, that the State Board had no authority or jurisdiction in the matter because Respondents are engaged in interstate commerce, and that the Order of Certification was invalid and unenforceable. On April 28, 1958, the State Board issued its final Decision and Order, in which it found Respondents' exceptions to be without merit, and ordered and decreed that its "Order of March 25, 1958, shall become and be absolute and final."

In a letter, dated April 30, 1958, to the Union's attorney, Edward Davis, Respondents' attorney, Baylinson, stated that Respondents intended to appeal to the "Common Pleas Court from the Order of the Board," and requested Davis to inform Union Business Agent Jericho, who had threatened to call a strike, "that we will not commence any negotiations during the pendency of the appeal." About 8 a.m. on May 1, 1958, when employees McIntyre and Klemmer, two truckdrivers in the unit found appropriate, were going to work, they were met outside the plant premises by Union Business Agent Jericho and informed by him that the Respondents would not bargain with the Union and that "we are authorized to go on strike." Jericho gave picket signs to the two employees who thereupon began picketing Respondents' premises. About a half hour later, they were joined in the picketing by employee Brodbeck, a helper in the unit found appropriate. The strike, with intermittent picketing, was still in progress as of December 11, 1958, the date of the hearing in the instant proceeding.

On June 23, 1958, the Respondents filed in the Court of Common Pleas of Philadelphia County a petition to review and set aside the Final Order of the State Board, alleging, in substance, that the State Board erred in finding a unit of truckdrivers and helpers to be appropriate and in failing to make a finding as to commerce. On July 10, 1958, the State Board filed with said court a petition for remand to permit the State Board to hold a further hearing relative to the question of jurisdiction. The Respondents joined in the petition. On July 10, 1958, the said court remanded the proceeding to the State Board "for the purpose of ascertaining whether the employer is engaged in interstate commerce within the meaning of the National Labor Relations Act and thereafter to make findings of fact and conclusions relative thereto." In compliance with such order, hearings were held before the State Board on July 22 and August 1, 1958.

On August 4, 1958, the Union filed its first charge with the National Labor Relations Board, alleging that it has been the bargaining agent for Respondents' truckdrivers and helpers since its certification by the State Board on March 25, 1958, and that Respondents have consistently refused to bargain with the Union since that time in violation of Section 8(a)(5) and (1) of the Act.

By letter, dated September 3, 1958, and addressed to Baylinson, Respondents' attorney, the Union's attorney, Davis, again requested an opportunity "to negotiate a collective bargaining agreement for the truckdrivers and helpers who designated" the Union "as their exclusive bargaining agent in the recent election held by the Pennsylvania Labor Relations Board." Davis reiterated on behalf of the Union "our

¹ *Maule Industries, Inc.*, 117 NLRB 1710, and *Allied Chemical and Die Corporation*, 116 NLRB 1784.

unwillingness to sit down with you and negotiate a collective bargaining agreement." The letter closed with a request that Baylinson "please be good enough to fix a time." Charles Reichert, 3rd, admittedly saw this letter, discussed it with Baylinson, and authorized the answer which Baylinson gave by letter, dated September 3 and addressed to Attorney Davis. In this letter, Baylinson stated that it has always been Respondents' position that the unit found appropriate by the State Board was "arbitrary," "capricious," and "improper," and that the State Board had no jurisdiction in this matter. He further pointed out that Respondents' exceptions are now the subject of an appeal before the Court of Common Pleas and that, on a remand, the State Board had taken additional testimony on jurisdiction but had not yet reached a decision. The letter concluded with a statement of Respondents' position that "we are not obligated to bargain with the representatives of Local 470 until this matter has been finally adjudicated."

On September 23, 1958, the State Board issued a Nisi Decision and Order, in which it made additional findings of fact with respect to jurisdiction. The State Board concluded that "it is obvious that the facts concerning the Employer's business satisfies the jurisdictional standards established by the National Labor Relations Board and that this Board is without jurisdiction in the matter"; revoked its prior Final Order of Certification; and dismissed the Respondents' petition. On October 2, 1958, the Union filed exceptions with the State Board. Thereafter, the State Board issued an Order, dated October 9, 1958, giving the parties 30 days within which to file briefs on the exceptions interposed by the Union.

On October 29, 1958, the Union's attorney wrote another letter to Respondents' attorney, Baylinson, stating that "in view of the fact that we are once again being called upon to file briefs before the" State Board, "I would like to take this opportunity to request an opportunity to sit down and negotiate a collective bargaining agreement for the employees" for whom the Union was certified "as their collective bargaining agent in the unit designated by the Board." Baylinson replied by letter, dated November 6, 1958, and admittedly authorized by Charles F. Reichert, 3rd, in which Baylinson stated that "my letter to Mr. Davis of September 4, 1958, will fully answer your recent letter addressed to me."

On November 5, 1958, the Union filed amended charges with the National Labor Relations Board, alleging additional unlawful refusals by Respondents to bargain, specifically on September 3 and October 29, 1958.

On December 4, 1958, the State Board issued a document, entitled, "Report to the Court of the Board's Findings Relative to the Question of Jurisdiction." In this document, after reviewing the proceedings, the Board stated that the issue raised by the Union's exceptions is the legal question of whether the Respondents are in a position to challenge the jurisdiction of the forum of their choice; concluded that the State Board was not directed by the court to make "such a primary decision"; and decided that "this matter must be returned with this report as an issue to be determined on Review of Final Order of Pennsylvania Labor Relations Board presently pending before your Honorable Court."

As of December 11, 1958, the date of the hearing in the instant proceeding, the Court of Common Pleas had rendered no decision.

B. Issues and contentions of the parties

It is the position of the General Counsel that: (1) The proceedings before the State Board establish a *prima facie* case as to the exclusive representative status of the Union in an appropriate unit, which has not been rebutted by Respondents, and that, under applicable Board decisions, the Respondents are required to honor the certification of the State Board in the same manner as a Board certification; (2) the Respondents have refused to meet and bargain with the Union after said certification; (3) the pendency of unfair labor practice proceedings before this Board and of further State proceedings in which Respondents were contesting the validity of the State Board certification is no defense to Respondents' refusal to meet and bargain with the Union; and (4) the strike, which began on May 1, 1958, was caused and prolonged by Respondents' unfair labor practices in refusing to bargain with the Union.

The Respondents contend that this Board must first determine the appropriateness of the unit before there can be any unlawful refusal to bargain. Although given the opportunity to do so, Respondents refused to adduce any evidence at the instant hearing with respect to the inappropriateness of a unit of drivers and helpers, electing to stand on their position that the General Counsel must first adduce evi-

dence that such a unit is appropriate. The Respondents also contend that the State Board certification is invalid because a unit of drivers and helpers is inappropriate and because the State Board had no jurisdiction in the matter, as Respondents are engaged in commerce within the meaning of the Act. The Respondents further contend that for the foregoing reasons, and because the validity of the State Board proceedings is still being contested in the State courts and the pendency of unfair labor practice charges filed with this Board by the Union, there was no unlawful refusal to bargain and the strike was not caused by any conduct of Respondents.

C. *The unlawful refusal to bargain*

1. The appropriate unit and the Union's exclusive representative status therein

On March 25, 1958, the Pennsylvania Labor Relations Board certified that, in a secret ballot election conducted by it, the Union had been selected as bargaining representative by a majority of the employees in an appropriate unit of drivers and helpers, and thereby became the exclusive bargaining representative of all the employees in said unit. On April 28, 1958, the State Board issued a final decision in this respect, finding Respondents' exceptions to be without merit. This Board has held that, absent any irregularity in the election, the same effect should be given to certifications based upon secret-ballot elections conducted under auspices of responsible State government agencies as to Board certifications.²

In finding a unit of drivers and helpers to be an appropriate unit for collective-bargaining purposes, the State Board relied upon and followed the same principles applied by this Board in customarily finding such a unit to be appropriate. That the State Board had no jurisdiction because Respondents are engaged in commerce within the meaning of the Act, does not destroy the fact that a majority of Respondents' drivers and helpers selected the Union as their bargaining representative in a secret-ballot election conducted by a responsible State agency. The State agencies also had no jurisdiction in the cases cited in the footnote, as the Respondents in those cases were also engaged in commerce within the meaning of the Act. Respondents seek to distinguish the instant case on the ground that in the cited cases there was no contention "that the election conducted by the" State agency "involved any irregularity." However, Respondents at no time contended, and do not now contend, that there was any "irregularity" in the election. Indeed, in its decision of March 25, 1958, the State Board stated that "the duly appointed watchers in attendance at the election have certified that the election was fairly and impartially conducted and that a true and perfect return thereof has been made by the designated Agent of the Board." Respondents at no time took any exception to this statement. Nor, as in the cited cases, do Respondents challenge the fact that the State Board, on March 25 and April 28, 1958, certified the Union as the exclusive bargaining representative of Respondents helpers and drivers.

The Board has recently reaffirmed its position that truckdrivers who spend a majority of their time in "actual driving," together with their helpers, constitute a functionally distinct group entitled to separate representation.³ Time spent in loading and unloading work is considered by the Board to be part of "actual driving."⁴

I find that all truckdrivers and helpers employed by Respondents, excluding all other employees, guards, and supervisors, as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. I also find that, as a result of an election conducted by the State Board, the Union has been at all times since March 25, 1958, the exclusive representative of all employees in the said appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

2. The refusal to bargain

The evidence pertaining to Respondents' refusal to meet and bargain with the Union has been set forth in section III A, *supra*. As soon as the State Board issued its Final Decision and Order, in which it found Respondents' exceptions to be without merit, Respondents, through their duly authorized agent, Attorney Baylinson,

² *Dunkirk Broadcasting Corporation*, 120 NLRB 1588; *Bluefield Products & Provision Company*, 117 NLRB 1660, 1661, 1663.

³ *Maule Industries, Inc.*, 117 NLRB 1710, 1713, 1715; *Interchemical Corporation*, 116 NLRB 1443, 1445; *Painesville Works, etc.*, 116 NLRB 1784, 1786.

⁴ *Maule Industries and Painesville Works* cases, *supra*.

informed the Union's attorney, by letter dated April 30, 1958, that Respondents intended to appeal the State Board's Decision to the State courts and that Respondents "will not commence any negotiations during the pendency of the appeal," and requested that Respondents' position in this respect be conveyed to the Union's business agent, who had threatened to call a strike. On September 3, 1958, the Union's attorney, by letter addressed to Baylinson, again requested an opportunity to negotiate an agreement for the employees in the unit certified by the State Board. In his reply letter of September 4, Baylinson pointed out that he was still contesting the State Board's certification and stated that "we are not obligated to bargain . . . until this matter has been finally adjudicated." By letter dated October 29, 1958, the Union's attorney again requested Baylinson for "an opportunity to sit down and negotiate a collective bargaining agreement." In his reply letter of November 6, Baylinson stated that Respondents' position was fully set forth in his previous letter of September 4.

It is thus clear, and I find, that beginning with April 30, 1958, Respondents have at all times refused to meet and bargain with the Union as the exclusive representative of the employees in the unit hereinabove found appropriate. It is true, as Respondents contend, that the Board or its agent, the Trial Examiner, may not find an unlawful refusal to bargain unless the Board or said agent first finds that the unit, with respect to which there was such a refusal, is appropriate within the meaning of Section 9(b) of the Act. I have already made such a finding with respect to the appropriate unit. It is not true, however, as Respondents further contend, that the conduct which occurred before I made this unit finding, may not serve as the basis for a finding of an unlawful refusal to bargain. The statute makes unlawful a refusal to bargain with respect to an appropriate unit; it does not prescribe that *only* those refusals which occur after a finding has been made as to the appropriate unit, will be unlawful. And the decisions, affirmed by the courts, in which the Board has at the same time made findings as to the appropriate unit and as to prior unlawful refusals to bargain with respect to said unit, as in this case, are legion.

Nor is there any merit to Respondents' further contention that there was no obligation to bargain while they were still contesting the State Board certification and after unfair labor practice charges had been filed with this Board by the Union. The Board and the courts have consistently held that the duty to bargain cannot be postponed by the pendency of a petition for reconsideration of a certification, by the filing of a petition for review in the courts, or by the filing of unfair labor practice charges.⁵

I find that by refusing to bargain with the Union as the exclusive representative of the employees in the unit, hereinabove found to be appropriate, on and after April 30, 1958, and specifically on April 30, September 4, and November 6, 1958, the Respondents have violated Section 8(a)(5) of the Act. I further find that by such conduct, the Respondents have also interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby violating Section 8(a)(1).⁶

D. *The unfair labor practice strike*

As previously found, on April 30, 1958, Respondents' Attorney Baylinson informed the Union's attorney that Jericho, the Union's business agent, had threatened to call a strike, and requested the Union's attorney to inform Jericho that Respondents intended to appeal the State Board's certification to the State courts and that the Respondents "will not commence any negotiations during the pendency of the appeal." The following morning, Jericho met two of Respondents' truckdrivers as they were coming to work, and told them that Respondents would not bargain with the Union and that "we were authorized to go on strike." Jericho gave picket signs to these two employees who thereupon began picketing Respondents' premises. Shortly thereafter, they were joined in the picketing by another employee, a helper, in the unit herein found appropriate. This strike, with intermittent picketing, was still in progress on December 11, 1958, the date of the hearing in the instant proceeding.

⁵ See, e.g., *Pasco Packing Co.*, 115 NLRB 437, 447; *The Borden Company*, 108 NLRB 807, 812; *N.L.R.B. v. Taormina Company*, 207 F. 2d 215 (C.A. 5).

⁶ See, e.g., *Tennessee Coach Company*, 115 NLRB 677, 679; *H. Rohtstein & Co., Inc.*, 120 NLRB 1556.

I find that the strike, which began on May 1, 1958, was caused and prolonged by Respondents' unfair labor practices in refusing to bargain with the Union, as previously found, and hence is an unfair labor practice strike.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents, set forth in section III, above, occurring in connection with their business 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 the Respondents have engaged in certain unfair labor practices, I will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondents have refused to bargain with the Union as the exclusive representative of their employees in an appropriate unit, I will recommend that, upon request, the Respondents bargain collectively with the Union and embody in a signed agreement any understanding which may be reached.

I have found that the strike, which began on May 1, 1958, and was still in progress as of the date of the hearing in the instant case, was caused and prolonged by Respondents unfair labor practices in refusing to bargain with the Union. Accordingly, I will further recommend that Respondents offer to the striking employees, upon their application, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, any persons hired on or after May 1, 1958, to provide places for the returning strikers. I will also recommend that Respondents make the striking employees whole for any loss of pay they may suffer by reason of the Respondents' refusal, if any, to reinstate them, by payment to each of them of a sum of money equal to that which each normally would earn as wages during the period from 5 days after the date on which the individual employee applies for reinstatement to the date of the Respondents' offer of reinstatement, less his net earnings during such period, in accordance with the formula prescribed in *F. W. Woolworth Co.*, 90 NLRB 289.⁷

Upon the basis of the above findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Local 470, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

2. All truckdrivers and helpers employed by Respondents, excluding all other employees, guards, and supervisors, as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

3. At all times since March 25, 1958, the Union has been the exclusive representative of all employees in the aforestated appropriate unit for the purposes of collective bargaining, within the meaning of Section 9(a) of the Act.

4. By refusing to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit on and after April 30, 1958, and specifically on April 30, September 4, and November 6, 1958, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By said acts the Respondents have interfered with, restrained, and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The strike, which began on May 1, 1958, and was still current as of the date of the hearing in this proceeding, was caused and prolonged by the above unfair labor practices of Respondents and hence was an unfair labor practice strike.

7. 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.]

⁷ See, e.g., *Concrete Haulers, Inc., etc.*, 106 NLRB 690, 693-694, enf'd. 212 F. 2d 477 (C.A. 5); *Buffalo Arms, Inc.*, 110 NLRB 816.