

4. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. By causing the Company to discriminate against employees in violation of Section 8(a)(3) of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

6. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Union has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

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.]

Ace Folding Box Corporation and Amalgamated Lithographers of America and United Papermakers and Paperworkers, AFL-CIO. *Case No. 13-CA-3069. July 10, 1959*

DECISION AND ORDER

On April 14, 1959, Trial Examiner Charles W. Schneider 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 filed exceptions to the Intermediate Report, and supporting briefs.

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

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 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 Ace Folding Box Corporation, Middlebury, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Amalgamated Lithographers of America, as the exclusive representative of all the employees

in the appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(b) In any manner interfering with the efforts of Amalgamated Lithographers of America to bargain collectively with it.

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

(a) Upon request, bargain collectively with Amalgamated Lithographers of America as the exclusive representative of all employees in the appropriate unit, and embody any understanding reached in a signed agreement.

(b) Post at its plant at Middlebury, Indiana, copies of the notice attached to the Intermediate Report marked "Appendix A."¹ Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region (Chicago, Illinois), shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for 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 Thirteenth Region, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith.

¹ 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."

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge filed November 18, 1958, by Amalgamated Lithographers of America, herein called the Lithographers, against Ace Folding Box Corporation, Middlebury, Indiana, herein called the Respondent, the Regional Director for the Thirteenth Region (Chicago, Illinois) issued his complaint, dated January 23, 1959, 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 National Labor Relations Act, 61 Stat. 136. A copy of the charge was duly served on the Respondent on or about November 21, 1958.

With respect to the unfair labor practices the complaint alleged, in substance, that on or about August 8, 1958, the Respondent refused, and at all times thereafter has refused, to bargain collectively with the Lithographers although the Lithographers was and is the exclusive collective-bargaining representative of the Respondent's employees within an appropriate bargaining unit.

In due course the Respondent filed its answer denying the commission of the alleged unfair labor practices.

Upon due notice a hearing was held at Chicago, Illinois, on March 4, 1959, before the duly designated Trial Examiner, Charles W. Schneider. The General Counsel, the Respondent, and the Lithographers appeared. Upon motion, and over objection by the General Counsel and the Lithographers, the United Papermakers and Paperworkers, AFL-CIO, and its Local Union 1018, herein called the Papermakers, were permitted to intervene.

All parties were represented by counsel, participated fully in the hearing, were afforded opportunity to be heard, to examine and cross-examine witnesses on mate-

rial matters, to introduce material evidence, and to argue the issues upon the record. The parties were granted 20 days in which to file briefs and proposed findings.¹

On March 20 the Respondent filed a request for a 20-day extension of time, which was denied by the Acting Chief Trial Examiner. On March 24 and 25, 1959, briefs were received from the Respondent, the Lithographers, and the General Counsel, and have been considered. The following posthearing matters are disposed of as indicated.

The Lithographers has moved to correct the transcript of hearing in specified particulars. The motion is hereby granted. The Respondent, the Lithographers, and the Papermakers have filed a stipulation for the correction of the transcript in the representation proceeding, Case No. 13-RC-5879, which is referred to the Board. In its brief the Respondent requested "time," duration unspecified, in which to correct the transcript in the complaint case. The particular corrections desired are not stated. In view of the indefiniteness of the request, withholding of issuance of the Intermediate Report and Recommended Order does not seem warranted. If material corrections are contemplated they may be submitted to the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Ace Folding Box Corporation, an Indiana corporation, is, and at all material times herein has been, engaged in the business of manufacturing folding paper boxes at its sole plant and place of business in Middlebury, Indiana. During the calendar year 1957, the Respondent, in the course, conduct, and operation of its business at Middlebury, Indiana, purchased and received directly from outside the State of Indiana products valued at in excess of \$2,175,000, and during the same calendar year the Respondent shipped products valued at approximately \$3,000,000 directly to points outside the State of Indiana.

II. THE LABOR ORGANIZATIONS INVOLVED

Amalgamated Lithographers of America and United Papermakers and Paperworkers, AFL-CIO, and its Local Union 1018, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The case arises out of the filing by the Lithographers (then affiliated with the AFL-CIO) in February 1958, of a petition for certification as collective-bargaining representative of the Respondent's offset press or lithographic production employees. At that time there was a collective-bargaining contract in existence between the Respondent and the Papermakers in a unit of production and maintenance employees. That unit included the offset employees.

Upon this petition the Board held a hearing in accordance with the provisions of Section 9 of the Act, in which hearing the Lithographers, the Respondent, and the Papermakers participated and presented evidence relating to the appropriate bargaining unit. The Respondent and the Papermakers objected to the severance of the offset employees from the plantwide unit, and contended that the unit proposed by the Lithographers was inappropriate.

On June 5, 1958, the Board, overruling the objections of the Respondent and the Papermakers, directed a self-determination election among the offset employees. Petitions for reconsideration were thereafter filed by the Respondent and the Papermakers, considered by the Board, and denied under date of June 23, 1958.²

On July 3, 1958, the election was held. Of the approximately 18 eligible voters, 17 cast ballots. Twelve ballots were cast for the Lithographers, 4 for the Papermakers, and 1 ballot was void. No objection being filed to the result of the ballot-

¹ At the conclusion of the hearing the Respondent moved *inter alia* to amend its answer to allege that the Lithographers is not the same union as the one certified. This motion was denied as untimely. The ruling did not, of course, remove the issue as to identity of the Charging Union from the case. The Respondent's answer effectively denies the commission of the unfair labor practices alleged. All issues material thereto open to consideration by the Trial Examiner have been considered in the disposition of the case.

² The election was directed in the following unit:

All pressmen, apprentice pressmen, feeders, helpers, and floormen engaged in offset work at the Employer's Middleburg, [sic] Indiana, plant, excluding all other employers [sic] and supervisors as defined in the Act.

ing the Lithographers was duly certified on July 14, 1958, as the collective-bargaining representative of the offset press employees in the appropriate unit hereinafter described.

Thereafter the Respondent instituted an action in the District Court of the District of Columbia seeking to set aside the certification, on the ground that the Board's unit determination was arbitrary, capricious, and an abuse of discretion. Summons was issued thereon on August 8, 1958. The suit was dismissed by the court for want of jurisdiction on February 9, 1959, and is presently pending on appeal.

In the meantime, on July 22, 1958, pursuant to the certification, the Lithographers requested the Respondent to meet for the purpose of discussing a collective-bargaining contract. Under date of August 8, 1958, the Respondent declined, and continues to decline, to meet with the Lithographers for such a purpose. The Respondent's reason, stated in its original letter of declination, is its desire "to seek court review of the N.L.R.B. proceedings."

The basic position of the Respondent and the Papermakers in the instant proceeding is substantially that urged by them in the representation matter, namely, that the Board's unit determination was incorrect. Insofar as the contentions in that or other respects reflect reiteration of previous view pressed upon the Board, or considerations related to the representation action, they are concluded by the Board's decision therein.

However, three new points are now urged by the Respondent and/or the Papermakers, all involving occurrences *post* the Board's certification. The first of these is that on or about August 18, 1958, an arbitrator found that the Lithographers' action in seeking to represent employees of another employer under circumstances assertedly similar to those here constituted a violation of the "no-raiding pact" or constitution of the AFL-CIO. The second point is that about August 21, 1958, the Lithographers terminated its affiliation with the AFL-CIO; which fact, it is asserted, raises doubt as to the Lithographers' identity, that is, whether it is the same organization as that selected and certified. There is no suggestion of dispute as to the arbitration decision—other than as to its materiality. The second fact, the disaffiliation, is a matter of stipulation.

The third new item offered is that following the certification the Respondent entered into a contract with the Papermakers covering its employees other than those in the appropriate unit, and thereafter unilaterally granted the same benefits to the employees in the lithographic unit, and that the latter employees have accepted the said benefits and continue to work without dissatisfaction. This action, involving dealing directly with represented employees, while refusing to recognize their representative, is more suggestive of an unfair labor practice than anything else. In any event the facts have no material bearing on the question of the appropriate unit, and have been excluded.

We turn then to the question as to the effect of the arbitrator's report and of the disaffiliation. Since there is no factual dispute, this is a matter of law upon the offered evidence, some of which has been excluded.

Initially it is to be observed that the new matters are apparent afterthoughts conceived at about the time of hearing, since neither the Respondent's written answer, dated February 2, 1959, nor the Papermaker's written motion to intervene, dated February 9, 1959, make any reference to them; though these pleadings specify other matters of asserted bearing on the issues. Nor have they been previously presented to the Board in quest of reformation of the Board's determination in the representation proceeding. I find none of these matters a defense to the complaint.

The assertion that the Lithographers' action in seeking to represent the Respondent's employees was in violation of the AFL-CIO no-raiding pact was made in the representation action and presented to the Board. Its effect upon the issues is therefore not open for me to examine. The subsequent issuance of the arbitrator's report concerning the matter is not, in my opinion, of such additional bearing as to warrant reexamination of the determination. But even if it were, I do not think the presentation timely now. In view of the lapse of time since the occurrence, the matter, if material, should have been brought to the attention of the Board by further petition for reconsideration in the representation proceeding. No adequate ground is advanced now for not having done so.

I find no substantial question as to the identity of the Lithographers. Its disaffiliation from the AFL-CIO does not, in my opinion, have any material effect upon the issues here. In the first place, if the disaffiliation had bearing upon the integrity of the certification it should have been timely presented to the Board. Secondly, in no event could the disaffiliation affect the question as to whether the Respondent refused to bargain with the certified representative of its employees. For that it did so is admitted. The disaffiliation occurred after the conceded refusal

to bargain in August, based upon the desire to test the Board's unit determination in the courts. Finally, disaffiliation, unaccompanied by evidence or offer of evidence of change in organic structure, composition, or leadership of a labor organization, does not tend to affect the identity of the organization. The evidence offered here as assertedly having that bearing is not of such probative character. Hence no substantial question is raised as to the identity of the Lithographers. A mere change of name of a labor organization, or abandonment of its affiliation with the AFL-CIO, is not sufficient to affect its status as a certified bargaining representative. *Continental Oil Co. v. N.L.R.B.*, 113 F. 2d 473, 477 (C.A. 10); *N.L.R.B. v. Harris-Woodson Company, Inc.*, 179 F. 2d 720 (C.A. 4).

It seems fair to conclude that the new considerations urged represent additional tactical maneuvers in pursuance of the basic opposition to the Lithographers' certification, based upon the conviction of the Respondent and the Papermakers that the offset employees do not constitute an appropriate bargaining unit. As such the assertions are merely efforts to relitigate the issue previously decided by the Board. The correctness of the Board's determination may be reviewed by the Board or by the court of appeals; it is not open to reexamination by the Trial Examiner.

It is consequently found that the following employees of the Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All pressmen, apprentice pressmen, feeders, helpers, and floormen engaged in offset work at the Employer's Middlebury, Indiana, plant, excluding all other employees and supervisors as defined in the Act.

It is further found that at all times since July 14, 1958, the Lithographers has been the representative for the purpose of collective bargaining of a majority of employees in the appropriate unit, and by virtue of Section 9(a) of the Act has been and is now the exclusive representative of all employees in said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

It is also found that on August 8, 1958, and at all times thereafter, the Respondent failed and refused to recognize and to bargain with the Lithographers as the exclusive representative of the employees in the appropriate unit.

It is further found that by the above-described action the Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 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 the operations of the Respondent 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 unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It having been found that the Respondent has refused to bargain collectively with the Lithographers, thereby interfering with, restraining, and coercing its employees, it will be recommended that the Respondent cease and desist therefrom. It will be further recommended that the Respondent, upon request, bargain collectively with the Lithographers with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of employees within the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

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. Amalgamated Lithographers of America, formerly known as Amalgamated Lithographers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. All pressmen, apprentice pressmen, feeders, helpers, and floormen engaged in offset work at the Respondent's Middlebury, Indiana, plant, excluding all other employees 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. 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.