

supervisors as defined in the Act,<sup>11</sup> constitute separate appropriate units for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

A. All technical employees, including senior engineers, project engineers, junior engineers, laboratory technicians, technicians, and draftsmen.

B. All production and maintenance employees, including plant clerical employees, stock and file clerks, the secretary to the Supervisor of the Quality Control Department, group leaders, truckdrivers, janitors, and quality control employees.<sup>12</sup>

[Text of Direction of Elections omitted from publication.]

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<sup>11</sup> The parties stipulated that group leaders were not supervisors, but agreed to exclude the following as supervisors: Cox (drafting department); Martin and Apple (engineering department); Glasener, J. Swendell, and W. Swendell (machine shop); Hullehan and Kilpatrick (production); Balgar (purchasing); Deihl (quality control), and Sweitzer (maintenance).

<sup>12</sup> The inclusions and exclusions, as specified, include those agreed to by the parties, as well as those considered herein.

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**Aircraft Peerless, Inc. and Lodge No. 113, International Association of Machinists, AFL-CIO.** *Case No. 13-CA-2733. August 4, 1959*

#### DECISION AND ORDER

On April 22, 1959, Trial Examiner John C. Fischer 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 filed exceptions to the Intermediate Report and a supporting brief.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report,<sup>1</sup> the exceptions and brief, and the entire record in this

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<sup>1</sup> We correct the following inadvertent inaccuracies in the Intermediate Report: (1) The Trial Examiner refers to a transfer of stock of the Peerless Tool and Engineering Company, whereas no such transfer took place; (2) the Trial Examiner refers to "Christmas 1958" on several occasions, whereas the Christmas period involved herein was Christmas 1957. (3) Two sentences relating to events occurring in September 1957, which are inadvertently repeated in the Trial Examiner's detailing of events occurring on February 10, 1958, are stricken from the Intermediate Report.

case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner except as modified herein.

1. We find, as did the Trial Examiner, that at all times material the Union represented a majority of the Respondent's employees in the unit found to be appropriate.<sup>2</sup> As is more fully set forth in the Intermediate Report, the Respondent in declining to recognize the Union did not base its refusal on any doubt as to its majority status. The reason advanced by the Respondent for denying recognition was its alleged fear that if it did so it might complicate its position with the tax authorities. The reason thus offered by the Respondent is not one cognizable under the Act as justification for an employer's refusal to recognize and bargain with its employees' representative. We accordingly find, in agreement with the Trial Examiner, that the Respondent's refusal to recognize and bargain with the Union in these circumstances was violative of Section 8(a) (5) and (1) of the Act.

In so concluding that the Respondent's conduct was violative of the Act, we deem it unnecessary to decide, and do not pass upon, the question of whether the Respondent was a successor employer to Peerless Tool and Engineering Company.

### 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 Respondent Aircraft Peerless, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Lodge No. 113, International Association of Machinists, AFL-CIO, 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 Lodge No. 113, International Association of Machinists, AFL-CIO, to bargain collectively with the Respondent.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Lodge No. 113, International Association of Machinists, AFL-CIO, as the exclusive representative of all employees in the appropriate unit, and embody any understanding reached in a signed agreement.

<sup>2</sup>The unit comprises all production and maintenance employees at the Respondent's Chicago plant, excluding clerical and professional employees, guards, and supervisors. Production and maintenance units are traditional, statutory units within the meaning of Section 9(b) of the Act. The Respondent, moreover, in its answer to the complaint, admitted that such a unit is an appropriate one.

(b) Post at its plant at Chicago, Illinois, copies of the notice attached hereto marked "Appendix A."<sup>3</sup> 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, as to what steps have been taken to comply herewith.

<sup>3</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."

## 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, we hereby notify our employees that:

WE WILL NOT interfere with the efforts of Lodge No. 113, International Association of Machinists, AFL-CIO, 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 Lodge No. 113, International Association of Machinists AFL-CIO, 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 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 Chicago, Illinois, plant, excluding clerical and professional employees, guards, and supervisors as defined in the National Labor Relations Act.

AIRCRAFT PEERLESS, INC.,  
*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.

## INTERMEDIATE REPORT

## STATEMENT OF THE CASE

This proceeding, brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 136), was heard at Chicago, Illinois, on December 1 and 2, 1958, pursuant to due notice, with all parties represented and participating in the hearing. The complaint, which was issued on October 15, 1958, by the General Counsel of the National Labor Relations Board and which was based on charges duly filed and served, alleged that Respondent has since October 1, 1957, and at various times thereafter refused to bargain with the Union as the exclusive representative of its employees in an appropriate unit, in violation of Section 8(a)(5) and (1) of the Act. Respondent answered on October 24, 1958, denying that it had engaged in unfair labor practices as alleged, challenged the jurisdiction of the Board, and denied that the Union had been the representative for purposes of collective bargaining of a majority of the employees in the appropriate unit as alleged in the complaint.

Upon the entire record in the case, and from my observations of the witnesses, I make the following:

## FINDINGS OF FACT

## I. THE LABOR ORGANIZATION INVOLVED

Lodge No. 113, International Association of Machinists, AFL-CIO, is a labor union within the meaning of Section 2(5) of the Act, and represents all production and maintenance employees at Respondent's plant in a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act.

## II. RESPONDENT'S BUSINESS; JURISDICTION

Respondent is now, and at all times material herein has been, a corporation duly organized under and existing by virtue of the laws of the State of Illinois, and has maintained an office and place of business at Chicago, Illinois, where it is now, and at all times material herein has been, engaged in the manufacture of machine parts and related products. Respondent, in the course and conduct of its business operations during the calendar year 1958 to date, manufactured, sold, and shipped machine parts valued at in excess of \$50,000 directly to points outside the State of Illinois. For purposes of this Act, Respondent is the successor to Peerless Tool and Engineering Company which was, and at all times material herein has been, a corporation duly organized under and existing by virtue of the laws of the State of Illinois. At all times material herein, Peerless Tool and Engineering Company maintained an office and place of business at Chicago, Illinois, where it was engaged in the manufacture of machine parts. Peerless Tool and Engineering Company, in the course and conduct of its business operations during the calendar year 1957, manufactured, sold, and shipped machine parts valued at in excess of \$50,000 directly to points outside the State of Illinois. I find that Respondent is, and at all times material herein has been, engaged in commerce and affects and has affected commerce within the meaning of Section 2(6) and (7) of the Act, and that it would effectuate the policies of the Act to assert jurisdiction herein.

## III. THE UNFAIR LABOR PRACTICES

Peerless Tool was first organized in 1938 by Edward Reither, Lena Reither, and James R. Hills to engage in the manufacture of aircraft engine parts in the city of Chicago. At some later date, possibly in 1951, the Lawrenz family, Otto B. Lawrenz and Edna S. Lawrenz, his wife, with their two sons, Melvin and Wesley, took over the stock of the corporation and operated the plant and business, which was located at 4431 West Division Street, Chicago, Illinois. In 1946, the plant's production and maintenance employees, which then numbered about 185, voted at a Board-conducted election to be represented by the Die and Toolmakers Lodge 113 of the International Association of Machinists, AFL-CIO. Respondent's counsel, Stickler, who represented the Peerless Tool Company before it ceased doing business on September 23, 1957, conceded at the hearing that from the time that Lodge 113 was certified by the Board in April 1946 until it ceased its business operations in September 1957, it was the majority representative of the Peerless Tool production and maintenance employees. Collective-bargaining contracts covering the wages, hours, and working conditions of the production and maintenance employees of Peerless Tool were executed during those years, the last contract being negotiated in June 1957 to expire in June 1958.

This last contract between Peerless Tool and Lodge 113 contained the usual recognition and union-security clauses. It was made binding on Peerless Tool and its "successors and assigns." Since at least 1951, Peerless Tool financed its business operations with capital furnished by the National Acceptance Corporation of Chicago, Illinois. To secure its loans, National Acceptance held a chattel mortgage on all of the machinery and equipment in the plant and it also had factoring arrangements on all of its accounts receivable, as well as a factor's lien on all the raw materials, work in process, and inventory. At the time Peerless Tool ceased doing business on or about September 23, 1957, it owed National Acceptance the sum of \$299,702.43. For some years past also, the U.S. Internal Revenue Service had been checking the Peerless plant operation and its income from the plant for the years 1943 to 1945, inclusive. At one time the Revenue Service claimed that Peerless Tool owed the Government over \$1,000,000 in corporate income taxes. However, attorneys for Peerless Tool resisted this claim and the amount of the tax deficiency was finally determined in August 1957. At that time the Revenue Service notified Peerless Tool that its final tax deficiency was slightly more than \$400,000. It demanded that Peerless Tool make payment of this amount.

While the dispute with the Revenue Service was in progress and during May 1956, the Lawrenz family created another corporation known as the Aircraft Peerless, Incorporated, the Respondent herein. According to Melvin Lawrenz, an officer of Peerless Tool, this corporation was formed in May 1956, and was kept in an inactive state to be used "in case we ran into trouble. We knew that we had a tax lien that we were going to be faced with." The new corporation was registered to do business at 4431 West Division Street, Chicago, Illinois, where the plant of the Peerless Tool was located, and it was authorized to engage in the same type of production as Peerless Tool—that is, the manufacture of aircraft engine parts. The title of the plant building where Peerless Tool operated was held in the name of Edna S. Lawrenz, the wife of Otto B. Lawrenz, president of Peerless Tool. The new corporation was, like the old, controlled exclusively by members of the Lawrenz family. Only one significant change appears in the stock ownership structure of the new corporation. Otto B. Lawrenz and Edna S. Lawrenz, the parents, relinquished control of their stock and turned over their shares to their son, Melvin E. Lawrenz, who assumed the leadership and control of the new corporation and became its president. A small amount of the stock was given to Melvin E. Lawrenz, Jr., the son of Melvin E. Lawrenz, to enable him to become a director and officer of the new corporation.

Prior to Peerless Tool ceasing to do business on September 23, 1957, the production work at the plant was supervised and directed by William R. McEvilly. McEvilly's aunt, M. Evelyn McEvilly, was its assistant secretary-treasurer. When the new corporation was established, William R. McEvilly became its vice president and his aunt became secretary-treasurer. Melvin E. Lawrenz, Jr., was then made assistant secretary-treasurer. However, neither William R. McEvilly nor his aunt, M. Evelyn McEvilly, own any stock in the Respondent corporation. The Lawrenz family stockholdings in Peerless Tool Company were, in the reorganization of the business in September 1957, concentrated in the hands of Melvin E. Lawrenz, Sr., who owns 99 percent of the stock. Otto B. Lawrenz, the father and former president of Peerless Tool, was given the job as general production manager of the plant with McEvilly as his assistant.

Faced with the necessity of making a tax payment of over \$400,000, the Lawrenz family decided, as they had long planned to do, to abandon Peerless Tool Corporation and carry on the business in the name of the Respondent, the Aircraft Peerless, Incorporated, which had been organized in May 1956 to meet the situation when and if it occurred. However, the Lawrenz family was advised by its attorneys that they could not escape the payment of the tax by directly transferring the assets and equipment of Peerless Tool to the new corporation because the new corporation would then be held liable for the tax as a transferee. As explained by the Respondent's counsel at the hearing and in his brief, he was very careful to arrange matters so that the new corporation would take over the business in such a manner that it would not be held liable for the tax and other obligations of Peerless Tool. One of the problems facing the Respondent's attorney in this respect was the collective-bargaining contract of Lodge 113, which recited that it was binding upon Peerless Tool "and its successors and assigns." As further explained by the Respondent's attorney in his brief, he did not want the new corporation to incur any obligations of Peerless Tool because he feared that the Revenue Service would seize upon such evidence to impose the tax on the new corporation on the theory of transferee liability.

Mr. Arthur Netrefa, the IAM business agent assigned to the Peerless Tool plant, credibly testified that in September 1957 he was invited by the Lawrenz family to

attend a conference at the plant office on the morning of September 21, 1957. At this conference, Melvin E. Lawrenz and Otto B. Lawrenz, the father, assisted by Attorney Stickler, explained the tax situation to him and the plans they had to continue operating the plant in the name of the new corporation. They told him that Peerless Tool could not pay the tax and that the corporation's assets were in imminent danger of being taken over by the Government agents to secure the tax lien. They further explained to him that they did not wish to interrupt the operations of the plant in any way and that they wanted the employees to stay on the job without losing a paycheck. They informed him further that if the IAM would cooperate in the transfer of the business from Peerless Tool to the Respondent corporation the men could continue working without interruption. When Netrefa asked him if the new corporation was ready to assume the obligations of the contract it had with Peerless Tool, they indicated that they could not do that because it might compromise them with the Revenue Service. They further pointed out to him that since it was planned that the new corporation should take over the business indirectly through a foreclosure sale to be conducted by the National Acceptance Corporation on its chattel mortgage foreclosure and on its factors liens, the new corporation could not be expected to assume the contract obligations of Peerless Tool with the Union. They assured him, however, that if the Union went along with the plan the employees would not lose a day's work and that their paychecks would be as good under the new corporation as they had been under the old.

After much discussion, it appears that Netrefa was persuaded to go along with the plan. He was then requested to appear at the plant on the following Monday morning, September 23, 1957, to explain the situation to the employees and obtain signed application blanks for new employment with the new corporation. On the same day, September 21, 1957, National Acceptance Corporation served Peerless Tool with a notice of chattel mortgage foreclosure and of a public auction sale of the assets of Peerless Tool on September 27, 1957. These notices were posted at the several places in and around the plant on September 21, 1957. Custodians of National Acceptance arrived at the plant on the following Monday, September 23, but the plant continued to operate as usual without interruption. Netrefa appeared at the plant on Monday morning, September 23, to address the employees and explained the plan of the Lawrenz family to operate the business in the name of the new corporation. He explained the situation of the Company in relation to its tax problem and what was expected of them. He also told them that the Union's contract had to be canceled in order for the plant to continue operating under the new corporation. There was some protest on the part of Union Shop Steward Anthony B. Chmielak and some of the other employees when they heard that the contract would have to be canceled. However, Melvin Lawrenz assured them that if they went along with the new corporation now it would go along with them later.

Later in the day when Netrefa returned to the plant to address the night-shift employees, Chmielak, still not convinced, engaged in a discussion prior to the meeting with Netrefa and Attorney Stickler over the binding effect of the Peerless Tool contract upon the new corporation. He was then told by both Stickler and Netrefa not to insist upon it. When Netrefa addressed the employees of the night shift that afternoon, he assured them that if the employees went along with the new corporation, it would go along with them later. With these assurances, all of the employees on both shifts agreed to the plan and signed employment application blanks for new employment with the new corporation. All the employees also executed new forms to comply with the Espionage Act because the new corporation would, like the old, continue to manufacture aircraft parts for defense purposes. The plant continued to operate normally during the entire week of September 23, 1957, while the custodians of the National Acceptance Corporation were in possession of the plant.

On September 27, 1957, the National Acceptance Corporation, with slight resistance from other bidders, purchased all the assets, equipment, accounts receivable, and other property of Peerless Tool for the sum of \$225,500. On September 30, 1957, National Acceptance turned the assets over to the new corporation and reinstated its chattel mortgage, its factoring arrangements on the accounts receivable, and its factors lien on the raw materials and inventory exactly as it had previously arranged with Peerless Tool. In addition to having no break in the production while the transition from the old to the new corporation was taking place, the record shows that the production methods employed by the new corporation were identical to those used by Peerless Tool; the same work classifications and employees were continued in the plant; the former Peerless Tool supervisory and nonsupervisory employees were hired; and the same work schedules and work shifts were employed.

The wage rates and other general work conditions which had existed when Peerless Tool operated the business were adopted by the new corporation.

In the months following the taking of possession of the plant by the new corporation, its officers dealt with the union representatives in substantially the same manner as they had done while Peerless Tool was operating the business. The same union shop steward and shop committee continued to function as before and any questions or grievances which arose were discussed with the same shop steward and the same union shop committee that had taken care of the employee matters when Peerless Tool operated the plant. Sometime in October 1957, President Melvin Lawrenz inquired of Shop Steward Chmielak whether the employees still had a union in the plant and if so whether they still wanted Lodge 113 to represent them. Chmielak told him he would make a check of the employees and let him know. Later Chmielak returned to inform him that a check of all the employees in the plant indicated that they still wanted Lodge 113 to represent them.

Shortly after the new corporation took possession of the plant, a few employees were laid off. Later in October and November 1957, several more employees were laid off. At the time that Peerless Tool gave up the plant and Respondent took it over, there were approximately 74 production and maintenance employees in the plant. The Respondent's attorney conceded at the hearing that Lodge 113 represented at least 63 of these employees at that time. It was also stipulated by the Respondent's attorney at the hearing that on January 1, 1958, the Respondent's work force had been reduced by layoffs to 40 employees and that 28 of these employees were then represented by Lodge 113. It was further stipulated that by the end of February 1958, there were only 24 employees left in the unit and that Lodge 113 represented 18 of these employees at that time. Thus, it is apparent, and I formally find, that Lodge 113 represented a majority of the Respondent's production and maintenance employees working at the plant in the period between September 23, 1957, and at least up until the end of February 1958.

During the months of October and November 1957, Union Agent Netrefa attempted to persuade the Respondent's representatives to sign a new contract with Lodge 113, but each time he was told they could not do so because it might compromise the new corporation with the tax authorities. During this period, the Respondent's representatives indicated to the union shop steward and other union representatives that they would give all of the same conditions when a new contract was executed with the Union with the possible exception of the seniority clause of the contract.

Shortly before Christmas 1958, a meeting was held between the Respondent's representatives and Union Agent Netrefa and Shop Steward Chmielak. The purpose of the meeting was to discuss what concessions the new corporation would make to the Union when the new contract was executed. During the meeting Otto B. Lawrenz stated he had gotten along well with the Union, he liked it, and he would "go along" with it. Turning to his son, Melvin, and Assistant Plant Manager McEville, he asked them if that was all right with them. Both responded in the affirmative. Otto Lawrenz then told the union agents that he would be willing to give the employees the same conditions they had had before when they worked for Peerless Tool, except that they could no longer get the 3 weeks' vacation with pay. President Melvin Lawrenz and Assistant Plant Manager McEville indicated they were willing to go along with such a contract. However, no definite agreement seems to have been reached at this conference and no indication was given when the new contract would be executed.

A few days before Christmas 1958 the Respondent posted a notice at the plant that there would be no half-holiday allowed to the employees on Christmas Eve and New Year's Eve. When the employees were working for Peerless Tool, they were always given these half-holidays and provision for them had been made in the contract. The Respondent's announcement, taking away the half-holidays from the employees, aroused the anger of the employees and Union Shop Steward Chmielak again urged his argument that the Peerless Tool contract provisions were binding on the Respondent. In addition to rejecting this claim, Assistant Manager McEville announced that the Respondent could no longer recognize or deal with Lodge 113 as the bargaining agent of the employees.

On January 21, 1958, International representatives of the IAM, accompanied by Business Agent Netrefa, conferred with the Respondent's attorney, Stickler, at his office. At this conference, the union representatives requested that Respondent recognize Lodge 113 as the majority representative of the Respondent's production and maintenance employees and negotiate a new contract with it. Stickler again stated that the Respondent could not do so because he feared complications with the tax authorities. On January 24, 1958, the IAM International representative, J. W. Ramsey, sent a letter by certified mail to the Respondent, informing it that a majority of

its production and maintenance employees had authorized Lodge 113 to represent them for the purposes of collective bargaining and requested a conference with the Respondent's representatives for the purpose of negotiating a contract. When the Respondent failed to answer this letter, Lodge 113 filed a petition with the Board's Thirteenth Regional Office in Chicago (13-RC-5846). The petition recited that at that time the Respondent had 22 employees in the unit.

At a joint conference held at the Regional Office on February 10, 1958, the Respondent indicated it was willing to agree to a consent election being held. (These notices were posted at several places in and around the plant on September 21, 1957.) Custodians of the National Acceptance Corporation arrived at the plant on the following Monday but the plant continued as usual without any interruption. Although the union representatives first were inclined to accept this offer, they later, after consulting with their counsel, rejected the offer and indicated that they would withdraw the petition. On the following day, February 11, 1958, the Union withdrew its petition and filed an 8(a) (5) charge, alleging that the Respondent had refused to bargain with the Union. At no time after January 21, 1958, when the Union formally demanded recognition and bargaining rights, did the Respondent's representatives question the Union's claim that it represented a majority of the Respondent's production and maintenance employees. Its refusal to grant recognition and bargaining rights to Lodge 113 was not based on any doubt as to its majority status but on its fear of complications with the tax authorities if it did so. Indeed, at the hearing, Respondent's counsel conceded that Lodge 113 represented a majority of the Respondent's employees during and after the period when the demands for recognition were being made in January and February 1958.

#### Conclusion

The Board has long held that a bargaining relationship once established by a certification to a union as a majority representative of a unit of employees runs with the "employing industry" and that a mere change of ownership does not absolve a successor from the duty to bargain with the certified union.<sup>1</sup> In the present case, I conclude that on the basis of the facts found by me and recited above, the Respondent took over intact the business operated by Peerless Tool and continued to operate it with the same employees and without any substantial change in the operations. Although the Respondent is a separate corporate entity, the facts indicate it is controlled by the members of the Lawrenz family, the same group of persons who controlled and operated the Peerless Tool Company. The evidence is clear that the Respondent corporation was organized by the Lawrenz family for the sole purpose of continuing their business in the name of the new corporation in the event that Peerless Tool Company could not solve its tax difficulties with the Government.

On the basis of the facts found, I conclude that the Respondent is the successor of Peerless Tool, and that it is obliged, under well-settled Board law, to recognize the majority status of Lodge 113, which was first established by the Board in an election held in April 1946. The evidence indicates clearly that Lodge 113 had a majority status which continued without a break from the time it was certified in 1946 to the time when Lodge 113 again demanded recognition and bargaining rights from the Respondent in January and February 1958. Although I am convinced that Business Agent Natrefa made some arrangement with the Lawrenz family not to press the legal claim of the Union, the Respondent was bound to honor the substantive terms of the contract which it had with the Peerless Tool Company. I disagree with the Respondent's contention that because he had so agreed he was thereby giving up the Union's representative rights as the majority agent of the employees. The Board has frequently held that a disclaimer of employee representation must be clear and unequivocal.

I find and conclude upon all of the facts that the Union did not surrender its right to represent the employees when it agreed not to insist that the new corporation assume the obligation of the contract which it had executed with the Union. On the contrary, I find that both the union representatives and the Respondent's representatives considered the Union's majority status to continue in existence after the Respondent took over the business and that it was only a question of negotiating a new contract with the Respondent corporation at some time in the future when the Respondent's attorney thought it safe to do so.

<sup>1</sup> *Investment Building Cafeteria*, 120 NLRB 38; *Alamo White Truck Service, Inc.*, 122 NLRB 1174. N.B.: The Intermediate Report of the *Alamo* case was written by John C. Fischer, the Trial Examiner in this case.

That the Respondent's representatives understood this to be the situation is indicated by the conversation they had with the union representatives at the conference which took place at the Respondent's plant shortly before Christmas 1958. At this conference, the Lawrenzes, both father and son, indicated their willingness to sign a new contract with the Union based generally on the terms of the old contract. Having found that the Respondent is a true employer successor of Peerless Tool in the operation of the plant where the employees represented by the Union were employed, it follows that it is bound by the bargaining relationship and majority status of the Union established by the Board certification issued in May 1946. The mere fact that the certificate was issued so long ago is immaterial in the circumstances of this case since the record shows that there has been a continuity of the majority status of Lodge 113 without any break from the time the certificate was issued.

In such a situation and in view of all of the other facts and circumstances in this case, I conclude that the mere change in ownership of the employment enterprise from Peerless Tool to National Acceptance and from National Acceptance to the Respondent was not so unusual a circumstance as to effect the bargaining rights of the Union, which were acquired by the issuance of the Board certification and maintained and continued in effect continuously thereafter until the Union again demanded recognition in January 1958. The Respondent's contention that since it did not acquire the business directly from Peerless Tool it cannot be considered the business successor of Peerless Tool is without merit. Cf. *Butler Chemical Co.*, 116 NLRB 1041 at 1049. The Respondent's reliance on *N.L.R.B. v. Birdsall-Stockdale Motor Company*, 208 F. 2d 234 (C.A. 10), and *Symns Grocer*, 109 NLRB 346, is misplaced. In those cases, the Board made an exception to its successor rule in cases where a purchaser of the business who had no previous connection with the seller buys the business without knowledge of unfair labor practices committed by the seller. Since the character and composition of the bargaining unit remained intact after the transfer of the business to the Respondent, and there was no substantial change in the character of the employing enterprise, the obligation to bargain, which was imposed by statute upon Peerless Tool, remained upon the Respondent as the successor employer of the employees included in the bargaining unit.

Where, as here, no essential attribute of the employment relationship has been changed as a result of the transfer, the certification continues with undiminished vitality to represent the will of the employees with respect to their choice of a bargaining agent, and the consequent obligation to bargain subsists notwithstanding the change in the legal ownership of the business enterprise. The Respondent has failed to show that the majority status of the Union was in any way impaired by the transfer of the business from Peerless Tool to the Respondent.<sup>2</sup>

For the above reasons I conclude that beginning with at least January 21, 1958, the Respondent violated Section 8(a)(5) of the Act when it is refused to meet and negotiate a new contract with Lodge 113, International Association of Machinists, AFL-CIO.

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 production and maintenance employees at Respondent's plant, excluding clerical and professional employees, guards, and supervisors as defined in the Act.

It is further found that at all times since July 18, 1957, Lodge No. 113, International Association of Machinists, AFL-CIO, 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 January 21, 1958, and at all times thereafter, the Respondent failed and refused to recognize and to bargain with the International Association of Machinists 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.

<sup>2</sup> *N.L.R.B. v. Blair Quarries, Inc.*, 152 F. 2d 25 (C.A. 4); *Northwest Glove Co., Inc.*, 74 NLRB 1697; *Simmons Engineering Co.*, 65 NLRB 1373; *Stonewall Cotton Mills*, 80 NLRB 325.

## 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 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 Lodge No. 113, International Association of Machinists, AFL-CIO, 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 Lodge No. 113, International Association of Machinists, AFL-CIO, 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. Lodge No. 113, International Association of Machinists, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. All production and maintenance employees at Respondent's plant, excluding clerical and professional 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. Lodge No. 113, International Association of Machinists, AFL-CIO, was, on July 18, 1957, 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 Lodge No. 113, International Association of Machinists, AFL-CIO, 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.]

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**Jewel Tea Co., Inc., Eisner Food Stores Division and United Retail Workers Union (Independent), Petitioner. Case No. 13-RC-6478. August 4, 1959**

## DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a stipulation for certification upon consent election, executed by the parties on March 23, 1959, an election by secret ballot was conducted on April 11, 1959, under the direction and supervision of the Regional Director for the Thirteenth Region among the employees in the appropriate unit. At the conclusion of the election, the