V. THE REMEDY

Having found that Respondents have engaged in certain unfair labor practices, I will recommend that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent Company violated Section 8(a)(1), (2), and (3) of the Act, and Respondent Local 222 violated Section 8(b)(1)(A) and (2) of the Act by applying, maintaining, and enforcing an agreement containing an illegal union-security provision, I will recommend that Respondent Company withdraw and withhold all recognition from Respondent Local 222 as the representative of its employees, unless and until said Local 222 shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election. Nothing in this recommendation should be taken, however, to require Respondent Company to vary those wages, hours, and other substantive features of its relations with the employees, if any, which have been established in the performance of this agreement.

As previously found, Respondent Company has given unlawful assistance and support to Respondent Local 222. Moreover, by their union-security agreement, implemented by a dues checkoff arrangement, the Respondents have unlawfully required the employees to maintain membership in Respondent Local 222 as the price of employment. In these circumstances, I find that it will effectuate the policies of the Act to order Respondents jointly and severally to refund to the employees all initiation fees, dues, or other moneys paid or checked off pursuant to the unlawful union-security agreement, or any extension, renewal, modification, or supplements thereof, or any agreement superseding it.[18]

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. By recognizing Local 222 as the exclusive bargaining representative for the Lake Success store employees, by applying the contract of February 4, 1957, to the Lake Success store employees, and by maintaining said contract in effect with respect to said employees, Respondent Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act, and Respondent Local 222 has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

2. By deducting union dues from the wages of Lake Success store employees pursuant to the checkoff provisions of the aforesaid contract and remitting same to Respondent Local 222, and by assisting Local 222 in obtaining employee signatures to union authorization cards, Respondent Company has engaged in and is engaging in further unfair labor practices within the meaning of Section 8(a)(2) and (1) of the Act.

3. 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.]

[18] See, e.g., *Bryan Manufacturing Company, supra; Revere Metal Art Co., Inc.*, 123 NLRB 114; *Hibbard Dowel Co.*, 113 NLRB 28.

Siemons Mailing Service, Petitioner *and* San Francisco-Oakland Mailers Union No. 18, ITU, AFL-CIO; Independent Mailers' and Addressers' Union, and Bookbinders & Bindery Women, Local 32-125, I.B. of B.

Case No. 20-RM-260. August 19, 1959

SUPPLEMENTAL DECISION ON MOTIONS, ORDER AMENDING DECISION AND DIRECTION OF ELECTION, AND ORDER TO SHOW CAUSE

Subsequent to the Board's Decision and Direction of Election in this case issued on November 14, 1958,[1] finding that the Employer's

[1] 122 NLRB 81.

business is seasonal with peak periods in April and October, unfair labor practice charges were filed by the Bookbinders, one of the Intervenors.[2] During the investigation of these charges, the International Mailers Union requested that it be allowed to intervene and appear on the ballot in the election to be held, and thereafter, on January 26, 1959, filed a written motion to this effect with the Board. To this, Intervenor Mailers Union No. 18 filed a written objection, partially based upon the failure of the International Mailers Union to file a showing of interest when requested to do so by the Regional Office.

The Board took no action on the posthearing motion for intervention pending settlement of the charges, which was agreed upon by the parties and which involved disestablishment of the remaining prehearing Intervenor, the Independent Mailers' and Addressers' Union. The period during which notice was posted pursuant to this settlement agreement expired on May 11, 1959.

On May 15, the Employer filed its motion to withdraw the petition, alleging a substantial change in the number and identity of the employees involved and a desire on its part not to "participate" in an election. Mailers Union No. 18 has filed a written objection to this withdrawal. The Board is advised by the Regional Director that the Bookbinders also opposes this withdrawal.

The Board, having duly considered the matter, has determined that the motion for posthearing intervention should be granted in the circumstances of this case,[3] and the motion by the Employer for the withdrawal of its petition denied inasmuch as the Unions involved seek an immediate election.[4]

Accordingly, we shall amend our direction of election to include on the ballot as one of the three choices the International Mailers Union, and to delete from the ballot the Independent Mailers' and Addressers' Union pursuant to the settlement agreement in Case No. 20–CA–1552, approved by the Board, which calls for disestablishment of this Union.

In connection with the motion for withdrawal of petition, the Regional Director has advised the Board of conditions suggesting a

[2] The Bookbinders filed 8(a)(1), (2), and (3) charges on December 3, 1958, in Case No. 20–CA–1552.

[3] The Board ordinarily denies posthearing intervention unless it is supported by a showing of interest "as of the time of hearing." See *Kermac Nuclear Fuels Corp.*, 122 NLRB 1512, footnote 2; *Transcontinental Bus System, Inc.*, 119 NLRB 1840, footnote 3; *United Boat Service Corporation*, 55 NLRB 671. This rule still obtains in representation cases filed by unions, but we believe it should not obtain in representation cases filed by employers as to which no showing of interest by the unions involved is necessary. See *International Aluminum Corporation*, 117 NLRB 1221, and *Stahl Manufacturing Co.*, 119 NLRB 1260, footnote 2. Apart, however, from the fact that this is an employer petition, the circumstances of this case, including the passage of time since the Board found that a question of representation existed, clearly calls for a resolution of that question by an election in which the employees will have a choice among those unions still seeking to represent them.

[4] See *International Aluminum Corporation, supra.*

change in the seasonal pattern of the Employer's business and indicating that peak periods now occur monthly rather than semiannually. In the circumstances it appears that an immediate election may be appropriate. Accordingly, we incorporate in this Supplemental Decision an order directed to the parties to show cause why an election should not be held within 40 days of this Supplemental Decision—allowing 10 days for response to the show cause order—on a date of peak employment as determined by the Regional Director.

[The Board amended the Direction of Election previously issued in this case to include on the ballot the International Mailers Union, and to delete from the ballot the Independent Mailers' and Addressers' Union, which was disestablished subsequent to the said Direction of Election.]

[The Board ordered that the parties herein shall show cause why an immediate election should not be held and the Decision previously issued herein amended to find that the peak seasons occur monthly rather than in April and October. If no cause be shown within the said period, the Board's Decision shall be so amended.]

CHAIRMAN LEEDOM and MEMBER BEAN took no part in the consideration of the above Supplemental Decision on Motions, Order Amending Decision and Direction of Election, and Order To Show Cause.

Magnode Products, Inc. ***and*** **District 13, Lodge No. 1850, International Association of Machinists, AFL–CIO, Petitioner.**
Case No. 9–RC–3585. August 19, 1959

DECISION AND DIRECTION OF ELECTION

Upon a petition[1] duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before John H. Arbuckle, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

[1] For reasons set forth below, the Employer's motion to dismiss the petition is denied. Its request for oral argument is also denied, because in our opinion the record and the Employer's brief adequately set forth the issues and the positions of the parties.