has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

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

4. 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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**David B. Klain, Jeffery Klain, Stanley Klain, Natalie Klain, and Bradley Klain, partners doing business as Sam Klain and Sons *and* Local No. 716, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** *Case No. 25-CA-758. May 17, 1960*

## DECISION AND ORDER

On July 8, 1958, Trial Examiner Reeves R. Hilton issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondents had not engaged in certain other unfair labor practices and recommended that the complaint be dismissed with respect to such allegations. Thereafter the Respondents and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

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 proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.

1. We agree with, and adopt, the Trial Examiner's finding that the Respondents violated Section 8(a)(1) of the Act by certain conduct which, as shown by the parties' stipulation, occurred between the dates of April 10 and 23, 1957, a period shortly preceding the filing of the original charge in this proceeding.[1]

In so finding, we reject the Respondents' contention that any finding of unfair labor practices in this proceeding is barred by Section 10(b)

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[1] The record shows that the Union's original charge was filed on April 26, 1957, and that the Respondent was served with a copy of this charge on May 1, 1957. The date of filing, which erroneously appears in the Intermediate Report as April 10, 1957, is hereby corrected accordingly.

of the Act. The record discloses that although the Union's original charge of violations of Section 8(a)(1) and (5) contained a specific allegation of a refusal to bargain consisting of a refusal to negotiate a contract with the Union unless the Union would eliminate all grievance procedures, this charge also contained a further general allegation that the Respondents had engaged in interference, restraint, and coercion violative of the Act, which allegation was not limited to the matters set forth as the basis of the charge of refusal to bargain.[2]

As more particularly set forth in the Intermediate Report, the Regional Director at first notified the parties that he was refusing to issue a complaint upon this charge. The Union, in accord with Board procedure, then filed an appeal to the General Counsel from the Regional Director's action. Subsequently the Regional Director notified the parties that he was withdrawing his letter of dismissal pending the Union's request for review of his dismissal action. And thereafter the General Counsel notified the parties that as the Regional Director was then proceeding in the matter there was no longer any appeal and that he, the General Counsel, was closing his files in respect thereto. On March 10, 1958, the Union filed an amended charge generally alleging an unlawful refusal to bargain and again containing a broad allegation of interference, restraint, and coercion. On March 13, 1958, the Regional Director issued a complaint alleging in general terms that the Respondents had unlawfully refused to bargain, and further alleging that the Respondents had engaged in interference, restraint, and coercion through "initiating, sponsoring and aiding in the circulation of a petition to decertify the Union." The Respondents requested, and the General Counsel furnished, a bill of particulars specifying the matters to be relied upon in support of the complaint. At the hearing the parties entered into a stipulation wherein the Respondents admitted that they had engaged in conduct substantially as alleged in the bill of particulars.[3]

Upon consideration of all the foregoing facts, we are satisfied that Section 10(b) of the Act does not bar our finding that the Respondents violated Section 8(a)(1). We find that the Union's original charge, filed within a few days after the time of events set forth

[2] This charge reads in part:

> By the above acts, and by other acts and statements, [the Respondents] by its officers, agents and employees, has interfered with, restrained, and coerced its employees in the rights guaranteed by Section 7 of the Act.

[3] The matters contained in the bill of particulars appear substantially as described in the Intermediate Report. The Respondents point out, however, and we note, that unlike the allegation of paragraph numbered 2(b) of the bill of particulars, the stipulation concedes only that the Respondents "instigated" and not that they "sponsored" a decertification petition We further note that the stipulation contains no admission corresponding to the allegation of the bill of particulars that the Respondents induced and encouraged one Tuohy and Raymond A Sutherlin to solicit employees to execute new authorizations in support of the petition. The findings of the Intermediate Report are hereby corrected accordingly.

in the stipulation and containing a broad allegation of interference, restraint, and coercion, was adequate to support the allegations of interference, restraint, and coercion contained in the complaint.[4] Although we regard the complaint as sufficiently resting on the original timely charge, we note moreover that the amended charge contains a similar broad allegation.

We further find that the original charge was not voided by the Regional Director's initial refusal to issue a complaint. The Union effectively preserved its original charge by appealing from the Regional Director's decision to the General Counsel, and this charge remained as the proper basis for further proceeding when the Regional Director thereafter rescinded his refusal and proceeded to issue complaint.

2. We also agree with the Trial Examiner, and for the reasons stated by him, that the record is insufficient to show that the Respondents refused to bargain in violation of Section 8(a)(5). The factual record in this proceeding is limited to the complaint, insofar as its factual allegations are conceded by the Respondents' answer, and to the matters appearing in the parties' stipulation. The record thus made discloses neither a request by the Union, nor a refusal by the Respondents, to bargain. No more appears than that the Respondents engaged in certain conduct whereby they associated themselves unlawfully with the preparation and circulation of a decertification petition. Absent evidence of a request by the Union to bargain, we find in this case, as did the Trial Examiner, that the record is insufficient to establish a violation of Section 8(a)(5) of the Act. We shall therefore dismiss the complaint insofar as it alleges that the Respondents refused to bargain in violation of Section 8(a)(5).

## ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, David B. Klain, Jeffery Klain, Stanley Klain, Natalie Klain, and Bradley Klain, partners doing business as Sam Klain and Sons, their agents, successors, and assigns, shall:

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[4] *Crosby Chemicals, Inc.*, 121 NLRB 412 Cf. *Brookville Glove Company*, 116 NLRB 1282. In view of the disposition hereinafter made of the allegation of an unlawful refusal to bargain, a majority of the Board finds it unnecessary here to determine whether Section 10(b) bars a finding of a violation of Section 8(a)(5). Member Rodgers, however, is of the opinion and would find that Section 10(b) bars such a finding, for the reason that the special and limited allegations of an 8(a)(5) violation contained in the original and only timely charge are insufficient to support the allegation of an entirely different type of 8(a)(5) violation which first appeared, after expiration of the 10(b) period, in the complaint and bill of particulars

1. Cease and desist from:

(a) In any manner initiating, participating, or assisting in the preparation of, or solicitation for, petitions to decertify Local No. 716, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization of their employees, or making promises of benefits to discourage membership in the said Union, or any other labor organization of their employees.

(b) In any other manner interfering with, restraining, or coercing their employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist the above Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from engaging in such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Post at their plant in Indianapolis, Indiana, copies of the notice attached hereto marked "Appendix."[5] Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by the Respondents or their duly authorized representative, be posted immediately upon receipt thereof, and be maintained by them 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 Respondents to insure that such notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Twenty-fifth Region, in writing, within 10 days from the date of this Order, what steps the Respondents have taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges that the Respondents refused to bargain collectively with the Union in violation of Section 8(a)(5) of the Act.

MEMBERS JENKINS and FANNING, dissenting in part:

While we agree with our colleagues in all other respects, we dissent with respect to the remedial provisions. We would require the Respondents to bargain with the Union, upon request, in addition to

[5] 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."

the customary cease and desist remedial order issued in this case because of the serious effect Respondents' 8(a)(1) conduct had in undermining the status of the Union as certified representative of its employees. This conduct consisted of: instigating a petition to decertify the Union; paying attorney fees in connection with the petition; encouraging and inducing one McAuly to prepare and solicit employee authorizations in support of the petition; through McAuly, soliciting employees to authorize the filing of the petition; and, through McAuly, promising the employees that if they would authorize the petition and get rid of the Union, Respondents would give them insurance, a wage increase, paid vacations, and a day off with pay on their birthdays.

## APPENDIX

### 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 in any manner initiate, participate, or assist in the preparation of, or solicitation for, petitions to decertify Local No. 716, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization of our employees, or make promises of benefits to our employees to discourage membership in said Union, or any other labor organization of our employees.
>
> WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist the above-named Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, or to refrain from any and all of such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

All our employees are free to become or remain or to refrain from becoming or remaining members of Local No. 716, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in

Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

DAVID B. KLAIN, JEFFERY KLAIN, STANLEY KLAIN, NATALIE KLAIN, AND BRADLEY KLAIN, PARTNERS, DOING BUSINESS AS SAM KLAIN AND SONS,

*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

The first issue, presented by Respondents' motions to dismiss, is whether the allegations of the complaint, alleging violations of Section 8(a)(5) and (1) of the Act, are prohibited by the 6-month statute of limitations period provided in Section 10(b) of the Act.

Respondents' counsel submitted memoranda in support of his motions, and after argument by counsel at the hearing, held on May 20, 1958, at Indianapolis, Indiana, I denied the motions. The parties then presented a written stipulation covering the facts in the case, which was offered and received in evidence, and the hearing was closed. Counsel were afforded opportunity to file briefs.

### I. JURISDICTION

On the record, I find that the Respondents are a partnership engaged in the wholesaling of plumbing supplies and maintain their office and principal place of business at Indianapolis, Indiana. The Respondents admit that during the 12-month period preceding the issuance of the complaint they purchased from points outside the State of Indiana and had shipped directly to their place of business, goods valued in excess of $500,000. The Respondents concede, and I find, that they are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

### II. THE LABOR ORGANIZATION INVOLVED

Local No. 716, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization as defined in Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The Section 10(b) question; chronology of events*

On April 10, 1957, the Union filed a charge wherein it alleged that, in violation of Section 8(a)(5) and (1) of the Act, the Company, since about March 25, 1957, had refused to bargain with it as the exclusive representative of the employees in an appropriate unit in that the Company "refused to negotiate a contract . . . unless the Union would eliminate all grievance procedures, although grievance machinery had been in operation under the prior contract," and by these and other acts the Company interfered with, restrained, and coerced the employees in the rights guaranteed by Section 7 of the Act.

By letter dated July 12, 1957, the Regional Director notified the Union and the Company that investigation failed to adduce sufficient evidence to warrant further proceedings and he was refusing to issue a complaint in the matter.

On February 11, 1958, the Regional Director wrote the parties that the above letter of dismissal was withdrawn, pending the Union's request for review of the dismissal action.

On March 10, 1958, the Union filed an amended charge wherein it alleged that since about March 25, 1957, the Company has refused to bargain with it as the employees' representative "as to rates of pay, wages, hours of employment and other conditions of employment" and by these and other acts the Company has

interfered with, restrained, and coerced the employees in the rights guaranteed by Section 7 of the Act, in violation of Section 8(a)(1) and (5) thereof.

On March 13, 1958, the Regional Director issued a complaint against the Respondents which alleges that the Union at all times material is and has been the duly designated and certified exclusive representative of the Respondents' employees in an appropriate unit comprising:

> All employees employed at or in the vicinity of, 835 North Pine Street, Indianapolis, Indiana, in the wholesaling of plumbing and heating supplies and equipment, including counter clerks, the shipping and receiving clerks, stockmen, truckdrivers, laborers, and the pump serviceman; but excluding outside salesmen, office clerical employees, guards, professional employees, the shop foreman, assistant managers, and all supervisors as defined in the Act.

The complaint further alleges that since about April 1, 1957, the Respondents have refused to bargain with the Union as the exclusive representative of the employees in the unit, and since the above date the Respondents have interfered with, restrained, and coerced their employees in the exercise of their rights under Section 7, for the purpose of discouraging membership in the Union, by initiating, sponsoring, and aiding in the circulation of a petition to decertify the Union. By these acts the Respondents have engaged in unfair labor practices as defined in Section 8(a)(1) and (5) of the Act.

About April 9, counsel for the Company filed a motion for a bill of particulars requesting, in substance, a statement of the particular conduct constituting the Company's refusal to bargain and a statement of facts constituting interference, restraint, or coercion by the Company or its agents, specifying acts occurring prior to and after September 10, 1957.

Thereafter, about April 14, the General Counsel furnished a bill of particulars stating the specific conduct constituting the refusal to bargain and interference, restraint, and coercion, consists of the action of Respondent David B. Klain in (1) initiating and sponsoring a decertification petition, (2) paying attorney's fees in connection therewith, (3) encouraging Ralph C. McAuly to solicit employee authorizations in support of the petition, (4) soliciting employees, through McAuly, to authorize the filing of the petition, (5) promising employees, through McAuly, insurance, wage increases, paid vacations, and paid day off on their birthdays, if they authorized the petition and got rid of the Union, and (6) inducing and encouraging one Tuhoy and Raymond A. Sutherlin to solicit employees to execute new authorizations in support of the petition The General Counsel stated he did not know when these acts occurred, hence, could not set forth specific dates

About May 14, the Respondents filed their answer in which they admitted certain allegations of the complaint but denied the commission of any unfair labor practices.

About May 15, the Respondents filed separate motions to dismiss the Section 8(a)(5) and (1) allegations of the complaint because the complaint does not allege any unfair labor practices outside of the prohibition of Section 10(b) of the Act.

In essence, counsel for the Company argues that since the original charge specified a refusal to bargain by reason of the Company's insistence upon the elimination of any grievance procedure, it is inadequate to support the allegations of the complaint and bill of particulars (jointly referred to as the complaint) because of the Respondents' activity in connection with the filing of a decertification petition Consequently, the complaint must be based on the amended charge which asserted a refusal to bargain in the broad language of the statute. Counsel contends that these charges allege violations of a different character and as the amended charge setting forth new and distinct unfair labor practices was not filed until more than 6 months after the occurrence thereof the complaint is barred by the limitation contained in Section 10(b) of the Act.

It is, of course, well settled that the charge is not pleading but merely sets in motion the machinery of an inquiry to determine whether a complaint shall issue and consistent with the general investigatory nature thereof, the complaint is not confined to the allegations contained in the charge. (*N L.R.B.* v. *Indiana & Michigan Electric Company*, 318 U.S. 9, 18; *Kansas Milling Company* v. *N L.R.B.*, 185 F. 2d 413, 415 (C.A. 10); *N.L.R.B.* v. *Kingston Cake Co., Inc.*, 191 F. 2d 563, 567 (C A. 3); *N L.R.B.* v. *Samuel J. Kobritz d/b/a Star Beef Company*, 193 F 2d 8, 14–16 (C.A 1); *Thayer Company and H. N. Thayer Company*, 99 NLRB 1122, 1126, enfd. 213 F. 2d 748 (C.A. 1), and *David G Leach, et al. d/b/a Brookville Glove Company, et al.*, 116 NLRB 1282.)

Section 10(b) of the Act provides:

> No complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made.

The Second Circuit in *N.L.R.B.* v. *Gaynor News Company, Inc.*, 197 F. 2d 719, in passing upon the effect of this provision on a complaint, stated (721–722):

> This section has been uniformly interpreted to authorize inclusion within the complaint of amended charges—filed after the six months' limitation period—which "relate back" or "define more precisely" the charges enumerated within the original and timely charges. The "relating back" doctrine for this purpose has been liberally construed to give the Board wide leeway for prosecuting offenses unearthed by its investigatory machinery, set in motion by the original charge. [Citing *Cusano* v *N.L.R.B.*, 190 F. 2d 898, 902–904 (C.A. 3) and the *Kobritz, Kingston* and *Kansas Mill* cases, *supra.*]

The court then held that a charge alleging violations of Section 8(a)(1) and (3) and later amended, more than 6 months after the violations, to allege additional victims of discrimination and a violation of Section 8(a)(2) fully supported the complaint alleging violation of those sections and was not barred by the 6-month limitation. The court said the "relating back" theory justified enlargement of the complaint to include additional discriminatees and the additional allegation in the complaint that action previously categorized as a violation of Section 8(a)(1) and (3) constituted also a violation of Section 8(a)(2) was proper for, "This was a change in legal theory only, and not in the nature of the offense charged." (Affd. 347 U.S. 17, 34, footnote 30; *N.L.R.B.* v. *Harry Epstein, et al. d/b/a Top Mode Manufacturing Co*, 203 F. 2d 482, 485 (C.A. 3); *White's Uvalde Mines,* 117 NLRB 1128, 1139–1140.)

I have carefully examined the cases cited by counsel for the Company and I find they are in accord with the principles discussed above.[1] Counsel stresses the decision of the Fourth Circuit in *Joanna Cotton Mills Co.* v. *N.L.R.B.*, 176 F. 2d 749. There the original charge alleged the discharge of an employee because of his membership in and activities on behalf of the union. Later the charge was amended by adding that the employee was discharged because he had engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection. A copy of the amended charge was not served until more than 6 months after the effective date of the amendments to the Act. The Board held that although the company had not discharged the employee because of union membership and activities, it did discharge him because of his engaging in other concerted activities. In brief, the court refused to enforce the Board's order for the reason that the original charge could not support the Board's finding and the amended charge was barred by the 6-month limitation. While the decision may tend to sustain the Respondents' position, generally it has not been followed by the courts. Thus, the Seventh Circuit in *N.L.R.B.* v. *Kohler Company,* 220 F. 2d 3, rejected the contention that several allegations of the complaint were not supported by a timely charge and the court, after pointing out that some earlier cases, including *Joanna Cotton Mills,* held the complaint must be limited to allegations of the charge, stated (pp. 6–7):

> But the courts then began to interpret Section 10(b) as requiring something less than exact similarity between charge and complaint. It has been said re-

[1] In *Indiana Metal Products Corporation* v *N.L.R.B.*, 202 F. 2d 613, 619 (C.A. 7), the court, while citing with approval the *Kobritz* and *Kingston* cases, *supra,* held the Board was not warranted in basing a finding of unfair labor practice on evidence of two independent acts in violation of Section 8(a)(1) which occurred subsequent to the filing of the charge and more than 6 months prior to the filing of the amended charge. In *N.L.R.B.* v *I.B.S. Mfg Co*, 210 F. 2d 634, 636–637 (C.A. 5), the court stated that although it is proper to amplify and expand a charge in line with its general substance, an entirely new and different cause of action may not be based thereon where the matters occurred more than 6 months before the cutoff date for the filing of the charge. Again, the court, in *N.L.R.B.* v. *D. W. Newton, d/b/a Newton Brothers Lumber Company,* 214 F. 2d 472, 473–474 (C.A. 5), refused to enforce the Board's order of reinstatement as to one discriminatee where the discharge occurred subsequent to the filing of the original charge and more than 6 months prior to the time when the discriminatee's name was first introduced into the case by way of amendment to the complaint at the hearing, distinguishing *Cathey Lumber Co* v *N.L.R.B.*, 185 F. 2d 1021 (C.A. 5). I do not consider these cases as supporting the Respondents' motion.

> peatedly that the charge is not a pleading, being intended, rather, as an administrative step necessary to set the Board's investigatory process in motion. The charge should, therefore, be construed broadly so as to allow any specific allegations in the complaint that are of "the same general nature." [Cases cited.]

The court concluded that it had gone far in calling for liberal construction of the charge, citing *N.L.R.B.* v. *Bradley Washfountain Co.*, 192 F. 2d 144, 149.

I reject counsel's contention that the filing of the amended charge constituted an abandonment of the matters set forth in the original charge. (*Kobritz, supra,* at pp. 15–16.) Counsel also points out that the bill of particulars fails to give the dates on which the acts and conduct occurred. Ordinarily, approximate dates are alleged, but here the General Counsel satisfactorily explains his inability to be more specific in this regard. In any event there is nothing in the record to indicate that the Respondents' substantive rights have been prejudiced by reason of the omission of specific dates.

In view of the foregoing authorities, I am of the opinion that the matters and violations alleged in the amended charge are of the same general nature as those in the original charge, consequently, the amended charge is adequate to support the complaint herein.

The same rationale also applies to the Section 8(a)(1) allegations of the complaint.

I, therefore, affirm my ruling at the hearing denying the motions to dismiss.

B. *The second issue is whether the record supports the allegations of unfair labor practices on the part of the Respondents*

As detailed above, the complaint alleges that the Respondents, since about April 1, 1957, have refused to bargain collectively with the Union as the statutory representative of all Respondents' employees in a unit appropriate for the purposes of collective bargaining, and by these and other acts thereby engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act. The bill of particulars, *supra,* describes specific acts and conduct constituting the unfair labor practices. The Respondents in their answer concede the appropriateness of the unit and the Union's status as representative of the employees but deny they refused to bargain with it or that they interfered with, restrained, or coerced the employees in the exercise of their rights guaranteed under Section 7 of the Act.

After denial of the motions to dismiss, a stipulation, signed by counsel for all the parties, was received in evidence. In the stipulation, which recites it "shall be the complete evidence" in the case, it is admitted that Respondent David B. Klain, during the period April 10 to 23, 1957, engaged in the acts and conduct set forth in the bill of particulars. The stipulation further provides that these admissions are made by the parties:

> . . . solely for the purpose of allowing a determination of the issues raised by the Charge, the Amended Charge, the Complaint and Bill of Particulars in support thereof, the Answer of Respondents and the Motions to Dismiss. . . .

The stipulation concludes by stating the Respondents do not thereby waive their Section 10(b) defense or their right to object to the materiality, competency, and relevancy of the admissions because they occurred in the period outside the statutory limitation of 10(b).

Thus, the only question to be determined is whether the facts as stipulated are sufficient to establish the allegations of the unfair practices, which are denied by the Respondents. I have no difficulty in concluding and finding that by engaging in the acts and conduct related in the stipualtion the Respondents violated Section 8(a)(1) of the Act. (*Birmingham Publishing Company,* 118 NLRB 1380, 1381–1382; *Watson Bros. Transportation Company, Inc.,* 120 NLRB 146.)

However, the stipulation is barren of any facts essential to sustain an allegation of refusal to bargain. It is fundamental that where an employer is alleged to have refused to bargain with a union, it must be shown that the union not only represented a majority of the employees concerned, but also that it has requested the employer to enter into bargaining negotiations. (*N.L.R.B.* v. *Valley Broadcasting Company,* 189 F. 2d 582, 586 (C.A. 6); *Joseph Solomon, an individual, d/b/a The Solomon Company,* 84 NLRB 226, 227–228; *Atlas Storage Division, P & V Atlas Industrial Center, Inc.,* 112 NLRB 1175, 1177–1178.) While the request need not be formal or made in any particular manner, there must be some showing that the union made it sufficiently clear to the employer that his employees desire to enter into negotiations through their designated bargaining agent. (*N.L.R.B.* v. *Columbian Enameling & Stamping Co., Inc.,* 306 U.S. 292, 297–298.) Here, there is no evidence whatever

that the Union ever requested the Respondents to enter into bargaining negotiations and certainly it cannot be assumed that the Union has complied with this condition precedent to a Section 8(a)(5) finding. Again, there is nothing in the record remotely suggesting that the parties ever held any meetings and there is a total absence of any facts customarily present in refusal to bargain cases. I, therefore, conclude and find that the facts are insufficient to establish a violation of Section 8(a)(5) of the Act.

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

The activities of the Respondents set forth in section I, above, occurring in connection with the operations of the Respondents described in section III, 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 thereof.

### V. THE REMEDY

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

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

### CONCLUSIONS OF LAW

1. The Respondents are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.
5. The Respondents have not engaged in any unfair labor practices in violation of Section 8(a)(5) of the Act.

[Recommendations omitted from publication.]

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## The Valley of Virginia Cooperative Milk Producers Association [1] *and* General Teamsters & Warehousemen Local Union 539, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Petitioner.

*Case No. 5–RC–2992. May 17, 1960*

## DECISION AND DIRECTION OF ELECTION

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

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

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

[1] The name of the Employer appears as amended at the hearing.