

known union adherent. Furthermore, it is not clear from the record herein whether Mueller's absences were during busy or slack periods and in either situation her absences were excused and even encouraged. In this light and in the light of Respondent's antiunion and anti-Butchers Union attitude, the Trial Examiner is not convinced that Mueller was terminated for the reasons asserted by Respondent. To the contrary, the Trial Examiner believes, finds, and concludes that these are mere pretexts to conceal Respondent's true motive. From the aforementioned facts it is apparent that Respondent resented any union aggressiveness and resented activity on behalf of the Butchers Union. Furthermore, Respondent signified its disapproval of Mueller's membership on the Butchers Union's committee and immediately upon becoming aware of this activity changed its attitude toward Mueller although it did not take action to sever her employment until it became important to reduce the Butchers Union's likelihood of becoming the bargaining agent. When that likelihood became imminent, Mueller's employment (and the employment of another member of the Butchers Union's three-member committee) was terminated for reasons which do not withstand analysis. In the light of the foregoing, an inference is warranted, and is now made, that Respondent capitalized upon the opportunity afforded by Mueller's leave of absence and the National Labor Relations Board election to rid itself of an active member of the Butchers Union and thereby reduced the likelihood of the Butchers Union becoming the bargaining agent for its employees.

A similar situation prevails with respect to Urbanski.

The Trial Examiner is not persuaded that Respondent has a policy of not permitting husband and wife to be employed at the same time but, assuming such a policy, the Trial Examiner is not convinced that the termination of Urbanski was based upon such a policy. The fact that Urbanski and her husband were employed for almost 2 years after their marriage, during which time they took joint vacations without mention being made of such policy negates Respondent's contention that it was awaiting an opportune time to effectuate such a policy. The fact that such a policy was not mentioned to Urbanski until after she became active on behalf of the Butchers Union, in the light of Respondent's antiunion and anti-Butchers Union attitude (outlined above), infers that Respondent's reliance upon any such policy is a pretext to conceal the real motive—the termination of a Butchers Union protagonist.

In summary, the Trial Examiner believes, finds, and concludes that the evidence establishes that these terminations were for the purpose of undermining the Union and stemming the tide of its organizational campaign and that the reasons assigned for these terminations were pretexts to conceal this purpose.

Ultimate Findings and Conclusions

In summary, the Trial Examiner finds and concludes:

1. The evidence adduced in this proceeding satisfies the Board's requirements for the assertion of jurisdiction herein.
2. Sausage Makers Local #102, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, is a labor organization within the meaning of the Act.
3. The evidence adduced establishes that Respondent, by discriminating in regard to tenure and conditions of employment and discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.
4. The aforesaid activities are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Industrial Rayon Corporation and District 50, United Mine Workers of America. *Case No. 5-CA-1686. August 9, 1960*

DECISION AND ORDER

Upon charges duly filed on April 4, 1960, and amended on April 12, 1960, by District 50, United Mine Workers of America, herein called 128 NLRB No. 67.

the Union, the General Counsel for the National Labor Relations Board, herein called the General Counsel, by the Regional Director for the Fifth Region, issued a complaint dated April 13, 1960, against Industrial Rayon Corporation, herein called Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a) (1) and (5) and 2(6) and (7) of the Act. Copies of the complaint, the charges, and notice of hearing were duly served upon Respondent and the Charging Party.

With respect to the unfair labor practice, the complaint alleged in substance that on or about March 30, 1960, and at all times thereafter, including the date of the issuance of this complaint, Respondent did refuse and continues to refuse to bargain collectively in good faith with the Union as the exclusive representative of all hourly paid powerhouse and filter plant employees at the Respondent's Covington, Virginia, plant. On or about April 20, 1960, the Respondent filed an answer denying that it had engaged in unfair labor practices and averring that the Board's certification of the Union was in error in permitting an industrial union which is not a traditional representative of "powerhouse employees" to seek and obtain representation of these employees.

Thereafter on May 16, 1960, all parties entered into a stipulation setting forth an agreed statements of facts. The stipulation provides that the parties waive their right to a hearing, to the issuance of a Trial Examiner's Intermediate Report and Recommended Order, to the taking of testimony, and to oral argument before the Board. It also provides that the entire record of the proceeding shall consist of the stipulation, the charge and the amended charge, affidavits of service of the charge and amended charges, complaint, notice of hearing, affidavit of service of complaint and notice of hearing, Respondent's answer to the complaint, order postponing the hearing indefinitely and affidavit of service thereof, the entire record in the matter of Industrial Rayon Corporation and District 50, United Mine Workers of America, Case No. 5-RC-2906, copy of letter dated March 28, 1960, from the Respondent to John A. Penello, copy of letter dated March 29, 1960, from the Union to the Respondent, and copy of reply letter dated March 30, 1960. The stipulation further provides that upon such stipulation and the record herein provided and on the receipt of briefs from the parties, the Board may make findings of fact and conclusions of law, and may issue its Decision and Order as if the same facts had been adduced after hearing, Intermediate Report, exceptions, and oral argument before the Board.

By an order issued on May 19, 1960, the Board approved the aforesaid stipulation, made it a part of the record herein, and transferred the matter to and continued it before the Board.

Upon the basis of the aforesaid stipulation, and upon the entire record in the case, including the Respondent's brief, the Board¹ makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY INVOLVED

Industrial Rayon Corporation is a Delaware corporation with its principal office in Cleveland, Ohio, and operating various plants, including one at Covington, Virginia, herein called the Covington plant, where it is engaged in the manufacture of rayon yarns and cloth. In the conduct of Respondent's business operation at its Covington plant it annually ships products in excess of \$50,000 to points outside the Commonwealth of Virginia.

We find that the Respondent at its Covington plant is, and at all times material herein has been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this case.²

II. THE LABOR ORGANIZATION INVOLVED

District 50, United Mine Workers of America, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

Since 1937, pursuant to a Board certification and successive collective-bargaining agreements, Local 202, Textile Workers Union of America, AFL-CIO, and its predecessor organizations, have represented the hourly paid employees at the Respondent's Covington, Virginia, plant in an overall plant unit. In 1949, the International Union of Operating Engineers, Local 922, attempted to sever from that unit the powerhouse and filter plant employees. However in the severance election ordered by the Board at that time, the Operating Engineers were unsuccessful. In 1955, in Case No. 5-RC-1778 (unpublished), the Operating Engineers made a second attempt to sever the powerhouse employees. This time it was successful, and after an election conducted by the Board on or about August 19, 1955, Local 922 of the Operating Engineers was certified as the collective-bargaining representative of all hourly paid powerhouse and filter plant employees at the Respondent's Covington, Virginia, plant. Pursuant to this certification, the Operating Engineers and the Respondent entered into successive collective-bargaining agreements. In 1958, Virginia Textile Union, Independent, filed a petition for the

¹ 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 [Members Rodgers, Bean, and Fanning].

² *Simons Mailing Service*, 122 NLRB 81.

powerhouse and filter plant unit in Case No. 5-RC-2401 (unpublished). In the election the Independent, the Operating Engineers, and the Textile Workers participated. The Independent won and was certified on June 18, 1958. On January 20, 1959, the Independent and Respondent entered into a collective-bargaining agreement effective for 1 year and automatically renewable from year to year thereafter absent 60 days' notice of a desire to modify or terminate the agreement by either party.

On September 24, 1959, District 50 of the United Mine Workers of America filed a timely petition in Case No. 5-RC-2906 (unpublished) for an election in the existing unit of powerhouse and filter plant employees. At the Board hearing on December 17, 1959, and in its brief to the Board, the Employer moved to dismiss the petition on the ground that the requested unit was inappropriate, and that the Petitioner was not qualified to represent a unit of powerhouse employees because it lacked the standing of a "traditional representative" of such employees. After due consideration of the Employer's contentions, the Board in its Decision and Direction of Election on March 3, 1960 (unpublished), denied the Employer's motion to dismiss, and directed an election in the unit requested by the Mine Workers. In the election held on March 17, 1960, the Mine Workers obtained a majority of the ballots cast. On March 26, 1960, the Regional Director for the Fifth Region of the Board certified District 50, United Mine Workers of America, as the collective-bargaining representative of the unit found appropriate by the Board, i.e., a unit of all hourly paid powerhouse and filter plant employees at the Respondent's Covington, Virginia, plant, excluding all other employees, office clerical and plant clerical employees, laboratory employees and technical staff, salaried employees, guards, and supervisors, as defined in the Act. On March 28, 1960, the Respondent informed the Regional Director that it would not honor the certification.

By letter dated March 29, 1960, the Mine Workers requested a meeting with the Respondent at the latter's earliest convenience for the purpose of negotiating a collective-bargaining agreement. By letter dated March 30, 1960, the Respondent replied that it intended to contest the Board's order and certification and that it was unwilling for that reason to meet with the Mine Workers. Since then, no collective bargaining between the Respondent and the Mine Workers has taken place.

A. Contentions of the parties

The General Counsel in his complaint contends in essence that by refusing to bargain collectively with District 50, United Mine Workers of America, the duly certified collective-bargaining representative of an appropriate unit of the Respondent's powerhouse and filter

plant employees, the Employer has violated Section 8(a)(5) and (1) of the Act. In its answer the Respondent denied having violated the Act and contended that the powerhouse and filter plant unit herein involved is not an appropriate unit for collective bargaining, that District 50, United Mine Workers of America, is not a union which has traditionally devoted itself to serve the special interests of powerhouse and filter plant employees, and that the certification of the Mine Workers therefore does not effectuate the purposes of the National Labor Relations Act. In its brief to the Board the Respondent did not raise the issue of inappropriate unit, but limited itself to its main argument that the Board should not have certified the United Mine Workers because of the Union's lack of qualification to represent powerhouse employees.

B. Discussion

1. There is no dispute that the powerhouse and filter plant employees perform the customary duties of employees of these classifications. The employees are engaged in the production of steam, electricity, and water for various purposes in the Respondent's plant. The Board has long held that powerhouse and filter plant employees constitute an appropriate departmental unit for purposes of collective bargaining.³ We, therefore, find consonant with Board precedent and with our decisions and directions of elections in the representative cases mentioned heretofore, that the unit of the Respondent's powerhouse and filter plant employees at its Covington, Virginia, plant, with the exclusions heretofore indicated, is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

2. We find no merit in the Respondent's contention that only a labor organization meeting the standards of the "traditional union" test is qualified to petition for a craft or departmental unit which has already been severed from a production and maintenance unit and has undergone its own independent bargaining history. One of the fundamental principles underlying the Act is that employees should be permitted to exercise the greatest freedom of choice in the selection of their bargaining representative. Only in exceptional circumstances, where this principle has to be accommodated to a doctrine of equal merit, has the Board with the approval of the courts, struck a balance and curtailed, to a limited extent, that freedom of choice. For example, in contract-bar cases, where the stability of labor relations must be taken into consideration, the Board prevents employees from changing their bargaining representative at an inappropriate time. Similarly, where a segment of employees seeks to be severed on a craft or departmental basis from an established production and

³ *Beaumont Mills, Inc.*, 85 NLRB 316.

maintenance unit, the Board has, in the interest of not disrupting stable bargaining relations, evolved the *American Potash* rule.⁴ Under that rule, only a labor organization which has traditionally devoted itself to representing the special interests of certain craft or departmental employees, is allowed to upset an established production and maintenance unit by severing such employees. *American Potash* is an exception to the general rule permitting freedom of choice to the employees. As such, it has been narrowly construed by the Board as limited only to severance cases, i.e., to situations where a smaller craft or departmental unit is to be carved out of an established broader unit. The Board has consistently held that the traditional craft union test does not apply to unions seeking an election in a craft or departmental unit where there is not prior substantial bargaining history on a broader basis.⁵ The same applies where a craft or departmental unit, as here, has once been severed from a production and maintenance unit and has, since then, developed its own bargaining history.⁶

Were we to adopt a rule as requested by the Respondent, that a craft or departmental unit once severed can from then on only be represented by a traditional craft union, we would curtail the freedom of choice of the employees unnecessarily by restricting them thereafter to choosing among a limited number of craft unions. We do not believe that it would effectuate the policies of the Act, to thus extend the limitation of the *American Potash* rule. Accordingly, as District 50, United Mine Workers of America, is the qualified and certified bargaining representative of the powerhouse and filter plant employees of the Employer, and as the record is clear that the Respondent refuses to bargain with that labor organization, we find that the Respondent has violated and is violating Sections 8(a) (5) and (1) 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 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 in violation of Section 8(a) (5) and (1) of the Act, we shall order the Respondent to cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

⁴ *American Potash and Chemical Corp*, 107 NLRB 1418.

⁵ *General Motors Corporation, Fisher Body Division, Mansfield, Ohio, Plant*, 117 NLRB 955, 956.

⁶ *Campbell Soup Company*, 109 NLRB 518, 521; *Mock, Judson, Voehringer Company of North Carolina*, 110 NLRB 437, 441.

As the Respondent has interfered with, restrained, and coerced its employees by its conduct we shall further order that the Respondent cease and desist from this and any other like or related conduct.

We shall also order the Respondent to bargain collectively, upon request, with District 50, United Mine Workers of America, and, if an understanding is reached, that such understanding be embodied in a signed agreement.

CONCLUSIONS OF LAW

1. District 50, United Mine Workers of America, is a labor organization within the meaning of the Act.

2. By engaging in the conduct set forth in section III, above, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

3. District 50, United Mine Workers of America, on March 30, 1960, was, and at all material times thereafter has been, the exclusive bargaining representative of all employees in the unit found to be appropriate in section III, above, for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. By refusing to bargain collectively with District 50, United Mine Workers of America, as the exclusive representative of its employees in an appropriate unit, beginning March 30, 1960, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (5) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Industrial Rayon Corporation, Covington, Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with District 50, United Mine Workers of America, as the exclusive representative of all hourly paid powerhouse and filter plant employees at the Respondent's plant in Covington, Virginia, excluding all other employees, office clerical and plant clerical employees, laboratory employees and technical staff, salaried employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist District 50, United Mine Workers of America, or any other labor organization, to bargain collectively

through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right 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.

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

(a) Upon request, bargain collectively with District 50, United Mine Workers of America, as the exclusive representative of all employees in the aforesaid appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant at Covington, Virginia, copies of the notice attached hereto marked "Appendix."⁷ Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by a duly authorized representative of the Respondent, be posted by 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 Respondent Company to insure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Fifth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

⁷In 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

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, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with District 50, United Mine Workers of America, as the exclusive bargaining representative of the employees in the appropriate unit. The bargaining unit is:

All hourly paid powerhouse and filter plant employees at our Covington, Virginia, plant, excluding all other employees, office clerical and plant clerical employees, laboratory employees and technical staff, salaried employees, guards, and supervisors as defined in the Act.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist District 50, United Mine Workers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right 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.

WE WILL, upon request, bargain collectively with the aforesaid labor organization as the exclusive representative of the employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

All our employees are free to become and remain, or refrain from becoming or remaining, members of the above-named Union, or any other labor organization, except to the extent that such right 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.

INDUSTRIAL RAYON 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.

Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and McJunkin Corporation.
Case No. 9-CC-133. August 9, 1960

DECISION AND ORDER

On May 15, 1958, Trial Examiner William F. Scharnikow issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices alleged in the complaint 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. The