several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since I have found that the Respondents, by photographing their employees while accepting union literature distributed outside the plant by the Union's agents, interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, I shall recommend that they shall cease and desist from such activity and take certain affirmative action designed to effectuate the policies of the Act.

Upon the foregoing findings of fact, and upon the entire 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. United Steelworkers of America, AFL–CIO, 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.

[Recommendations omitted from publication.]

American Cyanamid Company *and* Pensacola Building and Construction Trades Council, Petitioner

American Cyanamid Company *and* Textile Workers Union of America, AFL–CIO, Petitioner.[1] *Cases Nos. 15–RC–2175 and 15–RC–2179. May 31, 1961*

SUPPLEMENTAL DECISION, ORDER, AND DIRECTION OF ELECTIONS

On February 2, 1961, the Board issued a Decision, Order, and Direction of Election in the above-entitled proceeding.[2] In that Decision, the Board, with then Chairman Leedom and Member Fanning dissenting, found a unit of production and maintenance employees at the Employer's Santa Rosa plant located near Milton, Florida, to be appropriate in Case No. 15–RC–2179 and directed an election therein, and it found a unit of maintenance employees at such plant requested in Case No. 15–RC–2175 to be inappropriate and dismissed the petition for an election therein.[3] Thereafter, on February 7, 1961, the Council filed a motion for reconsideration of the decision insofar as it modified the Board's longstanding policy as to the establishment of maintenance units, or in lieu thereof, requested oral argument thereon.

[1] The Petitioners are referred to herein as the Council and TWUA, respectively.

[2] 130 NLRB 1.

[3] International Chemical Workers Union, AFL–CIO, and District 50, United Mine Workers of America, herein referred to as the Chemical Workers and UMW, respectively, intervened on the basis of their interest showings in the broader unit.

The Board on March 2, 1961, issued its order granting motion for reconsideration and request for oral argument, wherein it reserved until later the setting of the date and scope of the oral argument and postponed indefinitely the election previously directed.[4] Pursuant to a notice of hearing issued on April 17, 1961,[5] and as amended on April 20, 1961,[6] the Board heard oral argument in Washington, D.C., on May 11, 1961. Representatives of each of the parties participated.[7] In addition, the Board has accepted the statement of position filed by National Petroleum Association, as an *amicus curiae*, on the day of the oral argument.

The Board has reconsidered the issues raised by the Council's motion, in the light of the arguments made at the oral argument, the briefs filed by the parties and the various *amici curiae*, and the entire record in the cases.

A majority of the Board believes that the decision under reconsideration reversed a longstanding policy without rationale or sufficient support in the record. We believe that in all the circumstances present here it will effectuate the policies of the Act to find that either a unit of production and maintenance employees or of maintenance employees alone may be appropriate herein.

The record in this case fails to establish that the Employer's operation is so integrated, as alleged herein, that maintenance has lost its identity as a function separate from production, and that maintenance employees are not separately identifiable. On the contrary, the maintenance employees requested by the Council are established in separate departmental sections and have their own supervision. They perform the varied maintenance work for the entire plant exercising the particular skills required by this function. Such work is frequently accomplished in groups, sometimes in conjunction with production workers in the area involved. However, the function performed by production workers in such circumstances is incidental to the preparation of the equipment for the repairs made by the maintenance employees. While minor adjustments are made by some production workers on their own machinery this is incidental to their production operation.

We find on the basis of the evidence in this record that maintenance employees are readiliy indentifiable as a group whose similarity of function and skills create a community of interest such as would warrant separate representation.

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[4] Metal Trades Department, Building and Construction Trades Department and Industrial Union Department, all of AFL–CIO, had been permitted to intervene as *amici curiae* and to file briefs in support of their respective positions.

[5] The Board's notice granted the intervening *amici curiae* permission to participate in the oral argument

[6] The notice was amended to include TWUA in the order of argument.

[7] The Council did not participate through a separate representative but was represented in the argument by the representative of Building and Construction Trades Department, AFL–CIO.

Accordingly, we shall vacate the Decision, Order, and Direction of Election issued February 2, 1961, insofar as it finds a production and maintenance unit alone to be appropriate and a unit of maintenance employees to be inappropriate. As we have found that either of the requested units may be appropriate, we shall direct self-determination elections in the following voting groups of employees at the Employer's Santa Rosa plant located near Milton, Florida, excluding from each all office clerical employees, plant clerical employees, technical employees, professional employees, watchmen and/or guards, and supervisors as defined in the Act: [8]

(1) All maintenance employees, including all employees in the maintenance section of the engineering department and all employees in the utilities section of the production department.

(2) All production employees.

If a majority of the employees in group 1 votes for the Council, the employees in such group will be taken to have indicated their desires to constitute a separate unit which in such circumstances the Board finds to be appropriate, and the Regional Director shall certify the Council as the exclusive representative therefor. In that event, should a majority of the employees in group 2 vote for a labor organization, such group shall constitute an appropriate residual unit and the labor organization shall be certified as its representative. If a majority in group 1 does *not* select the Council, the ballots cast therein shall be pooled with those cast in group 2. If a majority in the pooled groups votes for a labor organization, it shall be certified for the broader unit of production and maintenance employees which in such circumstances shall be appropriate. If the votes are pooled, the votes for the Council shall be counted as valid votes but neither for nor against the labor organizations seeking the broader unit; all other votes shall be given their face value.

We specifically do not conclude that an absence of a more comprehensive bargaining history would necessarily establish the appropriateness of a maintenance unit. The Board must hold fast to the objectives of the statute using an empirical approach to adjust its decisions to the evolving realities of industrial progress and the reflection of that change in organizations of employees. To be effective for that purpose, each unit determination must have a direct relevancy to the circumstances within which collective bargaining is to take place. While many factors may be common to most situations, in an evolving industrial complex the effect of any one factor, and therefore the weight to be given it in making the unit determination, will vary from industry to industry and from plant to plant. We are therefore convinced that collective-bargaining units must be based upon all the relevant evidence in each individual case. Thus we shall continue

[8] See *Anheuser-Busch, Inc*, 124 NLRB 601.

to examine on a case-by-case basis the appropriateness of separate maintenance department units, fully cognizant that homogeneity, cohesiveness, and other factors of separate identity are being affected by automation and technological changes and other forms of industrial advancement.

[The Board vacated the Decision, Order, and Direction of Election in Cases Nos. 15-RC-2175 and 15-RC-2179, dated February 2, 1961.]

[Text of Direction of Elections omitted from publication.]

MEMBER FANNING, concurring specially:

I concur in the results reached by the majority for the reasons contained in my dissent from the original Decision, Order, and Direction of Election in this case.

MEMBER RODGERS, dissenting:

I heartily agree with the philosophy and procedure which the majority says it intends to follow in cases of this type. Since it has failed to apply this dynamic formula to the facts of this case, I must respectfully dissent.

W. Ralston & Co., Inc. and Technical Tape Corporation *and* Local 98, Rubberized Novelty and Plastic Fabric Workers' Union, International Ladies' Garment Workers Union, AFL-CIO

W. Ralston & Co., Inc. *and* Toy and Novelty Workers of America, Local 223. *Cases Nos. 2-CA-6626 and 2-CA-7389. June 1, 1961*

DECISION AND ORDER

On October 27, 1960, Trial Examiner George A. Downing 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. Thereafter, the Respondents filed exceptions to the Intermediate Report.[1]

The Board[2] has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.[3] The

[1] The Respondents also requested oral argument. As the record and exceptions adequately present the issues and the positions of the parties, the request for oral argument is denied.

[2] 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 McCulloch and Members Rodgers and Leedom].

[3] At the hearing the Respondents moved to dismiss the complaint on the ground that the Regional Director had dismissed an earlier charge. The Trial Examiner denied the