

Accordingly, I find that Vice President Parker violated Section 8(a)(1) of the Act, both in his interrogation as to King's union position, and in threatening him with economic disadvantages in the event the union campaign were successful. I also find, in the context of this threat, that his interrogation of Corbin was a further violation of Section 8(a)(1).

IV THE EFFECTS 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 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, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the above findings of fact, and upon the entire record, I make the following:

CONCLUSIONS OF LAW

- 1 Farm Stores, Inc., F. S. #2, Inc, F. S. #4, Inc, and F. S. #31, Inc, Divisions of Farm Stores, Inc., are engaged in commerce within the meaning of the Act.
2. Local 1010, Retail Employees Union of South Florida, affiliated with Retail, Wholesale and Department Stores Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
- 3 By interrogating employees concerning their union sympathies and by threatening them with loss of employment in consequence of successful union activities, the Respondent has engaged 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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**Tri-Associated Drywall Contractors, Inc., Chapter of Painting & Decorators Association, Petitioner and Los Angeles County District Council; Orange County District Council; Riverside County District Council; San Bernardino County District Council; Ventura County District Council; San Diego County District Council; United Bro. of Carpenters, AFL-CIO, and Los Angeles District Council; Orange Belt District Council; Ventura County District Council; San Diego Local 333, United Bro. of Painters, Decorators, AFL-CIO and Gypsum Drywall Industry Union, Ind.<sup>1</sup> Case No. 21-RM-668. June 7, 1961.**

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Max Dauber, hearing officer.

<sup>1</sup> At the hearing, the various district councils were referred to by numbers, but no motion was made to amend their names to include these numbers. Although all the labor organizations here involved were referred to at the hearing and in the pleadings as intervenors, they are all parties named in the petition. Gypsum Drywall Industry Union, Ind., is herein referred to as Gypsum, while the other labor organizations are referred to collectively as the Unions.

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>2</sup>

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 Leedom and Brown].

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

1. The Unions contend that the Employer-Petitioner, an association of employers in the drywall installation industry in southern California, does not meet the Board's jurisdictional standards.

Harold Lamunyon, president of Lamunyon Drywall Contractors, Inc., and Fletcher Reynolds, an officer of Fletch Reynolds, Inc., testified that their respective companies were members of the Employer-Petitioner. Each of them also testified that he was personally familiar with the business activities of his company, and that it had purchased during 1960, from a California distributor, materials valued at more than \$50,000 which had originated outside the State. Furthermore, Reynolds testified that his company received approximately \$45,500 for work done on military installations of the United States Government during the 1960 fiscal year, and Lamunyon testified that he also performed a substantial amount of such work. The Unions presented no evidence of their own to contradict this testimony, but argued that the testimony of Lamunyon and Reynolds, unsupported by business records, was not the best evidence. We find, however, that, as both witnesses were familiar with the operation of their respective companies and testified from their personal knowledge, and as the Unions presented no evidence to the contrary, the testimony of Lamunyon and Reynolds is of sufficient probative value to justify its consideration in determining whether to assert jurisdiction.<sup>3</sup> On the basis of this evidence, we find that these two employers meet our indirect inflow standard<sup>4</sup> and that Reynolds also meets our national defense standard.<sup>5</sup> As we treat all members of an employer association as a single enterprise for jurisdictional purposes, and assert jurisdiction over the entire association if any one of its members meets our standards<sup>6</sup> and as we have found that two members meet our jurisdictional standards, we find that the Employer-Petitioner is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

<sup>2</sup> The Unions moved to disqualify the hearing officer for alleged misconduct because of statements and rulings he made during the hearing, and moved to dismiss or remand the proceedings on the ground, *inter alia*, that they had not received a fair hearing. In view of our dismissal of the petition, which was urged by the Unions, these questions have become moot, but we note that the record does not indicate that the hearing officer was guilty of misconduct.

<sup>3</sup> *Stemar Company*, 116 NLRB 578

<sup>4</sup> *Siemons Mailing Service*, 122 NLRB 81.

<sup>5</sup> *Ready Mixed Concrete & Materials, Inc.*, 122 NLRB 318.

<sup>6</sup> See *Siemons Mailing Service*, *supra*, at 84.

2. The labor organizations involved claim to represent certain employees of the Employer.<sup>7</sup>

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act for the reasons set forth below.

4. The Employer-Petitioner urges the Board to find appropriate a single unit composed of journeymen and trainee drywall hangers and tapers employed by all its members. In the alternative, it seeks two associationwide separate units, one consisting of journeymen and trainee hangers and the other of journeymen and trainee tapers. On June 21, 1960, Gypsum demanded recognition by the Employer-Petitioner as the associationwide bargaining representative of the tapers, and, on July 15, as the associationwide representative of the hangers (also known as installers). At the hearing, Gypsum agreed to represent the tapers and hangers either in separate associationwide units or in a combined associationwide unit, whichever the Board found appropriate. The Unions contend that all the proposed units are inappropriate, and urge dismissal of the petition.<sup>8</sup>

Lamunyon, executive secretary of the Employer-Petitioner, testified that it had approximately 15 members, and he produced copies of cards purporting to show the membership status of the various employers, but all these copies were unsigned and undated. Both Lamunyon and Reynolds testified that their respective companies belonged to the Employer-Petitioner; Lamunyon also testified that he had authorized the Employer-Petitioner to act for his company, and an authorization card signed by him was introduced into the record. No such card was introduced for Reynolds or any other employer member, and Reynolds in fact admitted at the hearing that his company was also represented by Gypsum Drywall Contractors of California for collective-bargaining purposes until October 1960, 2 months after the original petition was filed herein.

The record shows that Gypsum Drywall Contractors of California is an employer association which has been in existence for many years, and has local chapters covering the same industry and geographical areas as the Employer-Petitioner claims to do. It has executed numerous collective-bargaining agreements with various unions over the years, is still actively engaged in collective bargaining, and is a

<sup>7</sup> The status of Gypsum as a labor organization was attacked by the Unions. As it exists for the purpose of representing employees with respect to wages, hours, and other conditions of employment, we find that it is a labor organization within the meaning of Section 2(5) of the Act.

<sup>8</sup> Among their grounds for dismissal of the petition, the Unions urge four different collective-bargaining agreements as bars. The Employer-Petitioner contends that none of these contracts constitute a bar because they are prehire agreements in the building and construction industry, executed in conformity with Section 8(f), and, therefore, cannot serve as bars. In view of our dismissal on other grounds, we do not pass upon these contract-bar contentions.

party to a number of current union contracts. Of the 15 employers who the Employer-Petitioner alleges comprise its membership, 12 were associated with Gypsum Drywall Contractors of California for collective-bargaining purposes during 1960. Only three were shown ever to have resigned, and their dates of resignation were not shown. The parties stipulated that all the members of the Employer-Petitioner, including Lamunyon, had signed counterparts of the master agreement negotiated by Gypsum Drywall Contractors of California with the various District Councils of Carpenters involved herein. That master agreement, which became effective on August 1, 1959, and runs to July 31, 1962, covers "drywall installers" or hangers. Thus, not only is there no evidence of any bargaining by the Employer-Petitioner for hangers or installers, but, on the contrary, the bargaining history shows that members of the Employer-Petitioner have bargained for hangers or installers through a different employer association.

There is evidence of some bargaining by the Employer-Petitioner regarding tapers, but it is clearly insufficient to establish the appropriateness of the unit of tapers sought herein. Lamunyon testified that the Employer-Petitioner was formed early in 1959 and its certificate of incorporation, which was introduced in evidence, is dated September 21, 1959. Nevertheless, at the hearing, which was held in November 1960, more than a year after the incorporation, only one contract was presented in evidence to which the Employer-Petitioner was a party. This was a contract with the Orange Belt District Council, executed on July 25, 1960, and made effective as of July 1, 1960, until June 30, 1963. The petition herein was filed less than 1 month after the execution of this contract.

The contract covers not only members of the Employer-Petitioner but also members of two other employer associations who operate within the jurisdiction of the Orange Belt District Council. It also covers employees in approximately 15 categories who work in the painting and paperhanging trade, including drywall tapers. It is clear, therefore, that the contract unit is far more extensive in its coverage of employers and of employee categories than the unit sought herein by the Employer-Petitioner. Moreover, while the Orange Belt District Council contended that this contract was a bar to the petition herein, it nevertheless joined the other Unions, at the hearing and in its brief, in attacking the bona fides of the Employer-Petitioner as an association of employers formed for the purpose of bargaining collectively.

In view of the short period of time which elapsed between the execution of the contract and the filing of the instant petition,<sup>9</sup> the attack by the Orange Belt District Council, which signed the contract with

<sup>9</sup> Cf. *Miron Building Products Co., Inc., et al.*, 116 NLRB 1406

the Employer-Petitioner and other employer associations, on the status of the Employer-Petitioner as a bargaining representative; the fact that the contract unit is not coextensive with the unit sought in the petition; and the disagreement among the parties over the appropriateness of the unit of tapers requested by the Employer-Petitioner, we find that there is no controlling history of multiemployer bargaining by the Employer-Petitioner in a unit of tapers.<sup>10</sup> We find, therefore, that the Employer-Petitioner has failed to establish a bargaining history of the kind and extent required by the Board to find appropriate the proposed Employer-Petitionerwide units of hangers and tapers, separately or combined.<sup>11</sup>

Further the record fails also to establish that the members of the Employer-Petitioner have clearly manifested a desire to be part of a multiemployer unit represented by the Employer-Petitioner.<sup>12</sup> Thus no evidence was presented to show that any members of the Employer-Petitioner, other than Lamunyon, authorized the Employer-Petitioner to bargain for the group, or that any of them jointly participated in any bargaining sessions.<sup>13</sup> And mere membership in an employer association does not constitute authorization for it to bargain collectively for its members.<sup>14</sup>

Accordingly, on the basis of the foregoing and the entire record, we shall grant the Unions' motion to dismiss the petition.<sup>15</sup>

[The Board dismissed the petition.]

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<sup>10</sup> *Schaeffers Prospect IGA Store*, 124 NLRB 1433.

<sup>11</sup> *American Publishing Corporation, et al.*, 121 NLRB 115, 121.

<sup>12</sup> *American Publishing Corporation, supra.*

<sup>13</sup> *Pennsylvania Garment Manufacturers Association, Inc.*, 125 NLRB 185, 197.

<sup>14</sup> *Arden Farms, et al.*, 117 NLRB 318.

<sup>15</sup> Before, during, and after the hearing, the Unions made numerous motions to dismiss, in addition to those adverted to above, on grounds of failure to join necessary parties, inconsistencies, and ambiguities in the petition and amended petition, and others. In view of our dismissal on unit grounds, we deem it unnecessary to pass upon these additional grounds for dismissal, or upon the motion by Orange Belt District Council for enforcement of a *subpoena duces tecum* against Lamunyon. Counsel for the Unions claims in his brief that this subpoena was not complied with, but we are administratively advised that it was. In view of our dismissal, we find that even if there was a failure to comply, it would not have been prejudicial to the Unions.

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**Nachman Corporation and Eugene Olaque, Employee, Petitioner  
and United Furniture Workers of America, Local 1010, AFL-  
CIO. Case No. 21-RD-489. June 7, 1961**

### ORDER

On March 23, 1961, the Board issued an order which in effect denied a request filed by Mattress, Spring & Bedding Workers, Local 691, 131 NLRB No. 126.