hours, pay, and fringe benefits, we find that the fabricating division is not a functional part of the production and maintenance unit in the steel division, nor an accretion to it.[5] Accordingly, we deny the Petitioner's motion to amend or clarify its certification.

[The Board denied the motion.]

[5] See *Chrysler Corporation*, 129 NLRB 407; *Barrett Division, Allied Chemical & Dye Corporation*, 120 NLRB 1026; *Cities Service Refining Corporation*, 121 NLRB 1091.

Herman O. Wunsch and William Smith t/a Atlantic Maintenance Co. *and* Philadelphia Window Cleaners and Maintenance Workers' Union, Local 125, AFL-CIO. *Case No. 4-CA-2325. December 18, 1961*

DECISION AND ORDER

On September 1, 1961, Trial Examiner Thomas N. Kessel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and is engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed timely exceptions to the Intermediate Report, and the Charging Party filed exceptions and a statement in support thereof.

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, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner made 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 the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modification as to the remedy.

THE REMEDY

The Trial Examiner recommended, *inter alia*, that the Respondent make whole those employees against whom discrimination has been found with the exception of Doris Jones, Belle Ford, and Dudley Riley. As to these individuals, the Trial Examiner found that they rejected the Respondent's offer of employment at a rate of pay lower than union scale, and thereby indicated their unwillingness to work. Contrary to the Trial Examiner, we find that the Respondent's offer

of employment to these three individuals was conditional in that it was based upon their first obtaining a withdrawal from the Union. In this regard, Doris Jones testified that Foreman Christian told her, "I would like to keep you, but I can't because you are in the union." She then asked how much he was paying and was told $1.15 an hour. She replied, "No, I come out cheaper by drawing unemployment." Belle Ford testified that Christian told her that she could continue to work provided she withdrew from the Union. She asked how much he was paying and was told $1.15 an hour. She then testified, "I said anyone who would work——" but was interrupted. When Christian subsequently called her on the telephone to find out whether she wanted to work and then instructed her to withdraw from the Union, she again asked what he would pay. Upon being told $1.15 an hour, she responded, "I wouldn't be down." Dudley Riley testified that Christian spoke to a group of employees and said that "they were not going to hire any union help," because the Respondent did not want to post a bond for each employee. Subsequently, when Riley learned from Sydney Shannon, Penn's day foreman and Christian's brother-in-law, that his $1.55 hourly rate was going to be reduced to $1.40, Riley testified that he definitely made up his mind not to work for Respondent at this rate.

In view of the unlawful condition attached to Respondent's offer, and as it has not been clearly established that these three discriminatees would have rejected Respondent's offer of employment even if it had not been conditioned on their withdrawal from the Union, we find no basis upon which to conclude, as did the Trial Examiner, that they should be denied backpay.[1] Accordingly, to remedy the Respondent's violations of the Act with respect to Doris Jones, Belle Ford, and Dudley Riley, we shall order the Respondent to make them whole, along with the remaining discriminatees, for any loss they may have suffered because of the discrimination against them, in the manner prescribed by the Trial Examiner in the section of the Intermediate Report entitled "The Remedy."

[1] Member Rodgers would adopt the Trial Examiner's recommendations denying backpay to Doris Jones, Belle Ford, and Dudley Riley. Member Rodgers notes that while the Respondent's offer of employment was conditional, the employees did not assert the unlawful condition as their reason for rejecting employment with Respondent Thus, Member Rodgers would find, as did the Trial Examiner, that the three individuals credibly testified that the reason for not accepting the Respondent's offer of employment was because its pay scale was lower than the union rate of pay. Accordingly, as this reason is totally unrelated to, and independent of, the conditional nature of the Respondent's offer of employment, Member Rodgers would not disturb the Trial Examiner's findings and recommendations in this regard. For the same reasons, Member Rodgers would not require the Respondent to make additional offers of employment to these three individuals in view of their previous unequivocal rejection of same. Cf. *L. Ronney & Sons Furniture Manufacturing Co., etc.*, 97 NLRB 891.

The backpay herein ordered shall begin on February 1, 1961, and continue to the date of the discriminatees' employment, or the date upon which unconditional employment is offered to them. However, because the Trial Examiner recommended that Doris Jones, Belle Ford, and Dudley Riley be denied backpay, and in accordance with our practice, we exclude from the above period the time from the date of the Intermediate Report to the date of our Order herein in computing the amount of backpay to which each is entitled. *Time-O-Matic, Inc.*, 121 NLRB 179, 181.

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Herman O. Wunsch and William Smith t/a Atlantic Maintenance Co., Pleasantville, New Jersey, their officers agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Philadelphia Window Cleaners and Maintenance Workers' Union, Local 125, AFL–CIO, or any other union, by discriminating in regard to hire or tenure of employment of their employees.

(b) In any manner interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form, join, or assist Philadelphia Window Cleaners and Maintenance Workers' Union, Local 125, AFL–CIO, or any other labor organization, to bargain collectively with representatives of their choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, or to refrain from engaging in such activities, as guaranteed in Section 7 of the Act.

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

(a) Offer to Helen Holland, Daisy Anthony, Jacquline Miller, Yvonne Stowe, Mary Morris, Marion Brooks, Doris Jones, Belle Ford, Rose Newkirk, William Waterson, Melvin Miller, Wilfred Coley, Don Eady, Richard Miller, Roumania Brewington, Albert Carson, Wayne Dotts, Dudley Riley, Edna Holley, and Thelma Strickland employment at the same or substantially equivalent positions at which they would have been employed had there not been discrimination against them, without prejudice to any seniority or other rights and privileges they might have acquired, and make them whole for any loss of pay suffered in the manner set forth in the section of the Intermediate Report entitled "The Remedy," as modified by our Decision and Order herein.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due and the rights of employment under the terms of this Order.

(c) Post at the United States Signal Corps Building in Philadelphia, Pennsylvania, with permission of the building authorities, copies of the notice attached hereto marked "Appendix."[2] Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by the Respondent's partners, be posted by them immediately upon receipt thereof, and maintained by them for a period of 60 consecutive days at the Signal Corps Building, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material. If permission for posting at the Signal Corps Building cannot be obtained from the building authorities, then a copy of the notice shall be mailed to each of the persons named therein and to all employees presently employed by the Respondent.

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

[2] 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."

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 discourage membership in Philadelphia Window Cleaners and Maintenance Workers' Union, Local 125, AFL–CIO, or in any other labor organization, by refusing to hire applicants for employment because of their membership in the aforesaid labor organization or in any other labor organization, or by discriminating in any manner in regard to hire, tenure, or any term or condition of employment.

WE WILL offer to the persons named below employment at the same or substantially equivalent positions at which they would have been employed had we not discriminated against them, with-

out prejudice to any seniority or other rights and privileges they might have acquired.

Helen Holland	William Waterson
Daisy Anthony	Melvin Miller
Jacquline Miller	Wilfred Coley
Thelma Strickland	Don Eady
Yvonne Stowe	Richard Miller
Mary Morris	Roumania Brewington
Marion Brooks	Albert Carson
Doris Jones	Wayne Dotts
Belle Ford	Dudley Riley
Rose Newkirk	Edna Holley

WE WILL make whole all the above-named persons for any loss of pay suffered because of the discrimination against them.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right of self-organization, to form labor organizations, or to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in any or all such activities.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of any labor organization.

HERMAN O. WUNSCH AND WILLIAM SMITH
T/A ATLANTIC MAINTENANCE CO.,
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 AND RECOMMENDED ORDER

STATEMENT OF THE CASE

On a charge filed by Philadelphia Window Cleaners and Maintenance Workers' Union, Local 125, AFL–CIO, herein called the Union, the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for the Fourth Region, issued his complaint dated May 24, 1961, against Herman O. Wunsch and William Smith t/a Atlantic Maintenance Co., herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the complaint, the charge, and a notice of hearing were duly served upon the parties. The Respondent's answer to the complaint denies the averment of statutory violations set forth therein.

Pursuant to notice, a hearing was held at Philadelphia, Pennsylvania, on July 10 and 11, 1961, before Thomas N. Kessel, the Trial Examiner duly designated to conduct the hearing. All parties were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded

all parties. After the close of the hearing the Respondent filed a brief which has been carefully considered.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. PERTINENT COMMERCE FACTS

The complaint alleges and the answer admits that Herman O. Wunsch and William Smith are partners doing business under the trade name Atlantic Maintenance Co., and during times material to this case have maintained an office and place of business in Pleasantville, New Jersey, for the performance of custodial and janitorial services; that during 1960 the Respondent in the course of its business operations performed services valued in excess of $100,000, of which services valued at more than $50,000 were performed in States other than New Jersey. It is further alleged and admitted that the Respondent annually renders services valued in excess of $100,000 under contracts with the United States Government and that these services have a substantial impact on the national defense. Respondent concedes and I find from these facts that it is engaged in commerce within the meaning of the Act, and I further find that exercise of the Board's jurisdiction over its operations will effectuate the purposes of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Philadelphia Window Cleaners and Maintenance Workers' Union, Local 125, AFL–CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

The complaint alleges the Respondent's refusal to employ 20 named persons because of their membership in and adherence to the Union, and that such refusal to employ was violative of Section 8(a)(3) and (1) of the Act. The Respondent asserts that these persons never applied to it for employment and were, therefore, never refused employment.

In the latter part of January 1961, the Respondent obtained a contract for the performance of janitorial services at the United States Signal Corps Building in Philadelphia. These services were then being performed by a business organization called Penn Associates whose contract was to expire on January 31. The Respondent was to begin operations under its contract on February 1. On or about January 23, William Smith, then and now one of the Respondent's partners, and Floyd Braman, then but not now a partner, retained the Penn Associates foreman, Edward H. Christian, to supervise its work at the Signal Corps Building. At the same time they authorized Christian to employ for the Respondent those persons working under him for Penn Associates whom he regarded as desirable workers.

On the evening of January 24 Christian spoke to the assembled 25 or 26 employees comprising the janitorial night force at the Signal Corps Building and informed them that the Respondent would succeed Penn Associates on February 1 as contractor for the cleaning services in the building. Doris Jones, one of the night-shift employees present, testified that Christian declared at the meeting that he was to be in charge of the day and night shifts for the Respondent. She recalled that he had announced that there would be "union work and union scales" for the employees, but that there would be some personnel changes with not all the Penn Associates employees being retained. Thereupon he passed out individual slips of paper to the employees with instruction to insert name, address, and place of birth. The employees then returned the slips to him. According to Jones, Christian advised that he would later place on his desk the names of those employees whom he would keep. Christian conceded that he had passed out the slips and called for the information described by Jones but testified that he had said only that he wanted the slips to submit to the Signal Corps provost marshal for clearance. He acknowledged telling the employees that he would later post the names of those turned in by him to the provost marshal.

On January 26 Christian posted a sheet listing 21 names. These included the names of the 20 employees alleged in the complaint unlawfully to have been denied employment because of their membership in the Union. The other name was that of employee Ida Reeves who was hired by the Respondent on February 1 and who withdrew from membership in the Union on February 20. The listing of names on the sheet was preceded by the following statement:

JANUARY 26th 1961.

NOTICE

THE FOLLOWING PERSONS WILL BE HIRED BY THE ATLANTIC MAINTENANCE CO., as of Feb. 1st 1961, and will be required to fill out forms the night of January 31st at 9:00 P.M. Those persons, who's names I have, but dose [sic] not appear on this list, may apply as sub. workers if they so desire.

Christian's signature appeared at the bottom of the sheet with designation as foreman for the Respondent.

Subsequent to the posting of the foregoing notice it was withdrawn and discarded. The precise circumstances relating to its manner of removal are disputed, but no resolution of these contradictions is required. What matters is that sometime before January 31 Christian admittedly directed the removal of the notice and revoked its effect. The determination in this case of the question at issue depends on Christian's reasons for this action.

The aforementioned Doris Jones testified that on January 30 Christian had remarked to her that he was "not keeping any union workers, that the contractor did not sign the union agreement." In her presence Christian had also said to employee Ida Reeves, "If you want to work, go to the union and get a withdrawal card." Then, according to Jones, he said to her, "I would like to keep you, but I can't because you are in the union." Belle Ford, another former Penn Associates employee, testified that on the day when the notice had been removed she was told by Christian that she could continue to work provided she withdrew from the Union. He informed her that Ira Reeves had done so. A week later, after the Respondent was already operating under its contract, she assertedly received a telephone call from Christian who again offered her work if she would withdraw from the Union. Another Penn Associates employee, Daisy Anthony, testified that on January 31 Christian had absolved himself of blame for the fact that her employment was to end that day with these remarks: "Don't blame me. The Atlantic Maintenance is not hiring any union help. I can't hire you." Roumania Brewington had been a subforeman under Christian before January 31. He testified that he had held a conversation on January 30 with Christian in which the latter told him that he would not hire the "Penn Associates hands that was working there—that they were going to get all non-union to—all non-union employees to work." Dudley Riley, a former Penn Associates employee, testified that after the notice was posted but prior to January 31 Christian had told him that the Respondent did not want to provide bonds for its employees and would therefore not have any union help. Clarence Gamble, employed by the Respondent from February 1 to sometime in April 1961, testified that about March 8 or 10, Christian called a meeting of the Respondent's employees and told them that he had heard that some employees wanted to join the Union and that so long as he was the supervisor there would be no union in the building. Called as a witness by the General Counsel Floyd Braman testified that about the time when he hired Christian in the latter part of January 1961, Christian advised that he had some good workers in his force whom he would like to hire. Braman related that he had given Christian authority to hire them but not if they belonged to the Union. Then Christian observed they could get withdrawal cards from the Union.

Christian denied telling Jones and Ford they would have to get withdrawal cards from the Union to work for the Respondent. He denied the remark attributed to him by Anthony as well as the comments ascribed to him by Gamble. He did not refute Braman's testimony that he was instructed not to hire employees who belonged to the Union. He testified that when Braman informed him that the Respondent was not going to sign a union contract he removed the notice from the wall where it had been posted, and did so because he knew the persons listed were members of the Union and the Respondent was not going to have a union shop. He had planned to have these persons fill out the Respondent's regular employment application forms and tax forms before they started duty for the Respondent at 9 p.m. on January 31, and had then wanted to explain why the Respondent would not have a union shop. He claimed that he did have such a meeting with the night force on January 30 [1] at which time he reported what the wage scale would be. He

[1] I do not credit Christian's testimony that such meeting was held. Brewington testified credibly he was not requested by Christian to call such meeting and that he did not summon the employees under him to a meeting. Daisy Anthony and Yvonne Stowe, also a former Penn Associates employee, credibly testified they were neither called to nor

claimed also that he then told the employees "we could not hire people who were Union members, because we were not going to be a Union shop. But that anybody who wanted to join our company under this wage scale, without a union, was willing [sic] to do so." He further denied making the statement related by Riley about posting a bond for employees, but conceded that there was a meeting of three or four employees on January 28 or 29 at which Riley was present when he, Christian, said the Respondent would not operate a union shop and that the employees could work at the Respondent's pay scale if they so desired.

Ida Reeves denied that she had been requested by Christian or any agent of the Respondent to withdraw from the Union in order to obtain employment from the Respondent. She explained that she withdrew from the Union because she knows "that you cannot belong to a non-union shop and belong to a union."

That an employer's refusal to hire applicants for employment because of their union membership is violative of the Act has long been settled law.[2] This is not disputed by the Respondent. As noted, the Respondent maintains only that the persons who allegedly were denied employment had not applied therefor. The record shows otherwise.

The January 24 meeting by Christian with the 25 or 26 employees on the night force was clearly called by the former to apprise the employees of their job opportunities with the Respondent. When he advised them that he would post a list of those whom he would select for employment and contemporaneously instructed them to submit personal data on slips of paper, he was in effect asking for and accepting their applications for work. Obviously, these employees would not have filled out and submitted these slips if they had not thereby intended to show their desire for employment by the Respondent. The informality of these slips did not detract from their character as applications. Nor did the fact that the Respondent may have contemplated the completion by these employees of more detailed application forms before they actually entered on duty on February 1. The subsequent posting of the notice telling them in clear and unmistakable language that those whose names were listed would be hired by the Respondent as of February 1, 1961, leaves no room for doubt that Christian had solicited their applications for employment on January 24 and that by the posting of the list he had decided which applicants would be put to work on February 1. The subsequent withdrawal and revocation of that notice constituted a refusal to employ the persons listed therein which, if motivated by statutorily proscribed reasons, was violative of Section 8(a)(3) of the Act. There is ample evidence demonstrating that the Respondent was unlawfully motivated.

The credited testimony of Doris Jones, Belle Ford, Daisy Anthony, and Roumania Brewington reveals Christian's decision not to employ anyone who belonged to the Union and his conditioning of employment upon withdrawal from the Union. Braman's credited testimony shows that Christian was carrying out the Respondent's instructions not to hire the Union's members. Christian's own testimony is tantamount to a confession that the persons named in the complaint were known by him to be members of the Union and that he had not hired them for this reason. This evidence sufficiently proves the complaint allegation of the Respondent's unlawful discriminatory conduct and obviates need for consideration of other conflicting testimony further demonstrating Christian's unlawful motives. I find that the Respondent by denying employment to the persons named in the complaint on February 1, 1961, because of their membership in the Union violated Section 8(a)(3) and (1) of the Act.[3]

In reaching the foregoing conclusion, I have considered those portions of Christian's testimony to the effect that he told the employees they could work for the Respondent if they were willing to accept its pay scale. Were this all Christian had said there would be no basis for a finding of unlawful discrimination. This, however, was not the case, for these remarks were coupled with assertions that the Respondent would not hire members of the Union and with requirements that employees withdraw from the Union. Willingness to accept the Respondent's pay scales was apparently not enough to gain employment. It was also necessary to give up union membership. This requirement as the price for a job was plainly violative of the Act.

---

attended such meeting. In these circumstances I do not believe there was a January 30 meeting.

[2] See *Phelps Dodge Corp.* v. *N.L.R.B.*, 313 U.S. 177.

[3] *T I L. Sportswear Corporation*, 131 NLRB 176.

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, 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 Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It has been found that the Respondent on February 1, 1961, denied employment to the 20 employees named in the complaint in violation of Section 8(a)(3) and (1) of the Act.[4] I therefore recommend that the Respondent be ordered to offer employment on a nondiscriminatory basis to each of these 20 employees displacing if necessary any employee hired at or subsequent to the time of the discrimination against them to perform work for which each of these persons is qualified. I further recommend that the Respondent be required to credit all these employees with such seniority and other rights and privileges that would have accrued to them as of the dates when they would have been hired, absent the discrimination against them. If, after displacing employees in the aforesaid manner, the Respondent, for lawful reasons unrelated to its discriminatory motivation, has no existing need for any of the employees having the experience or qualifications of any of the employees against whom discrimination has been found in this case, the Respondent shall place them on a preferential list and offer them jobs for which their experience and qualifications show them to be equipped as replacements are needed or as new jobs are created. It is further recommended that the Respondent make whole those employees against whom discrimination has been found with the exceptions hereinafter noted, for any loss they may have suffered because of the discrimination against them by payment to them of sums of money equal to the amounts they normally would have earned as wages from the date of the discrimination to the date of the offer of employment or placement upon a preferential hiring list with backpay to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

The foregoing backpay recommendations shall not apply to Doris Jones, Belle Ford, and Dudley Riley. I am satisfied from their testimony that they would not have worked for the Respondent for its lower than union pay rates, even if the Respondent had offered them employment without attaching unlawful conditions. Doris Jones testified that when, in the course of her conversation with Christian on January 30, he told her he could not hire her because of her union membership, she asked how much he was paying and was told $1.15 an hour. She replied, "No, I come out cheaper by drawing unemployment." Belle Ford testified that during a conversation with Christian in which she was told to withdraw her card from the Union in order to receive employment from the Respondent, she asked what he was paying and was told $1.15 an hour. Her response is reflected by the following testimony: "I said anyone who would work——" This sentence was not completed by the witness because she was interrupted at this point by another question. However, her later testimony concerning another incident indicates that what she had undoubtedly told Christian was that she would not consider working for the Respondent for $1.15 an hour. Thus, when Christian subsequently called her on the telephone to find out whether she wanted to work and then instructed her to withdraw her card from the Union, she again asked what he would pay her and was told $1.15 an hour. Her response was, "I wouldn't be down." Dudley Riley testified that when he learned that his $1.55 hourly rate was going to be reduced to $1.40 he definitely made up his mind not to work for the Respondent for this rate. While I have recommended that the Respondent be required to offer Jones, Ford, and Riley employment without attaching unlawful conditions, I do not believe they are also entitled to backpay awards for a period when they would not have worked even if there had not been insistence by the Respondent upon compliance with its unlawful conditions.

Because the Respondent's unfair labor practices go to the heart of the Act, the commission of similar and of other unfair labor practices may reasonably be antici-

[4] Helen Holland, Daisy Anthony, Jacquline Miller, Thelma Strickland, Yvonne Stowe, Mary Morris, Marion Brooks, Doris Jones, Belle Ford, Rose Newkirk, William Waterson, Melvin Miller, Wilfred Coley, Don Eady, Richard Miller, Roumania Brewington, Albert Carson, Wayne Dotts, Dudley Riley, and Edna Holley.

pated. It will therefore be recommended that the Respondent be orderd to cease and desist from in any manner infringing upon the rights guaranteed its employees by Section 7 of the Act.

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. Herman O. Wunsch and William Smith t/a Atlantic Maintenance Co. are an employer within the meaning of Section 2(2) of the Act and are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Philadelphia Window Cleaners and Maintenance Workers' Union, Local 125, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By discriminating with respect to the hire and tenure of employment of the 20 employees hereinabove named the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (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.]

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW), AFL–CIO, and its Amalgamated Local No. 453 *and* Maremont Automotive Products, Inc., Charging Party. *Case No. 13–CB–888. December 18, 1961*

DECISION AND ORDER

On October 12, 1960, Trial Examiner Eugene E. Dixon 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 Intermediate Report attached hereto. Thereafter, both Respondents and the Charging Party filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings of the Trial Examiner made 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 case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, insofar as they are consistent with this Decision and Order.

We agree with the Trial Examiner that Respondents violated Section 8(b)(3) of the Act but not for the reasons on which he relied.

On the facts, which are accurately set forth in the Intermediate Report, we find, as did the Trial Examiner, that the unit 21 negotiating committee and its chairman, Hawkins, were the negotiators and agents for both Respondents, Local and International. However, we disagree with the Trial Examiner's holding that the International's