

sentatives of his employees" and thereby through indirection provides a labor organization with rights as the agent of such employees—is not invoked by General Counsel. That is, there is no claim that by the action in question the Respondent has failed to bargain in good faith with the Charging Union. Obvious reasons exist for the lack of such claim. Both the unit and the majority elements are still before the Board, and in the investigation stage.

So far as the record before the Trial Examiner is concerned, there is no evidence that any employee has been interfered with, restrained, or coerced in his right to join or not to join any labor organization, or to select as his bargaining agent any labor organization, or that individually or collectively employees have been discriminated against in fact or for the purpose of discouraging or encouraging membership in any labor organization.

Brooks' affidavit makes it clear that the Respondent does not relish the idea of splitting off its lithographers from the rest of its printing department, and that as an economic move it has effected a reorganization. And unless it be held that a labor organization acquires some proprietary control over an employer's way of conducting his business merely by asking to bargain for a specific group of his employees, the Trial Examiner fails to perceive how any section of the Act has been violated.

It would appear that General Counsel is anticipating a possible right which the Charging Union may acquire, at some future time, as the bargaining agent of the lithographers only. But until that right has been certified, by the Board, it does not exist and can hardly be violated. And until that right is violated, there can be no derivative violation of Section 8(a)(1).

It will be recommended that the complaint be dismissed.

[Recommendations omitted from publication.]

Weyerhaeuser Company and Amalgamated Lithographers of America, Local No. 4, Petitioner

Weyerhaeuser Company and Printing Specialties & Paper Products Union No. 415, affiliated with International Printing Pressmen and Assistants' Union of North America, AFL-CIO, Petitioner. *Cases Nos. 13-RC-7069 and 13-RC-7168. December 19, 1961*

DECISION AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, consolidated hearings were held before Rush F. Hall, 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 these cases,¹ the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.²
2. The labor organizations involved claim to represent certain employees of the Employer.

¹ The Employer's request for oral argument is hereby denied, as the record in this proceeding, including the briefs of the parties, adequately presents the issues and positions of the parties.

² The parties stipulated that the Employer is engaged in the manufacture of folding cartons and paper boxes at its Chicago, Illinois, plant and produces and ships goods directly outside the State of Illinois in value exceeding \$400,000 per annum.

3. Questions affecting commerce exist 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.

4. In Case No. 13-RC-7069 Lithographers petitioned for a unit of "all lithographic production employees" at the Employer's Chicago plant. In Case No. 13-RC-7168 Printing Pressmen petitioned for a unit of "all production and maintenance employees of the Company, including plant clerical[s]" excluding truckdrivers and classifications normally excluded. On May 11, 1960, the petitions were consolidated for hearing. The Employer contends that a unit confined to lithographic production employees is inappropriate, and that only a plant-wide unit is proper; it contends further that no smaller unit may be appropriate than one comprising the entire printing department, including both letterpress and lithographic employees.

The Employer operates a factory in Chicago, Illinois, where it is engaged in the manufacture of paper boxes and folding cartons. Some of the products are "decorated" either by letterpress or by lithographic printing in the printing department of the plant. The Employer operates two lithographic presses, a two-color Harris press and a larger five-color Miehle press, which are located, together with certain letterpress equipment, in the printing department of the Employer's Chicago plant. Prior to the events hereinafter set forth, lithographic production employees included first pressmen, second pressmen, apprentice pressmen, feeders, helpers, and floormen or stock handlers. These employees, 16 in number and working under the separate immediate supervision of a lithographic foreman, were carried by the Employer on a separate "offset" payroll and were trained on the job by the Employer specifically for lithographic work. Feeders, helpers, and floormen apparently interchanged with other employees in the plant during times of slack work to prevent layoff or to provide additional help for overloaded departments, but lithographic pressmen were never interchanged. The lithographic employees in the Employer's plant had the same responsibilities and performed the same duties as lithographers in regular commercial lithographic plants. The on-the-job training received by lithographic employees extended over a period of $\frac{1}{4}$ years, beginning as floorman and progressing through the categories of helper, feeder, apprentice pressman, and second pressman, to first pressman. One section of the Employer's printing area was designated as the "offset department." It was stipulated by the parties that there was no history of collective bargaining at the Chicago plant affecting the employees involved herein with the exception of the Employer's truckdrivers who are not involved in either petition.

The Board has held, in similar situations, that lithographic employees may constitute an appropriate unit separate from other

employees.³ However, a plantwide unit including lithographic employees may also be appropriate. On the basis of the record as of the close of the hearing herein, we find that each requested unit may be appropriate; namely, the lithographic unit sought by Lithographers (including the following lithographic production employees: first pressmen, second pressmen, apprentice pressmen, feeders, helpers, and floormen) and the plantwide unit requested by Printing Pressmen.

On June 17, 1960, the Employer filed a motion to remand these cases for further hearing.⁴ It alleged in a supporting affidavit that since the termination of the hearing on June 1, 1960, it had instituted a program of additional training and interchanging of the lithographic and letterpress employees so that each would be qualified to do the work of the other, and that as a result of such additional training the distinctions in skills which previously existed between them was being eliminated. The Employer contends therefore, that in view of the changed situation, the uniform duties and skills, and the interchange of lithographic and letterpress employees, a unit of lithographic production employees was no longer appropriate.

In our decision in Case No. 13-CA-3750, issued this day, and reported at 134 NLRB 1371, in which the legality of the Employer's aforementioned conduct was in issue, a majority of the Board found that, by reorganizing and retraining its lithographic production employees, the Employer had engaged in conduct which violated Section 8(a)(1) and (3) of the Act. As part of the remedy devised to fit the unusual circumstances of the case, the Board ordered that the Employer cease and desist from engaging in conduct which deprives its employees of their right to organize and select a bargaining representative of their own choosing; and, in order to restore to the lithographic employees the right of which the Employer had sought to deprive them, the Board directed that the lithographic employees, if found to constitute a separate appropriate unit, be given an opportunity to decide in this representation proceeding, whether they desired to be separately represented by the Amalgamated Lithographers of America, Local #4, the labor organization which had filed a petition on their behalf. In view, however, of the commission of such unfair labor practices and the probability that their effects have not been dissipated, we shall not direct immediate elections, but shall authorize the Regional Director for the Thirteenth Region to conduct the elections at such time as he is satisfied that the effects of the unfair labor practices have been dissipated or at such earlier time as the Lithographers may request him to proceed.

³ *Weyerhaeuser Company*, 129 NLRB 998, 999; *Printing Industry of Delaware*, 131 NLRB 1100; *Lord Baltimore Press, Incorporated*, 128 NLRB 334, 337. *N.L.R.B. v. Weyerhaeuser Company, successor to Ace Folding Box Corporation*, 276 F. 2d 865 (C.A. 7), cert. denied 364 U.S. 879.

⁴ In view of our determination herein, the Employer's motion to remand is hereby denied.

In directing the elections herein, we shall not, however, make any final unit determination until we have ascertained the desires of the employees as expressed in the elections. We shall direct that separate elections be held among the following voting groups of employees at the Employer's Chicago plant:

A. All those who functioned as lithographic production employees on June 1, 1960, including those who worked as first pressmen, second pressmen, apprentice pressmen, feeders, helpers, and floormen or stock-handlers or their replacements, but excluding all other employees, watchmen and guards, and all supervisors within the meaning of the Act.

B. All production and maintenance employees, including plant clerical employees, but excluding those employees designated in voting group "A," truckdrivers, office clericals, professionals, guards and watchmen, and supervisors as defined by the Act.

Since Printing Pressmen has petitioned for a unit of production and maintenance employees, apparently including lithographic production employees, we shall place them on the ballot in the voting group of lithographic production employees.

5. If a majority of the employees in voting group "A" vote for Lithographers, they will be taken to have indicated their desire for separate representation, and the Regional Director conducting the election is instructed to issue a certification of representative to the Lithographers for a separate unit of lithographic production employees which the Board, in these circumstances, finds to be appropriate for collective-bargaining purposes. The certification by the Regional Director shall be as follows: "All lithographic production employees at the Employer's plant at Chicago, Illinois, including first pressmen, second pressmen, apprentice pressmen, feeders, helpers, and floormen or stock-handlers but excluding all other employees, watchmen and guards, and all supervisors within the meaning of the Act"; and, in such event, should a majority of the employees in voting group "B" vote for the Printing Pressmen as their bargaining representative, the Regional Director is instructed to issue a certification of representative to such bargaining representative for a unit of production and maintenance employees (specifically excluding the above lithographic production employees), which the Board in these circumstances finds to be appropriate for collective-bargaining purposes. However, if a majority in voting group "A" does not select Lithographers, the ballots of the employees in that voting group will be pooled with those of the employees in voting group "B" and if a majority of the employees in the pooled group select the Printing Pressmen as their bargaining representative, the Regional Director is instructed to issue a certification of representative to such bargaining representative for a unit of production and maintenance employees includ-

ing lithographic production employees, which the Board in such circumstances finds to be an appropriate unit for collective-bargaining purposes.⁵

[Text of Direction of Elections omitted from publication.]

MEMBER RODGERS took no part in the consideration of the above Decision and Direction of Elections.

⁵ If the votes are pooled they shall be tallied in the following manner: the votes for Lithographers shall be counted as valid votes, but neither for nor against the Printing Pressmen; votes are to be afforded their face value whether for or against representation by the Printing Pressmen.

Foley Construction Company and Truckdrivers, Chauffeurs and Helpers Union Local 100, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

The W. L. Harper Company and Truckdrivers, Chauffeurs and Helpers Union Local 100, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

Chas. F. McCurdy, Inc.¹ and Truckdrivers, Chauffeurs and Helpers Union Local 100, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases Nos. 9-CA-1906, 9-CA-1907, and 9-CA-1908. December 20, 1961

DECISION AND ORDER

On November 15, 1960, Trial Examiner Leo F. Lightner issued his Intermediate Report in the above-entitled consolidated proceeding, finding that the Respondents had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the Intermediate Report attached hereto. Thereafter, the General Counsel and the Charging Party filed exceptions to the Intermediate Report, together with 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 and the entire record in this case, including the exceptions and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, to the extent consistent with our decision herein.

The Respondents, who are engaged in the heavy construction industry, maintain offices in Cincinnati, Ohio, and work primarily in Ohio and Kentucky. Since 1953, the labor relations division of the

¹ The name of this Respondent appears as amended at the hearing.