

action of the type conventionally ordered in such cases, which I find necessary to remedy and to remove the effects of the unfair labor practices and to effectuate the policies of the Act. For reasons which are stated in *Consolidated Industries, Inc.*, 108 NLRB 60, 61, and cases there cited, I shall recommend a broad cease-and-desist order.

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. United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. The employee representation plan constituted 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 rights guaranteed in Section 7 of the Act, Respondent engaged in unfair labor practices proscribed by Section 8(a)(1).

4. By discharging Glenn Moyer and Joseph Tarantino because of their participation in concerted activities protected by Section 7 of the Act, Respondent engaged in unfair labor practices proscribed by Section 8(a)(1).

5. By discharging Glenn Moyer and Joseph Tarantino because of their participation in the employee representation plan, Respondent engaged in discrimination to discourage membership in a labor organization, thereby engaging in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

6. By discharging Glenn Moyer and Joseph Tarantino because of their activities on behalf of the Steelworkers' Union, Respondent engaged in discrimination to discourage membership in a labor organization, thereby engaging in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

7. The aforesaid unfair labor practices having occurred in connection with the operation of Respondent's business as set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and substantially affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Cleveland Pneumatic Tool Company, Div. of Cleveland Pneumatic Industries, Inc., Petitioner and Aerol Aircraft Employees Association¹ and Metal Polishers, Buffers, Platers, and Helpers International Union, AFL-CIO, and its Local No. 3.² Case No. 8-RM-271. February 1, 1962

DECISION AND ORDER

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Rodgers and Fanning].

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

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

¹ Hereinafter referred to as the Association.

² Hereinafter referred to as the Metal Polishers Union.

2. The labor organizations involved claim to represent employees of the Employer.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c) and Section 2(6) and (7) of the Act, for the following reasons:

The Employer, an Ohio corporation engaged in the manufacture of military and civilian aircraft landing gear, seeks an election to determine the bargaining representative for the metal-finishing employees in department 23 of its main plant in Cleveland, Ohio, or in the alternative, clarification of the certifications of the two unions involved herein. The Employer takes the position that the Metal Polishers Union and the Association are seeking to represent employees currently being represented by each other. The petition seeks an election in a single overall unit of all metal-finishing employees in department 23.

The record discloses that the Metal Polishers Union was certified in 1944 by the Board for a craft unit of metal-finishing employees in department 23, which unit is described in the certification as "all metal polishers, buffers, platers, and helpers, excluding all other employees." See *Cleveland Pneumatic Tool Company*, 55 NLRB 746. The Association (which was then known as the United Social Club and Employees Association) was certified at the same time for a unit of production and maintenance employees, which included the classification "snaggers."

In April 1961, the Association won a consent election conducted by the Board in the production and maintenance unit (Case No. 8-RC-4204). Although the Employer challenged the eligibility of the snaggers to cast ballots in that election, on the ground that they belonged in a separate craft unit, the challenged ballots were insufficient to affect the outcome and, therefore, the Board did not have to pass upon the validity of the challenges. The election resulted in the certification of the Association on April 19, 1961, as the representative of the production and maintenance employees, excluding those employees represented by the Metal Polishers Union. On May 16, 1961, the Company and the Association executed a 3-year contract covering the production and maintenance unit including the snaggers in department 23.

The Association contends that this petition should be dismissed under Section 9(c)(3) of the Act as amended, because it was filed less than 12 months after a valid election had been held and within the certification year. As the April 1961 certification specifically excluded only the metal polishers and not the snaggers, and as the con-

tract between the Employer and the Association entered into following that certification covers snaggers, we find merit in the Association's contention. In accordance with the Board's well-established rule not to entertain petitions during an incumbent's certification year, we shall dismiss the instant petition. See *Centr-O-Cast & Engineering Company*, 100 NLRB 1507. See also *Sumner Williams, Inc.*, 122 NLRB 349.

By its motion for clarification, the Employer seeks to have the Board exclude the snaggers from the Association's unit and include them in the Metal Polishers unit. In view of its entering into a bargaining agreement which includes the snaggers, we shall deny the motion.

[The Board dismissed the petition and denied the motion for clarification.]

Ozark Hardwood Company and General Drivers and Helpers, Local 373, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Case No. 26-CA-72 (formerly 32-CA-72). February 2, 1962*

SUPPLEMENTAL DECISION AND RECOMMENDATION

On December 12, 1961, the Board issued a Proposed Supplemental Decision and Recommendation in the above-entitled proceeding,¹ which provided for the filing of exceptions thereto within 20 days. No statement of exceptions has been filed with the Board, and the time for such filing has expired.

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts the Proposed Supplemental Decision and Recommendation as its final Supplemental Decision and Recommendation. For the reasons stated in the Proposed Supplemental Decision, and upon the entire record in the case, the Board respectfully recommends to the United States Court of Appeals for the Eighth Circuit that the Order issued by the Board in this case on December 19, 1957, be enforced with the modification that the sums required by said Order to be paid by Respondent to each discriminatee therein named shall be in full liquidation and discharge of all back-pay due in this proceeding in consequence of Respondent's discrimination, with no other or further liability herein.

¹ 134 NLRB 1188.

135 NLRB No. 85.