herein be consolidated, in the absence of the pendency in the RD case of the question of whether the election should be held or the petition dismissed, I find no basis for even inferring the existence of a directive to consider such a question. Therefore, I consider it outside the scope of my authority in this proceeding to make any recommendation to the Board with respect to the appropriateness of the remedy suggested by the EA and the General Counsel.

However, in light of the finding in the CA case of a violation of Section 8(a)(1), the Board might wish to consider whether it would effectuate the policy of the Act to overrule the Acting Regional Director's approval of the stipulation for certification upon consent election and dismiss the petition in the RD case. I believe it would be inappropriate for me to make a gratuitous recommendation with respect to the appropriateness of the Board undertaking consideration of this question or with respect to how the question should be determined, were it to be considered.

Upon the basis of the foregoing findings of fact, and upon the entire record in this proceeding, I make the following:

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The EA is a labor organization within the meaning of Section 2(5) of the Act.
3. By implanting in the mind of an employee the idea of organizing a movement to decertify a union which is the recognized bargaining representative for the unit of which said employee is a member, encouraging him to take such action, and advising him of the initial steps to take, Respondent did initiate such a movement and thereby has interfered with employees in the exercise of their statutory rights within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.
5. None of the allegations of unfair labor practices set forth in paragraphs numbered 9 and 10 of the complaint herein has been sustained.
6. The allegations set forth in paragraph numbered 8 have been sustained to the extent of the finding in paragraph numbered 3 hereinabove

[Recommendations omitted from publication.]

McCormick Construction Company *and* Joseph Hender

Local Union 542, International Union of Operating Engineers, AFL-CIO *and* Joseph Hender. *Cases Nos. 4-CA-1670 and 4-CB-421. March 15, 1962*

SUPPLEMENTAL DECISION AND ORDER

On March 23, 1960, the Board issued its Decision and Order in the above-entitled proceeding,[1] finding that the Respondent Company and the Respondent Union had engaged in and were engaging in certain unfair labor practices violative of Section 8(a)(3) and (1) and Section 8(b)(2) and (1)(A) of the Act, respectively. In brief, the Board found that the Respondents entered into and maintained a hiring arrangement which failed to contain certain safeguards required by the Board as set forth in its *Mountain Pacific* decision.[2] In addition, the Board found that the Respondents by maintaining and enforcing this arrangement discriminated against Joseph Hender.

[1] 126 NLRB 1246. (Member Fanning not participating.)

[2] *Mountain Pacific Chapter of the Associated General Contractors, Inc., et al.*, 119 NLRB 883

On October 31, 1960, the Board filed in the United States Court of Appeals for the Third Circuit a petition for enforcement of its Decision and Order. On April 4, 1961, the court remanded this case to the Board "for further consideration and determination of the proper party respondent."[3] On April 17, 1961, the Supreme Court of the United States handed down its decision in *Local 357, Teamsters*[4] which rejected the Board's determination in the *Mountain Pacific* case that an exclusive hiring arrangement was discriminatory unless it contained certain safeguards. In the *News Syndicate* case,[5] the Court also rejected the Board's conclusion that an agreement which gives foremen hiring authority was necessarily unlawful where the foremen were members of the union and the union's constitution provides that foremen hire only members of the union.

In light of these decisions, the Board[6] has reexamined its conclusions in the above-entitled consolidated proceeding and concludes that the record does not preponderantly establish either that the parties operated an unlawful hiring arrangement, or that the refusal of employment to Joseph Hender was violative of the Act.[7] Accordingly, we shall dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

[3] In view of our dismissal of the complaint herein, we need not pass on this issue.

[4] *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Los Angeles-Seattle Motor Express)* v. *N.L.R.B.*, 356 U.S. 667.

[5] *N.L.R.B.* v. *News Syndicate Company, Inc. and New York Mailers' Union No. 6, International Typographical Union, AFL–CIO*, 365 U.S. 695.

[6] Pursuant to the provision 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 [Members Leedom, Fanning, and Brown].

[7] Subsequent to the hearing herein, while the case was on remand from the Circuit Court of Appeals for the Third Circuit, Local Union 542, International Union of Operating Engineers, alleged that Hender was discriminated against because he opposed the administration of the Local Union by a trusteeship which was established by the International Union and was in existence during the alleged unfair labor practices. No evidence dealing with the trusteeship or Hender's position with respect thereto was presented at the hearing. Having considered the foregoing assertion in the nature of a motion to adduce additional evidence regarding Hender's employment, we are constrained to deny such motion as it does not deal with newly discovered evidence or evidence that was not available at the time of the hearing. *Sheet Metal Workers International Association, Local Union No. 99 (Dohrmann Hotel Supply Company)*, 120 NLRB 1366, 1367.

Houston Building and Construction Trades Council[1] ***and*** **Claude Everett Construction Company.** *Case No. 23–CP–2. March 16, 1962*

DECISION AND ORDER

On July 28, 1961, Trial Examiner William F. Scharnikow issued his Intermediate Report in the above-entitled proceeding, finding that the

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