

ployees of the quality control department in the classifications of quality control helper apprentice, quality control mechanic, laboratory technician, and engineering technician were technical employees whose interests were not distinguishable for bargaining purposes from those of other unrepresented technical employees in the shipyard.⁴ The ratesetters appear to have a close community of interest with production checkers as in most instances they have worked in this capacity and they retain seniority in the production checkers unit. Under current Board policy as set forth in *Sheffield*⁵ they might appropriately be included in a unit with the production checkers.⁶ However, no labor organization seeks a unit consisting of ratesetters and production checkers. Additionally, it appears that production progressors in department 2 do similar or related work to ratesetters and are not included in the petition.

From the foregoing and from the entire record, we find that the employees sought in the instant petition do not constitute a unit appropriate for collective bargaining under established Board standards. We shall, accordingly, dismiss the petition.

[The Board dismissed the petition.]

⁴ Case No. 15-RC-2356, issued October 22, 1961 (not published in NLRB volumes), dismissing a petition for employees of the quality control department.

⁵ *The Sheffield Corporation*, 134 NLRB 1101.

⁶ The Employer's motion at the close of the hearing requesting the Board to rescind the certification of representatives in the production checkers unit hitherto issued in Case No. 15-R-1077 (not published in NLRB volumes), is herewith denied, inasmuch as that question cannot be said to have been adequately litigated herein.

United States Welding Works Company, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 452. *Case No. 27-CA-1152. June 12, 1962*

DECISION AND ORDER

Upon charges duly filed on January 17, 1962, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 452, herein called the Union, the General Counsel of the National Labor Relations Board, herein called the General Counsel, by the Regional Director for the Twenty-seventh Region, issued a complaint dated March 7, 1962, against United States Welding Works Company, Inc., herein called the Respondent. The complaint alleged that the Respondent violated Section 8(a) (1) of the Act by promising certain benefits to employees if they would abandon the Union.

On March 15, 1962, Respondent filed its answer to the complaint denying the allegation and alleging as an affirmative defense that its

conduct was protected by the First Amendment to the Constitution of the United States and Section 8(c) of the Act. Thereafter, all parties joined in a stipulation to transfer the proceeding directly to the Board. In their stipulation, the parties agreed to waive a hearing before a Trial Examiner, the making of findings of facts and conclusions of law by a Trial Examiner, and the issuance of an Intermediate Report and Recommended Order. The parties further stipulated that the entire record shall consist of the complaint, the Respondent's answer, and a stipulation of facts together with the exhibits attached thereto. On March 28, 1962, the Board issued an order approving the stipulation and transferring the case to the Board for the purpose of making findings of fact and conclusions of law and the issuance of a Decision and Order. Thereafter, the General Counsel and the Respondent filed briefs with the Board.

Upon the basis of the stipulation of the parties, the briefs, and the entire record in the case, the Board makes the following:¹

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

United States Welding Works Company, Inc., is a Colorado corporation having its principal office, plant, and place of business in Denver, Colorado, where it is engaged in the distribution of welding supplies. During the 12-month period ending June 30, 1961, Respondent grossed approximately \$575,000 in revenues, and in excess of \$50,000 of the amount was derived from sales made directly to places located outside the State of Colorado.

We find that Respondent is, and has been at all times material hereto, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 452, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

The sole issue in this case, on the facts stipulated by the parties, is whether the Respondent violated Section 8(a)(1) of the Act by promising employees who were union members certain benefits if they would abandon the Union. Briefly, the facts are as follows:

Respondent, for the past 3 or 4 years, had been considering institution of a deferred profit-sharing plan for employees who were not in the bargaining unit represented by the Union. In June 1961, the

¹ Pursuant to the provision of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Leedom, Fanning, and Brown].

plan was adopted. During the first week of December 1961, Respondent held a dinner for employees who were eligible to participate in the plan in order to familiarize them with the deferred profit-sharing plan and its benefits. The dinner was tendered only to those employees eligible to participate in the plan.

On three or four occasions union members approached Mr. Lofgren, Respondent's president, and inquired how they might get out of the Union. One such employee, Roger Whitaker, was referred by Lofgren to the National Labor Relations Board. On January 12, 1962, Whitaker, in accordance with procedural information previously received at the Denver, Colorado, office of the Board, filed a decertification petition with the Board. Unfair labor practice charges alleging, in substance, that Respondent has instituted the profit-sharing plan to destroy its majority, were filed by the Union on January 17, 1962. These charges were dismissed.

Respondent's president, on January 22, and again on February 2, 1962, sent letters to all of Respondent's employees including those in the bargaining unit represented by the Union. The first letter informed the employees that a decertification petition had been filed; that such petition requested the Board to conduct an election to determine whether the Union would continue to represent the employees in the bargaining unit; that majority rule would determine the outcome of the election; and that the Respondent would keep them informed of further developments. The second letter, dated February 2, is the one relied upon by the General Counsel as the gravamen of the 8(a)(1) allegation of this complaint. The body of that letter, which was signed by Respondent's president, reads as follows:

When I wrote you last week, advising you of the company's receiving notice from the National Labor Relations Board of a filing of a petition for an election among those of you in the bargaining unit, I said that I would attempt to keep you informed.

As of this writing the election has been blocked, as the result of an apparent delaying tactic of the Teamsters Union by the Union's filing of an unfair labor practice charge against the company. The charge alleges:

Since on or about January 1, 1962 the above named Employer discriminatorily instituted a profit sharing plan for non union employees only. Above named profit sharing plan was instituted in order to undermine and destroy the undersigned labor organization's majority status. By the above and other acts the above named employer has interfered with, restrained and coerced its employees in violation of their rights guaranteed by Section 7 of the act.

The company considers this action on the part of the Teamsters, clearly and simply an attempt to harass both the employees and the company by delaying the secret National Labor Relations Board's conducted election that the employees have requested. As many of you recall, we discussed the new profit sharing plan last June with those of you who were eligible to participate. As you all know there are many ways in which we, as employees can be compensated. Some of the methods used at U.S. Welding are a straight hourly wage, a weekly or monthly salary, a commission or a combination of these. We all are familiar with the first two methods. A good example of the third method is our driver-salesmen, who are paid a weekly salary and also on a commission basis. So too, the profit sharing plan adds another method of compensation for eligible employees, another combination method if you please.

The company feels that the Teamsters charge is unfair, unfounded, and intended primarily to delay the desire of the employees—a free, secret, government conducted election. To represent the interests of the company and to help make the truth known to the National Labor Relations Board we have turned the matter over to the company attorney. As of this time there is nothing additional to report except to say that I will continue to keep you advised of the developments on this important subject.

The General Counsel contends that the effect of this foregoing letter in the context of a forthcoming decertification election is to offer employees who are union members the benefits of the Employer's profit-sharing plan if they will abandon the Union. We do not so construe it. There is nothing in the letter itself which contains such an offer, and there is no other evidence in the record which warrants the construction urged by the General Counsel. We shall, accordingly, dismiss the complaint.

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 452, is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

[The Board dismissed the complaint.]