Boetticher & Kellogg Co., Inc. *and* Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Case No. 25–CA–1412. July 18, 1962*

DECISION AND ORDER

On March 5, 1962, Trial Examiner Lloyd A. Fraker issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was 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 exceptions to the Intermediate Report and a supporting brief.

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 [Chairman McCulloch and Members Leedom and Brown].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. Except as indicated below, the rulings are hereby affirmed.[1] The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the extent consistent with the decision below.

We agree with the Trial Examiner's conclusion that the Respondent refused to bargain with the Union in violation of Section 8(a)(5) of the Act. As already noted, we reach this conclusion on the basis of testimony given by Respondent's witnesses and on uncontroverted testimony by others, as follows:

On April 8, 1961, Respondent's three over-the-road truckdrivers, Pate, Birchler, and Martin, designated the Union as their bargaining representative. On April 10, the Union requested recognition of the Respondent for a unit of the over-the-road drivers. At this time, Respondent also employed two city drivers and a warehouseman, Hooper, who was assigned to over-the-road driving duties for about 10 percent of his time.

The Union's recognition demand was received by Respondent on April 11, and Respondent's Vice President Killinger conceded that he then had no doubt that the Union was the "agent" of the three over-the-road drivers.

[1] While we find that the Trial Examiner erred in not permitting any cross-examination of Martin by Respondent, we do not find this prejudicial error for we are not relying on Martin's testimony herein Our conclusion that Respondent violated the Act is based only upon testimony of Respondent's witnesses and the testimony of others which is uncontradicted. Also, although we find error in the aforementioned ruling of the Trial Examiner, we are satisfied, upon careful examination of the record, that neither it nor any other circumstance cited by Respondent supports its charge of bias and prejudice on the part of the Trial Examiner.

On April 13, 1961, Respondent replied to the Union as follows:

> This will acknowledge receipt of your letter of April 10, 1961, addressed to the writer, in which you claim that a majority of the employees in what you define as the collective bargaining unit, have selected your union as the bargaining agent.
>
> We, of course, have no way of knowing whether your union does represent a majority of the over-the-road semitractor-trailer drivers. However, what information we have that has come to our attention is to the contrary.
>
> We also have in our possession a petition which the National Labor Relations Board calls Case No. 25–RC–2016, asking for an election at our Company. Be advised that we have already told the National Labor Relations Board that we will be glad to cooperate with them in their investigation of this case.

Also on April 13, Respondent's Vice President Killinger asked employee Pate if he, Birchler, and Martin had joined the Union and, upon receiving an affirmative reply, requested Pate to arrange a meeting of these three employees with him (Killinger) on the following weekend on a nonwork day.

On Sunday, April 16, the three over-the-road truckdrivers met at Respondents' office with Killinger and Respondent's secretary-treasurer, Don Heseman. At the outset of the meeting, Killinger asked each employee whether he had joined the Union, stating that he did not have to reply if he did not want to. All three answered in the affirmative. There followed a discussion of employee grievances concerning the overloading of trucks and the assignment of Hooper to driving of certain of the loads. The employees complained of the overloading both on grounds of safety and because the lighter loads resulted in more trips (the employees were paid by the hour). Also, they viewed the assignment of Hooper to part-time truckdriving duties as cutting down their time. Killinger promised he would look into the matter with a view to making some adjustments, particularly with respect to the overloading complaints.

On April 20, Pate telephoned Killinger and told him that he and Birchler would like to meet with him further.[2] Killinger set Saturday, April 22, as the date for the requested meeting. On that date, Killinger and Respondent's president, Kirwer, met with Pate and

[2] According to Killinger, Pate said at that time, "Birchler and I have decided to withdraw from the union but we would like to talk to you about it first." Pate denied making any such statement when he telephoned. He admitted, however, that in the course of the meeting thereafter held, he and Birchler told Killinger that both of them were thinking of withdrawing from the Union. The Trial Examiner found that Birchler and Pate were in fact considering withdrawing from the Union "by the time of the second meeting" and, under either version, it seems clear that this was so. However, these employees did not in fact withdraw from the Union. Respondent does not claim that it thought that they had done so, either at that time or any time here material

Birchler. Pate had with him a list of items for a "contract" which included: (1) the previously discussed grievances about the overloading of the trucks and Hooper's assignment to routes; (2) a more evenly balanced daily schedule of hours of driving; (3) a guarantee of 45 hours per week; and (4) a wage increase of about 25 percent in the hourly rate. Killinger admittedly stated that Respondent would not "contract" and was not permitted to "promise" anything so long as the employees were in the Union and the Union was in the picture. There was a discussion of each of the specific items above mentioned. As to each, Killinger commented as follows: (1) the truckloads would be lightened; (2) Hooper would not be assigned to any runs "except in case of emergency"; (3) no promise could be given about a 45-hour guarantee because there could not be certainty as to the amount but up to now the employees had in fact worked at least 45 hours; and (4) as to the wage item, Respondent "would be lucky" if it could manage a 10-percent increase, but that nothing could be done or promised definitely while the Union was in the picture.

At the hearing in the representation proceeding on May 5, Respondent claimed that the requested unit was inappropriate and maintained that the only appropriate unit was one encompassing all the Respondent's truckdrivers, including the city drivers and the part-time driver, Hooper. The Board found the Respondent's position to be without merit in its Decision and Direction of Election issued August 7, 1961, and held that the requested unit of over-the-road drivers, excluding Hooper, was in fact appropriate.[3]

It is clear from the foregoing facts that the Union, representing all the employees in an appropriate unit, requested recognition as the bargaining agent for that unit and has been rejected by Respondent. Respondent claims that it nevertheless did not violate the Act because it had a good-faith doubt as to the appropriateness of the requested unit as well as the Union's majority status therein. We are not persuaded by Respondent's defense.

Respondent's rejection on April 13 of the Union's April 11 request states that it had no way of knowing whether the Union represented a majority of the over-the-road drivers and that what information it had was "to the contrary." However, Killinger's own testimony indicates that Respondent did not entertain any such doubts and possessed no such "contrary" information. On the very day Respondent's reply was transmitted to the Union, Respondent learned from Pate that all three over-the-road drivers had joined the Union. It was told the same thing on April 16, this time by all three drivers themselves, and it could not then have had any reasonable doubts of the Union's representative status. Yet Respondent persisted in its refusal to

[3] The representation petition was dismissed following issuance by the General Counsel of the instant complaint.

recognize the Union. The Respondent now asserts that it always doubted the appropriateness of the requested unit. But it did not challenge the validity of the Union's request on this ground in its April 13 reply. And even after the Board found the requested unit to be an appropriate one, Respondent was still not prepared to extend recognition to the Union. When, in addition to all the foregoing, are added Respondent's interrogation of the over-the-road drivers [4] and its dealing with those drivers outside the presence of their bargaining representative, we are convinced, and conclude, that Respondent refused to recognize and bargain with the Union because of a fixed intent to avoid dealing with the Union at all and that its conduct violated Section 8(a)(5) and (1) of the Act.[5]

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Boetticher & Kellogg Co., Inc., Evansville, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully interrogating its employees as to their membership in and activities on behalf of Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

(b) Bargaining directly with its employees in derogation of the rights of their exclusive bargaining representative.

(c) Refusing to recognize and bargain with the above-named Union as exclusive representative of the employees in the appropriate bargaining unit. The appropriate unit is: All over-the-road truckdrivers employed by Respondent at its Evansville, Indiana, establishment, excluding city truckdrivers, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights 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) Upon request, bargain collectively with the above-named Union as to the wages, hours, and other terms and conditions of employment of the employees in the appropriate unit, and, if an agreement is reached, embody the terms thereof in a written contract.

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[4] In the circumstances described, we agree with the Trial Examiner that Respondent's interrogation of the drivers violated Section 8(a)(1) of the Act.

[5] See *Fred Snow, Harold Snow and Tom Snow d/b/a Snow & Sons*, 134 NLRB 709; *Mitchell Concrete Products Co., Inc*, 137 NLRB 504.

(b) Post at its Evansville, Indiana, establishment, copies of the notice attached hereto marked "Appendix."[6] Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after having been duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, 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.

(c) Notify the Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith.

[6] 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 you that:

WE WILL NOT unlawfully interrogate our employees as to their membership in and activities on behalf of Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

WE WILL NOT bargain directly with our employees in derogation of the rights of their exclusive bargaining representative.

WE WILL NOT refuse to recognize and bargain with the aforesaid labor organization as the exclusive representative of our employees in the appropriate unit.

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

WE WILL, upon request, recognize and bargain with said labor organization as the exclusive representative of our employees in the appropriate unit, and if an agreement is reached, embody the terms thereof in a written contract.

The unit of our employees appropriate for the purposes of collective bargaining with the said labor organization is:

All over-the-road truckdrivers employed by us at our Evansville, Indiana, establishment, excluding city truckdrivers, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

BOETTICHER & KELLOGG CO., INC.,
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.

Employees may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, Telephone Number, Melrose 2-1151, if they have any question concerning this notice or compliance with its provisions.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

The original unfair labor practice charge in this case was filed July 16, 1961, and the amended charge was filed July 28, 1961, by Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, against Boetticher & Kellogg Co., Inc., herein called the Respondent. The complaint was issued August 30, 1961.

This case was heard by Trial Examiner Lloyd R. Fraker at Evansville, Indiana, on January 3, 1962.

At the hearing the Respondent moved orally to disqualify me as the Trial Examiner because of alleged bias against one of its counsel, Arthur R. Donovan. The motion was overruled for reasons which were fully explicated by me on the record.

After the close of the hearing and within the time fixed for filing briefs as extended, the General Counsel and the Respondent filed briefs, in support of their respective positions, which have been fully considered by me in arriving at my findings and recommendations herein.

After the close of the hearing the Respondent renewed its objection to my participation in the hearing as the Trial Examiner, by a motion in writing. For the reasons stated by me in a written order issued February 19, 1962, said motion has also been overruled.

The Pleadings and Stipulation

It is alleged in the complaint, as amended by interlineation at the hearing, that the Respondent at specified times violated Section 8(a)(1) of the National Labor Relations Act, as amended, herein called the Act, by the conduct of its officers and agents in interrogating certain of its employees, in bargaining with them as individuals and in refusing to bargain with the Union as their exclusive collective-bargaining representative in an appropriate unit.

It is also alleged in the complaint, as so amended, that the Respondent at specified times violated Section 8(a)(5) of the Act by refusing to bargain with the Union as such representative of the Respondent's employees in said unit.

In its answer the Respondent admitted the jurisdictional allegations of the complaint as well as the status of the Union as a labor organization, as defined in Section 2(5) of the Act, the official capacities and the agency for the Respondent, of its three corporate officers who are named in the complaint, but denied generally all other allegations of the complaint.

The General Counsel and the Respondent stipulated, in writing, that on April 11, 1961, the Respondent received a written request from the Union for recognition and bargaining with it as the collective-bargaining representative of all over-the-road semitractor-trailer drivers employed at your Evansville, Indiana, establishment; excluding all guards, professional employees, clerical employees, and supervisors as defined in the Act and all other employees; that on or about April 14, 1961, the Union received from the Respondent a written refusal to recognize or bargain with

it for such employees; and that the Respondent had not as of December 29, 1961, recognized the Union as the representative of said employees. Since there is no evidence in the record that the Respondent has, at any time, recognized the Union, I will apply the presumption of the continued existence of the facts covered in the stipulation. (*N.L.R.B.* v. *National Motor Bearing Company*, 105 F. 2d 652 (C.A. 5); and *N.L.R.B.* v. *Piqua Munising Wood Products Co.*, 109 F. 2d 552 (C.A. 6).)

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Since the allegations of the complaint of the facts, upon which the jurisdiction of the Board in this case is predicated, are admitted by the Respondent, I find that the Respondent is an Indiana corporation engaged at Evansville, Indiana, in the distribution, at wholesale, of hardware, electrical and automotive parts, and building supplies and equipment, and that during the period of 12 months prior to August 30, 1961, it sold and shipped goods of a value in excess of $50,000, from its establishment in Evansville, Indiana, to points outside of that State.

I find, therefore, that the Respondent is engaged in commerce and in operations affecting commerce as defined in Section 2(6) and (7) of the Act and that it will effectuate the policies and purposes of the Act to assert jurisdiction over the Respondent.

II. THE LABOR ORGANIZATION INVOLVED

The General Counsel alleged, the Respondent admitted, and I find that the Union is a labor organization as defined in Section 2(5) of the Act.

III. THE APPROPRIATE UNIT

On August 7, 1961, in the related representation case No. 25–RC–2016, the Board issued a Decision and Direction of Election (not published in NLRB volumes) in which it found that the unit of over-the-road drivers (excluding the part-time driver and the city drivers) sought by the Union was the unit of Respondent's employees which is appropriate for the purposes of collective bargaining. I am bound by that decision and shall, therefore, base my findings herein which are collateral to the issue of the appropriate unit, on that decision of the Board, a copy of which is in evidence as General Counsel's Exhibit No. 3G.

IV. PROCEDURAL ISSUES

A. During the course of the Union's interrogation of the witness Pate, one of the over-the-road truckdrivers, involved in this case, who was called and interrogated in chief by the General Counsel, I overruled the Respondent's objection that a question asked the witness by counsel for the Union, was leading. The question itself was not highly leading; however, that it entirely beside the point. Under Sections 102.8 and 102.38 of the Board's Rules and Regulations, Series 8, as amended, the Union having filed the charges herein, was a party to the proceedings and had the right to cross-examine witness called by the General Counsel. (*John L. Clemmey Company, Inc.*, 118 NLRB 599.) It seems to me that such a privilege is particularly appropriate in this case where all three of the employees in the appropriate unit had joined the Union and after two meetings with officials of the Respondent two of the three admitted that they might withdraw from the Union. The meetings were held after the Respondent knew that all three of said employees had joined and it had refused ot recognize or bargain with the Union as their representative. There is no evidence that the Union was notified that either of the meetings would be held and none of its representatives attended either meeting. Although the Respondent denied, in its answer herein, that it had refused to bargain with the Union, it defended against that allegation of the complaint solely on the theory that there was no obligation on its part to bargain.

B During the course of the hearing I ruled that the Respondent should cross-examine Martin (one of the three over-the-road truckdrivers involved) who was a witness called by the General Counsel, at the close of the General Counsel's direct examination of him rather than after counsel for the Union had also interrogated him. Upon the Respondent's refusal to do so, I excused the witness after counsel for the Union had interrogated him and refused to permit the Respondent to cross-examine him. Although the Union's interrogation of this witness was trivial and had little or no bearing on the issues, that fact has nothing to do with the issue raised by my ruling.

My reasons for requiring the Respondent to cross-examine Martin at the close of the General Counsel's direct examination were to expedite the hearing, since it was

entirely possible that the Union would not interrogate him at all, and to facilitate consideration of the record in this case by having the examination in chief and the main cross-examination in consecutive order.

Under Section 102.35 (f), (h), and (k) of the Board's Rules and Regulations, Series 8, as amended, my authority to so rule is not subject to debate. When this issue first arose counsel for the Respondent indicated clearly that he would accede to my ruling on the matter and when I had ruled contrary to his request, he refused to do so. At this point I refused to rescind my ruling in the interest of conducting an orderly hearing and of retaining control thereof.

Ordinarily I would not discuss such collateral issues in an Intermediate Report but have done so here because the Respondent has challenged my rulings as indicative of the bias on my part against it. I have discussed them in detail in this case and have cited the controlling rules and decisions so that the parties, and the Board, if exceptions are taken to this Intermediate Report, may have the benefit of my unbiased thinking on the collateral issues in question.

V. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The alleged direct violations of Section 8(a)(1) of the Act*

The Respondent's vice president, John H. Killinger, testified that on April 11, 1961, when he received the Union's request for recognition and bargaining, the Respondent had in its employ only three employees in the appropriate unit, namely, Gilman Pate, Clayton Birchler, and Gaylon Martin, who will be hereinafter referred to by their last names only. He also testified that on April 13, 1961, he approached Pate in the Respondent's warehouse, asked him if he had joined the Union and if Birchler and Martin had done likewise, and that, upon being told by Pate that all three of said employees had joined the Union, he asked Pate to arrange a meeting with the three of them for the next Saturday, in the Respondent's office as he "would just like to hear it from them. . . . whether or not they had joined the Union." I credit his statement that he asked Pate if he, Birchler, and Martin had joined the Union and that he requested Pate to arrange a meeting with the three employees the following Saturday, as admissions against interest, but I do not credit his statement that he asked for the meeting only for the purpose of having said employees tell him either individually or collectively if they had joined the Union. In the first place he could have asked each of the other two if they had joined the Union at the warehouse, without arranging a meeting for that purpose, on a nonworking day in the office.

At that time he was privileged to ask each of said employees if he had joined the Union if he had given them the assurances which the Board approved for such interrogation in its decision in the *Blue Flash Express, Inc.*, case (109 NLRB 591). He did not, however, at any time give the employees in question any such assurances. In the second place his testimony as a whole clearly indicates that he called that meeting and at the very least suggested a second meeting, in an effort to rid the Respondent of the Union, by promising said employees adjustments in their conditions of employment which would leave them with little, if anything, to be gained by their continued adherence to the Union.

All three of the employees involved testified in detail as to the bargaining concerning the conditions of their employment which took place between them and Killinger at that meeting. Their testimony was straightforward and some of it was favorable to the Respondent. It is true that they were confused as to dates, etc., but so was Killinger, as is to be expected when witnesses rely on their memory to fix the dates of transactions which occurred in the past.

All three of said employees testified, as did Killinger, that Don Heseman, the Respondent's treasurer, was present at the meeting of April 16, 1961. Heseman was not called to corroborate Killinger and no explanation was given for the Respondent's failure to call him. Under such conditions the presumption is that had Heseman been called he would not have testified favorably to the Respondent. (*Bonham Cotton Mills, Inc.*, 121 NLRB 1235, and *Threads Incorporated*, 124 NLRB 968.) They also testified that during that meeting Killinger told them to think it over and let him know what they decided. Each of them also testified that Killinger interrogated each of them individually about having joined the Union before the meeting of April 16, 1961. I credit their testimony in that regard as well as all of their testimony which conflicts with the testimony of Killinger. His testimony clearly indicates that after interrogating Birchler, Pate, and Martin as to their membership in the Union at a time when he already had no doubt that the Union represented all of them, he proceeded to bargain with them as individuals, to promise them benefits conditioned on their withdrawal from the Union, and that the purpose back of such conduct was

to get them to withdraw from the Union. His testimony that, although he had not talked to his attorneys before the meeting of April 16, 1961, and had had no experience in labor relations before that time, he knew he could not talk to them about anything pertaining to the Union because, "You read it in the newspapers all the time and various places," is incredible.

In view of the promises made to the three employees at the meeting of April 16, 1961, contingent upon their withdrawal from the Union, it is not strange that by the time of the second meeting Birchler and Pate were considering withdrawing from the Union.

Crediting, as I do, the testimony of the three employees involved that at their first meeting with Killinger he agreed to adjust their grievances as to hours, stops, and the use of a part-time over-the-road driver, I find that the decision of Birchler and Pate to consider withdrawing from the Union was induced by such promises. There is no evidence in the record, however, that any of said employees ever withdrew from the Union or that adjustment of their grievances was ever actually effectuated by the Respondent.

It is not disputed that the second meeting between officials of the Respondent and over-the-road truckdrivers in its employ was held in the office of the Respondent on Saturday, April 22, 1961. Both Killinger and J. F. Kirwer, the Respondent's president, attended as did Birchler and Pate. Both of said employees testified credibly that Birchler arranged for the meeting pursuant to Killinger's request, voiced at the first meeting, that the three employees involved "think it over" and let him know what they had decided. Based on the credited testimony as to what took place at the first meeting, and on the admissions of Killinger against the interest of the Respondent, I infer that Killinger had suggested that the employees think over their membership in the Union and let him know what, if anything, they were going to do about withdrawing therefrom and that the second meeting was brought about by such conduct on his part.

Both Killinger and Kirwer testified that they had been advised by counsel before the second meeting with the employees and knew that they could not legally bargain with the employees directly, at that time. Strangely enough Killinger testified, in his direct testimony, that he told the two employees present at that meeting that he would make no changes in their working conditions "until they were out of the Union," and Kirwer almost admitted the same but caught himself in time to put it on the basis that the Respondent could not offer the employees anything "as long as the matter was in the course of litigation."

Even if the employees were told at either or both of the meetings that the Respondent could not promise them anything as long as the matter was in litigation, admittedly Killinger did bargain with them directly at both meetings and did promise to adjust certain grievances for them. This being so the Respondent's contention that it did not bargain with them even though Killinger knew that on and after April 11, 1962, the Union was the agent for all three of the over-the-road truckdrivers, is absurd.

Since all of the interrogation of and bargaining with the three employees involved took place after the Respondent knew that the Union was their exclusive collective-bargaining representative and the interrogation was not within the protection of the Board's non *per se* doctrine as enunciated in its *Blue Flash* decision, I find that the Respondent violated Section 8(a)(1) of the Act by interrogating them and bargaining with them directly.

B. *The alleged refusal to bargain with the Union*

Since admittedly the Respondent knew, at all times on and after April 11, 1962, that the Union represented all of the employees in the unit found to be appropriate by the Board, it could not have had a good-faith doubt as to the majority status of the Union at any time subsequent to that date. It stands admitted that at all times thereafter the Respondent not only failed but refused to recognize and bargain with the Union as the representative of said employees.

Under such conditions its conduct in violating Section 8(a)(1) of the Act, as found above and in failing and refusing to recognize and bargain with the Union constituted violations of Section 8(a)(5) and (1) of the Act and I so find. (*Joy Silk Mills, Inc.*, 85 NLRB 1263, enfd. as mod. 185 F. 2d 732 (87 App. D.C. 306).)

Although I also find that the Respondent was motivated by bad faith in violating Section 8(a)(1) and (5) of the Act, as found above, in a case such as this where the Respondent's illegal conduct amounted to direct violations of the Act, its motives in so doing are not material. (*The Radio Officers' Union of the Commercial Telegraphers Union, AFL (A. H. Bull Steamship Company)* v. *N.L.R.B.*, 347 U.S. 17.)

In arriving at the findings and conclusions on which my recommendations herein are based, I have carefully considered and reconsidered all of the evidence adduced at the hearing and have based my findings and recommendations on the entire record in this case.

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

CONCLUSIONS OF LAW

1. The Respondent is an employer as defined in Section 2(2) of the Act, is engaged in commerce and in operations affecting commerce as defined in Section 2(6) and (7) of the Act, and it will effectuate the policies and purposes of the Act to assert jurisdiction in this case.

2. The Union is a labor organization as defined in Section 2(5) of the Act.

3. By interrogating employees Pate, Birchler, and Martin as to their membership in and activities on behalf of the Union, on and after April 13, 1961, and by bargaining with them directly on and after April 16, 1961, the Respondent interfered with, coerced, and restrained them in the exercise of the rights guaranteed them in Sections 7 and 8 of the Act, in violation of Section 8(a)(1) thereof.

4. By failing and refusing, on April 11, 1961, and at all times thereafter, to recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees in an appropriate unit of all over-the-road truckdrivers employed by it at its Evansville, Indiana, establishment, excluding city truckdrivers, office clerical employees, professional employees, guards, and supervisors as defined in the Act, and by, on and after April 16, 1961, bargaining directly with the employees in said unit, the Respondent refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

5. The foregoing findings of violations, by the Respondent, of Section 8(a)(1) and (5) of the Act, are findings of unfair labor practices, as defined therein, tending to lead to a labor dispute or disputes which would have a substantial effect on the Respondent's business operations in commerce as defined in Section 2(6) of the Act.

[Recommendations omitted from publication.]

Local 3, International Brotherhood of Electrical Workers, AFL–CIO *and* Jack Picoult and Al Picoult d/b/a Jack Picoult.

Case No. 2–CP–122. July 18, 1962

DECISION AND ORDER

On April 23, 1962, Trial Examiner Sidney Sherman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was 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 exceptions to the Intermediate Report and a supporting brief.

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 [Members Leedom, 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 Inter-