the aforesaid unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. By the foregoing conduct, by interrogating its employees concerning their union activities, by threatening to close the plant if the employees chose the Union to represent them; by requesting its employees to form a shop committee to negotiate with Respondent instead of a national union; by conducting a poll of its employees to ascertain if they would suspend their activities in behalf of a national union for several weeks until Respondent's president returned to the plant; by notifying employees Richard H. Alt, James Buddelmeyer, Harold Donaldson, Gerald Meyer, and Joseph W. Morman on or about August 29, 1961, that they were laid off because of their activities in behalf of the Union and then rescinding such action the same day following an affirmative employee vote in the Respondent-directed poll above referred to, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Continental Bus System, Inc. d/b/a Continental Rocky Mountain Lines, Inc. *and* Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local No. 1468, AFL-CIO. *Case No. 27-CA-1100. September 25, 1962*

DECISION AND ORDER

On February 15, 1962, Trial Examiner Sidney Lindner 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 attached Intermediate Report. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and supporting briefs, and the Union filed exceptions.

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 [Chairman McCulloch and Members Fanning and Brown].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exception and briefs, and the entire record in this proceeding, and hereby adopts the finding, conclusions, and recommendations of the Trial Examiner with the following modifications.

1. The Respondent does not deny that it refused to bargain with the Union and that there was a reduction in the rates of pay and changes in the hours of employment of four employees [1] during the week of September 14, 1961. The Respondent contends, however, that the employees involved were not its employees but were employees

[1] Richard Safford, Dale Parks, Earl Pitts, Rudy Hakle.

of Sterling A. Bittle who operated the bus terminal for the Respondent as an independent contractor. The Trial Examiner found, and we agree, that the Respondent was responsible for the foregoing conduct which violated Section 8(a)(1) and (5) of the Act. In making this finding, the Trial Examiner properly relied on the Board's decision in the representation case involving the Respondent, Case No. 27–RC–1986 (not published in NLRB volumes), that the Respondent, rather than Bittle, was the Employer herein because it retained control over the employees herein. As it is implicit from the decision in the representation case and as it is also clear from the record herein, we further find that Bittle was the representative of the Respondent in his dealings with the employees herein.

2. The General Counsel in its exceptions requests that the Respondent be required to revoke the unilateral changes in wages and hours and that a make-whole remedy be provided, covering Respondent's violation of Section 8(a)(1) of the Act, making the employees involved whole for any loss of pay suffered, plus 6-percent interest, because of the Respondent's unilateral reduction in the rates of pay and hours of employment of said employees. We find merit in these exceptions and shall frame our order accordingly. We shall make the backpay award for the full period from the date of the foregoing unilateral changes to the date of the restoration of the wage rates and hours of employment which prevailed during the week of September 14, 1961.[2] The Respondent shall also pay interest on the backpay at the rate of 6 percent to be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

ORDER

The Board adopts the Recommended Order of the Trial Examiner with the changes indicated below.[3]

[2] *Cascade Employees Association, Inc.*, 126 NLRB 1014; *A.P.W. Products Co., Inc*, 137 NLRB 25.

[3] The following paragraphs are inserted after section 2(a) of the Recommended Order:

Revoke the unilateral changes in wage rates and hours of employment which were instituted for Richard Safford, Dale Parks, Earl Pitts, and Rudy Hakle during the week of September 14, 1961.

Make whole said employees for any loss of pay, plus 6-percent interest, they may have suffered by reason of the unilateral changes.

Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or appropriate to permit an anlysis of the backpay amounts due the employees involved herein as set forth in the Decision.

The following paragraphs are added to the notice attached to the Intermediate Report:

WE WILL revoke the unilateral changes in wage rates and hours of employment of Richard Safford, Dale Parks, Earl Pitts, and Rudy Hakle instituted during the week of September 14, 1961.

WE WILL make whole said employees for any loss of pay, plus 6-percent interest, they suffered by reason of the unilateral cut in their wages and hours of employment.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge and a first amended charge duly filed by Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local No. 1468, AFL–CIO, on October 2 and November 7, 1961, respectively, the General Counsel of the National Labor Relations Board issued a complaint on November 15, 1961, alleging that Continental Bus System, Inc. d/b/a Continental Rocky Mountain Lines, Inc., has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, herein called the Act.

With respect to the unfair labor practices, the complaint alleged in substance that: (1) the employees at the Respondent's bus terminal at Grand Junction, Colorado, including ticket clerks, ticket agents, baggagemen, and janitors, but excluding office clerical employees, professional employees, guards, watchmen, and supervisors as defined in the Act, constitute and at all times material herein did constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act; (2) on or about August 17, 1961, and at all times thereafter a majority of the Respondent's employees in the said appropriate unit designated and selected the Union as their representative for the purposes of collective bargaining with the Respondent; (3) on or about August 25, 1961, the Regional Director for the Twenty-seventh Region on behalf of the Board certified the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit heretofore described; (4) on or about September 14, 1961, the Respondent by its supervisor and agent Sterling Bittle, Jr., unilaterally changed existing wage rates and hours of employment of the employees in the appropriate unit; (5) since on or about September 20, 1961, the Union requested and continues to request the Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment; (6) on or about September 29, 1961, and at all times thereafter the Respondent has refused to bargain collectively with the Union as the exclusive bargaining representative of all of the employees in the aforementioned appropriate unit; and (7) by such actions the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

The Respondent's answer duly filed admitted certain allegations of the complaint but denied the commission of any unfair labor practices. The answer affirmatively averred that Respondent on January 4, 1961, entered into a contractual arrangement with Bittle in which he agreed to render certain services as "commission agent" or independent contractor, to hire his own employees and assume full responsibility for them as their sole employer, and under the terms of which it was expressly provided that Respondent reserved no control whatsoever over the said employees or the services to be performed by them or their discharge, compensation, or other terms or conditions of their employment. As a second additional defense the answer set forth that the Union on or about January 4, 1961, filed a representation petition with the Board declaring Bittle as the Employer of the purported employees whom it now represents. Thus, by its words and conduct it recognized Bittle as the employer and further the employees dealt with Bittle as their Employer and entered into contractual arrangements with him. By such conduct the Union and the employees are now estopped from claiming that Respondent is their employer.

Pursuant to notice, a hearing was held at Denver, Colorado, on January 8, 1962, before Trial Examiner Sidney Lindner. The General Counsel, the Respondent, and the Union were represented at the hearing and all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The parties were given the opportunity to present oral argument before the Trial Examiner and to file briefs, proposed findings of fact, and conclusions of law.

Upon the entire record in the case, including the record in Case No. 27–RC–1986, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Continental Bus System, Inc. d/b/a Continental Rocky Mountain Lines, Inc., is a Tennessee corporation with its principal office located at Dallas, Texas. The Respondent is now, and at all times material herein has been, engaged in the operation of an interstate bus service among the States of Colorado, Utah, and New Mexico. In the course and conduct of its operations, the Respondent annually re-

ceives gross revenues in excess of $250,000. It was stipulated at the hearing and it is hereby found that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local No. 1468, AFL–CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

On November 30, 1960, the Union, claiming to have been designated bargaining agent by a majority of Respondent's employees at the Grand Junction, Colorado, bus depot, requested recognition and a meeting to negotiate a collective-bargaining contract. The Respondent by letter dated December 8, 1960, informed the Union it would require it to proceed in accordance with the provisions of the Act and that in accordance with management policy over the past several years it was then actively engaged in effectuating a contract with a "commission agent," who will not be a Respondent employee but rather an independent contractor, to take over ticket-selling as well as some other functions of Respondent's operation at its bus depot in Grand Junction, Colorado. Respondent therefore saw no necessity for negotiating with any representative of its "present employees." A petition for certification of representatives was filed by the Union on December 28, 1960, and docketed by the Board as Case No. 27–RC–1986.

On January 4, 1961, the Respondent and Sterling P. Bittle entered into a contractual arrangement known as the "Standard Commission Agency Contract" in which Bittle agreed to render certain services at Respondent's bus depot at Grand Junction, Colorado.

On January 5, 1961, the Union by its then President Andrew Bergman filed a petition for certification of representatives docketed as Case No. 27–RC–1988, which named Sterling P. Bittle as the employer of the same unit of employees at the Grand Junction bus depot as appeared in Case No. 27–RC–1986. This petition was withdrawn by Bergman on January 7, 1961, without any formal action being taken by the Board.

On July 28, 1961, after the usual proceedings which included a full hearing on the representation petition in Case No. 27–RC–1986, participated in by all the parties involved in the instant proceeding, the Board, after consideration of the entire record and the brief filed by Continental Rocky Mountain Lines, Inc., in support of its contentions raised at the representation hearing,[1] issued a Decision and Direction of Election in the representation case (not published in NLRB volumes) in which it found "All employees at the Employer's bus terminal in Grand Junction, Colorado, including ticket clerks, ticket agents, baggagemen, and janitors, but excluding office clerical employees, professional employees, guards, watchmen, and supervisors as defined in the Act" constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

In the election conducted on August 17, 1961, the Union received a majority of the votes cast. On August 25, 1961, the Regional Director for the Twenty-seventh Region, acting on behalf of the Board, certified the Union as the bargaining representative of Respondent's employees in the unit theretofore found appropriate.

During the week of September 14, 1961, Bittle reduced the rates of pay and changed the hours of employment of four employees at the Grand Junction bus depot. Bittle, who testified he was still operating under the terms of the contract

[1] In its brief Continental set forth that the basic issue involved was whether or not the persons in question were in fact employees of Continental or of Bittle as an independent contractor or "commission agent." In support of the position that it was not the employer, Continental contended that it entered into a valid, binding contractual arrangement with Bittle on January 4, 1961, in which he agreed to render certain services as a "commission agent" or independent contractor at Continental's bus depot at Grand Junction, Colorado. It also contended that the contract expressly provided that Continental shall reserve no control over the agent or its employees or how the facilities should be furnished or the services performed. It stated that it did not in fact reserve any control over employees' discharge, compensation, or services rendered by any employee or person hired by the agent. Continental further contended that it could not repudiate its agreement with Bittle otherwise it would be held accountable in damages or other penalties. And if the Board should declare in the representation proceeding that Continental is the employer of Bittle's servants and employees for purposes of collective bargaining, their agreement would be nullified contrary to the intention of the parties.

entered into on January 4, 1961, effectuated the said changes without consulting the Union.

By letter dated September 20, 1961, addressed to Respondent, the Union called attention to its certification by the Board and requested a meeting for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment in regard to the Grand Junction depot employees.

The Respondent on September 29, 1961, advised the Union that any meeting with it would be "presumptious and worthless" for the following reasons: (1) Respondent was not the employer of the employees whom the Union purported to represent; (2) the employees worked for, had contracts with, and were on Bittle's payroll; (3) Respondent would be held accountable in damages for breach of contract if it were to presume to negotiate for Bittle in matters relating to his employees; and (4) Respondent had neither the right nor the power to enter into any negotiations relating to such employees.

Respondent did not meet with the Union.

At the hearing herein, Respondent attempted to raise identical contentions it had advanced in the representation case. I excluded evidence which either was in existence or was known and available to it at the time of the representation proceeding.[2] Citing *William S. Shurrett d/b/a Greyhound Terminal and Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America, Division 1174 (AFL–CIO)*, Case No. 15–RC–2383, an administrative decision of the Board issued September 7, 1961, CCH NLRB Section 10,603, counsel for Respondent attempted to adduce evidence from Bittle to prove the latter's annual gross receipts from the operation of the Grand Junction bus depot. The General Counsel's objection to the receipt of such evidence was sustained but counsel for Respondent was permitted an offer of proof on the record to show that the gross annual receipts from the operation of the bus depot were in excess of $170,000.[3]

The sum total of the evidence in the instant proceeding establishes no material change in the operations of Respondent's Grand Junction bus depot since the date of the Board's previous decision. It is clear from the language in its decision, which I will hereinafter set forth in detail, that the Board considered and dealt with all of Respondent's contentions raised at that time and herein.

> The Employer contends that it is not the employer of the employees in the unit, and moves to dismiss the petition. However, the record shows that the terminal is an essential link in the Employer's operation of an interstate bus transportation system. Moreover, at the time the petition was filed the terminal was in fact operated by the Employer, and the employees were directly employed by the Employer.
>
> It is true that the Employer thereafter contracted with one Sterling Bittle, Jr., theretofore an employee, to take over operation of the terminal. However the public designation of the terminal was not changed, and the Employer's brief in this case still refers to it as "Continental's bus depot at Grand Junction, Colorado." The Employer argues that the contract nevertheless made Bittle the employer of the employees it had theretofore employed to operate the terminal. However, in the contract the Employer retained many continuing obligations: The obligation to pay the rent of the terminal, and the obligation to furnish the necessary equipment, utilities and janitorial services. Moreover, the contract reserves to the Employer many rights: The right to inspect the terminal, the right to all bus tickets and the proceeds from their sale, and the right to receive daily reports and remittances from Bittle. Most significantly, the Employer retains the right to terminate the contract immediately, without notice, for certain defaults by Bittle, and afer 10 days for other defaults.

---

[2] It is well settled that issues which have been fully litigated in a prior representation proceeding may not be relitigated thereafter in a complaint proceeding unless it can be shown that facts not then known had subsequently become available and were of substantial materiality to the resolution of the issues involved. *Pittsburgh Plate Glass Company* v. *N.L.R.B.*, 313 U.S. 146, 161–162; *N.L.R.B.* v. *West Kentucky Coal Company*, 152 F. 2d 198, 200–201 (C.A. 6), cert denied 328 U.S. 866; *Allis-Chalmers Manufacturing Company* v. *N.L.R.B.*, 162 F. 2d 435 (C.A. 7).

[3] It should be noted that Bittle received only a commission on the gross receipts. Several factors in the present situation different from the *Shurrett* case, *supra*, are that the employer there paid Greyhound an annual rental for the terminal property, and his gross income consisting primarily of commissions from the sale of tickets, charters, and tours as distinguished from gross receipts was in excess of $50,000.

In these circumstances and on the basis of the entire record, we are of the opinion that the Employer has not divested itself of sufficient control over the employees involved by the other provisions of the contract: For example, the provisions giving Bittle the right of control over the employes, and imposing on him the obligation of paying their wages out of his commissions from ticket sales and making the necessary payroll deductions, and the further obligation of holding the Employer harmless from liabilities arising at the terminal.

Accordingly, we deny the Employer's motion to dismiss the petition. See *Albert Lea Cooperative Creamery Association,* 119 NLRB 817, 821; *Provident Life and Accident Insurance Company,* 118 NLRB 412. See also *King* v. *Southwestern Greyhound Lines, Inc.,* 169 F. 2d 497.

The Board's decision in Case No. 27–RC–1986 is binding upon me as is the certification of the Union on August 25, 1961.

Accordingly I conclude that Respondent's admitted refusal to recognize or bargain with the Union on and after September 29, 1961, constituted an unfair labor practice violative of Section 8(a)(5) of the Act and by Bittle's actions during the week of September 14, 1961, unilaterally changing the rates and hours of employment of the employees in the heretofore found appropriate unit, Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) thereof.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, I will recommend that it cease and desist therefrom and from "in any manner interfering with the efforts of the [Union] to bargain collectively with [Respondent]."[4] I will further recommend that Respondent take certain affirmative action in order to effectuate the policies of the Act.

Upon the basis of the above findings of fact, and upon the entire record in the case, including the record in the representation case, I make the following:

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.
2. All employees at the Respondent's bus terminal in Grand Junction, Colorado, including ticket clerks, ticket agents, baggagemen, and janitors, but excluding office clerical employees, professional employees, guards, watchmen, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining.
3. The Union, since the date of its certification, August 25, 1961, has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.
4. By refusing on and since September 29, 1961, to bargain collectively with the Union as the representative of the above employees and by unilaterally changing the rates of pay and hours of employment of the employees in the above-described appropriate unit, Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

On the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondent, Continental Bus System, Inc. d/b/a Continental Rocky Mountain Lines, Inc., its officers, agents, successors, and assigns, shall:

[4] See *N.L.R.B.* v. *Express Publishing Company,* 312 U.S. 426, 439.

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith concerning wages, hours, and other terms and conditions of employment with Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local No. 1468, AFL–CIO, as the exclusive representative of the employees in the following appropriate unit: All employees at the Respondent's bus terminal in Grand Junction, Colorado, including ticket clerks, ticket agents, baggagemen, and janitors, but excluding office clerical employees, professional employees, guards, watchmen, and supervisors as defined in the Act.

(b) Unilaterally changing wage rates and hours of employment of the employees in the above-described appropriate unit.

(c) In any manner interfering with the efforts of the above-named Union to bargain collectively with the above-named Company on behalf of the employees in the above-described unit.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named Union as the exclusive representative of all employees in the appropriate unit and embody in a signed agreement any understanding reached.

(b) Post at its bus depot at Grand Junction, Colorado, copies of the notice attached marked "Appendix." [5] Copies of such notice, to be furnished by the Regional Director for the Twenty-seventh Region, shall, after being signed by an authorized representative of the Respondent, be posted immediately upon receipt thereof, and be maintained by it for a period of 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 such notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director, in writing, within 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply herewith.[6]

---

[5] In the event that this Recommended Order be adopted by the Board the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the Words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

[6] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendation of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local No. 1468, AFL–CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any manner interfere with the efforts of Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local No. 1468, AFL–CIO, to bargain collectively as the exclusive representative of the employees in the bargaining unit described below.

WE WILL, upon request, bargain with Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local No. 1468, AFL–CIO, as the exclusive representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such an understanding in a signed agreement.

WE WILL NOT unilaterally change the rates of pay and hours of employment of the employees in the bargaining unit described below. The bargaining unit is:

All employees at our bus terminal in Grand Junction, Colorado, including ticket clerks, ticket agents, baggagemen, and janitors, but excluding

office clerical employees, professional employees, guards, watchmen, and supervisors as defined in the Act.

CONTINENTAL BUS SYSTEM INC. D/B/A CONTINENTAL ROCKY MOUNTAIN LINES, 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, 609 Railway Exchange Building, 17th and Champa Street, Denver, Colorado, Telephone Number, Keystone 4–4151, Extension 513, if they have any question concerning this notice or compliance with its provisions.

Local Union No. 1065, United Brotherhood of Carpenters and Joiners of America, AFL–CIO *and* Willamette General Contractors Association *and* C. J. Hansen Company. *Cases Nos. 36–CC–87–1 and 36–CC–87–2. September 25, 1962*

DECISION AND ORDER

On May 21, 1962, Trial Examiner James R. Hemingway 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 attached Intermediate Report. Thereafter, the Respondent filed a motion to reopen the record and the General Counsel filed a motion in opposition thereto.[1] The Respondent also filed exceptions to the Intermediate Report, a supporting brief, and a request for oral argument.[2]

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 Rodgers and Fanning].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in

[1] By its motion to reopen the record, the Respondent seeks to introduce certain evidence which it alleges would establish that its picketing was conducted for the purpose of forcing Mills Construction Company to submit to an arbitration under the terms of its contract with Respondent. Even if it could be said that Respondent sought arbitration, its picketing to force Mills to an arbitration and in this manner compel Mills to cease doing business with Largent under the contract's hot cargo clause, we would still find Respondent had violated the Act. *Construction, Production & Maintenance Laborers Union Local 383, AFL–CIO, et al. (Colson and Stevens Construction Co., Inc.)*, 137 NLRB 1650 The motion is denied.

[2] Because, in our opinion, the record, exceptions, motions, and brief adequately set forth the issues and positions of the parties, this request is hereby denied.