

posted immediately upon receipt thereof in conspicuous places and be maintained for a period of 60 consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Fifteenth Region, in writing, within 20 days from the receipt of this Intermediate Report what steps Respondent has taken to comply herewith.⁴³

It is further recommended that the Board set aside the election conducted in a unit of Respondent's employees on August 10, 1961, and direct a new election at an appropriate time pursuant to the stipulation for certification upon consent election.

It is further recommended that the complaint be dismissed insofar as it alleged violations of the Act not specifically found herein.

⁴³ In the event that these Recommendations 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 Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, you are notified that:

WE WILL NOT interrogate employees in a manner constituting interference, restraint, or coercion; instruct or solicit employees to get other employees to vote against Lodge 635, International Association of Machinists, AFL-CIO, and International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers; threaten employees with loss of their jobs, curtailment of benefits, or other reprisal on account of their union activities; promise employees benefits to influence their vote in a Board election or their union sympathies or activities; or create an impression among the employees that their union activities are under surveillance.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in Section 7 of the Act.

HENDRIX MANUFACTURING COMPANY, 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, T6024 Federal Building (Loyola), 701 Loyola Avenue, New Orleans, Louisiana, Telephone Number 529-2411, if they have any question concerning this notice or compliance with its provisions.

Air Control Products of St. Petersburg, Inc. and Teamsters, Chauffeurs, Helpers, Local Union #79, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case No. 12-CA-2336. October 24, 1962

DECISION AND ORDER

On July 16, 1962, Trial Examiner John P. von Rohr issued his Intermediate Report in the above-entitled case, finding that the Respondent had engaged in and was engaging in an unfair labor practice violative of Section 8(a)(5) and (1) of the Act and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. There-

after, 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 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 entire record in this case, including the Intermediate Report, and the exceptions and brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

The Board adopts the Recommended Order of the Trial Examiner.¹

¹ The penultimate sentence in the notice is amended to read "60 consecutive days from the date of posting" instead of "60 days from the date hereof."

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon a charge duly filed on April 17, 1962, the General Counsel for the National Labor Relations Board, for the Regional Director for the Twelfth Region (Tampa, Florida), issued a complaint on April 25, 1962, against Air Control Products of St. Petersburg, Inc.,¹ herein called the Respondent, alleging that it had engaged in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. The Respondent filed an answer in which it denied the allegations of unlawful conduct alleged in the complaint.

Pursuant to notice, a hearing was held in Tampa, Florida, on May 28, 1962, before Trial Examiner John P. von Rohr. All parties were represented by counsel and were afforded full opportunity to adduce evidence, to examine and cross-examine witnesses, and to file briefs.

Upon the entire record in this case, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

Air Control Products of St. Petersburg, Inc., is a Florida corporation with its sole officer and place of business located in St. Petersburg, Florida, where it is engaged in the fabrication and sale of windows, shower and tub enclosures, kitchen cabinets, and related products.

Respondent is one of several owned subsidiary companies of Air Control Products, Inc., whose main office and plant is located in Miami, Florida, where many of the products sold by the Respondent are manufactured. Payroll records of Respondent are maintained in Miami, and the paychecks are issued therefrom. General company policy, including labor relations, are established by Air Control Products, Inc., for its subsidiary organizations, including the Respondent.

During the last calendar year Air Control Products, Inc., has received goods and materials valued in excess of \$50,000 which were shipped to its plant in Miami, Florida, directly from outside the State of Florida. During the same period, Air Control Products, Inc., shipped products and goods valued in excess of \$50,000 from its plant in Miami to points and places outside of Florida.

¹ The complaint was amended at the hearing to show this as being the correct name of the Respondent Company. To the extent that the formal documents in the representation proceeding herein refer to the Company as Air Control Products, Inc., of St. Petersburg, said formal documents are hereby amended accordingly.

I find that the Respondent is and has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters, Chauffeurs, Helpers, Local Union #79, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, hereinafter called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

On March 14, 1962, the Board in Case No. 12-RC-1157,² on the basis of a Board-directed election,³ duly conducted on August 10, 1961, certified the Union, which was the Petitioner in said proceeding, as the exclusive bargaining representative of the Respondent's employees in the unit described in the Recommended Order below. By telegram dated March 21, 1962, the Union requested the Respondent to bargain with it as the exclusive representative of the employees in the unit found appropriate and asked for a meeting for this purpose at an early date. By letter dated March 28, 1962, Respondent's attorney notified the Union that Respondent would decline to meet and bargain with it on the ground that the Board's certification was invalid. The basis for the instant proceeding arises from Respondent's apparent purpose to test the validity of the said certification.

The substance of Respondent's attack upon the Board certification is premised upon its claims that (1) the Board erroneously included installers, whom it contends are independent contractors, in the appropriate unit; (2) that an alleged supervisor participated in the obtaining of the Union's showing of interest; and (3) that it was denied due process when not granted a continuance in the representation hearing. All of these matters have been raised and/or litigated at various stages of the representation proceeding. All have been considered by the Board and have been decided adversely to the Respondent.

No testimony was taken at the hearing in the instant proceeding, there being no contention by the Respondent that it had newly discovered evidence or evidence which was not available to it at the representation stage. As to the matters in dispute, it is well settled that I am bound by the Board's ruling in the representation proceeding and the ensuing certification.⁴ On the basis thereof, it is found and concluded that the Union was duly designated as collective-bargaining representative by a majority of the employees in the unit, and, in accordance with the certification, is the exclusive collective-bargaining representative of all the employees in the unit in question, within the meaning of Section 8(a) of the Act.

Hence, by refusing to bargain with the Union so certified, I find that Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(5), and, derivatively, of Section 8(a)(1) thereof.

RECOMMENDED ORDER

On the basis of the foregoing and upon the entire record in this and the representation proceeding, I, pursuant to Section 10(c) of the Act, hereby recommend that the Respondent, Air Control Products of St. Petersburg, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Teamsters, Chauffeurs, Helpers, Local Union #79, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the duly certified exclusive bargaining representative of its employees in the following unit:

All employees of Air Control Products of St. Petersburg, Inc., in its St. Petersburg, Florida, plant, including installers, formica workers, production employees, plant clerical employees, truckdrivers, and warehousemen, excluding office clerical employees, salesmen, guards, and supervisors as defined in the Act.

² This case was consolidated with Case No. 12-RC-1156

³ A Decision and Direction of Election in Cases Nos 12-RC-1156 and 12-RC-1157 was issued by the Board on July 12, 1961 [132 NLRB 114]

⁴ *Pittsburgh Plate Glass Company v NLRB.*, 313 U.S. 146, 157-158; *NLRB v West Kentucky Coal Company*, 152 F.2d 198, 200-201 (C.A. 6), cert. denied 328 U.S. 866; *Esquire, Inc. (Coronet Instructional Films Division)*, 109 NLRB 530, 539.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to bargain collectively through said Union, or any other labor organization of their own choosing.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the said certified Union as the exclusive representative of the employees in the appropriate unit described above, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an agreement is reached, embody said agreement in a signed contract.

(b) Post at its plant in St. Petersburg, Florida, copies of the attached notice marked "Appendix."⁵ Copies of the said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being duly signed by the Respondent's representative, be posted by it 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 said Regional Director, in writing, within 20 days of the receipt of this Recommended Order, what steps it has taken to comply therewith⁶

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 Recommended Order 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 Recommended order 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 bargain collectively, upon request, with Teamsters, Chauffeurs, Helpers, Local Union #79, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive bargaining representative of all employees in the bargaining unit described below concerning wages, rates of pay, hours of employment, and other conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is:

All employees of Air Control Products of St. Petersburg, Inc., in its St. Petersburg, Florida, plant, including installers, formica workers, production employees, plant clerical employees, truckdrivers, and warehousemen, excluding office clerical employees, salesmen, guards, and supervisors as defined in the Act.

WE WILL NOT refuse to bargain collectively as aforesaid, nor will we, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their right to bargain collectively through the said Union or any other labor organization of their own choosing.

AIR CONTROL PRODUCTS OF ST. PETERSBURG, 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, Ross Building, 112 East Cass Street, Tampa 2, Florida, Telephone Number, 223-4623, if they have any question concerning this notice or compliance with its provisions.