

personnel stationed there from violence or fear of it. One may reasonably conclude that the thrust of its deregistration action against Mahoney in March 1961 was to apply that policy. Certainly, that conclusion is at least as consistent with the evidence as a belief that it had any of the ulterior motives the General Counsel attributes to it, and if that is the situation, the General Counsel has failed to carry the burden of providing his case by evidence of preponderant weight.

In sum, much as one may personally regret the curtailment of Mahoney's long-shore employment opportunities as a result of the deregistration, the evidence impels a conclusion that the General Counsel has not established that the deregistration stemmed from unlawful motives rather than from a design by PMA to protect its hiring facilities from violence, the fear of it, and disorder. Accordingly I shall recommend dismissal of the complaint.¹⁰

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

CONCLUSIONS OF LAW

1. Local 19 and the International are, and have been at all times material to this proceeding, labor organizations within the meaning of Section 2(5) of the Act.

2. Pacific Maritime Association is, and has been at all times material to this proceeding, an employer within the meaning of Section 2(2) of the Act.

3. The record does not establish that the Respondent has engaged in the unfair labor practices imputed to it in the complaint

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, it is recommended that the Board enter an order dismissing the complaint.

¹⁰ Section 16(a) of the collective-bargaining agreement, which prescribes the grievance machinery, contains a proviso that the Coast Committee has no "power to review decisions relative to the methods of maintaining registration lists, or the operation of hiring halls." Section 16(g) provides that "(n)othing in this section (16) shall prevent the parties from mutually agreeing upon other means of deciding matters upon which there has been disagreement." The issues here require no determination as to the power of the Coast Committee to review or take the action it did with respect to Mahoney. The results here would be the same whether or not its action was *ultra vires*, and by reaching the conclusions set forth above, I intend no implication that I have passed on the reach of the Coast Committee's review or other authority in Mahoney's case

General Instrument Corporation and Local 472, International Union of Electrical, Radio and Machine Workers, AFL-CIO.

Case No. 22-CA-1292. December 10, 1962

DECISION AND ORDER

Upon a charge and first amended charge filed by Local 472, International Union of Electrical, Radio and Machine Workers, AFL-CIO, herein called Local 472, the General Counsel of the National Labor Relations Board by the Regional Director of the Twenty-second Region issued a complaint dated August 3, 1962, against General Instrument Corporation, herein called Respondent, alleging that Respondent had engaged in and was engaging 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. Copies of the charge, amended charge, complaint, and notice of hearing were duly served upon Respondent.

With respect to the unfair labor practices, the complaint alleges, in substance, that on or about April 12, 1962, the Regional Director of the Twenty-second Region issued a certification in Case No. 22-RC-1353 designating International Union of Electrical, Radio and Machine Workers, AFI-CIO, herein called the IUE, as the exclusive collective-bargaining representative of a unit composed of all technical employees in the Thermo-Electric Division of the Respondent's plant in Newark, New Jersey. The complaint also alleges that on or about April 13, 1962, and at all times thereafter, Respondent unlawfully refused to bargain with the IUE or its designated agent, Local 472.

On September 17, 18, and 19, all parties to this proceeding entered into a stipulation and jointly moved to transfer this proceeding directly to the Board for findings of fact, conclusions of law, and decision and order. The motion states that the parties waive hearing and oral argument before a Trial Examiner, the making of findings of fact and conclusions of law by a Trial Examiner, the issuance of an Intermediate Report and Recommended Order, and oral argument before the Board. The motion also provides that the parties' stipulation and certain specified documents constitute the entire record in the case.

On September 25, 1962, the Board granted the parties' motion to transfer the case to the Board. Briefs were thereafter filed by the General Counsel, the Charging Party, and the Respondent.

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 [Chairman McCulloch and Members Leedom and Brown].

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent maintains its principal office and place of business at its plant in Newark, New Jersey, and at all times material herein has been engaged at said plant and place of business in the manufacture, sale, and distribution of electronic devices and related products.

During the year immediately preceding the issuance of the complaint, the Respondent had sales in excess of \$500,000, of which prod-

¹In its brief to the Board, Local 472 incorporated a motion to strike certain portions of the stipulated record on the ground that these matters are "immaterial and superfluous." Oppositions to this motion have been filed by the General Counsel and by the Respondent. All parties, including Local 472, had stipulated that these matters "be deemed admitted in evidence and made a part of the record of this proceeding." The motion is denied.

ucts, goods, and materials valued in excess of \$50,000 were shipped from said plant in interstate commerce directly to States of the United States other than the State of New Jersey.

The Respondent admits, and we find, that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

Local 472 and the IUE are labor organizations as defined in Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

On September 11, 1961, the IUE filed a petition in Case No. 22-RC-1353 seeking to represent a unit of technical employees in the Employer's Thermo-Electric Division, Newark, New Jersey. Following a hearing, the Regional Director for the Twenty-second Region issued a Decision and Direction of Elections on November 13, 1961 (not published in NLRB volumes), in which he found, in agreement with the contention of the Respondent, that a unit including both technical and professional employees was appropriate. Accordingly, he directed separate elections in two voting groups, one consisting of all professional employees and the other consisting of all technical employees.

Subsequent to this Decision the IUE filed with the Board a timely request for review of the Regional Director's Decision and Direction of Elections. Opposition to this request was filed by Respondent. The Board by telegraphic orders, dated December 7 and 12, 1961, respectively, ordered the Regional Director to proceed with the elections as scheduled, but to impound the ballots, and granted the request for review, directing that the ballots cast in the elections remain impounded pending its decision on review.² On March 27, 1962, the Board issued its Decision on Review, Order and Direction (not published in NLRB volumes), in which it modified the unit found appropriate by the Regional Director, and found the following unit of Respondent's employees to be an appropriate unit within the meaning of Section 9(b) of the Act: "All technical employees in the Thermo-Electric Division of the Employer's plant in Newark, New Jersey, including senior laboratory technicians, laboratory technicians, laboratory specialists, junior laboratory technicians, and laboratory apprentices, but excluding professional employees, all other employees, watchmen, guards, and supervisors as defined in the Act."³

² The elections were held on or about December 8, 1961.

³ On April 11, 1962, Respondent filed a motion for reconsideration of the Board's Decision on Review, Order, and Direction. This motion was denied by the Board on May 7, 1962.

Thereafter, on April 3, 1962, the ballots of the employees in the unit found appropriate by the Board were counted and a tally of ballots was furnished the parties which showed that of 15 valid votes cast in the election, 8 were cast for the IUE and 7 were cast for "no union." One other ballot was challenged because the voter's name was not on the eligibility list. On April 12, 1962, the Regional Director issued a Supplemental Decision and Certification of Representatives (not published in NLRB volumes) wherein he sustained the challenge to the ballot and certified the IUE as the exclusive representative of the employees in the above-described unit.⁴

On April 13, 1962, the IUE designated Local 472 as its agent for the purpose of engaging in collective bargaining with Respondent with respect to the certified unit. On the same date, Harry Kelner, International representative of the IUE and the business representative of Local 472, formally requested the Respondent to meet and bargain. The Respondent refused. On May 8, 1962, Respondent sent a telegram to the IUE stating that it refused to bargain with the IUE for the unit certified by the Board on the ground that the Board's unit determination violated the Act. Thereafter, by letter dated May 10, 1962, addressed to its employees, the Respondent stated that it had advised the IUE to file a "refusal to bargain" charge with the Board in order that Respondent might obtain review of the Board's action in a Federal court. Respondent admits that on or about April 13, 1962, and at all times thereafter it has refused and continues to refuse to recognize or bargain with the IUE or its agents.

The Respondent's defense is concerned solely with the Board's unit determination, and Respondent has raised no matter not previously considered and rejected by the Board in the aforementioned representation proceeding. We accordingly find that the Respondent, by refusing to bargain with the IUE on and after April 13, 1962, has violated Section 8(a) (5) and (1) of the Act.

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.

⁴The challenge to the ballot was sustained because the Regional Director found that the voter in question had been discharged for cause prior to the payroll period used to determine voter eligibility. This fact was conceded by the IUE in the course of the investigation of the challenged ballot.

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, we shall order that it cease and desist therefrom and, upon request, bargain collectively with the IUE as the exclusive representative of its employees in the appropriate unit.

CONCLUSIONS OF LAW

1. General Instrument Corporation is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union of Electrical, Radio and Machine Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All technical employees in the Thermo-Electric Division of the Respondent's plant, Newark, New Jersey, including senior laboratory technicians, laboratory technicians, laboratory specialist, junior laboratory technicians, and laboratory apprentices, but excluding professional employees, all other employees, watchmen, guards, 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.

4. At all times since April 12, 1962, the IUE has been and continues to be the exclusive bargaining representative of all the employees in the aforementioned unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing, on and after April 13, 1962, to bargain collectively with the IUE as the exclusive representative of its employees in the aforesaid unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing to bargain with the IUE, the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, General Instrument Corporation, Newark, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with International Union of Electrical, Radio and Machine Workers, AFL-CIO, as the representative of its employees in the above-described appropriate unit.

(b) In any like or related manner interfering with the efforts of the above-named labor organization to bargain collectively.

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

(a) Upon request, bargain collectively with International Union of Electrical, Radio and Machine Workers, AFL-CIO, as the representative of its employees in the above-described appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant in Newark, New Jersey, copies of the attached notice marked "Appendix."⁵ Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being 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 its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Twenty-second Region, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

⁵ 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 our employees that:

WE WILL, upon request, bargain collectively with International Union of Electrical, Radio and Machine Workers, AFL-CIO, concerning rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, we will embody said understanding in a signed agreement.

The bargaining unit is:

All technical employees in the Thermo-Electric Division of the Employer's plant in Newark, New Jersey, including senior laboratory technicians, laboratory technicians, laboratory specialists, junior laboratory technicians, and laboratory apprentices, but excluding professional employees, all other

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

WE WILL NOT in any like or related manner interfere with the efforts of the International Union of Electrical, Radio and Machine Workers, AFL-CIO, to bargain collectively.

GENERAL INSTRUMENT CORPORATION,

Employer.

Dated_____ By_____

(Representative)

(Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 614 National Newark Building, 744 Broad Street, Newark 2, New Jersey, Telephone No. Market 4-6151, if they have any question concerning this notice or compliance with its provisions.

Northwestern Photo Engraving Co., Inc. and Chicago Photo-Engravers Union No. 5. Case No. 13-CA-4175. December 10, 1962

DECISION AND ORDER

On July 30, 1962, Trial Examiner Fannie M. Boyls issued her Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Charging Party and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board¹ 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 briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

¹Pursuant 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 [Members Rodgers, Fanning, and Brown].