

this case. In overruling *Denver-Colorado Springs*, they assert it to be their intention to accord dual-function employees the same rights enjoyed by part-time employees. However, with respect to the unit sought by the Pressmen in Case No. 8-RC-4602, my colleagues seemingly ignore their own new rule. Here, the pressmen's helper spends 20 percent of his time employed in that capacity, yet for some unexplained reason my colleagues are excluding him from the Pressmen's unit. If the unit placement rules governing part-time employees are not to be applied to dual-function employees, as my colleagues say, I fail to understand why the helper—who clearly is a regular, as distinguished from a casual, employee—should be excluded since if he were a part-time employee there is no question but what he would be included.¹¹

As I would find the unit sought by the Typographical Union inappropriate, I would dismiss its petition.

¹¹ *Joseph A. Goddard Company*, 83 NLRB 605; *R. W. McDonnell and E. M. Bishop d/b/a Lone Star Boat Mfg. Co.*, 94 NLRB 19; *Decatur Transfer & Storage, Inc.*, 105 NLRB 633; *Allstate Insurance Company*, 109 NLRB 578; *Personal Products Corporation*, 114 NLRB 959

E. S. Kingsford, d/b/a Kingsford Motor Car Company and Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case No. 18-CA-1451. January 8, 1963

DECISION AND ORDER

On October 18, 1962, Trial Examiner Lee J. Best 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 dismiss the complaint or, in the alternative, to reopen the record so that it might adduce further evidence. The General Counsel opposed the Respondent's motion.¹

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 [Members Leedom, Fanning, and Brown].

The Board has reviewed the Trial Examiner's rulings and finds no prejudicial error. The rulings are hereby affirmed. The Board

¹ The motion is denied. The assertions in the motion are more properly the subject matter for consideration at the compliance stage of this proceeding. It should be emphasized that the Board's Order in this case is directed to the Respondent and its successors and assigns.

has considered the Intermediate Report, the Respondent's motion and the opposition thereto, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

The Board hereby adopts as its Order the Recommended Order of the Trial Examiner.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding brought under Section 10(b) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 *et seq.*, herein called the Act, was heard pursuant to notice before Trial Examiner Lee J. Best at Iron Mountain, Michigan, on August 23, 1962, with only the General Counsel of the National Labor Relations Board (herein called the Board) and Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called the Union or Charging Party) represented. After receiving due notice of the time and place of the hearing, E. S. Kingsford, d/b/a Kingsford Motor Car Company (herein called the Respondent) failed and refused to appear.

Based upon a charge filed by the Union on June 28, 1962, which was duly served upon the Respondent on June 30, 1962, the General Counsel issued a complaint and notice of hearing on July 26, 1962, which was duly served upon the Respondent on July 28, 1962, alleging unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act. On August 16, 1962, the General Counsel issued an amendment to the complaint, which was duly served upon the Respondent on August 20, 1962. The Respondent failed to file any answer whatsoever, although duly notified pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations that, unless such answer to the complaint be filed within 10 days from service thereof, all allegations therein shall be deemed to be admitted to be true and may be so found by the Board.

The principal issue raised by the complaint, as amended, and as to which all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, adduce evidence, to submit oral argument on the record and to file written briefs with the Trial Examiner, was whether the Respondent, E. S. Kingsford, d/b/a Kingsford Motor Car Company has since on or about April 2, 1962, continually failed and refused to bargain collectively with the Union as the certified exclusive bargaining representative of its employees in an appropriate unit with respect to wages, hours, and conditions of employment in violation of Section 8(a)(1) and (5) of the Act.

Upon motion for summary judgment by the General Counsel pursuant to Sections 102.20, 102.24, and 102.25 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, the entire record in the case including the undisputed sworn testimony of Wallace Gasman (business representative of Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America), and as background the entire records in Cases Nos. 18-RC-4580 and 18-CA-1253, including all decisions and orders of the Board therein, I make the following:

FINDINGS AND CONCLUSIONS

I. BUSINESS OF RESPONDENT

E. S. Kingsford is an individual proprietor doing business as Kingsford Motor Car Company, having his principal places of business at Iron Mountain and Kingsford, Michigan, where he is engaged in the retail sale and repair of new and used automobiles as a franchised dealer for the Ford Motor Company. During the calendar year 1961 in the course and conduct of his business, the Respondent sold new and used cars and parts and performed services for his customers in an amount valued in excess of \$500,000 of which amount sales and services valued in excess of \$50,000 were made and rendered to customers situated outside the State of Michigan. By reason of such operations, I find that Respondent is and has

been at all times material herein engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act, existing in whole or part for the purpose of representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.

The Appropriate Unit

The Board found in its Decision and Direction of Election in Case No. 18-RC-4580 on March 21, 1961 (not published in NLRB volumes), as stipulated by the parties, and I find in the instant case that the following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act:

All shop employees at the Employer's Iron Mountain, Michigan, and Kingsford, Michigan, agencies, including parts department employees, excluding all office employees, salesmen, guards, and watchmen, and all supervisors as defined in the Act.

III. THE UNFAIR LABOR PRACTICES

On or about December 30, 1960, 11 employees of the Respondent out of a total of 15 nonsupervisory shop and parts department employees signed applications for membership in the Union along with a separate certificate authorizing the Union to request recognition as their bargaining agent and to conduct bargaining negotiations in their behalf with the Respondent. Thereupon, Arnold Alsten (secretary-treasurer of the Union) on January 3, 1961, mailed the 11 signed certificates to Respondent, and by covering letter informed the Respondent that "a majority of your employees within a bargaining unit consisting of shop employees have designated the Teamsters Union Local No. 328, to represent them in collective-bargaining negotiations for a working agreement." In reply thereto by letter of January 9, 1961, the Respondent notified the Union that it would insist upon an election being conducted by the National Labor Relations Board before recognizing any collective-bargaining agent to negotiate a working agreement for employees in its shops. Thereupon, the Union filed a representation petition in Case No. 18-RC-4580 on January 10, 1961; but the Respondent refused to sign any agreement for the conduct of a consent election. On January 21, 1961, the Respondent closed its body shop, contracted out the work, and discharged three members of the Union employed therein. Thereafter, on January 27 and February 10 and 11, 1961, Respondent discharged three additional members of the Union from employment in its auto parts department.¹ Following a representation hearing, the Board issued its Decision and Direction of Election on March 21, 1961, pursuant to which an election was conducted on April 5, 1961, among 15 eligible employees; 14 votes were cast in the election of which 5 were cast for the petitioner, 4 against the petitioner, and 5 ballots cast by its discharged employees were challenged by the Respondent. Thereupon, the Board directed a hearing on the challenged ballots on May 25, 1961, in Case No. 18-RC-4580 in consolidation with the hearing in Case No. 18-CA-1253. After the hearing and report thereon by Trial Examiner Owsley Vose, the Board directed its Regional Director to count the challenged ballots and to prepare and serve upon the parties a revised tally of the ballots cast in the election. The revised tally of ballots issued on March 27, 1962, shows 10 votes cast for the petitioner and 4 votes against the petitioner. As a result thereof, a certification of representation was issued on April 3, 1962, certifying that the Union has been designated and selected by a majority of Respondent's employees in the appropriate unit as their representative for the purposes of collective bargaining, and that, pursuant to Section 9(a) of the Act, as amended, that organization is the exclusive representative of all employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

¹ In Case No. 18-CA-1253 the Board found each of these discharges to be discrimination in regard to hire and tenure of employment to discourage membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

By a letter posted by registered mail on April 2, 1962, which was received by the Respondent on April 3, 1962, the Union requested Respondent to fix a convenient date for a meeting of the parties to negotiate a working agreement. On April 16, 1962, Respondent notified the Union that he would meet a representative of the Union any day that week in his office at 129 Stephenson Avenue, Iron Mountain, Michigan, and requested confirmation of date and time. Thereupon, the Union on April 24, 1962, requested that the meeting be held on Thursday or Friday of that week or on Monday, April 30, or on Tuesday, May 1, 1962. On April 26, 1962, Respondent notified the Union that Mr. Kingsford was absent from the city, but would contact the Union immediately upon his return. In the absence of such promised contact, the Union on May 17, 1962, posted a letter by registered mail which was received by Respondent on May 18, 1962, requesting that Respondent promptly schedule a date for the meeting and agreed to meet on any date at the convenience of the Respondent. On May 18, 1962, Respondent notified the Union that Mr. Kingsford was still out of the city, but expected to return about June 1, and thereupon would contact the Union immediately. By letter of June 7, 1962, Respondent notified the Union that Mr. Kingsford had returned to Iron Mountain, and was then available for a meeting at any time. By letter of June 8, 1962, the Union designated that a meeting be held at the office of Respondent in Iron Mountain, Michigan, at 10:30 a. m. on Tuesday, June 12, 1962.

The first and only meeting for negotiations between the parties was held on June 12, 1962, in Respondent's office at Iron Mountain, Michigan. The Union was represented by Business Representative Wallace Gasman; and the Respondent was represented by E. S. Kingsford (proprietor) and C. A. Minella (general manager). The Union proposed as the basis for negotiations a written proposal which had previously been submitted by the Union to the Respondent on March 29, 1961; whereupon Respondent, E. S. Kingsford, took the position and made a statement to the effect that he could not grant any wage increase and would not bargain pending enforcement of the Board's Decision and Order in Case No. 18-CA-1253 by the United States Court of Appeals, Sixth Circuit (Cincinnati, Ohio), which requires in substance that Respondent cease and desist from (a) discouraging membership in the Union by discharging, laying off, or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment; (b) threatening employees that he will sell or close the business or take other retaliatory action against employees for having engaged in union activities; (c) threatening employees that he will not sign a contract with the Union under any circumstances; (d) in any other manner interfering with, restraining, or coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment authorized by Section 8(a)(3) of the Act; and also requiring Respondent to make whole and reinstate certain named employees by reason of discrimination in regard to their hire or tenure of employment. See *E. S. Kingsford doing business as Kingsford Motor Car Company*, 135 NLRB 711.

Concluding Findings

Amendment to the complaint issued herein by the General Counsel on August 16, and duly served upon the Respondent on August 18, 1962, specifically alleges:

7(a) Commencing on or about April 2, 1962, and continuing to date, and more particularly on April 24, 1962, May 17, 1962, and June 12, 1962, the Union has requested and is requesting the Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, as the exclusive bargaining representative of all the employees of the Respondent in the Unit.

The Respondent has filed no answer whatsoever to the complaint, and after being duly notified, failed to appear at the hearing. The complaint is amply supported by the foregoing findings of fact, and under the circumstances of this case, all allegations therein are deemed to be admitted to be true. Therefore, pursuant to Sections 102.20, 102.24, and 102.25 of Rules and Regulations of the National Labor Relations Board, Series 8, as amended, General Counsel's motion for summary judgment is hereby granted; and from the entire record in the case, I find that on or about April 2 or 3, 1962, and at all times thereafter, the Respondent refused and continues to refuse to bargain collectively with the Union as the certified exclusive bargaining representative of all employees in the appropriate unit with respect to wages, hours, and other

terms and conditions of employment in violation of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The conduct of Respondent set forth in section III, above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent on and since April 2 or 3, 1962, engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has at all times since April 2 or 3, 1962, in violation of Section 8(a)(5) of the Act, refused to bargain with the Union as the duly certified exclusive bargaining representative of its employees for the purposes of collective bargaining, it will be recommended that, upon request, the Respondent shall bargain in good faith with such representative with respect to wages, hours, and other terms and conditions of employment, and if an understanding is reached embody such understanding in a signed agreement.

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

CONCLUSIONS OF LAW

1. Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act, which is and has been at all times material to this case the duly certified exclusive bargaining representative of Respondent's employees in the unit herein found to be appropriate for the purpose of collective bargaining.

2. By refusing to bargain collectively in good faith with the Union as the exclusive bargaining representative of his employees in such appropriate unit on April 2 or 3, 1962, and at all times thereafter to date, 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.

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

Upon the foregoing findings of fact, conclusions of law, and the entire record in the case, I issue the following:

RECOMMENDED ORDER

E. S. Kingsford, d/b/a Kingsford Motor Car Company, its agents, supervisors, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the duly certified exclusive bargaining representative of all employees in the unit herein found to be appropriate for the purposes of collective bargaining.

(b) In any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3).

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Upon request, bargain collectively in good faith with Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive bargaining representative of its employees in the appropriate unit; and if an understanding is reached embody such understanding in a signed agreement.

(b) Post at each of its agencies or places of business in Iron Mountain and Kingsford, Michigan, copies of the attached notice marked "Appendix."² Copies of such notice, to be furnished by the Regional Director for the Eighteenth Region, shall, after being duly signed by the Respondent or his authorized representative, be posted by the Respondent immediately upon receipt thereof, and maintained for a period of 60 consecutive days from posting 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 Regional Director for the Eighteenth Region in writing, within 20 days from receipt thereof, what steps the Respondent has taken to comply with this Recommended Order.³

² If this Recommended Order is 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. If the Board's Order is enforced by a decree of a United States Court of Appeals, there shall be substituted the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" for the words "Pursuant to a Decision and Order."

³ If this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Eighteenth Region, 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 National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL, upon request, bargain collectively in good faith with Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 328, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive bargaining representative of all our employees in the unit found by the Board to be appropriate for the purposes of collective bargaining, and, if an understanding is reached, embody such understanding in a signed agreement.

The appropriate unit is:

All shop employees at our Iron Mountain, Michigan, and Kingsford, Michigan, agencies, including parts department employees, excluding all office employees, salesmen, guards, and watchmen and all supervisors as defined by the Act.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join, or assist the aforesaid Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as amended.

E. S. KINGSFORD, D/B/A KINGSFORD
MOTOR CAR COMPANY,

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, 316 Federal Building, Minneapolis 1, Minnesota, Telephone No. 339-0112, Extension 2601, if they have any question concerning this notice or compliance with its provisions.