

(c) Notify said Regional Director, in writing, within 20 days from the date of receipt of this Intermediate Report and Recommended Order, what steps it has taken to comply herewith.<sup>16</sup>

<sup>16</sup>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 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, as amended, we hereby notify our employees that:

WE WILL bargain collectively, upon request, with International Union of Electrical Radio and Machine Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees at the Evansville plant, excluding office clerical employees, professional employees, branch manager, messenger, salesman, guards, and supervisors as defined in the Act.

WE WILL NOT interrogate our employees about their union activities in violation of the law.

WE WILL NOT threaten our employees with reprisals or promise them benefits in order to induce them to give up the Union.

WE WILL NOT instigate, sponsor, or secure employee resignations from the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist the above-named 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.

BAUSCH & LOMB, INCORPORATED,  
*Employer.*

Dated----- By-----  
(Representative) (Title)

This notice must remain posted for 60 consecutive 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 4, Indiana, Telephone No. Jackson 7-5451, if they have questions concerning this notice or compliance with its provisions.

**Ideal Laundry and Dry Cleaning Co. and Dry Cleaning and Laundry Workers, Local Union No. 304, Laundry, Dry Cleaning and Dye House Workers International Union. Case No. 27-CA-1269. February 25, 1963**

DECISION AND ORDER

On December 12, 1962, Trial Examiner Fannie M. Boyls issued her Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative  
140 NLRB No. 145.

action, as set forth in the attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a brief in support thereof.<sup>1</sup>

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 of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.<sup>2</sup> The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

### ORDER

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

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<sup>1</sup> The Respondent's request for oral argument is hereby denied as, in our opinion, the record, including the Respondent's exceptions and brief, adequately presents the issues and positions of the parties.

<sup>2</sup> The Respondent has admittedly refused to bargain with the Union although the Union was certified following an election in a representation proceeding. (*Ideal Laundry and Dry Cleaning Co.*, 137 NLRB 1374.) The Respondent contends that the Board erred in its unit finding in the representation proceeding by excluding certain disputed employees, and that the Trial Examiner erred in adopting those findings and in refusing to permit the Respondent to adduce further evidence with respect to the appropriate unit. The Respondent does not materially challenge the facts relied upon in the representation proceeding, but does challenge the inferences and conclusions drawn therefrom. As these issues were fully litigated in the representation proceeding, and in the absence of evidence newly discovered or unavailable to the Respondent at the time of the representation hearing, we affirm the Trial Examiner's finding that such issues are not properly the subject of relitigation in the instant proceeding. *Esquire, Inc. (Coronet Industrial Films Division)*, 109 NLRB 530, enf. 222 F. 2d 253 (C.A. 7); *Pittsburgh Plate Glass Company v. NLRB.*, 313 U.S. 146; *Burroughs Corporation*, 118 NLRB 1177.

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

### STATEMENT OF THE CASE

Pursuant to a charge filed on August 3, and an amended charge filed on September 10, 1962, a complaint was issued on September 24, 1962, alleging that Ideal Laundry and Dry Cleaning Co., herein called the Company or Respondent, had violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to bargain on and after August 6, 1962, with Dry Cleaning and Laundry Workers, Local Union No. 304, Laundry, Dry Cleaning and Dye House Workers International Union, herein called the Union, which had theretofore been certified by the Regional Director of the National Labor Relations Board as the exclusive bargaining representative of Respondent's employees in a unit found to be appropriate. Respondent filed an answer, admitting that it had refused to bargain with the Union, as alleged in the complaint, but asserting as a defense that the unit found by the Regional Director to be appropriate was in fact inappropriate and that the Union had not been selected by a majority of the employees in an appropriate unit.

A hearing was held before Trial Examiner Fannie M. Boyls at Denver, Colorado, on November 1, 1962. The parties set forth their contentions and the issues on the record. No witnesses were called. The General Counsel rested his case after introducing in evidence the pleadings in this case and the proceedings in the underlying representation proceeding (Case No. 27-RC-2082) [137 NLRB 1374] and asking me to take official notice of the transcript of hearing in that proceeding.

Respondent's asserted defense to its refusal to bargain with the certified Union was that the Board's determination as to the appropriateness of the unit and its

voiding of two of the ballots cast in the election was contrary to law and arbitrary and capricious. It was the position of the General Counsel that since Respondent had admittedly refused to bargain and had asserted no defenses which were not raised and decided adversely to it by the Regional Director and Board in the representation case, it could not have those same issues relitigated in this proceeding. Respondent, on the other hand, contended that it had a legal right to relitigate those issues and make a full and complete record in this proceeding irrespective of what had transpired in the representation proceeding. It did not contend that any of the evidence it sought to adduce was newly discovered or, for any other reason, was not or could not have been adduced in the representation case. Following my ruling that I would not permit a relitigation of the issues previously litigated, Respondent made offers of proof with respect to these issues, which are contained in the transcript of this proceeding and some of which appear as rejected exhibits. The proffered evidence was rejected.

Upon the entire record in this case,<sup>1</sup> including the record in the underlying representation proceeding, of which I take official notice, I make the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF RESPONDENT

The complaint alleges, the answer admits, and I find that Respondent, a Colorado corporation, has offices and its principal place of business in Denver, Colorado, where it is engaged in the laundry and drycleaning business. In the course and conduct of its business operations, it annually performs laundering and drycleaning services valued in excess of \$500,000 and receives goods and materials at its Denver establishment, either directly or indirectly, from outside the State of Colorado valued in excess of \$50,000. I find that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

It was stipulated at the hearing and I find that Dry Cleaning and Laundry Workers, Local Union No. 304, Laundry, Dry Cleaning and Dye House Workers International Union, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The underlying representation proceeding (Case No. 27-RC-2082)*

In proceedings initiated by the Union on May 18, 1961, seeking to represent the Company's employees in a unit consisting of all laundry production workers, excluding engineers, drivers, drycleaners, office employees, and supervisors as defined by the Act, or, in the alternative, in a unit which would include the drycleaning employees or which would also include the maintenance employees, a hearing was held before a hearing officer of the Board on June 2, 1961. On the basis of the record thus made, the Regional Director, on June 21, 1961, issued his Decision and Direction of Election, finding appropriate and directing an election in the following unit:

All laundry and drycleaning production and maintenance employees at the Employer's Denver, Colorado, plant, excluding all office clerical employees, drivers, guards, and supervisors as defined in the Act.

Thereafter, on or about June 29, 1961, the Company filed with the Board a request for review of the Regional Director's Decision and Direction of Election, contending, *inter alia*, that all its employees except guards and supervisors should be included in the appropriate bargaining unit. On July 17, 1961, 2 days before the scheduled election, the Board, by telegraphic order, denied the request for review, stating:

. . . the only substantial issue raised therein involves unit placement of salaried drivers, and such issue, in the Board's opinion, can best be resolved through challenge procedure. Accordingly, it is further ordered that unit description in said Decision and Direction of Election be, and it hereby is, amended to provide that unit placement of salaried drivers be deferred and that ballots of such employees be challenged. Their unit placement will be determined, if necessary, by Regional Director's rulings on challenges or on motion for clarification.

<sup>1</sup> The official report of proceedings in this case contains a confused and inaccurate transcript of the hearing in a number of instances. In order that the transcript may correctly reflect material statements made at the hearing, the record is hereby corrected in the manner set forth in Appendix A, *infra*.

An election was held on July 19, 1961. A tally of the ballots showed 59 votes for the Union and 58 against it; 6 ballots (those of the salaried drivers) were challenged; and 2 were void. The Company thereafter filed timely objections to the conduct of the election, contending that the ballot of one of the employees voting "No," which had been voided because she signed it, should have been counted because she was "almost completely blind" and "may have intended to identify the ballot to show that it was cast by someone who was blind," and further objecting to the challenge of the ballots of the salaried drivers. On August 7, 1961, almost 2 weeks beyond the period provided by the Board's Rules and Regulations within which objections may be filed, the Company, by letter, further objected to the Board agent's action in voiding a ballot which had a "no" written in both the "yes" and "no" boxes.<sup>2</sup>

On September 8, 1961, the Regional Director issued a Supplemental Decision and Certification of Representatives in which he sustained the challenges to the ballots of the six salaried drivers, including two "relief drivers," who had voted, upheld the voiding of the signed ballot as being in accordance with "well established Board policy, and refused to consider the Company's belated objection to the other voided ballot because such objection "was not timely filed."<sup>3</sup> He accordingly certified the Union as the exclusive bargaining representative.

On September 25, 1961, the Company filed with the Board an appeal from the Regional Director's (original and) Supplemental Decision and Certification of Representatives. Without abandoning any objections stated in its July 1, 1961, request for review, the Company set forth in detail its reasons for objecting to the Regional Director's action in sustaining the challenges to ballots of the salaried drivers and also argued that the Regional Director had erred in voiding the signed ballot and in refusing to consider the objection which had been filed belatedly.

On July 17, 1962, the Board, with all five members participating, issued its ruling on request for review, unanimously upholding the Regional Director's rulings with respect to the challenged and void ballots and stating its reasons for doing so.

### B. *The refusal to bargain*

Following the Board's ruling on July 17, 1962, upholding the Regional Director's certification of the Union as the bargaining representative of Respondent's employees in a unit consisting of all laundry and drycleaning production and maintenance employees, excluding all office clerical employees, drivers, guards, and supervisors, the Union, on or about August 3, 1962, requested, and has continued to request, Respondent to bargain with it as the representative of those employees. Respondent, on or about August 6, 1962, refused the Union's request for bargaining and has continuously thereafter refused to bargain with the Union. As stated by its counsel at the hearing, its refusal is grounded upon the same contentions made in the representation proceeding—that the Union does not represent a majority of its employees in the appropriate bargaining unit, the Regional Director and Board having erred in determining the appropriateness of the unit and in having failed to count the two void ballots.

Since there is no contention that Respondent's operations have changed since the hearing in the representation case and the evidence sought to be adduced by Respondent in this case was substantially of a cumulative nature, I am bound by the Board's decision in the representation case. As stated by the Supreme Court in *Pittsburgh Plate Glass Company v. N.L.R.B.*, 313 U.S. 146, 162, where the same issues previously litigated in the underlying representation case were similarly sought to be relitigated in the complaint case, "a single trial of the issues was enough." Respondent suggested at the hearing in this case that the Administrative Procedure Act (enacted subsequent to the Supreme Court's decision in the *Pittsburgh Plate Glass* case) guarantees it the right to a full and complete hearing on all issues in the complaint case irrespective of whether they were litigated in the representation case. Section 5 of the Administrative Procedure Act, however, expressly excepts cases

<sup>2</sup> The Board's Rules and Regulations, Series 8, as amended, provides that: "Within 5 days after the tally of ballots has been furnished, any party may file with the regional director four copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely . . . . Copies of such objections shall immediately be served upon each of the other parties by the party filing them, and a statement of service shall be made."

<sup>3</sup> The Union also filed objections to the election. The Regional Director overruled one of them and, in view of his disposition of the challenged ballots, resulting in a certification of the Union, found it unnecessary to rule on the other objection.

involving the certification of employee representatives from the procedures prescribed for most other agency hearings and decisions and subsequent to the enactment of that legislation, the Board and courts have continued to follow the salutary principle enunciated in the *Pittsburgh Plate Glass* case that a single trial of an issue is enough. See, e.g., *N.L.R.B. v. Southern Bleachery & Print Works, Inc.*, 257 F. 2d 235, 241 (C.A. 4), cert. denied 359 U.S. 911; and *N.L.R.B. v. American Steel Buck Corp.*, 227 F. 2d 927, 929 (C.A. 2).

I accordingly find that Respondent's admitted refusal to bargain with the Union following the Board's final ruling on its request for review and the Union's request for bargaining, was in violation of Section 8(a)(5) and (1) of the Act.

#### IV. CONCLUSIONS OF LAW

1. The following unit of Respondent's employees is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All laundry and drycleaning production and maintenance employees at Respondent's Denver, Colorado, plant, excluding all office clerical employees, drivers, guards, and supervisors as defined in the Act.

2. On September 8, 1961, and at all times thereafter, the Union was and now is the representative of Respondent's employees in the appropriate unit described above for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

3. By refusing on or about August 6, 1962, and thereafter, to bargain collectively with the Union as the exclusive representative of all its employees in the above-described appropriate unit, Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

#### V. THE REMEDY

Having found that Respondent has refused and still refuses to bargain collectively with the Union in the appropriate unit described herein, in violation of Section 8(a)(5) and (1) of the Act, my Recommended Order, among other things, will direct Respondent to cease and desist therefrom and, upon request, to bargain collectively with the Union as the exclusive representative of the employees in the unit herein found to be appropriate.

#### RECOMMENDED ORDER

Upon the foregoing findings and conclusions and the entire record, including the record in the underlying representation case, and pursuant to Section 10(c) of the Act, I hereby recommend that the Respondent, Ideal Laundry and Dry Cleaning Co., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Dry Cleaning and Laundry Workers, Local Union No. 304, Laundry, Dry Cleaning and Dye House Workers International Union, as the exclusive bargaining representative of all its laundry and drycleaning production and maintenance employees employed at its Denver, Colorado, plant, excluding all office clerical employees, drivers, guards, and supervisors as defined in the Act.

(b) 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 plant at Denver, Colorado, copies of the attached notice marked "Appendix A."<sup>4</sup> 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 Respondent, be posted immediately upon the receipt thereof, and be maintained

<sup>4</sup>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."

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 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 Respondent has taken to comply herewith.<sup>5</sup>

<sup>5</sup>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 A

### NOTICE TO ALL EMPLOYEES

Pursuant to a 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, we hereby notify our employees that:

WE WILL bargain collectively, upon request, with Dry Cleaning and Laundry Workers, Local Union No. 304, Laundry, Dry Cleaning and Dye House Workers International Union, as the exclusive bargaining representative of all our employees in the appropriate unit described below with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an agreement is reached, embody such agreement in a signed contract. The appropriate unit is:

All laundry and drycleaning production and maintenance employees employed at our Denver, Colorado, plant, excluding all office clerical employees, drivers, guards, and supervisors as defined in the Act.

WE WILL NOT in any manner interfere with the efforts of Dry Cleaning and Laundry Workers, Local Union No. 304, Laundry, Dry Cleaning and Dye House Workers International Union, to bargain collectively as the exclusive representative of the employees in the bargaining unit described above.

IDEAL LAUNDRY AND DRY CLEANING Co.,  
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 Twenty-seventh Regional Office, 609 Railway Exchange Building, 17th and Champa Streets, Denver 2, Colorado, Telephone No. Keystone 4-4151, Extension 513, if they have any questions concerning this notice or compliance with its provisions.

**Playskool Manufacturing Company and Furniture and Bedding Workers Union, Local 18-B, United Furniture Workers of America, AFL-CIO, Petitioner**

**Playskool Manufacturing Company and Furniture and Bedding Workers Union, Local 18-B, United Furniture Workers of America, AFL-CIO. Cases Nos. 13-RC-8430 and 13-CA-4864. February 25, 1963**

## DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

On October 9, 1962, Trial Examiner Edwin Youngblood issued his Intermediate Report in the above-entitled proceeding, finding that 140 NLRB No. 143.