WE WILL NOT in any like or related manner refuse to bargain with said Unions as the exclusive representatives of our employees in the aforesaid appropriate units.

NICKEY CHEVROLET SALES, INC.,
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, Midland Building, 176 West Adams Street, Chicago 3, Illinois, Telephone No. Central 6-9660, if they have any question concerning this notice or compliance with its provisions.

The Western and Southern Life Insurance Company *and* Insurance Workers International Union, AFL-CIO. *Case No. 6-CA-2625. April 16, 1963*

DECISION AND ORDER

On February 13, 1963, Trial Examiner Alba B. Martin 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 exceptions to the Intermediate Report together with a supporting brief.

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 briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[1]

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner with the following modifications:

1. Substitute the following for paragraph 1(b) of the Recommended Order:[2] "Interfering with the efforts of the Insurance

[1] Respondent, in its exceptions and brief, has renewed arguments made in the representation matter underlying this proceeding (138 NLRB 538) and before the Trial Examiner, that the Board's unit finding is incorrect. We find no merit in these arguments. We have found that the individual district offices of the Employer are separate administrative entities through which it conducts its business operations, and that a unit consisting of all debit insurance district agents at each such office is inherently appropriate. It is, therefore, irrelevant whether, as the Employer seeks to establish, the Union may also have attempted to organize the agents working at other district offices, or that the Board has also grouped a number of district offices into a single unit where justified by considerations which are not present here. See *Metropolitan Life Insurance Company*, 138 NLRB 512, and 138 NLRB 565 (Members Rodgers and Leedom dissenting).

[2] See *Metropolitan Life Insurance Company*, 141 NLRB 337 (Members Rodgers and Leedom dissenting).

Workers International Union, AFL–CIO, to negotiate for or represent the employees in the said appropriate unit as the exclusive bargaining agent."

2. In the first line of the second paragraph of the "Notice to All Employees", strike the words "in any manner."

MEMBERS RODGERS and LEEDOM, dissenting:

In our dissenting opinion in the representation proceeding which underlies this complaint case, 138 NLRB 538, we indicated that we would have found inappropriate the unit that the Union was seeking. We adhere to our views there expressed, and would accordingly dismiss the complaint. See also the dissenting opinions in *Quaker City Life Insurance Company*, 134 NLRB 960; *Metropolitan Life Insurance Company*, 138 NLRB 512 and 565; and *Equitable Life Insurance Company*, 138 NLRB 529.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This case, heard before Trial Examiner Alba B. Martin at Pittsburgh, Pennsylvania, on December 3, 1962, arises out of Respondent's admitted refusal to recognize and bargain with the Union certified by the Board in two units in Cases Nos. 6–RC–3060 and 6–RC–3063, herein called "the representation cases." The charge was filed October 26, 1962, the complaint was issued November 1, 1962, and the answer was dated November 12, 1962. After the hearing the Union and Respondent filed briefs, which have been duly considered. Upon such consideration and upon the entire record in this case and in the related representation cases, Cases Nos. 6–RC–3060 and 6–RC–3063, which I incorporated by reference into the record herein at the hearing, and of which I take official notice, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, an Ohio corporation, is engaged in the solicitation, sale, and issuance of life, health, and accident insurance policies. Respondent has offices located in 23 States of the United States. During the 12 months preceding October 1, 1962, the premiums which Respondent received from policyholders were in excess of $1,000,000 of which in excess of $50,000 was received from policyholders outside the State of Pennsylvania. The complaint alleged, Respondent admitted, and I find that at all times material herein Respondent has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Insurance Workers International Union, AFL–CIO, the Charging Party, herein referred to as the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The General Counsel's affirmative case*

Upon petitions for certification in the two representation cases, the Board held a consolidated hearing, following which, in its Decision and Direction of Elections issued September 14, 1962 [1] (138 NLRB 538), the Board directed separate elections, in two units which it found to be appropriate units, at the Employer's McKeesport and Wilkinsburg, Pennsylvania, offices among the following employees of the Employer:

[1] All of the events herein occurred in 1962.

All debit insurance district agents, excluding plant clerical and office clerical employees, inspectors, managers, assistant managers, guards, professional employees and all supervisors as defined in the Act.

On October 5, in secret elections conducted under the supervision of the Regional Director for the Sixth Region, a majority of employees in each unit selected the Union as their representative, and on October 15, the Regional Director certified the Union as the exclusive collective-bargaining representative of the employees in each of said units.

On October 16, by letter, the Union requested the Employer to bargain collectively with it concerning the rates of pay, wages, hours of employment and other conditions of employment of the employees in the two units. On October 19, by letter, Respondent refused to meet or bargain with the Union "for the reason that said two offices do not constitute appropriate bargaining units."

B. *Respondent's defense*

In substance Respondent sought to defend its admitted refusal to recognize and bargain with the Union for the two certified units (the unit question was fully litigated in the representation cases) by contending that the Board's unit findings were wrong and that certain other units suggested by the Respondent in the representation cases and litigated in those cases were right—or, at least, more appropriate. At the hearing before me Respondent sought, unsuccessfully, to introduce testimony designed to show that its claimed units were more appropriate than the units found by the Board in the representation cases.

Respondent also sought to introduce evidence that the Union sought and failed to organize Respondent's employees on a wider geographical basis than the units found appropriate by the Board, Respondent contending that this proved that, contrary to the mandate of Section 9(c)(5), extent of organization was given controlling weight in the Board's unit findings. Examination of the record and the Board's Decision in the representation cases, 138 NLRB 538, reveals that not only was extent of organization not given controlling weight in the unit determinations, but that it was not given any weight at all. The representation record is silent as to extent of organization. The Board's Decision was grounded upon the Company's organization and operations and its relations with its employees and it made no mention at all of the extent to which the employees had organized. On its face the Decision showed that extent of organization had no bearing upon the Decision. Under these circumstances no new fact relating to extent of organization was admissible or relevant.[2] See *Moss Amber Mfg. Co.*, 119 NLRB 732, 733, footnote 1, enfd. 364 F. 2d 107, 110 (C.A. 9).

The law is settled that the issues raised and determined in the prior representation cases may not be relitigated in the complaint proceeding. *Pittsburgh Plate Glass Company* v. *N.L.R.B.*, 313 U.S. 146, 157–158; *N.L.R.B.* v. *American Steel Buck Corp.*, 227 F. 2d 927, 929 (C.A. 2); *N.L.R.B.* v. *Botany Worsted Mills*, 133 F. 2d 876, 882 (C.A. 3); *N.L.R.B.* v. *West Kentucky Coal Company*, 152 F. 2d 198, 200–201 (C.A. 6), cert. denied 328 U.S. 866; *Quaker City Life Insurance Company*, 138 NLRB 61. It is equally clear that as a Trial Examiner of the Board, I am bound by the Board's earlier unit determinations and the ensuing certifications. *West Kentucky Coal Company, supra*, 152 F. 2d at p. 201; *Air Control Products of St. Petersburg, Inc.*, 139 NLRB 413; *Esquire, Inc. (Coronet Instructional Films Division)*, 109 NLRB 530, 539, enfd. 222 F. 2d 255 (C.A. 7).

Accordingly, on the basis of the Board's prior determinations in the representation cases, I find and conclude that at all times material herein the Union has been, and now is the certified collective-bargaining representative of Respondent's employees in the appropriate units hereinbefore described. I further find and conclude that Respondent has, since October 19, 1962, refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate units; and that Respondent by such refusal has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

---

[2] Respondent contended in substance, that some of this evidence became newly available to it since the representation case hearing and was therefore admissible herein because of that fact. That it was newly available did not make otherwise irrelevant testimony admissible. Further, with due diligence, by use of the subpena power or requests for stipulation, the proffered testimony could have been available to Respondent at the representation case hearing. See *Moss Amber Mfg. Co., supra*.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Respondent's refusal to bargain, set forth in section III, above, occurring in connection with the operations of Respondent set forth in section I, 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 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 (adopting the language prescribed by the Supreme Court in *N.L.R.B.* v. *Express Publishing Company*, 312 U.S. 426, 439) from "in any manner interfering with the efforts of the [Union] to bargain collectively with [Respondent]." 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 this and the representation cases, 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. The appropriate units are:

(a) All debit insurance district agents employed at Respondent's McKeesport, Pennsylvania, office, excluding plant clerical and office clerical employees, inspectors, managers, assistant managers, guards, professional employees, and all supervisors as defined in the Act, constitutes a unit appropriate for the purposes of collective bargaining.

(b) All debit insurance district agents employed at Respondent's Wilkinsburg, Pennsylvania, office, excluding plant clerical and office clerical employees, inspectors, managers, assistant managers, guards, professional employees, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining.

3. The Union, since the date of its certifications, October 15, 1962, has been and now is the exclusive representative of all employees in the aforesaid appropriate units for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. By refusing, on and since October 19, 1962, to bargain collectively with the Union as the representative of the above employees, 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

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that Respondent, the Western and Southern Life Insurance Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith concerning wages, hours, and other terms and conditions of employment with Insurance Workers International Union, AFL–CIO, as the exclusive representative of the employees in the following appropriate units:

> All debit insurance district agents employed at Respondent's McKeesport, Pennsylvania office, excluding plant clerical and office clerical employees inspectors, managers, assistant managers, guards, professional employees, and all supervisors as defined in the Act.
>
> All debit insurance district agents employed at Respondent's Wilkinsburg, Pennsylvania office, excluding plant clerical and office clerical employees, inspectors, managers, assistant managers, guards, professional employees, and all 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 units.[3]

---

[3] As noted in the section of this report captioned "The Remedy," the language of paragraph 1(b) of the Recommended Order follows that prescribed by the Supreme Court in the *Express* case, *supra*, 312 U.S. at 439.

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 units, and embody in a signed agreement or agreements any understandings reached.

(b) Post at its McKeesport and Wilkinsburg offices, copies of the attached notice marked "Appendix."[4] Copies of such notice, to be furnished by the Regional Director for the Sixth 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 of the date of the receipt of this Intermediate Report and Recommended Order what steps the Respondent has taken to comply herewith.[5]

Upon the entire record in the instant case and the representation cases and upon the above considerations, it is further recommended that the General Counsel's motion for judgment on the pleadings, upon which judgment was reserved at the hearing, be granted.

---

[4] 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. If the Board's Order is enforced by a decree of the United States Court of Appeals, the notice will be further amended by the substitution of the words "A Decree of the United States Court of Appeals, Enforcing an Order" for the words "A Decision and Order."

[5] In the event this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Sixth 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 Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Insurance Workers International Union, AFL–CIO, as the exclusive representative of the employees in the bargaining units described below.

WE WILL NOT in any manner interfere with the efforts of Insurance Workers International Union, AFL–CIO, to bargain collectively as the exclusive representative of the employees in the bargaining units described below.

WE WILL, upon request, bargain with Insurance Workers International Union, AFL–CIO, as the exclusive representative of all the employees in the bargaining units 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.

The bargaining units are:

All debit insurance district agents employed at our McKeesport, Pennsylvania office, excluding plant clerical and office clerical employees, inspectors, managers, assistant managers, guards, professional employees, and all supervisors as defined in the Act.

All debit insurance district agents employed at our Wilkinsburg, Pennsylvania office, excluding plant clerical and office clerical employees, inspectors, managers, assistant managers, guards, professional employees, and all supervisors as defined in the Act.

THE WESTERN AND SOUTHERN LIFE INSURANCE 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, 2107 Clark Building, 701–717 Liberty Avenue, Pittsburgh 22, Pennsylvania, Telephone No. 471–2977, if they have any question concerning this notice or compliance with its provisions.

Wausau Concrete Company, Inc. *and* International Hod Carriers, Building and Common Laborers Union of America. *Case No. 18–CA–1469. April 16, 1963*

DECISION AND ORDER

On January 29, 1963, Trial Examiner Joseph I. Nachman issued his Intermediate Report in the above-entitled proceeding, finding that Respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Intermediate Report. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief; and the Respondent filed an exception to the Trial Examiner's failure to make a particular fact finding, together with a brief in support of the Intermediate Report.

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 Leedom].

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

ORDER

[The Board dismissed the complaint.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding heard before Trial Examiner Joseph I. Nachman at Wausau, Wisconsin, on November 6 and 7, 1962,[1] involves allegations that Wausau Concrete Company, Inc., herein called Respondent, discriminatorily discharged two employees. No independent Section 8(a)(1) activity is involved. All parties were present at the hearing and were afforded full opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally on the record. Oral argument was presented by Respondent, both Respondent and the General Counsel submitted briefs, all of which have been duly considered.

Upon the entire record, and from my observation of the witnesses, I make the following:

[1] The original and amended charges were filed on August 2 and September 17, 1962, respectively; the complaint issued September 17, 1962.