WE WILL consider on the merits, notwithstanding any time limitations contained in our collective-bargaining agreement with the union, the grievances filed with us by our former employees, Harold E. Shafer, Bobby Charles Harding, and Ray F. Moore, if any of them indicate a desire to have their grievances reinstated.

WE WILL consider for reemployment, when our plant expansion program has been completed, any of our former employees who were discharged after the picketing of our plant on May 11 and 12, 1962, without reference to their previous filing of grievances or participation in the filing of charges against us under the National Labor Relations Act, provided that such former employees apply for reemployment.

EAST TEXAS PULP AND PAPER COMPANY,
Employer.

Dated_____ By_____
(R. M. BUCKLEY, *President*)

_____
(RAY BROWN, *Plant Manager*)

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-third Regional Office, 6617 Federal Office Building, 515 Rusk Avenue, Houston, Texas, 77002, Telephone No. Capitol 8-0611, Extension 296, if they have any question concerning this notice or compliance with its provisions.

Harry Pollins, d/b/a Harry's Television Sales and Service *and* Local Union 1430, International Brotherhood of Electrical Workers, AFL-CIO. *Case No. 22-CA-1412. June 28, 1963*

DECISION AND ORDER

On April 30, 1963, Trial Examiner Samuel Ross issued his Intermediate Report in the above-entitled proceeding, finding that Respondent had engaged 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 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 [Members Leedom, 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 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.[1]

[1] We agree with the Trial Examiner that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize the Union on and after October 31, 1962. In so finding, however, we rely upon the unlawful conduct engaged in by the Respondent after October 31 in addition to the earlier events relied upon by the Trial Examiner.

ORDER

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

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge filed November 5, 1962, by Local Union 1430, International Brotherhood of Electrical Workers, AFL–CIO (herein called the Union), the General Counsel of the National Labor Relations Board issued a complaint dated December 19, 1962, and amended on February 11, 1963, against Harry Pollins, d/b/a Harry's Television Sales and Service (herein called Pollins or Respondent), alleging that Respondent had engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act. In substance, the complaint as amended alleges that Respondent interfered with, restrained, and coerced his employees in the exercise of rights guaranteed by the Act, by interrogation of employees regarding union membership and sympathies, and by offering and promising employees benefits and better working conditions if they would cease from engaging in a strike or giving assistance or support to the Union. In addition, the complaint alleges that although the Union was the duly designated representative of Respondent's employees in an appropriate unit, since October 31, 1962, Respondent has failed and refused to recognize and bargain with the Union.

The Respondent filed an answer which denies that his commerce meets the Board's standards for assertion of jurisdiction, denies the commission of unfair labor practices, and asserts five affirmative defenses. Pursuant to due notice, a hearing was held before Trial Examiner Samuel Ross at New Brunswick, New Jersey, on February 18 and 19, 1963. All parties were represented at the hearing by counsel and were afforded full opportunity to be heard, to introduce evidence, to examine and cross-examine witnesses, and to present oral argument. At the conclusion of the hearing, I reserved decision on the General Counsel's motions to strike Respondent's five affirmative defenses. The motions are hereinafter disposed of in accordance with my findings and conclusions. After the hearing, briefs were filed by the Respondent and the General Counsel on March 21 and 25, 1963, respectively, which I have carefully considered.

Upon the entire record in the case and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. COMMERCE

The Respondent, Pollins, is an individual whose store and service shop is located in North Brunswick, New Jersey, where he is engaged in the business of selling and servicing radio and television sets and related products. In the calender year 1961, a representative period, his gross revenue for such sales and services was $226,083.43. All of that revenue, except approximately $20,000, was received by Respondent for sales to and service for the general public at retail.[1] All such sales and service, both retail and nonretail, were made and performed by Respondent within the State of New Jersey. During the same year 1961, Respondent purchased parts and television antennas valued at about $2,000 directly from out of the State, and television sets, high fidelity equipment, and other products valued at $119,413.27 from Apollo Distributing Company and other companies located in New Jersey, who received such products from outside the State.

Practically all of the indirect and much of the direct inflow was received by Respondent in connection with the retail aspect of his business. Quite obviously, if Respondent's business is regarded as a retail enterprise, his annual gross sales are insufficient to meet the Board's standard for assertion of jurisdiction, since they are

[1] Respondent's only business other than with the general public was as follows: He received between $17,000 to $18,000 from several local automobile sales agencies for the sale, installation, and service of radio sets; between $1,200 to $1,300 for wiring several commercial enterprises for sound; and $1,000 for the sale of two color television sets to a bowling alley.

less than $500,000.[2] However, Respondent also made sales to and performed services for automobile agencies and other commercial enterprises which were not retail.[3] This aspect of Respondent's business, if considered separately, also does not meet the Board's standard for assertion of jurisdiction over nonretail enterprises.[4] In this regard, it is quite apparent that since the gross revenue from the nonretail sales and services was only $20,000, the purchases or inflow for this segment of the business must have been less than $50,000.

However, since the Respondent operates a combination retail and nonretail enterprise, the separate segments of his business may not be considered separately in determining whether to assert jurisdiction. The Board's established policy for determining whether it will assert jurisdiction over an employer whose business is both retail and nonretail is to apply nonretail standards to the employer's *total operations*, unless the nonretail aspect of the employer's business is *de minimis*.[5] Quite clearly, if nonretail standards are applied to Respondent's entire business, both retail and nonretail, his inflow of $121,000 is sufficient for the assertion of jurisdiction. Accordingly, the only remaining commerce question is whether this combination standard should be applied, or in other words, whether the nonretail aspect of this business should be regarded as *de minimis*. In a similar case,[6] the Board held that where the nonretail sales were $5,246.75, less than 4 percent of the gross business of $153,921.27, the employer's operations fell within the *de minimis* exception to the Board's rule for combination retail and nonretail enterprises. In the instant case, the nonretail sales were $20,000, less than 9 percent of Respondent's gross sales of $223,083.43. In view of the greater nonretail sales and percentage of business here involved, and in the absence of any more definitive ruling by the Board, I am constrained to the conclusion that the nonretail aspect of Respondent's business is not *de minimis*.

Accordingly, since Respondent's inflow for his entire operations is more than sufficient to meet the Board's nonretail standard for such combination enterprises, I conclude that it will effectuate the policies of the Act to assert jurisdiction over the Respondent's operations. I therefore find that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

I further find that Local Union 1430, International Brotherhood of Electrical Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain with the Union*

In the latter part of October 1962, Respondent had in its employ six television and radio technicians. On October 29,[7] all six of Respondent's technicians attended a union meeting held for the purpose of organizing employees of television and radio service shops in the New Brunswick area. Four of Respondent's technicians [8] signed cards at the meeting authorizing the Union to act as their collective-bargaining representative. A fifth employee, Alfred Perrone, executed and signed the application-for-membership portion of the card at the union meeting, but neglected to sign the authorization portion of the card until a few days later. The sixth employee, Allen Siegel, executed and signed his union authorization card on the next day, October 30.

On October 30 the Union, by telegram, advised Respondent that it represented a majority of his "TV technicians," and requested a meeting to negotiate "wages and other conditions of employment" for Respondent's employees. Respondent did not reply to the telegram. The following morning, October 31, by prearrangement, all six technicians met outside Respondent's store with the Union's representatives,

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[2] *Carolina Supplies and Cement Co.*, 122 NLRB 88.

[3] The Supreme Court has defined "retail" sales and services as those which are made to a purchaser "to satisfy his own personal wants or those of his family or friends." *Roland Electric Company v. Walling*, 326 U.S. 657, 674–675. Obviously, Respondent's business for commercial establishments does not meet the definition of retail

[4] *Siemons Mailing Service*, 122 NLRB 81.

[5] *T. H. Rogers Lumber Company*, 117 NLRB 1732, 1733; *Appliance Supply Company*, 127 NLRB 319, 320; *Indiana Bottled Gas Company*, 128 NLRB 1441.

[6] *Yakima Cascade Fuel Co.*, 126 NLRB 1316

[7] All dates hereafter refer to 1962 unless otherwise specifically noted.

[8] Raymond Crawford, John M. Lennon, Zdzislaw Wicyniak, and Fred M. Thompson.

and agreed that unless Respondent granted immediate recognition to the Union, they would go on strike. Thereupon, Union Representatives Frank Mancuso and William Maude, together with Fred M. Thompson, one of the technicians, entered the store, and had a conversation with Respondent Pollins. Mancuso told Pollins the Union represented his employees, and that unless he executed a form of "stipulation" to recognize the Union as their exclusive representative and to meet later to negotiate a contract, his employees would strike. Pollins protested that he knew nothing about such matters and wanted to consult with his attorney. Pollins then called his counsel, Henry M. Spritzer, and Mancuso spoke with him on the telephone and repeated the Union's demands and threat of strike. Spritzer agreed to come down to Respondent's store later that morning and meet with the Union's representatives. Spritzer also suggested that the employees return to work in the interim, but this was rejected by Mancuso. However, Mancuso did agree with Spritzer that picketing of Respondent would be deferred until after their meeting.

Spritzer came to Respondent's store about 10:30 a.m. on October 31, and after talking briefly with Pollins in the store, went outside to the street where the union representatives and all of the employees were waiting for him. Union Representative Mancuso repeated his demands to Spritzer. Mancuso told Spritzer that all he wanted at that time was a recognition agreement, and the men would go back to work. Mancuso also told Spritzer that bargaining for a contract could be deferred for 10 days or longer to suit Spritzer's convenience. Mancuso also told Spritzer that he represented 100 percent of Respondent's employees, and showed Spritzer the union authorization cards which the employees had signed. Spritzer replied that he wanted an opportunity to investigate the circumstances under which the cards had been signed and suggested that an election be held. Mancuso responded that the men were all there in the street and that Spritzer could ask them whether the signatures on the cards were genuine. Mancuso also offered to permit Spritzer to call a "priest" or a "public servant" and have an election right there and then. Spritzer suggested that it would put Respondent in an unfair competitive position if he were the only TV service enterprise which had to meet union conditions. Mancuso replied that the Union already represented RCA's mechanics, and planned to organize all the other TV shops in the area. Finally, in response to Spritzer's repeated request for information regarding the Union's wage demands, Mancuso told him they wanted $36 per day. Spritzer replied that the demand was ridiculous and went back into Respondent's store.

After Spritzer left, Mancuso reported to the employees what had transpired, and they decided to stay out on strike and to set up picket lines at Respondent's store. All of Respondent's employees participated in the strike and picketing which continued thereafter from October 31 until November 3.

B. *Concluding findings in respect to refusal to bargain*

1. The appropriate unit

As noted above, at the time of the Union's demand for recognition and bargaining as the representative of Respondent's employees, Respondent had in his employ six television and radio technicians.[9] Two of these technicians performed outside service work. The other four worked in Respondent's shop.

There is no prior history of collective bargaining for Respondent's employees, and no contention has been raised by Respondent that the unit for which the Union demanded recognition was inappropriate. Such a unit of television and radio repairmen has been held by the Board to be appropriate.[10] Moreover, in this case, the requested unit is also coextensive with Respondent's entire shop.[11] Accordingly, I find that all employees employed by Respondent at his North Brunswick, New Jersey, store, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

2. The supervisory status of Fred M. Thompson

One of the six television and radio technicians, Fred M. Thompson, was Respondent's service manager. It was Thompson's responsibility to check all television and radio sets to make sure that they were operating properly before delivery to Respondent's customers. Thompson assigned work regularly to at least one of Respond-

[9] Respondent's only other employee was an office clerical.

[10] *General Electric Supply Corporation,* 83 NLRB 1135.

[11] *Beaumont Forging Company,* 110 NLRB 2200.

ent's other technicians, and sometimes to the others. Thompson interviewed applicants for employment and made effective recommendations in respect to their employment or nonemployment. He also made effective recommendations in respect to promotions for the other technicians. Thompson's salary was about $25 more per week than that of the other technicians. On the foregoing, I conclude that Thompson was a supervisor of Respondent within the meaning of Section 2(11) of the Act.[12]

In view of my conclusion in respect to Thompson's supervisory status, it is obvious that he did not properly belong in the unit for which the Union sought representative status. Moreover, it is also clear that in seeking recognition, the Union regarded him as part of the unit which it sought to represent. However, this variance from what otherwise would be an appropriate unit was a minor one and subject to modification. At no time did the Respondent, in refusing to recognize and bargain with the Union, raise any question that the unit was inappropriate because the Union sought also to include Thompson. On the contrary, its refusal to consider the Union's demand for recognition and offer to prove its majority foreclosed any clarification by the Union regarding the scope of its requested unit. Accordingly, I conclude that the Union's recognition and bargaining demand was for representation in a unit appropriate for collective-bargaining purposes.[13]

The record herein also clearly discloses that on October 30, when the Union sent its telegraphic demand for recognition, and on October 31, when the oral demand was made, the Union represented all of Respondent's employees in an appropriate unit.

3. Respondent's contentions

Respondent contends that the Union's telegraphic demand was "equivocal," and implied that the Union intended to seek an election to establish its majority status. The telegram stated:

> This is to inform you that this local union represents a majority of TV technicians in your employ.
>
> The National Labor Relations Act guarantees workers the right to choose a representative free from coercion of their employers. *Please contact the undersigned so that a meeting can be established* to begin negotiations for wages and other conditions of employment for your employees we represent. [Emphasis added.]

I do not regard the foregoing as "equivocal," nor does it, in my opinion, suggest that the Union planned to establish its majority status by an election. I therefore regard this contention of Respondent as without merit.

In any event, it is clear that on the day following the telegram, when the Union orally repeated its demand for immediate recognition and bargaining, it rejected the request of Respondent's counsel for a formal Board election. On this occasion, moreover, the Union demonstrated the unanimous support of the employees for its demands, by showing Respondent's counsel their union authorization cards, by offering to let him question the employees regarding the authenticity of the signatures on the cards, by their withholding of services until recognition was granted, and by their strike when recognition was denied. Thus, even assuming *arguendo* that there was any possible merit to Respondent's contention that the telegraphic demand was "equivocal," there clearly could not be any basis for misunderstanding the nature of the Union's oral demands on October 31. On that day, it is clear that Respondent not only could not have any doubt regarding the nature of the Union's demands, but also could not have any good-faith doubt regarding the Union's status as the exclusive representative of all his employees.

Nevertheless, Respondent's brief suggests that because the Union filed a representation petition with the Board on November 1,[14] he was justified in withholding recognition until such petition was processed to a Board election. The short answer to this contention is that on October 31, when recognition was refused, the Union not only had not yet filed a representation petition, but the Respondent did not know that the Union contemplated filing any such. Obviously, therefore, Respondent's refusal to accord recognition to the Union on October 31 could not have been based either on a good-faith doubt that the Union represented a majority of his employees, or on the pendency of the representation petition. The Board has repeatedly held:

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[12] *Timber Laminators, Inc.*, 130 NLRB 1301.

[13] *American Rubber Products Corp.*, 106 NLRB 73, 77; *Hamilton Plastic Molding Company*, 135 NLRB 371, 373.

[14] Case No. 22–RC–1829. The petition was withdrawn by the Union on November 5.

> An employer has no absolute right to insist upon an election before recognizing a union, where, as here, the Union's claim of majority status has been established in a less formal manner and no reasonable basis exists for doubting that claim.[15]

Moreover, even assuming *arguendo* that Respondent had any doubt regarding the Union's majority status, such doubt should have been dispelled by the unanimous participation of his employees in the Union's strike and picketing.[16]

Respondent finally suggests that since the Union's immediate demand was only for recognition, and bargaining was to be deferred to a later date, it cannot be said that he refused to bargain. Respondent cites no precedent for this novel contention, and it is, quite apparently, devoid of any possible merit. The Supreme Court, referring to the purpose of Section 8(a)(5) of the Act, said in *N.L.R.B.* v. *Insurance Agents' International Union*:[17]

> That purpose is the making effective of the duty of management to extend recognition to the Union; the duty of management to bargain in good faith is essentially the corollary of its duty to recognize the Union.

So, in this case, Respondent having refused to take even the initial bargaining step of recognition, it follows, *a fortiori*, that Respondent also was refusing to bargain with the Union.

For all the foregoing reasons, I find and conclude that on and after October 31 Respondent refused to bargain in good faith with the Union although it was the exclusive representative of his employees in a unit appropriate for collective-bargaining purposes, and I further conclude that thereby Respondent engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

C. *Interference, restraint, and coercion*

1. Promises of benefits to end strike

At 8:30 a.m. on Saturday, November 3, strikers John Lennon and Raymond Crawford arrived at Respondent's store for their regular picket duty. According to Lennon, about an hour later, Service Manager Thompson and the other three strikers appeared, and Thompson announced, "We [have] thought this thing over and we have decided to go back [to work]." Lennon suggested that they wait until Union Representative Maude, and Crawford, temporarily not present, returned. Thompson agreed. Lennon then said that he would not return to work unless there was an agreement that there would be no discrimination against him or Crawford. Thompson replied that he had such an agreement from Respondent, but he would go into the store and confirm it. Thompson then entered the store, came out shortly thereafter, and reported that Respondent agreed that there would be no discrimination against Lennon or Crawford. A little later, Maude and Crawford returned and were apprised of the new development. Maude then suggested that Thompson wait at least until the following Monday, when a conference on the Union's representation petition was scheduled at the Board's office. However, Thompson replied "that they were determined to go back." Thereupon Thompson, Wicyniak, Siegel, and Perrone entered Respondent's store. After a short discussion with Crawford, Lennon also decided to return to work and went in. Crawford refused to return,[18] and he and Maude left the vicinity of Respondent's store shortly thereafter.

Lennon testified that when he entered the store, Pollins assured him that there would be no discrimination against him. A little while later Service Manager Thompson called Lennon to the side and told him "that they had met with Mr. Pollins the night before, . . . they had discussed their grievances with him, and that he had promised to take care of the grievances when the Labor Relations Board was out of the picture, and that he promised that he would give us full hospitalization, 1 day off every 6 weeks, and that I [Lennon] was in line for a raise." About 4 weeks later these promised benefits, 1 day off every 6 weeks and full hospitalization paid for by Respondent, were given to the employees without negotiation or consultation with the Union.

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[15] *Mitchell Concrete Products Co., Inc*, 137 NLRB 504; *Fred Snow et al, d/b/a Snow & Sons*, 134 NLRB 709, 710.

[16] *Preston Feed Corporation*, 134 NLRB 629, 641–642; *N.L.R.B.* v. *William S. Shurett, d/b/a Greyhound Terminal*, 314 F. 2d 43 (C.A. 5).

[17] 361 U.S. 477, 484–485.

[18] Crawford never returned to work for Respondent. He subsequently went into the television sales and repair business for himself.

Respondent Pollins denied that he had made any promises to the striking employees before they abandoned the strike. Similarly, Service Manager Thompson denied that he had any conversations with Pollins before the strike ended and he also denied that he had told Lennon or any other employee that Pollins had made any promises to him.

Lennon impressed me as a frank and forthright witness in whose testimony I could place reliance.[19] He was still employed by Respondent when he testified in this proceeding, and had received an increase in pay after the strike. Thus, there appears no reason for animus by Lennon against Respondent, and he exhibited none. Moreover, it appears to me highly improbable that Thompson and the other three striking employees would so quickly abandon the strike which they had voluntarily undertaken, unless there had been prior consultation with Pollins regarding the grievances which had originally motivated their union interest. For all the foregoing reasons, I conclude that Lennon's version of his conversation with Thompson should be credited, and that the denials of Respondent and Thompson regarding the making of these promises of benefits and their reiteration to Lennon are not worthy of belief. Since, as found above, Thompson is a supervisor of Respondent, his admission regarding these promises of benefit was binding on Respondent and not hearsay.

Respondent nevertheless suggests that interference, restraint, and coercion in violation of Section 8(a)(1) of the Act is not established by the foregoing, because: (1) these benefits "had been requested of the Employer for at least a year before they were granted"; (2) the hospitalization was granted in lieu of the employees' usual Christmas bonus; and (3) the promises were iterated to Lennon after the strike had ended, and thus could not have been made to deter the employees from continuing to strike. I regard all of these contentions as devoid of merit. As to (1) above, the fact that these unsatisfied demands had existed for some time before the advent of the Union clearly suggests the inference that the motivation for promising and giving these benefits after the Union's advent was to wean the employees from their interest in and activities on behalf of the Union. Moreover, this inference of antiunion motivation for the promise and giving of these benefits is clearly impelled by Respondent's admitted opposition to the representation of his employees by any union, and by the fact that giving of the benefits was deferred until "after the Labor Board was out of the picture." As to (2), although the record is quite clear that the hospitalization was in lieu of the employees' usual Christmas bonus, the latter in no case was more than $35 per employee per annum, whereas the cost of the hospitalization was about $15 per month per employee, or about $180 per annum. Thus, the paid hospitalization was a substantial benefit over and above what the employees had received before. Finally, as to (3) above, I have found, based on Thompson's admission to Lennon, that these promises of benefit were quite evidently made to Thompson and the other three technicians before the strike ended and motivated their sudden decision to return to work. Moreover, even assuming that the promises were made after the strike ended, the Respondent's act of dealing directly with the strikers in this regard, and not through their representative, clearly interfered with the right of Respondent's employees to deal with him through a collective-bargaining representative, and thus violated Section 8(a)(1) of the Act.

For all the foregoing reasons, I conclude that by promising and subsequently granting benefits to the employees as described above, Respondent interfered with, restrained, and coerced his employees in the exercise of rights guaranteed by the Act, and thereby engaged in unfair labor practices wtihin the meaning of Section 8(a)(1) of the Act.

In addition, the granting of these benefits to the employees after the strike ended, without prior negotiation or consultation with the Union, in itself, constituted a violation of Section 8(a)(5) and (1) of the Act. Thus, as found above, the Union was the majority representative of Respondent's employees on October 31 when they struck over his refusal to recognize and bargain with the Union. Even assuming that the abandonment of the strike by the employees could be regarded as a loss by the Union of its majority status,[20] such loss of majority is directly attributable to Respondent's unfair labor practice in refusing to recognize the Union. Accordingly, the duty of Respondent to bargain with the Union nevertheless continued,[21] and his

[19] Conversely, Pollins' testimony in respect to the Union's demand for recognition was contradicted by his affidavit given to a Board agent, and Thompson appeared to be evasive and lacking in candor on cross-examination.

[20] On the contrary, the record clearly discloses that none of the employees ever withdrew his authorization of the Union to represent him.

[21] *Franks Bros Company* v. *N L R.B.*, 321 U.S. 702.

unilateral grant of benefits to the employees without negotiation with the Union further undermined the Union in violation of Section 8(a)(5) and (1) of the Act.[22]

2. Interrogation of Lennon

According to Lennon's credited testimony, about 1 month after the strike ended, Service Manager Thompson told him in substance, "The Labor Board is coming down here next week, and we want you to cooperate with us, [and] not to cooperate with the Board." Lennon replied that if put under oath, he would tell the truth. Later that day, Respondent Pollins approached Lennon and asked him, "Who are you with? Are you with me or with the Union?" Lennon replied that he "had been for unions" all his life and would continue to do so. At quitting time that day, Service Manager Thompson told Lennon that he wanted "to get this thing straight." He then asked Lennon, "Are you with us or are you with the Union." Lennon replied that under the law, he had a right to "belong to any union," and he then asked Thompson, "What is it you want from me?" Pollins replied, "We want you not to cooperate with the Board." To Lennon's question whether he was being asked "to lie to the Board," Pollins answered, "Yes." Lennon responded that he refused to "sweep the dirt under the carpet."

Pollins admitted that he had interrogated Lennon as to whether "he was for the Union." He also admitted that he had advised Lennon "that the National Labor Relations Board was coming down" However, he denied that he requested Lennon "not to cooperate" with, or to lie to the Board agent. Service Manager Thompson also admitted that he and Pollins had asked Lennon whether he was "for the Union." According to Thompson, Lennon replied, "He is a union man and will be a union man all his life . . . and . . . when the hearing comes up, he will testify to the truth and all of the facts he knows." Thompson also admitted that Pollins told Lennon "that there was a Labor Board investigator going to come around to talk to him." Thompson denied that Pollins asked Lennon to lie to the Board agent. Although asked, neither Pollins nor Thompson was able to furnish any plausible or rational reason for interrogating Lennon regarding his support of the Union, or for advising him of the contemplated visit of the Board agent to Respondent's shop. In view of the substantial corroboration of Lennon's testimony by Pollins and Thompson in regard to their interrogation of Lennon, and especially in the light of Thompson's admission that Lennon said he was going to tell the truth in the Board proceedings, I am satisfied that this response of Lennon was prompted by Respondent's request that Lennon not cooperate with the Board agent and lie to him.

Accordingly, I conclude that by asking Lennon whether he was with Respondent or for the Union, and by asking Lennon not to cooperate and to lie to the Board agent, Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act, and thereby engaged in unfair labor practices within the meaning of Section 8(a)(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 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.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that he cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Local Union 1430, International Brotherhood of Electrical Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
2. All employees employed by Respondent at his North Brunswick, New Jersey, store, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

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[22] *N.L.R.B. v. Benne Katz, d/b/a Williamsburg Steel Products Co.*, 369 U.S. 736.

3. At all times material herein, the Union has been the exclusive bargaining representative of the employees in the aforesaid appropriate unit within the meaning of Section 9(a) of the Act.

4. By refusing to bargain collectively in good faith with the Union as the exclusive representative of the employees in the aforesaid appropriate unit, and by taking unilateral action with respect to terms and conditions of employment of his employees without consultation or negotiation with the Union, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By the foregoing conduct, by promising and subsequently giving benefits to employees to discourage their continuance or resumption of a strike, by interrogating employees regarding union adherence, and by requesting employees not to cooperate with and to lie to a Board agent investigating an unfair labor practice charge, Respondent has interfered with, restrained, and coerced employees in the exercise of their rights under the Act, and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6 The aforesaid unfair labor practices affect commerce within the meaning of 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 the Respondent Harry Pollins, d/b/a Harry's Television Sales and Service, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local Union 1430, International Brotherhood of Electrical Workers, AFL–CIO, as the exclusive representative of all employees at his North Brunswick, New Jersey, store, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, concerning rates of pay, wages, hours of employment, grievances, and other conditions of employment.

(b) Unilaterally changing the number of employees' days off, hospitalization, or any other term or condition of employment of its employees in the aforesaid appropriate unit, without notification to, consultation and negotiation with the above-named Union, or in order to discourage their continuation or resumption of a strike, or other union activities

(c) Interrogating employees concerning their union interest or activities in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

(d) Requesting employees not to cooperate with, or to lie to, agents of the Board engaged in investigation of unfair labor practices.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local Union 1430, International Brotherhood of Electrical Workers, AFL–CIO, 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 engaging in 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 modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which I find will effectuate the policies of the Act·

(a) Upon request, bargain collectively with the above-named Union as the exclusive representative of all his employees in the appropriate unit described above concerning rates of pay, hours of employment, grievances, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at his premises at North Brunswick, New Jersey, copies of the attached notice marked "Appendix A." [23] Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by Respondent, be posted by him immediately upon receipt thereof and maintained by

[23] 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 "A Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "A Decision and Order."

him 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 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 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps it has taken to comply herewith.[24]

[24] 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 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, upon request, bargain collectively with Local Union 1430, International Brotherhood of Electrical Workers, AFL–CIO, as the exclusive representative of all our employees described below, with respect to rates of pay, wages, hours of employment, grievances, and other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our employees at our North Brunswick, New Jersey, store, excluding all clerical employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT unilaterally change the number of employees' days off, hospitalization, or any other term or condition of employment of our employees, without first giving notice to, and discussing the matter with, the above-named union as the exclusive bargaining representative of our employees in the above-described unit, in order to discourage their continuation or resumption of a strike, or other union activities.

WE WILL NOT coercively or unlawfully interrogate any of our employees regarding union membership, adherence, or sympathy.

WE WILL NOT request any of our employees to withhold his cooperation from, or to lie to, a Board agent engaged in investigation of unfair labor practices.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local Union 1430, International Brotherhood of Electrical Workers, AFL–CIO, 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, and 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 modified by the Labor-Management Reporting and Disclosure Act of 1959.

All our employees are free to become or remain or to refrain from becoming or remaining members of Local Union 1430, International Brotherhood of Electrical Workers, AFL–CIO, or any other labor organization.

HARRY POLLINS, D/B/A HARRY'S TELEVISION SALES AND SERVICE,
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, New Jersey, 07102, Telephone No. Market 4–6151, if they have any questions concerning this notice or compliance with its provisions.