indeed, refuse to go to work for Masson immediately upon the Farmers' offer of work with Masson on July 15. In a sense, then, the offer of the raise was made to cause the employees to end their refusal to work which refusal was based upon the protest to the Respondent's paying less than the contract scale. But, the employees could still have protested this condition and could still have collected their backpay, assuming the same was due, even if they had gone back to work for Masson. Therefore, I believe it is more consistent with the situation as it existed at the time the various offers of raises were made that the Respondent made these offers for the purpose of keeping the employees on the Masson payroll, which was actually the Respondent's payroll. Thus, the offer of the raise in pay in return for the employees' coming back to work was, I find, merely the means by which the Respondent sought to assure the continuance of its business activity.

Accordingly, I shall recommend that that portion of the complaint which alleges that the Respondent offered raises to the employees to induce them to refrain from and abandon their concerted protected activity be dismissed.

CONCLUSIONS OF LAW

1. The Respondent did not violate Section 8(a)(3) of the Act as alleged in the complaint.
2. The Respondent did not violate Section 8(a)(1) of the Act as alleged in the complaint.

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 complaint be dismissed in its entirety.

American Metal Products Company *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, and Its Local 1198. *Case No. 26-CA-1653. August 3, 1964*

DECISION AND ORDER

On May 22, 1964, Trial Examiner Thomas N. Kessel issued his Decision in the above-entitled proceeding finding that the Respondent had engaged in and was engaging in certain unfair labor practices alleged in the complaint and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Respondent filed exceptions to the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members 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 entire record in this case, including the Trial Examiner's Decision and the exceptions thereto, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order the Order recommended by the Trial Examiner and orders that the Respondent, American Metal Products Company, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed October 7, 1963, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, and its Local 1198, herein called the Union, against American Metal Products Company, herein called the Respondent, the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for Region 26, issued his complaint dated December 4, 1963, alleging that the Respondent had engaged in and was 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 National Labor Relations Act. The Respondent's answer denies the complaint allegation of statutory violation. Copies of the complaint, the charge, and a notice of hearing were duly served upon the parties. Pursuant to said notice a hearing was held before Trial Examiner Thomas N. Kessel at Union City, Tennessee, on February 24, 1964. All parties were represented at the hearing by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded all parties. After the close of the hearing the General Counsel and the Respondent filed briefs which have been duly considered.

Upon the entire record in the case I make the following:

FINDINGS OF FACT

I. PERTINENT COMMERCE FACTS

The Respondent is a Michigan corporation which maintains plants in several States, including a plant at Union City, Tennessee, where it is engaged in the manufacture, sale, and distribution of automotive parts. In the year preceding issuance of the complaint the Respondent manufactured, sold, and shipped from its Union City, Tennessee, plant, to points outside the State of Tennessee, finished products valued in excess of $50,000. The Respondent concedes and I find from the foregoing facts that it is an employer engaged in interstate commerce within the meaning of the Act and that the purposes of the Act will be effectuated by the Board's assertion of jurisdiction in this case over its business.

II. THE LABOR ORGANIZATIONS INVOLVED

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, and its Local 1198 are labor organizations admitting to membership the Respondent's employees.

III. THE UNFAIR LABOR PRACTICES

On August 2, 1963, the Union was issued the Board's certificate as exclusive bargaining representative of a unit of the Respondent's hourly rated production and maintenance employees, with certain exclusions, at the Respondent's Union City, Tennessee, plant. The complaint alleges the Respondent's violation of Section 8(a)(5) of the Act for failing and refusing to meet and bargain collectively with the Union pursuant to its request notwithstanding the Union's certification. The Respondent attacks the validity of the Union's certificate to justify its admitted refusal to comply with the Union's bargaining request. The Board's Decision and Direction of Election in Case No. 26–RM–134, reported at 139 NLRB 601, is characterized as arbitrary and capricious, particularly with respect to the Board's determination as to the voting eligibility of a certain class of employees whose votes

were determinative of the election results enabling the Union to obtain its certificate. The Union's conduct in the election is also challenged as a basis for the Respondent's defense that the certificate was lawfully dishonored.

As recited in the aforementioned Decision and Direction of Election, the Union had been the certified representative of the Respondent's employees for several years before November 14, 1961. On that day the Union struck the Respondent's plant, presumably for economic reasons.[1] Between the start of the strike and January 26, 1962, the Respondent permanently replaced 320 striking production employees, 10 maintenance employees, and 3 tool-and-die employees out of 388 employees in the bargaining unit. On January 26, 1962, the Union delivered its letter to the Respondent announcing the termination of the strike and stating the unconditional offer of the strikers to return to work.

Following the recall of some of the strikers and the failure of negotiations to produce a contract, the Respondent filed a petition on February 28, 1962, docketed as Case No. 26–RM–134, to test the Union's representative status. A hearing was held on April 2, 1962. On October 29, 1962, the Board issued its aforementioned Decision and Direction of Election in that case. As noted therein the "significant issue" involved the voting eligibility of striking employees. The Respondent had contended that the strikers who had been permanently replaced between the November 14, 1961, start of the strike and its January 26, 1962, termination had lost their eligibility to vote because they ceased to be engaged in an economic strike within the intendment of Section 9(c)(3) of the Act.[2] The Board rejected this contention. It said:

> In this regard, we note that the parties met in an abortive collective-bargaining session on February 27, 1961, after which the Employer [the Respondent in this proceeding] filed the instant petition; that the Union still persists in its attempt to cause the General Counsel to prosecute the unfair labor practices alleged in the charges it has filed and appealed; that the Union has continued to pay strike benefits to those members not rehired after January 26 and has resumed the payment of such benefits to the striking, tool, die, and maintenance employees who were reemployed in their jobs on January 29, and who again refused to work on and after March 2. Finally, we note that the Union, on and after March 1, has resumed and continued its picketing of the plant. In these circumstances, it is evident that the Union has not abandoned its continuing representational interest in the subject bargaining unit and the striking employees continued to have a desire to be so represented. Accordingly, we find that the economic strike which began on November 14, 1961, was not terminated or abandoned on January 26, 1962, but, insofar as the record shows, has continued to the present. In view of the foregoing, we find that all replaced strikers who are not entitled to reinstatement are eligible to vote in the election directed herein.

Pursuant to the Board's direction an election was held on November 9, 1962. The tally issued by the Regional Director shows that 627 employees cast ballots. Of these 67 were for the Union, 2 against, and 558 were challenged. Thereafter the Respondent filed timely objections to conduct by the Union which assertedly affected the results of the election. The Acting Regional Director investigated the objections and on January 2, 1963, issued his report on objections and challenged ballots. The objections pertaining to conduct by the Union were found unsupported or not meritorious and it was recommended that they be overruled. As to the ballots challenged by the Respondent (267 were challenged by the Union, 289 by the Respondent, and 2 by both the Union and the Respondent) on the ground

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[1] Charges filed by the Union in Cases Nos. 26–CA–1207 and 26–CA–1269 eventuated in the issuance of a consolidated complaint against the Respondent alleging violations of Section 8(a)(3) and (5) of the Act. On October 9, 1963, the Trial Examiner who conducted the hearing in these cases issued his Decision, TXD–440–63, finding that the November 14, 1961, strike was initially for economic reasons but was converted on and after January 18, 1962, by the Respondent's conduct into an unfair labor practice strike. The Respondent has filed exceptions to this finding with the Board. As requested, I have judicially noticed the Trial Examiner's Decision and have read it, but neither adopt nor rely on any of the findings or conclusions therein.

[2] Section 9(c)(3) provides concerning the holding of representation elections that:

> Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within twelve months after the commencement of the strike.

that they were cast by employees who "were not strikers on the date of the election," the Acting Regional Director stated in his report:

> . . . the Board disposed of this same contention in its Decision and Direction of Election, and found the strikers to be economic strikers. Therefore, no merit is found to this contention of the employer . . . .

Accordingly, it was recommended that the Respondent's challenges to these ballots be overruled. Thereafter, the parties filed with the Board timely exceptions to the foregoing report. On June 17, 1963, the Board issued its Supplemental Decision and Direction adopting the findings, conclusions, and recommendations of the Acting Regional Director. As directed by the Board, the Regional Director opened and counted challenged ballots including those challenged by the Respondent on the ground that they were cast by employees who were not strikers on the date of the election. On July 29, 1963, the Regional Director issued a revised tally of ballots showing that 355 ballots had been cast for the Union, 162 against it, and 110 ballots remained unopened. A majority of the valid votes having been cast in favor of the Union the Regional Director on August 2, 1963, issued the Union its certification as exclusive collective-bargaining representative of the appropriate unit of the Respondent's employees. There followed the Union's request to the Respondent to honor the certification and to meet and bargain collectively with the Union, the Respondent's refusal, and, finally, the charge, complaint, and hearing before me with respect to said refusal.

Concerning the defense that the Board improperly decided that the replaced strikers were eligible to vote, the Respondent presented evidence to show that certain critical facts which the Board found existed when the hearing in Case No. 26–RM–134 was held on April 2, 1962, did not obtain when it issued its Decision and Direction of Election in that case on October 29, 1962. The facts relied upon by the Board were related to what was termed in the decision as "the significant issue" in the case, namely, the status of the replaced strikers as eligible voters in the directed election. As noted, the Board had declared their eligibility within the intendment of Section 9(c)(3) of the Act because, in the language of that section, it found them "engaged" in the strike against the Respondent which had commenced on November 14, 1961. The Board made this finding despite the Union's notification to the Respondent on January 26, 1962, that the strike had been terminated and the striking employees were unconditionally offering to return to work. The portion of the Board's decision, hereinabove recited, explaining the conclusion that the replaced strikers were eligible to vote included as factors supporting this conclusion the findings that "the Union has continued to pay strike benefits to those members not rehired after January 26" and "the Union, on after March 1, has resumed and continues its picketing of the plant."

Various stipulations along with other documents received in evidence show in the aggregate that the Union discontinued payment of strike benefits to all but two strikers on July 25, 1962, and that the picketing which commenced on November 14, 1961, and was maintained until January 26, 1962, was resumed on March 1, 1962, discontinued on April 6, 1962, and not again thereafter resumed. This evidence, argues the Respondent, reveals that the Board was seriously mistaken concerning the facts on which it relied when it issued its decision on October 29, 1962. The Respondent maintains that had the Board been aware of the changed circumstances pertaining to the strikers since the April 2 representation hearing it would not have decided that they were eligible voters as intended by Section 9(c)(3) of the Act. On November 8, 1962, the day preceding the election, the Respondent sent telegrams individually to the Board's members requesting reopening of the hearing and record in Case No. 26–RM–134 for admission of "substantial and material new evidence . . . not in existence on date of hearing April 2, 1962." No replies were received to these telegrams.

The Respondent's exceptions to the Regional Director's report on objections and challenged ballots plainly reveal that each factual matter and supporting argument offered by the Respondent in this proceeding to attack the validity of the Union's certification, including reference to the November 8 telegrams to Board Members requesting reopening of the record and hearing in Case No. 26–RC–134, was presented to the Board in these exceptions. I find that the Respondent in defending its alleged refusal to bargain is merely attempting to relitigate issues which have already been considered and passed upon by the Board in its Supplemental Decision and Direction in Case No. 26–RM–134. It there said:

> The Board has considered the objections, the challenges, the Regional Director's report, the exceptions thereto, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Regional Director.

As I may not in this proceeding permit relitigation of matters already litigated before the Board in the representation proceeding which culminated in issuance of the certificate attacked by the Respondent, I accord no validity to the Respondent's defense.

I find that the Respondent without legal justification has, since August 9, 1963, refused, as alleged and conceded, to meet and bargain with the Union pursuant to its request as the certified representative of its employees in an appropriate unit. By such refusal the Respondent has violated Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

Having found that the Respondent engaged in unfair labor practices violative of Section 8(a)(5) and (1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It has been found that the Respondent has refused and still refuses to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit described herein. It will therefore be recommended that the Respondent bargain collectively, upon request, with the Union as the exclusive representative of the employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

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. American Metal Products Company is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, and its Local 1198 are labor organizations within the meaning of Section 2(5) of the Act.
3. All hourly rated production and maintenance employees at the Respondent's Union City, Tennessee, plant, excluding all management representatives, executive and supervisory employees, assistant foremen, and any employee who has the right to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend the same, all office and clerical employees, professional employees, timekeepers, and plant protection employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. On August 2, 1963, and at all times thereafter, the Union was and now is the representative of a majority of the Respondent's employees in the appropriate unit described above for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. By refusing on and after August 9, 1963, to bargain collectively with the Union as the exclusive representative of all its employees in the above-described appropriate unit, 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.
6. The aforesaid unfair labor practices are unfair labor practices affecting 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 this proceeding I recommend that American Metal Products Company, at its Union City, Tennessee, plant, its officers, agents, successors, and assigns, shall:

1. Cease and desist from refusing to bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, and its Local 1198, as the exclusive representative of all its

employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) On request bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, and its Local 1198, as the exclusive representative of the employees in the appropriate unit and embody any understanding reached in a signed contract.

(b) Post at its place of business in Union City, Tennessee, copies of the attached notice marked "Appendix."[3] Copies of said notice, to be furnished by the Regional Director for Region 26, shall, after being duly signed by an authorized representative of the Respondent, be posted by it 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 said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 26, in writing, within 20 days from the receipt of this Decision, what steps it has taken to comply therewith.[4]

[3] 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."

[4] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 26, 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 bargain collectively upon request with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, and its Local 1198, 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 understanding in a signed contract. The appropriate unit is:

All hourly rated production and maintenance employees at our Union City, Tennessee, plant, excluding all management representatives, executive and supervisory employees, foremen, assistant foremen, and any employee that has the right to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend the same, all office and clerical employees, professional employees, timekeepers, and plant protection employees.

AMERICAN METAL PRODUCTS 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, 746 Federal Office Building, 167 North Main Street, Memphis, Tennessee, Telephone No. 534–3161, if they have any questions concerning this notice or compliance with its provisions.