APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to conduct our labor relations in compliance with the National Labor Relations Act, as amended, we notify you that:

WE WILL NOT threaten you with economic reprisals to discourage your membership in or activities on behalf of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of your rights under the National Labor Relations Act.

WE WILL, upon request, bargain collectively with the above-named labor organization as the exclusive representative of all employees in the unit described below and embody any understanding reached in a signed agreement.

All production and maintenance employees at our Marlette, Michigan, plant, excluding office clerical employees, and all supervisors and guards as defined in the Act.

METAL CRAFT 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 Board's Regional Office, 501 Book Building, 1249 Washington Boulevard, Detroit, Michigan, Telephone No. 226–3210, if they have any questions concerning this notice or compliance with its provisions.

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**Reilly Tar & Chemical Corporation *and* Oil, Chemical and Atomic Workers International Union, AFL–CIO.** *Case No. 25–CA–1905. April 9, 1965*

## DECISION AND ORDER

On December 23, 1964, Trial Examiner A. Bruce Hunt issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged 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 and a brief in support thereof. The General Counsel filed a brief in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Jenkins].

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

Trial Examiner's Decision, the exceptions, the briefs, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions,[1] and recommendations.[2]

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Order recommended by the Trial Examiner, and orders that the Respondent, Reilly Tar & Chemical Corporation, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order with the following modification.

Paragraph 1(c) is modified to read as follows:

"Assisting employees in their efforts to discontinue their union affiliations."[3]

[1] While we fervently support the maxim that "One father is more than a hundred schoolmasters," we also acknowledge that a father's zeal in instruction may cause, in the breast of even the most loving son, the emotion so well described by the poet

I'll meet the raging skies
But not an angry father

Thus, rather than interject ourselves into a happy family relationship in this case where the order and remedy are not materially affected, we deem it unnecessary to decide whether the remarks by Ruble, *pere*, to Ruble, *fils*, constitute a violation of Section 8(a)(1) of the Act, as found by the Trial Examiner

[2] We find without merit the Respondent's allegation of bias and prejudice on the part of the Trial Examiner There is no basis for finding that bias or prejudice existed merely because a Trial Examiner has resolved some or all of the important factual conflicts arising in a proceeding in favor of the General Counsel's witnesses As the Supreme Court has stated " [T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact" *N L R B v Pittsburgh S S Company*, 337 U S 656, 659 Moreover, as it is the Board's established policy not to overrule a Trial Examiner's resolutions as to credibility except where, as is not the case here, the clear preponderance of all of the relevant evidence convinces it that the resolutions were incorrect, we find, contrary to the Respondent's contentions, that no basis exists for disturbing the Trial Examiner's credibility findings *Standard Dry Wall Products, Inc*, 91 NLRB 544, enfd 188 F 2d 362 (C A 3)

[3] Accordingly, in the second indented paragraph of the Appendix, the words "solicit or" are deleted

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

This proceeding, in which charges were filed on February 14, 1964, and the complaint was issued on March 23, 1964, involves allegations that the Respondent, Reilly Tar & Chemical Corporation, violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.* On May 4, 1964, a hearing was held before Trial Examiner A. Bruce Hunt at Indianapolis, Indiana, at which all parties were represented. Upon the entire record, and my observation of the witnesses, I make the following:

### FINDINGS OF FACT

#### I. THE RESPONDENT

Reilly Tar & Chemical Corporation, an Indiana corporation with its principal offices in Indianapolis, Indiana, is engaged in the production and sale of coal tar products, chemicals, and preserved wood products. The Respondent annually ships products

valued in excess of $50,000 from its Indianapolis plants directly to points outside Indiana. There is no dispute, and I find, that the Respondent is engaged in commerce within the meaning of the Act.

II. THE UNION

Oil, Chemical and Atomic Workers International Union, AFL–CIO, is a labor organization which admits to membership employees of the Respondent

III. THE UNFAIR LABOR PRACTICES

A. *Background*

During 1961, in Case No. 25–RC–2048, the Union won an election in a contest with another labor organization and was certified as the representative of employees in a production and maintenance unit at the Respondent's Maywood plant in Indianapolis The number of employees currently in the unit is approximately 135, and the Union continues to be their representative. In the representation case, the unit was not litigated, having been stipulated. The parties in that case also agreed upon the following exclusions from the unit:

> Office clerical employees, laboratory employees, college trainees, professional employees, watchmen, foremen, guards, and supervisors as defined in the . . Act.

At all times material to the instant case, there were no college trainees employed at the Maywood plant. Our issues involve the laboratory employees.

B. *The issues*

The issues are whether the Respondent, during the early part of 1964, invalidly (a) refused to bargain with the Union as the representative of certain laboratory employees at the Maywood plant, (b) interrogated and threatened laboratory employees concerning their union activities, and (c) assisted laboratory employees in withdrawing their designations of the Union to represent them.

C. *Events during 1964*

During January, five technicians worked in the Respondent's laboratory. They are Luis Alvarez, Larry Ruble, Robert Skaggs, Ronald Stanley, and Charles Steele. Their supervisor was Donald Colvin. Other employees in the laboratory are Sidney Michelson, a chemist, who worked there at all material times, and Robert Allen, a technician leadman, who worked there prior to October 1963. During October, Allen suffered a heart attack and, following his recovery, he worked in the clerical department

On January 19, Stanley and Steele signed applications for membership in the Union. On the next day, Alvarez and Ruble signed like applications The remaining nonsupervisory employees named above, Allen, Michelson, and Skaggs, did not sign union cards [1] On January 21 a union representative, William Newman, wrote to the plant manager, C. A. Fisher, asserting that the Union represented a majority of the laboratory employees, excluding the supervisor and chemist, and requesting that a meeting be held for the purpose of collective bargaining. The letter was received the next day. The Respondent did not reply in writing Fisher and Newman talked several times however and their testimony concerning their conversations is conflicting. The conflicts need not be resolved. It suffices to say that Newman orally renewed the request for recognition and that the Respondent asserts in its brief that:

> Fisher suggested [to Newman] that maybe they could get together and between them determine whether the Union had representation or not. Newman said he would have to let Fisher know about that because he was not in a position to give an answer at that time. Newman never did advise Fisher of the Union position

[1] The parties are agreed that Michelson is a professional employee within the meaning of Section 2(12) of the Act Section 9(b) of the Act provides " . That the Board shall not (1) decide that any unit is appropriate for [collective-bargaining] purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit, . "

As will appear, Fisher conducted his own poll of the laboratory technicians. He ascertained that the Union represented a majority of them.

Upon an undisclosed date shortly before Newman wrote to the Respondent, and again shortly thereafter, Colvin, the supervisor in the laboratory, spoke with Steele In the first conversation, Colvin said that if the Union should become the representative of the laboratory employees, the basis of compensation of those employees would be changed from salary to hourly, that they would lose their sickness benefits, that their pay would be docked for tardiness, and that their insurance benefits would be changed to coincide with the benefits being received by employees in the production and maintenance unit. In the second conversation, Colvin said that in the event of unionization, the rules of the laboratory would be enforced strictly and that there would be definite times for "coffee breaks" instead of the existing practice whereby employees were permitted to obtain coffee whenever they desired.[2]

Within a day or two after Fisher received the letter from Newman, Fisher instructed Colvin to bring the laboratory technicians to Fisher's office for individual interviews. Fisher questioned the technicians in the presence of Colvin. Fisher prefaced his questions with a single statement, i.e., that he had received a letter from the Union in which the Union claimed to be the representative of the laboratory employees. There are conflicts in the testimony concerning whether Fisher asked some employees whether they had signed union cards, as the General Counsel contends, or whether Fisher asked whether they were represented by the Union, as the Respondent contends. The conflicts need not be resolved because there is no meaningful difference in the nature of the inquiries. The record does not disclose the exact number of employees whom Fisher interviewed. He testified that he interviewed at least five, and the Respondent's brief fixes the number as "[b]etween five and seven." I deduce that the number is six. We have seen that seven is the maximum number of nonsupervisory laboratory employees. Ruble, Stanley, and Steele testified for the General Counsel that they were interviewed and that they disclosed to Fisher that they had signed union cards.[3] Fisher testified that Allen and Skaggs also were interviewed and that those two employees told them that they were not represented by the Union.[4] Fisher testified further that he could not recall whether he interviewed Michelson, the chemist, and it is reasonable to conclude that Michelson was not interviewed because the Union had not asked in its letter of January 21 for a unit including the chemist. Moreover, if Michelson had been interviewed, presumably he would have answered Fisher's question in the negative because he had not signed a union card, but the only employees who answered negatively were Allen and Skaggs. The sole remaining employee is Alvarez, who was not a witness. It is reasonable to conclude that he was interviewed because Fisher instructed Supervisor Colvin, as Fisher testified, to bring the "lab employees down to [Fisher's] office" and because Fisher would not have suspended the interviews until he had obtained an answer to the question whether the Union represented a majority of the laboratory technicians.

Fisher's interview of Stanley consisted of more than Stanley's answer to a question whether Stanley had designated the Union to represent him. After the question and answer, Stanley asked Fisher to relate "the advantages and disadvantages of belong-

[2] These findings are based upon the reliable testimony of Steele, who testified also that he had additional similar conversations with Colvin On the other hand, Colvin's testimony differs As a witness for the Respondent, Colvin testified on direct examination that he talked with Steele upon occasion, but he did not give his version of the conversations He did, however, specifically deny having made the remarks attributed to him by Steele On cross-examination, Colvin testified that he told his subordinates that, if the Union should represent them, the basis of their compensation, hourly or salary, would be subject to negotiation He testified further that he could not recall whether he spoke to the employees concerning insurance, sick leave, and coffee breaks Upon being shown an affidavit which he had executed earlier, Colvin testified that he spoke to the employees concerning insurance and coffee breaks, saying to them that the benefits they enjoyed would become subject to negotiation if the Union should represent them On redirect examination, Colvin testified that his remarks to the employees were made in response to questions which they asked of him I cannot credit Colvin's testimony Unlike Steele's version of the conversations, Colvin's testimony does not have the ring of truth

[3] Steele fixed the date of his interview as January 23 or 24 Ruble fixed the date of his interview as "within a couple of days after" January 22 Stanley fixed the date of his interview as February 3, but Fisher testified that he could not "be sure" that Stanley had fixed the date correctly The record does not disclose any reason why Stanley's interview would have been delayed for approximately 1 week

[4] Colvin, who was present at the interviews, testified for the Respondent that Skaggs said to Fisher that Skaggs had not signed a union card

ing to a union" Fisher answered that the employees would be compensated on an hourly basis rather than by salaries. Stanley asked about the possibilities of promotion, and Fisher answered that "a union member would go further because a union member had only so far he could go." [5]

Ruble's father is a foreman at the plant. Ruble, age 21, lives with his parents. He and his father ride together to and from work. During the latter part of January and early February, the father and son discussed the Union, usually as they rode together. In the first such conversation, the subject of the Union was raised by the father, the son never having mentioned the Union to the father. The elder Ruble asked whether the son had joined, and received an affirmative reply. The father said he did not 'think it was such a good idea." In the initial or subsequent conversations, the father suggested that the son withdraw from the Union, that the son seek other employment, and that the son go to Fisher and discuss the son's attitude toward the Union. The son did not comply with the suggestion that he go to Fisher, but, as will appear, the son was instrumental in a movement to have laboratory technicians withdraw from the Union.[6]

At about the time of Ruble's conversations with his father, he also had conversations with his supervisor, Colvin, about the advantages and disadvantages of union representation. Upon one such occasion in Colvin's office, when Michelson, the chemist, was present, Colvin said that "things were pretty lax" in the laboratory, that they had been for a long time, and that he had been told that in the event of unionization he would have to enforce the rules.[7]

On February 5, the Union filed with Board's Regional Office a petition in Case No. 25–RC–2574 alleging that the laboratory employees constitute an appropriate unit and seeking certification as their representative. The petition contains a parenthetical statement that the laboratory employees "will be placed" in the production and maintenance unit which the Union already represented. It should be recalled at this point that the Union's letter of January 21 requesting recognition contained no mention of enlarging the production and maintenance unit to include the laboratory employees. On February 10, the Respondent received a notice that a hearing in the representation case would be held on February 14. In its brief, the Respondent says that on February 10 a meeting was held at the Regional Office at which the "Respondent agreed to a stipulation for an election to be conducted by the Board [and that a] hearing was set for February 14, 1964, to determine the names of employees eligible to vote."

On February 13, Alvarez, Ruble, and Stanley, who had signed applications for union membership, and Skaggs, who had not done so, signed individual letters to the Union withdrawing the applications. Copies of the letters were mailed to the Regional Office and to the Respondent. The circumstances will be recited. That morning Ruble asked Supervisor Colvin for a sheet of paper. Colvin asked why Ruble wanted it, and Ruble replied that he "just wanted a piece of paper." Somewhat later, Ruble asked Michelson how to withdraw from the Union, and Michelson replied that he did not know. Michelson told Colvin that Ruble wanted to compose

[5] The findings concerning this portion of Stanley's interview are based upon his testimony. On the other hand, Fisher testified that Stanley asked whether "his affiliation with the union would have any effect on his advancement with the company," to which Fisher replied that "it would have no effect" and that Stanley's advancement would "depend on his self improvement, his work record and those things" Colvin, who was present at the interview, did not testify about it. I cannot credit Fisher's version Although there is no evidence of hostility on the part of the Respondent toward the Union prior to the organizational activities among the laboratory employees, there is substantial evidence that the Respondent voiced objections to those activities. Moreover, Fisher's interviews of employees were not conducted for the legitimate purpose of enabling the Respondent to decide whether it was obligated to bargain with the Union This is apparent because Fisher learned in those interviews that the Union represented a majority of the laboratory technicians, but the Respondent did not bargain. Instead, as will appear, it assisted employees in withdrawing from the Union.

[6] The findings concerning the conversation between the father and son are based upon the latter's testimony. The elder Ruble was not a witness and, therefore, there is no testimony by him which would aid me in determining whether he sought to speak to his son as a father, as a foreman, or as both

[7] The findings concerning Colvin's remarks are based upon Ruble's testimony On the other hand, Colvin testified that he never said to an employee that the lax routine in the laboratory would be "tightened up" in the event of unionization Michelson was not a witness

a letter to the Union withdrawing his membership. Colvin went to Ruble and inquired whether Ruble wished to talk with him. Ruble answered affirmatively and said that he, Alvarez, Skaggs, and Stanley desired to withdraw from the Union, but that he did not know how to word the letters. Colvin said that he did not know either, but that he would learn. Colvin reported the matter to Plant Manager Fisher, who drafted the letter. Colvin gave the draft to Ruble. The latter showed the draft to Stanley, who approved it. Colvin supplied paper and envelopes, and Ruble began to type the letters in the payroll office, but his typing ability was slight and he turned the task over to Stanley.[8] After the letters were typed, Colvin supplied the pen with which the employees signed. Colvin also supplied three stamps for the envelopes addressed to the Union, the Respondent, and the Regional Office, and Colvin took the letters to a post office where he mailed them. According to Colvin, the letters were signed in the late afternoon when the employees were ready to go to their homes, and he took the letters to the post office because the employees wanted the copies to the Regional Office to be received the next day.

On February 14 the original letters were received by the Union and copies were received by the Regional Office and the Respondent The record does not disclose the hour at which the representation hearing was scheduled to begin that day, but there is evidence by the Respondent that a union representative, Andy Turner, appeared late and, with his appearance, the Respondent learned that he had filed a charge against it that morning. The initial charge, filed by Turner and alleging invalid interrogation of employees, bears a time stamp of 11:09 a m. During the hearing in the representation case, the Union moved to amend its petition by striking the parenthetical statement that the laboratory employees would be placed in the production and maintenance unit. The Union asserted that the laboratory employees constitute a separate appropriate unit. The Respondent objected to the motion, contending that the Board should decide whether the laboratory employees should be within or outside the production and maintenance unit. After the hearing was concluded, Turner filed an amended charge, reiterating the allegation in the original one and alleging also that the Respondent had refused to bargain collectively and had sought to undermine the Union's majority status.

On March 23 the Regional Director issued the complaint in the instant case On the next day, he dismissed the petition in the representation case.

### D. *The refusal to bargain collectively*

#### 1. The appropriate unit

We have seen that during 1961, by agreement among the Respondent, the Union, and another labor organization, certain classifications of employees, including those in the laboratory, were excluded from a unit of production and maintenance employees. We have seen too that during January 1964, the Union asked for recognition as exclusive representative of the laboratory employees, excluding the supervisor and chemist, and that during February it filed a petition in which it said that the laboratory employees would be placed in the production and maintenance unit which the Union already represented, but that at the representation hearing the Union reverted to its original position that the laboratory employees constitute a separate appropriate unit.

The Respondent's position is not entirely clear. It's answer denies the allegation of the complaint that the laboratory employees constitute an appropriate unit. It's brief says that "a *bona fide* dispute over the appropriate unit" existed between it and the Union, and that it's "position is now, and always has been, that" the Board should decide the unit question and subsequently conduct an election. This assertion is not supported by Plant Manager Fisher's testimony. He testified that after he received the Union's request for recognition he told the Union's representative, Newman, that "it would be desirable" to settle the Union's claim "without going through the National Labor Relations Board." Moreover, the record is clear that Fisher, in talking with Newman, did not raise any question concerning the appropriateness of the unit set forth in Newman's letter of January 21. Finally, the Respondent's brief contains a section entitled "Conclusions of Law" in which conclusion No 2 is substantially identical with the paragraph of the complaint which alleges that the laboratory employees constitute an appropriate unit.[9]

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[8] Upon earlier occasions, the Respondent had assisted employees in their personal correspondence.

[9] The brief contains six conclusions of law If they are proposed conclusions in conformity with Section 8(b) of the Administrative Procedure Act and Section 102 42 of the Board's Rules and Regulations, Series 8, as amended, I grant Nos. 1 and 2 and reject the remainder

The Respondent's laboratory technicians are compensated on a salary basis and, as reflected by the remarks to them by their supervisor, Colvin, recited above, they have other working conditions and benefits which differ from those of employees in the production and maintenance unit. There appears to be no interchange between the laboratory technicians and the employees in that unit, and, as we have seen, the technicians were excluded from the production and maintenance unit in 1961. I find that all laboratory employees at the Respondent's Maywood plant, excluding supervisors and professional employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.[10] *Oliver Iron and Steel Corporation, Berry Division,* 104 NLRB 1043, *United States Gypsum Company,* 114 NLRB 1285, 1291–92.

2. The Union's majority status

All of the laboratory employees other than Michelson and Colvin are technicians They number six including Allen, the technician leadman. As recited above, during October 1963 Allen suffered a heart attack and following his recovery he was worked in the clerical department. At the time of the hearing, 6 or 7 months after the heart attack, Allen had not resumed work in the laboratory. It is unncessary, however, to decided whether Allen should be considered as having been a laboratory technician at the time of the Union's request for recognition during January 1964. This is so because the Union possessed majority status at that time regardless of whether Allen be so considered. As we have seen, Alvarez, Ruble, Stanley, and Steele signed applications for membership in the Union For reasons which appear below, effect cannot be given to Alvarez', Ruble's, and Stanley's letters withdrawing their applications. I find that on January 20, 1964, and at all times thereafter, the Union was the duly designated representative of a majority of the employees in the appropriate unit and, pursuant to Section 9(a) of the Act, was the exclusive representative of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

The principal issues are whether the Union's majority status was destroyed by the letters of three employees in which they withdrew their applications and whether the Respondent's earlier refusal to bargain is immunized because of those letters. We have seen that Plant Manager Fisher, following his receipt of the Union's letter requesting recognition, questioned the laboratory technicians concerning their desire for union representation. The only legitimate purpose of such interrogation would have been to enable the Respondent to ascertain whether the Union possessed the majority status it claimed, i e., whether the Respondent was required to bargain collectively. *Offner Electronics, Inc.,* 134 NLRB 1064, 1066. Fisher had no such purpose in mind, as is apparent from his refusal to bargain with the Union after he ascertained that it possessed majority status. Moreover, Fisher's inquiries of employees were not accompanied by assurances from him that his purpose was legitimate and that they would not be subjected to reprisals for having designated the Union to represent them. *Blue Flash Express, Inc.,* 109 NLRB 591. I hold that Fisher's interrogation of employees in his office, in the presence of Supervisor Colvin who had brought them there individually, was clearly coercive and violative of Section 8(a)(1). I hold also that Fisher's statement to Stanley that a nonunion employee would have better chances for advancement with the Respondent than a union member, and his statement that the basis of compensation would be changed in the event of unionization, were likewise violative of the Act. Additionally, Colvin's remarks to Steele and to a lesser extent to Ruble that, if the Union should become the representative of the laboratory employees, certain working conditions would be changed and the rules in the laboratory would be enforced strictly, violated Section 8(a)(1). The final issue concerning allegedly coercive remarks involve the statements to Ruble by his father, a supervisor. As recited, the father did not testify. The father's remarks, if made to any employee other than the son, would constitute a clear violation of the Act. The question is whether the father spoke as a supervisor or as a parent. I can understand that the Respondent should not be held responsible for the father's inquiry of the son whether the latter had joined the Union. But the father's remarks did not cease with the question. The record is clear that the son had decided not to seek parental guidance concerning the Union and that for an undisclosed number of days the son

[10] Colvin is excluded from the unit because of his supervisory status. Michelson, the chemist, is excluded because he is a professional employee. See footnote 1.

had not told his father of his application for union membership. When the son answered the father's opening question by acknowledging union membership, it must have been apparent to the father that he had touched upon a subject which the son had chosen not to discuss with him. If the father had ceased his remarks at that point, or had merely added, as he did, that he did not "think it was such a good idea," I should be inclined to dismiss the allegation of the complaint concerning the father's remarks. The father, however, suggested that the son withdraw from the Union, that the son find a job with another employer, and that the son have a talk with Plant Manager Fisher. The latter remarks are coercive and on the record in this case are not to be characterized as parental guidance. The son had been subjected to a coercive inquiry by Fisher, and he was subjected to a coercive remark by his immediate supervisor, Colvin, at about the time of his father's remarks Clearly, the father's remarks were neither isolated nor innocuous. They violated Section 8(a)(1).

Turning to the events of February 13 when three employees signed letters to the Union withdrawing their applications,[11] and to the question whether the Respondent's conduct in connection with those letters constituted an unfair labor practice, the pertinent inquiry "is whether the employees decide[d] of their own free will, independently of employer solicitation, to withdraw their union designations." *Martin Theatres of Georgia, Inc., d/b/a WTVC,* 126 NLRB 1054, 1058 Here the Respondent's refusal to bargain with the Union upon learning of its majority status, coupled with the coercive conduct of Fisher, Colvin, and the elder Ruble, require the conclusion that the employees did not decide of their own free will to withdraw their membership applications.[12] Moreover, a leading role in securing the withdrawal letters was taken by the younger Ruble who, in withdrawing, followed the explicit suggestion of his father and the implicit suggestions of Fisher and Colvin.[13] I find that the Respondent's participation in the preparation and mailing of those letters violated Section 8(a)(1).

In defense of its refusal to bargain, the Respondent places reliance upon the Union's having filed a petition, upon the withdrawal of the petition, and upon the termination of the representation proceeding without the conduct of an election. This reliance is misplaced. A labor organization's "filing of a representation petition does not of itself suspend an employer's bargaining duty unless there is other evidence of a good-faith doubt" *Irving Air Chute Company, Inc, Marathon Division* 149 NLRB 627. "The filing of a refusal to bargain charge stymies and supersedes the representation case until the refusal to bargain case has been disposed of." *Gotham Shoe Manufacturing Co., Inc.,* 149 NLRB 862. There was no bona fide issue to be resolved by the representation case. The Respondent had learned from the employees before the petition was filed that the Union possessed majority status in the unit which the Union described in its letter of January 21. The Respondent did not raise any question about the appropriateness of that unit until after the petition was filed, and it is that unit which I find to be appropriate. It is true that the employees' letters withdrawing their membership applications had been mailed by the Respondent so as to be received by the Union and the Regional Office on the day of the hearing in the representation case, but, for reasons recited herein, those letters did not serve to destroy the Union's majority status and to establish a need for an election. I find that the Respondent, by rejecting the Union's demand for recognition and collective bargaining during January 1964, refused and continues to refuse, to bargain collectively in violation of Section 8(a)(5) and (1) of the Act

Upon the basis of the above findings of fact and upon the entire record in the case, 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. All laboratory employees at the Respondent's Maywood plant, excluding supervisors and professional employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

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[11] The fourth employee who signed such a letter, Skaggs, had not signed an application

[12] I am not unmindful that Stanley testified that he withdrew his application of his own free will On the other hand, Ruble avoided an answer to a question whether he withdrew of his own free will.

[13] The extent of the younger Ruble's participation in the withdrawal movement is not set forth in the record Ruble's testimony that the "whole idea was [his] own" indicates that he took a leading part Moreover, the Respondent says in its brief that "the matter of withdrawal was instigated by employee Larry M Ruble on February 13, 1964, when he requested some paper for personal use"

3. On January 20, 1964, the Union was, and at all times thereafter has been, the exclusive representative of all employees in such unit for the purposes of collective bargaining.

4 By refusing to bargain collectively and by interfering with, restraining, and coercing employees in the exercise of their rights under the Act, the 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 entire record in the case and pursuant to Section 10(c) of the Act, and in order to effectuate the Act's policies, it is hereby recommended that the Respondent, Reilly Tar & Chemical Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Refusing to bargain collectively with Oil, Chemical and Atomic Workers International Union, AFL–CIO, as the exclusive representative of all employees in the appropriate unit.

(b) Interrogating and threatening employees concerning union activities.

(c) Soliciting and assisting employees to discontinue their union affiliations.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with Oil, Chemical and Atomic Workers International Union, AFL–CIO, as the exclusive representative of all employees in the aforesaid unit and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Maywood plant, copies of the attached notice marked "Appendix." [14] Copies of said notice, to be furnished by the Regional Director for Region 25, shall, after being signed by the Respondent's representative, be posted by it immediately upon receipt thereof, and maintained by it for at least 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any material.

(c) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision what steps the Respondent has taken to comply herewith.[15]

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[14] If this Recommended Order is adopted by the Board, the words "as Ordered by" shall be substituted for the words "as Recommended by a Trial Examiner of" in the notice In the further event that the Board's Order be enforced by a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order of" shall be substituted for the words "as Ordered by."

[15] If 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

### NOTICE TO ALL EMPLOYEES

As Recommended by a Trial Examiner of the National Labor Relations Board we are posting this notice to inform our employees of rights guaranteed to them by the National Labor Relations Act:

WE WILL NOT interrogate or threaten you concerning your union activities

WE WILL NOT solicit or assist you to discontinue your union affiliations.

WE WILL NOT violate any of the rights which you have under the National Labor Relations Act to join a union of your own choice and to engage in union activities, or not to join a union and not to engage in such activities.

WE WILL, upon request, bargain collectively with Oil, Chemical and Atomic Workers International Union, AFL–CIO, as the exclusive representative of all employees in the following bargaining unit:

All laboratory employees at our Maywood plant, excluding supervisors and professional employees.

REILLY TAR & CHEMICAL CORPORATION,
*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 material.

If the employees have any questions concerning this notice or whether the Employer is complying with its provisions, they may communicate with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, Telephone No. Melrose 3–8921.

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**The Annin Company, Division of Worthington Corporation *and* United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO.** *Case No. 21–CA–5661. April 9, 1965*

## DECISION AND ORDER

On December 14, 1964, Trial Examiner David Karasick issued his Decision 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 Decision. He also found that the Respondent had not unlawfully discriminated against Donald W. Morton as alleged in the complaint and recommended that that allegation be dismissed. Thereafter the General Counsel and the Respondent filed exception to the Decision, and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Brown and Jenkins].

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 Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, 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 National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner and orders that the Respondent, The Annin Company, Division of Worthington Corporation, 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

This proceeding was heard before Trial Examiner David Karasick in Los Angeles, California, on May 4, 5, and 6, 1964, upon a complaint alleging that The Annin