

4. The parties stipulated, and we find, that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees who work 20 hours or more per week as waiters, waitresses, bartenders, dishwashers, cooks, miscellaneous kitchen helpers, hostesses, and cashiers at the Employer's Long Beach, California, restaurant, but excluding all office clerical employees, watchmen, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Women's Bindery Union, Local No. 42, International Brotherhood of Bookbinders, AFL-CIO and National Publishing Division, McCall Corporation. *Case No. 5-CD-97. June 10, 1965*

DECISION AND ORDER

Upon a charge filed on March 12 and amended March 19, 1964, by National Publishing Division, McCall Corporation, hereinafter called the Employer, the General Counsel for the National Labor Relations Board, by the Regional Director for Region 5, issued a complaint dated February 9, 1965, against Women's Bindery Union, Local No. 42, International Brotherhood of Bookbinders, AFL-CIO, hereinafter called the Respondent, alleging that the Respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8(b) (4) (ii) (D) and Section (2) (6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint with notice of hearing were duly served upon Respondent and the Employer. Thereafter, the Respondent filed an answer denying the commission of any unfair labor practices.

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

With respect to the unfair labor practices, the complaint alleged, in substance, that the Board, in a proceeding under Section 10(k) of the Act, had determined that the Washington Mailers' Union, No. 29, affiliated with the International Typographical Union, AFL-CIO, hereinafter called the Mailers, rather than the Respondent, was entitled to perform the work in dispute, consisting of the inserting of more than 1 and less than 21 copies of magazines into envelopes for mailing; that the Respondent has refused to comply with the terms of the Board's Decision and Determination of Dispute; that since on or about

March 5, 1964, the Respondent, by means proscribed by Section 8(b) (4), has engaged in conduct an object of which was to force or require the Employer to assign the disputed work to employees represented by Respondent rather than to employees represented by the Mailers; and that by such conduct the Respondent has engaged in unfair labor practices within the meaning of Section 8(b) (4) (ii) (D) and Section 2(6) and (7) of the Act.

On or about April 4, 1965, all parties entered into a stipulation in which, *inter alia*, they waived a hearing and the issuance of a Trial Examiner's Decision, and agreed to have the case submitted directly to the Board for findings of fact, conclusions of law, and an appropriate Order. The stipulation provided that the entire record in the proceeding shall consist of the complaint, the notice of hearing, the answer, the record and briefs in the 10(k) proceeding, and the Board's Decision and Determination of Dispute in that proceeding. On April 13, 1965, the Board approved the aforesaid stipulation, and ordered this proceeding transferred to it.

Upon the basis of the aforesaid stipulation, and upon the entire record in this case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Employer is engaged at Washington, D.C., in the printing and distribution of magazines and other publications. During the year preceding the hearing, the Employer received at its place of business directly from outside the District of Columbia goods and materials valued in excess of \$50,000. During the same period, the Employer shipped goods and materials valued in excess of \$50,000 directly from its place of business to places located outside the District of Columbia. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction in this case.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Respondent and the Mailers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE RESPONDENT'S UNFAIR LABOR PRACTICES

In its Decision and Determination of Dispute (150 NLRB 388¹), the Board determined that the Respondent was not lawfully entitled

¹ As amended by order correcting Decision and Determination of Dispute, dated December 22, 1964.

to force or require the Employer to assign the work in dispute (consisting of the inserting of more than 1 and less than 21 magazines into envelopes for mailing) to members of the Respondent rather than to employees represented by the Mailers, by means proscribed by Section 8(b)(4)(ii)(D). The Board directed the Respondent to notify the Regional Director for Region 5, in writing, with respect to its intention to comply with the Board's determination. On or about January 23, 1965, the Respondent, through its attorney, indicated that it did not intend so to comply.

Section 10(k) of the Act requires that, if the Respondent complies with the Board's determination, the 8(b)(4)(D) charge must be dismissed. As the Respondent has not complied with the 10(k) determination, we must now consider the merits of the complaint. All the factors essential to a finding of an 8(b)(4)(D) violation are present here. It is clear from the stipulated record that on March 5, 1964, the Respondent threatened to cause its members to cease working for the Employer if the disputed work was not assigned to members of the Respondent, with an object of forcing or requiring the Employer to assign the disputed work to members of the Respondent rather than to employees represented by the Mailers. It is not contended that the Employer was failing to conform to an order or certification of the Board determining the bargaining representative for employees performing the disputed work. The arguments advanced here by Respondent are, by stipulation, the same arguments asserted in the 10(k) proceeding. None of these arguments raises a meritorious defense to the complaint now before the Board.

Accordingly, we conclude that the Respondent has violated Section 8(b)(4)(ii)(D) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The conduct of the Respondent, set forth above, occurring in connection with the operations of the Employer, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

CONCLUSIONS OF LAW

1. Respondent Women's Bindery Union, Local No. 42, International Brotherhood of Bookbinders, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. By threatening, coercing, or restraining the Employer, National Publishing Division, McCall Corporation, a person engaged in commerce, with an object of forcing or requiring the Employer to assign to members of Respondent rather than to employees represented by the Mailers the work of inserting more than 1 and less than 21 copies of magazines into envelopes for mailing, the members of Respondent not being lawfully entitled to perform such work, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b) (4) (ii) (D).

3. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, and upon the entire record in this case, the National Labor Relations Board hereby orders that the Respondent, Women's Bindery Union, Local No. 42, International Brotherhood of Bookbinders, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from threatening, coercing, or restraining the National Publishing Division, McCall Corporation, where an object thereof is to force or require the National Publishing Division, McCall Corporation, to assign the work of inserting more than 1 and less than 21 copies of magazines into envelopes for mailing, to members of the Respondent rather than to employees represented by Washington Mailers' Union No. 29, affiliated with the International Typographical Union, AFL-CIO, except insofar as such conduct is permitted under Section 8(b) (4) (D) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the purposes of the Act:

(a) Post at its offices and meeting halls, copies of the attached notice marked "Appendix."² Copies of the notice, to be furnished by the Regional Director for Region 5, 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

²In the event this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

consecutive days thereafter, in conspicuous places, including all places where the Respondent normally posts notices for members. Reasonable steps shall be taken to insure that the notice is not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of said notice to the Regional Director for Region 5, for posting by the National Publishing Division, McCall Corporation, if it is willing, at all locations upon its premises where notices to its employees are customarily posted.

(c) Notify the Regional Director for Region 5, in writing, within 10 days of the date of this Order, what steps the Respondent has taken to comply herewith.

APPENDIX

NOTICE TO ALL MEMBERS OF WOMEN'S BINDERY UNION, LOCAL NO. 42, INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, AFL-CIO; WASHINGTON MAILERS' UNION NO. 29, AFFILIATED WITH THE INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, AND ALL EMPLOYEES OF NATIONAL PUBLISHING DIVISION, MCCALL CORPORATION, WASHINGTON, D.C.

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the purposes of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT threaten, coerce, or restrain the National Publishing Division where an object thereof is to force or require the National Publishing Division to assign to members of the Women's Bindery Union rather than to employees represented by the Mailers, the work of inserting more than 1 and less than 21 copies of magazines into envelopes for mailing, except insofar as any such conduct is permitted under Section 8(b)(4)(D) of the Act.

WOMEN'S BINDERY UNION, LOCAL NO. 42, INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, AFL-CIO,
Labor Organization.

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, Sixth Floor, 707 North Calvert Street, Baltimore, Maryland, Telephone No. 752-8460, Extension 2100, if they have any question concerning this notice or compliance with its provisions.