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 National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discourage membership by any of our employees in Truck Drivers, Warehousemen and Helpers of Jacksonville, Local Union No. 512, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization, by discharging or otherwise discriminating against employees in regard to their hire or tenure of employment, or any other term or condition of employment.

WE WILL offer King Adams immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

WE WILL make whole King Adams for any loss of pay he may have suffered as a result of the discrimination against him.

WE WILL NOT interrogate our employees concerning their union sentiments, whether they have signed union cards, or as to the union activities of other employees, invite employees to report to management concerning the union activities of other employees, tell employees that wage increases are being withheld because of union activities, or in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection, or to refrain from any or all such activities.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of any labor organization.

I V. SUTPHIN, CO.–ATLANTA, INC.,
Employer

Dated_____ By_____
(Representative) (Title)

NOTE.—We will notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training Act of 1948, as amended, after discharged from the Armed Forces.

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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Room 706, Federal Office Building, 500 Zack Street, Tampa, Florida, Telephone No. 228–7711.

D'Armigene, Inc. *and* Local 107, International Ladies' Garment Workers' Union, AFL–CIO. *Case No. 29–CA–181. August 3, 1965*

DECISION AND ORDER

On June 9, 1965, Trial Examiner Sidney Lindner issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial errors was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, and the entire record in the case, and hereby adopts the findings,[1] conclusions, and recommendations of the Trial Examiner.

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 Respondent, D'Armigene, Inc., Bay Shore, Long Island, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

[1] The Trial Examiner's Decision is hereby corrected so that the unit description includes cuttermarkers rather than cuttermakers.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

On a charge duly filed on March 16, 1965, by Local 107, International Ladies' Garment Workers' Union, AFL–CIO, herein called the Union, the General Counsel of the National Labor Relations Board by the Regional Director for Region 29 issued a complaint, together with a notice of hearing dated March 29, 1965, copies of which were duly served upon the parties. The complaint alleges, in substance that D'Armigene, Inc., herein called the Respondent, refused to bargain with the Union in violation of Section 8(a)(1) and (5) of the Act.

Respondent's answer denied certain allegations of the complaint, including those relating to the appropriateness of the bargaining unit,[1] the status of the Union as exclusive representative of all employees in said unit and the commission by Respondent of any unfair labor practices within the meaning of the Act. As affirmative defenses the Respondent alleged that the unit does not constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act, that the Board's rulings on challenged ballots were erroneous (Case No. 29–RC–6), and that the Board's denial of a stay pending decision by the Court of Appeals with respect to the Board's Order in 148 NLRB 2 was a denial of due process.

On May 3, 1965, the General Counsel filed and served a motion for judgment on the pleadings. In support thereof he contended that: (1) the affirmative defenses pleaded by the Respondent had been raised and litigated in the underlying representation proceeding, Case No. 29–RC–6, and the Respondent may not relitigate these issues in the complaint proceeding before the Trial Examiner, who is bound by the Board's decision; (2) on March 3, 1965, the Union requested Respondent to recognize it as the exclusive collective-bargaining representative of the Respondent's employees in the aforesaid unit and since March 5, 1965, the Respondent refused to recognize and bargain collectively with the Union (which facts were alleged in the complaint and admitted in the Respondent's answer thereto); and (3) the allega-

[1] The following employees of Respondent were found to constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All cutting department employees employed by Respondent at its plant in Bay Shore, Long Island, New York, including cutters, cuttermakers, and assorters, but excluding all other production and maintenance employees, office clerical employees, sales employees, professional employees, watchmen, guards, and supervisors as defined in the Act.

tions of the complaint must be found to be true and the Trial Examiner should make findings of fact and conclusions based thereon and recommend an appropriate order.

On May 10, 1965, Trial Examiner Sidney Lindner issued and caused to be served on all the parties, an order directing the Respondent to show cause, on or before May 20, 1965, why the motion should not be granted and the issues raised by the pleadings herein should not be resolved without further hearing. The order also directed Respondent to submit any evidence newly discovered or not available at the time of the representation proceeding by way of an offer of proof.

In Response to the order to show cause, I received Respondent's offer of proof dated May 18, 1965, in which Respondent offered as proof the record in Case No. 2-CA-9396 and the Board's Decision therein, 148 NLRB 2 (of which record the Board took administrative notice in its Decision and Order dated February 4, 1965 (Case No. 29-RC-6), on the challenged ballots herein), and the fact that said proceeding is pending on appeal before the Court of Appeals for the Second Circuit (also noted by the Board in said Decision and Order).

It appearing, therefore, that there are no issues of fact herein requiring a hearing before a Trial Examiner for the purpose of issuing a Decision, I deem this case submitted for decision on the pleadings, the motion papers and the record in Case No. 29-RC-6. The hearing herein heretofore indefinitely postponed is hereby canceled, and I make the following:

Rulings on the Motion

The issues raised by Respondent's answer and offer of proof were previously raised and determined by the Board in the underlying representation case (Case No. 29-RC-6). It is well settled that such issues, absent newly discovered evidence, none of which is offered here, may not be relitigated in this case.[2]

It is apparent from the foregoing that there are no factual issues litigable before me. Accordingly, the General Counsel's motion is granted on the basis of the entire record herein, including the representation case, and I hereby make the following:

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a New York corporation engaged at Bay Shore, Long Island, New York, in the manufacture and sale of women's uniforms. During the past 12 months, Respondent purchased supplies, materials, and products valued in excess of $50,000 which were shipped directly to its Bay Shore plant from suppliers located outside the State of New York, and manufactured, sold, and shipped products in excess of $50,000 in interstate commerce to customers in other States. I find that the Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization as defined in Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The Representation Proceeding

a. *The unit*

All cutting department employees employed by Respondent at its plant in Bay Shore, Long Island, New York, including cutters, cuttermakers, and assorters, but excluding all other production and maintenance employees, office clerical employees, sales employees, professional employees, watchmen, 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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[2] *Pittsburgh Plate Glass Company* v. *N.L.R.B.*, 313 U.S. 146; *Metropolitan Life Insurance Company*, 141 NLRB 337, enfd. 328 F. 2d 820 (C.A. 3); *Metropolitan Life Insurance Company*, 141 NLRB 1074, enfd. 330 F. 2d 62 (C.A. 6); *Esquire, Inc.* (*Coronet Instructional Films Division*), 109 NLRB 530, 538-539, enfd 222 F. 2d 253 (C.A. 7).

b. *The certification*

On or about January 24, 1964, a majority of the employees of the Respondent in said unit, in a secret election conducted under the supervision of the Regional Director for Region 2, designated and selected the Union as their representative for the purposes of collective bargaining with Respondent, and on February 23, 1965, the Board certified the Union as the collective-bargaining representative of the employees in said unit and the Union continues to be such representative.

c. *The request to bargain and the Respondent's refusal*

On or about March 3, 1965, and continuing thereafter, the Union has requested the Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described appropriate unit. On or about March 5, 1965, Respondent did refuse, and continues to refuse, to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of all the employees in said unit.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, occurring in connection with its operations set forth in section I, 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 and is engaging in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act.

Upon the foregoing findings of fact and the entire record in the case, including the representation proceedings, I make the following:

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act
3. All cutting department employees employed by Respondent at its plant in Bay Shore, Long Island, New York, including cutters, cuttermakers, and assorters, but excluding all other production and maintenance employees. office clerical employees, sales employees, professional employees, watchmen, 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.
4. Since on or about February 23, 1965, the Union has been, and is the exclusive representative for the purposes of collective bargaining of the employees in the unit described above.
5. By refusing to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit on or about March 5, 1965, and thereafter, 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 affect commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this case and in the representation proceeding, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that the Respondent, D'Armigene, Inc , its officers, agents, successors, and assigns, shall.

1. Cease and desist from·

(a) Refusing to bargain collectively with Local 107, International Ladies' Garment Workers' Union, AFL–CIO, as the exclusive bargaining representative of its employees in the following unit:

All cutting department employees employed by Respondent at its plant in Bay Shore, Long Island, New York, including cutters, cuttermakers, and assorters, but excluding all other production and maintenance employees, office clerical employees, sales employees, professional employees, watchmen, guards, and supervisors as defined in the Act.

(b) Interfering with the efforts of Local 107, International Ladies' Garment Workers' Union, AFL–CIO, to negotiate for or represent the employees in the said appropriate unit as the exclusive bargaining agent

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

(a) Upon request, bargain collectively with Local 107, International Ladies' Garment Workers' Union, AFL–CIO, as the exclusive representative of all the employees in the appropriate unit described above, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Bay Shore, Long Island, New York, plant, copies of the attached notice marked "Appendix." [3] Copies of said notice, to be furnished by the Regional Director for Region 29, shall, after being duly signed by Respondent's representative, be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 29, writing, within 20 days from the receipt of this Decision and Recommended Order, what steps the Respondent has taken to comply herewith.[4]

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[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 is 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 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

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Local 107, International Ladies' Garment Workers' Union, AFL–CIO, as the exclusive representative of the employees in the bargaining unit described below

WE WILL NOT interfere with the efforts of Local 107, International Ladies' Garment Workers' Union, AFL–CIO, to negotiate for or represent as exclusive bargaining agent the employees in the bargaining unit described below

WE WILL, upon request, bargain with the above-named union, as the exclusive representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such an understanding in a signed agreement.

The bargaining unit is:

All cutting department employees employed by Respondent at its plant in Bay Shore, Long Island, New York, including cutters, cuttermakers, and assorters, but excluding all other production and maintenance employees, office clerical employees, sales employees, professional employees, watchmen, guards, and supervisors as defined in the Act.

D'ARMIGENE, INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Fourth Floor, 16 Court Street, Brooklyn, New York, Telephone No. 596–5386.