

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Meacham Building, Sixth Floor, 110 West Fifth Street, Fort Worth, Texas, Telephone No. Baltimore 1-7000.

**Franklin Electric Co., Inc. and International Union of Electrical, Radio and Machine Workers, AFL-CIO and Employee Relations Committee (Industrial Relations Committee), Party of Interest and Bonus Committee, Party of Interest.** *Case No. 25-CA-2057. August 31, 1965*

### DECISION AND ORDER

On July 2, 1965, Trial Examiner John H. Eadie 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 Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

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 Jenkins and Zagoria].

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 brief, and the entire record in this case, and hereby adopts the findings, conclusions,<sup>1</sup> and recommendations of the Trial Examiner, with the modification indicated in our Order.<sup>2</sup>

### 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, as modified herein, and orders that the Respondent, Franklin Electric Co., Inc., Bluffton, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified:

<sup>1</sup> *Ferguson-Lander Box Co.*, 151 NLRB 1615; *Grand Foundries, Inc.*, 151 NLRB 1170; and *Wahlgren Magnetics, a Division of Marshall Industries*, 132 NLRB 1613.

<sup>2</sup> We agree with the Respondent that in the circumstances of this case the Order should be limited to remedying the specific unlawful conduct found here. We shall, therefore, narrow the general scope of paragraph 1(c) of the Trial Examiner's Recommended Order. *Hammond Organ Company*, 149 NLRB 997, and *NLRB v. Thompson Ramo Wooldridge, Inc.*, 305 F. 2d 807 (C.A. 7).

1. In paragraph 1(c) substitute the phrase "In any like or related manner" for the phrase "In any other manner."
2. Modify the third indented paragraph of the notice<sup>3</sup> to correspond with the above change in the Order.

<sup>3</sup>The telephone number for Region 25, appearing at the bottom of the Appendix attached to the Trial Examiner's Decision, is amended to read: Telephone No 633-8921

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

Upon charges<sup>1</sup> filed by International Union of Electrical Radio and Machine Workers, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board issued a complaint dated December 29, 1964, against Franklin Electric Co., Inc., herein called the Respondent, alleging that the Respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (2) and Section 2(6) and (7) of the Act. The Respondent filed an answer in which it admitted the jurisdictional allegations of the complaint but denied the commission of any unfair labor practices.

A hearing was held before Trial Examiner John H. Eadie at Bluffton, Indiana, on March 16, 1965. After the conclusion of the hearing the General Counsel and the Respondent filed briefs. The General Counsel also filed a motion to correct transcript, which together with a certificate of service was attached to his brief. Since no objection was made to the motion to correct the transcript of record, it is hereby granted. The motion and certificate of service are received in evidence as Trial Examiner's Exhibits Nos. 1 and 2, respectively.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The Respondent is an Indiana corporation, having its principal office and plant at Bluffton, Indiana. It is engaged in the manufacture, sale, and distribution of electric motors, automatic machines, and related products.

During the year preceding the date of the complaint herein, the Respondent, in the course and conduct of its business operations, purchased, transferred, and delivered to its plant goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported to said plant directly from States of the United States other than the State of Indiana.

The complaint alleges, the Respondent's answer admits, and I find that the Respondent is engaged in commerce within the meaning of the Act

#### II. THE LABOR ORGANIZATIONS INVOLVED

Employee Relations Committee (sometimes called and known as Industrial Relations Committee), Bonus Committee, herein referred to as Employee Committee and Bonus Committee, respectively, and the Union are labor organizations within the meaning of the Act.<sup>2</sup>

#### III. THE UNFAIR LABOR PRACTICES

##### A. Background

On June 7, 1962, the Union filed a petition in Case No 25-RC-2235 to represent the Respondent's production and maintenance employees. The election pursuant to this petition was held on July 18, 1962. The Union lost the election.

<sup>1</sup>The original charge was filed on October 2, 1964. An amended charge was filed on November 5, 1964.

<sup>2</sup>The Respondent's answer denies the above allegation of the complaint. At the hearing the Respondent stipulated that the Union is a labor organization within the meaning of Section 2(5) of the Act. The above finding with respect to Employee Committee and Bonus Committee is based on facts hereinafter related and found

The certification of results of the election was issued on July 26, 1962. The Union filed another petition on April 6, 1964, in Case No. 25-RC-2614. The election pursuant to this petition was held on May 16, 1964. The Union also lost this election. Objections to the conduct of the election were filed by the Union on May 18, 1964. In his report on objections, issued on August 28, 1964, the Regional Director recommended that the Union's objections be overruled. In its Decision, dated October 6, 1964, the Board adopted the Regional Director's recommendations and overruled the Union's objections in their entirety.<sup>3</sup>

#### B. *The Employee Relations Committee*

On July 16, 1962, E. J. Schaefer, the Respondent's president, sent a letter to all employees, advising them "to talk to me about Franklin . . . about conditions . . . not up to our standards or . . . to tell me your suggestions for improvement." The letter pointed out that Don Rosie, the Respondent's industrial relations manager, was brought to the plant "for the sole purpose" of giving the employees "someone to talk to."

On July 20, 1962, a meeting was held in the plant's conference room. The meeting was attended by eight nonsupervisory employees, Rosie and Jean Grove, the Respondent's personnel supervisor at the time. The employees were paid for the time spent at the meeting.<sup>4</sup> The purpose of the meeting was to discuss the formation of an employee committee to be organized among the hourly workers in order to confer with management on employee problems. An election was held on July 23, 1962, to select representatives from each department to meet with Rosie and Grove for the purpose of establishing the committee and organizing a method of handling employee complaints.<sup>5</sup> The elected representatives met with Rosie and Grove on July 25. At this meeting another election was held to select a committee of five to meet with management to set up a procedure for the handling of complaints. Meetings between the five elected representatives and Rosie and Grove were held on August 22 and 29 and September 12, 1962. These meetings resulted in the drafting of a document entitled "Employee Relations Program," which established the procedure to be used for the filing of employee complaints and set forth the duties and structure of the Employee Committee. This procedure was presented to the committee by the Respondent and adopted by its members.

On October 15, 1962, a notice to the employees was issued by Rosie, announcing that an election would be held for the purpose of electing section representatives, who in turn would elect those to serve as members on the Employee Committee. Thereafter, elections were held in the various departments of the plant. Foremen conducted the elections, by assembling the employees, advising them of the purpose of the election, and passing out, collecting, and counting or having the ballots counted at their direction.<sup>6</sup> The results of the elections were reported to Rosie by the foremen.

The first meeting of the newly elected Employee Committee was held on November 13, 1962, in Rosie's office. At this meeting Rosie presented a form to be used to record employee requests or complaints which were not answered satisfactorily at earlier steps. It was adopted by the Employee Committee. The form, which is still in use, at all times since its adoption has been printed and distributed by the Respondent.

The Employee Committee, elected by the departmental representatives, meets monthly with Rosie and other supervisory personnel. The departmental representatives, as well as members of the Employee Committee, meet on company time and property. These meetings are held in the office of George Green, general foreman, on the day on which the Employee Committee meets with Rosie. Complaints that

<sup>3</sup> At the hearing herein and in its brief the Respondent contended that the principle of *res adjudicata* applies, claiming that the objections in the representation proceeding cover the same issue raised by the pleadings in the instant matter. The Union's objections in Case No. 25-RC-2614 were adduced in evidence by the Respondent. The allegations of the complaint herein are nowhere mentioned in the objections.

<sup>4</sup> It is undisputed that representatives of the Employee Committee were paid for their time and attendance at all meetings with the Respondent.

<sup>5</sup> The above election and all others hereinafter mentioned were held on the Respondent's time and property.

<sup>6</sup> It is undisputed that all elections of the Employee Committee were conducted in this manner.

the departmental representatives receive from employees in their departments are discussed with Green. Complaints that are not settled at these meetings are brought to the attention of Rosie.

There was no election for members of the Employee Committee during 1963. On April 3, 1964, Rosie placed an announcement in the issue of "Frankly Speaking," a company publication, for an election to be held on April 14 and 15, 1964. The results of the election were prepared by Rosie and distributed by him to the departments.

Through December 1963, either Rosie or Grove took the minutes of the meetings between management and the Employee Committee. The minutes were prepared and posted or distributed by either Rosie or Grove. About December 1963, Evert Blem became personnel supervisor. Thereafter, either he or Rosie took the minutes of the meetings.

### *C. The Bonus Committee*

The Bonus Committee is composed of the Respondent's nonsupervisory employees, one elected annually from each department. The "Franklin Electric Bonus Plan" provides for a Bonus Committee to carry out the functions and purposes of the plan. This plan, prepared and distributed by the Respondent, has been in existence for about 15 years. Rules governing employee eligibility for the bonus, its computation, structure of the Bonus Committee, duties of its members, and the basic procedure for the operation of the committee are set forth in the plan. The last elections for members of the committee were held on April 24, 1964, for second-shift representatives, and on October 22, 1964, for selection of first-shift representatives. The notices of these elections were prepared and distributed by Blem. These elections, as well as all prior elections, were held on company time and property. The elections were conducted by the various department foremen or supervisors. They assembled the employees, distributed and collected the ballots, selected employees to count the ballots, and announced the results of the elections. The results of these elections were reported to Blem by the foremen or other employees. Blem prepared and distributed an announcement of the results, which was included in the notice for the first meeting of the Bonus Committee after the election.

Meetings of the Bonus Committee are held monthly at the plant, usually in the plant conference room. The notices of the meetings are prepared and posted by the Respondent, and the times of the meetings are announced by Blem. Attached to the meeting notices are lists of employees who are eligible for reclassification. These lists are prepared and approved by Blem and distributed by his office. The meetings of the Bonus Committee are conducted by Blem. The members of the committee are paid for their time spent at the meetings, regardless of the shift during which they work. The meetings are concerned with ratifying the proposed reclassification of eligible employees. Since the first meeting in 1964 through the last meeting held prior to February 23, 1965, all employees eligible for reclassification were approved by the Bonus Committee. However, the committee has the authority to reject employees for bonus reclassification, and has exercised such authority in the past.

In addition to approval of bonus reclassification, various problems in regard to working conditions are discussed at times at the meetings between the committee and Blem. At the meeting held on February 25, 1964, there was a discussion with respect to the lost time and efficiency due to lack of sufficient "tote pans" and the need for shields or guards on certain machines. The complaints were made by a member of the committee. Blem answered that a foreman was checking into it. At the meeting held on April 21, 1964, there were discussions about "clean up time" and about the repair of a hoist in the press department. A member of the committee raised these questions. At the meeting held on September 8, 1964, there was discussion between the committee and Blem concerning improvement of the plant canteen facilities, this point also having been raised by a member of the committee.

The minutes of the meetings of the Bonus Committee are taken by Blem, are typed under his direction, and are distributed to the employees by his office.

### *D. Conclusions*

Minutes of the Employee Committee and the Bonus Committee were received in evidence. These minutes show, contrary to the Respondent's contentions, that both Committees have functioned as labor organizations throughout their existence. While it appears that the Bonus Committee was limited to bonus reclassifications for the most part in its dealings with management, it did raise complaints about

and discuss certain working conditions in the plant, as related above. Further, as pointed out by the General Counsel in his brief, the bonus plan affects an employee's wages and is part of the wages that he receives as an employee.

With respect to the Employee Committee, the minutes disclose that this committee dealt with the Respondent concerning various aspects of wages, hours, and working conditions. For example, the Employee Committee at its meetings with management raised such subjects as overtime, "sick pay policy," payment of a bonus during vacations and holidays, pay raises, cleanliness of restrooms, seniority, improvement of parking lot lighting and safety, group insurance, and pension plan.

Accordingly, I find that the Employee Committee and the Bonus Committee are labor organizations within the meaning of the Act.

The evidence conclusively shows that since April 2, 1964,<sup>7</sup> the Respondent has dominated and interfered with the administration of, and contributed assistance and support to, both the Employee Committee and the Bonus Committee. I find that such conduct was in violation of Section 8(a)(2) 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 Respondent's operations described in section I, above, have a close intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

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

It has been found that the Respondent on and after April 2, 1964, has dominated and interfered with the administration of, and assisted and contributed financial and other support to, the Employee Committee and the Bonus Committee. It will be recommended that the Respondent cease and desist from such activity. It also will be recommended that the Respondent cease and desist from recognizing or in any other manner dealing with the Employee Committee and the Bonus Committee, and that the Respondent completely disestablish them.

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

#### CONCLUSIONS OF LAW

1. The Union, the Employee Committee, and the Bonus Committee are labor organizations within the meaning of Section 2(5) of the Act.

2. By dominating and interfering with the administration of the Employee Committee and the Bonus Committee, and by contributing financial and other support to them, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(2) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. 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 pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that the Respondent, Franklin Electric Co., Inc., its officers, agents, successors, and assigns, shall:

<sup>7</sup>At the hearing the Respondent objected under Section 10(b) of the Act to the admission of any evidence concerning conduct occurring prior to the above date. The objection was overruled; and the evidence was received for background purposes. This evidence establishes that the Employee Committee and the Bonus Committee were creatures of the Respondent. Although the violations of the Act, found herein, are not based upon this evidence, it has been considered in the Recommended Order.

1. Cease and desist from:

(a) Dominating or interfering with the administration of, or contributing financial or other support to, the Employee Committee and the Bonus Committee, or dominating or interfering with the formation or administration of, or contributing financial or other support to, any other labor organization of its employees.

(b) Recognizing or in any other manner dealing with the Employee Committee and the Bonus Committee, or any successor thereto, as a collective-bargaining representative of any of its employees.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

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

(a) Withhold all recognition from the Employee Committee and the Bonus Committee as representatives of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of employment, and completely disestablish said organizations, or any successors thereto, as such representatives.

(b) Post at its plant in Bluffton, Indiana, copies of the attached notice marked "Appendix"<sup>8</sup> Copies of said notice, to be furnished by the Regional Director for Region 25, shall, after being duly signed by the Respondent or its authorized representatives, be posted by Respondent 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 to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 25, in writing, within 20 days from the date of the receipt of this Decision, what steps it has taken to comply herewith.<sup>9</sup>

<sup>8</sup> 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".

<sup>9</sup> 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 HEREBY DISESTABLISH the Employee Relations Committee (Industrial Relations Committee) and the Bonus Committee as the representatives of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and we will not recognize the said Committee or any successors thereto for any of the above purposes.

WE WILL NOT dominate or interfere with the formation or administration of any labor organization, or contribute financial or other support to it.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or mutual aid or protection, or to refrain from any or all such activities.

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

FRANKLIN ELECTRIC CO., INC.,  
Employer.

Dated----- By-----  
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, 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, 614 Ista Center, 150 West Market Street, Indianapolis, Indiana, Telephone No. 534-3161.

**International Union of Operating Engineers, Local No. 428, AFL-CIO and Ets-Hokin Corporation and International Brotherhood of Electrical Workers, Local No. 769, AFL-CIO. Case No. 28-CD-50. August 31, 1965**

**DECISION AND ORDER**

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of charges under Section 8(b)(4)(D) of the Act by Ets-Hokin Corporation (herein called Ets-Hokin or the Employer) alleging that Local No. 428, International Union of Operating Engineers, AFL-CIO (herein called Respondent, IUOE, or Local 428), had induced and encouraged employees to cease work in order to force or require Ets-Hokin to assign the disputed work to members of IUOE rather than to members of Local 769, International Brotherhood of Electrical Workers, AFL-CIO (herein called IBEW or Local 769). A hearing was held before Hearing Officer James W. Cherry, on March 3, 4, 5, and 6, 1964. All parties who appeared at the hearing were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing upon the issues. The rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. Briefs were filed by the Respondent, the Employer, and Local 769, and have been duly considered.

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].

Upon the entire record in the case, the Board makes the following findings:

**I. THE BUSINESS OF THE EMPLOYER**

The parties stipulated that: the Employer, Ets-Hokin Corporation, a California corporation, is engaged in the contracting business in 154 NLRB No. 53.