APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order 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 Union of Powerhouse Workers, Local No. 1, as the exclusive bargaining representative of the employees in the appropriate unit.

The appropriate unit is:

All utility department employees located at the Employer's Fernandina Beach, Florida, plant, excluding all other employees, watchmen, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with efforts of Union of Powerhouse Workers, Local No. 1, to bargain collectively.

RAYONIER, INCORPORATED,
Employer.

Dated_____ By_____
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 706 Federal Office Building, 500 Zack Street, Tampa, Florida, Telephone No. 228–7711, Extension 257.

Acme Industrial Products, Incorporated *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO. *Case No. 4–CA–3770. April 20, 1966*

DECISION AND ORDER

On December 29, 1965, Trial Examiner Charles W. Schneider issued his Decision in the above-entitled proceeding, finding that 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, Respondent filed exceptions to the Trial Examiner's Decision, together with 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 [Members Fanning, Brown, and Jenkins]

The Board has reviewed the ruling of the Trial Examiner and finds that no prejudicial error was committed The ruling is hereby affirmed The Board has considered the Trial Examiner's Decision, the exceptions, brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner

[The Board adopted the Trial Examiner's Recommended Order]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

The Representation Proceeding

On March 25, 1965, pursuant to a stipulation for certification upon consent election entered into between Acme Industrial Products Incorporated, Philadelphia, Pennsylvania, the Respondent herein, and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, the Union herein, an election was held under the supervision of the Board's Regional Director for Region 4 among employees of the Respondent in the bargaining unit hereinafter described The Union received a majority of the votes cast in the election

The Respondent filed timely objections to the election In these the Respondent stated that the Union and persons acting on its behalf

> 1 through misrepresentation and trickery deceived employees into believing that a vote for the union would automatically guarantee them benefits contained in a collective bargaining agreement between Acme Industrial Products, Incorporated and the UAW covering work in Detroit
>
> 2 intimated and threatened employees unless they agreed to vote for the union
>
> [And] did by the above and other acts interfere with the rights of employees to exercise their free choice

In accordance with the Board's Rules and Regulations, Series 8, as amended, the Regional Director filed a report and recommendations on objections to election in which he concluded, and recommended to the Board, that the Respondent's objections be dismissed because of the Respondent's failure, despite several requests, to furnish any evidence in support of the objections Exceptions to the Regional Director's report and recommendations were timely filed by the Respondent

In its exceptions the Respondent reiterated the text of its objections to the election In addition the Respondent stated in the exceptions that the Union

> did serve upon the employees of Acme Industrial Products, Inc a copy of an alleged agreement between Acme and Local 155 covering wages wherein the Union representative stated
>
> PLEASE NOTE That the above wage agreement covers only wage rates up to October, 1963 Since then some employees have received additional wage increases based on merit We have not received up to date rates They are in the mail They will be available as soon as we receive them
>
> Rocco Palamaro,
> INT'L REP UAW AFL–CIO

The Respondent further asserted in its exceptions that this material was distributed on the day of the election without opportunity for refutation or rebuttal by the Company, so as to preclude the employees from properly evaluating it, and for the purpose of misleading the employees to believe that if they voted for the Union they would receive a like wage scale This is presumably the agreement and conduct

referred to in the Respondent's objection 1 to the election The Respondent did not deny its failure, despite requests, to submit evidence to the Regional Director in support of its objections

On May 12, 1965, the Board issued its Decision and certification of representative in which it found that the Respondent's exceptions raised no substantial issues of fact or law warranting reversal of the Regional Director's finding and recommendation Accordingly the Board adopted the Regional Director's finding and recommendation, dismissed the Respondent's objections to the election, and certified the Union as the collective-bargaining representative in the appropriate unit

The Complaint Case

On October 7, 1965, upon a charge filed by the Union on September 10, 1965, the Regional Director issued a complaint alleging that commencing on or about September 1, 1965, the Respondent refused to bargain collectively with the Union, though requested to do so

The Respondent duly filed its answer, in which it denied the commission of unfair labor practices However, the answer admitted the allegations of the complaint with regard to jurisdiction, the election, the certification of the Union, and the Respondent's refusal to bargain with the Union upon request Further, the answer denied that the Union was the legal bargaining representative of the employees, and denied that the bargaining unit was appropriate With respect to the allegation in the complaint to the effect that the Union was a labor organization, the answer neither admitted nor denied the allegation As the basis for its defense, the Respondent reiterated in its answer the substance of the objections to the election and the exceptions to the Regional Director's report and recommendations which the Respondent had filed in the representation proceeding

In addition, the Respondent attached to its answer a copy of the alleged agreement concerning wages which, according to the Respondent s exceptions to the Regional Director's report, had assertedly been served upon the employees

Thereafter the General Counsel filed a motion for judgment on the pleadings, supported by a memorandum In these the General Counsel asserted that all material issues not admitted by the Respondent s answer had been previously decided by the Board in the representation proceeding, and that there were therefore no genuine issues requiring a hearing for the purpose of taking evidence To the motion for judgment on the pleadings the Respondent duly filed an answer

In this answer to the motion for judgment on the pleadings the Respondent reiterated the substance of its objections and exceptions in the representation case, and denied that the question involved had been previously raised, "for the reason that no hearing was ever held regarding the objections to the election by the respondent" The answer concluded with the statement that a "fair and just solution" required a hearing before a Trial Examiner in order that the Respondent could question witnesses under oath regarding the Union's conduct

Ruling on the Motion for Judgment on the Pleadings

The Respondent seeks to relitigate here the correctness of the Board's action in dismissing the Respondent s objections to the election and in certifying the Union as the exclusive representative of the employees in the bargaining unit This it may not do In the absence of newly discovered or previously unavailable evidence, issues which were or could have been raised in a related representation case may not be relitigated in an unfair labor practice proceeding [1] The Board has said

> It is the policy of the Board not to allow a party to relitigate in a complaint proceeding such as this one the legal effect of matters which the party has already litigated and the Board has decided in a prior representation proceeding [2]

There is no contention by the Respondent that the evidence which it would seek to adduce at a hearing before a Trial Examiner in the unfair labor practice proceeding is newly discovered or previously unavailable The documentary material, and the allegations concerning its distribution and the conduct of the union representative to which the Respondent referred in its exceptions to the Regional Director's

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[1] *Pittsburgh Plate Glass Company* v *N L R B*, 313 U S 146 *United States Rubber Company* 155 NLRB 1298

[2] *Producers Inc*, 133 NLRB 701, 704

report and recommendations, and attached to its answer to the complaint, seem plainly to relate to the Respondent's original objection 1 and are presumably a basis for that objection

It was the obligation of the Respondent to submit evidence to the Regional Director, in accordance with his several requests, to support its objections The Respondent's failure to do so, not denied, constituted a waiver of its objections In this respect the Board has said

> The Board has consistently held that a party filing objections to an election is obliged to furnish evidence in support of such objections and that, unless such evidence is produced, the Regional Director is not required to pursue his investigation further [3]

The Fifth Circuit Court of Appeals has held to the same effect

> It is further quite clear that the burden was not on the board to show that the election was fairly conducted but on the respondent to show that it was not
>
> In these circumstances, the failure and refusal of respondent to support its charges by tendering affidavits amounted in law and in fact to a waiver or abandonment of them, and the director and board were right in their position that, since respondent had not undertaken to support them, they would not be considered as presenting any vice in the election [4]

A hearing upon objections to an election is not a matter of right The Board has said

> unless substantial and material issues of fact are raised a request for a hearing will be denied The Board has rejected the contention that a Respondent is entitled as a matter of right to a hearing on objections to an election In order to prevent delay in election procedure the Board has uniformly refused to direct a hearing on objections unless the party supplies specific evidence of conduct which *prima facie* would warrant setting aside the election [5]

Whether the additional matter asserted by the Respondent in its exceptions to the Regional Director s report and recommendations constituted a basis for hearing was necessarily decided by the Board adversely to the Respondent in the Decision and certification of representatives, in which the Board found that the Respondent's exceptions "raise[d] no substantial issue of fact or law warranting reversal of the Regional Director's finding and recommendation " The amplification of the matter attached to the answer to the complaint added little but detail to the prior assertions, and cannot be construed as either new or previously unavailable evidence

The validity of the Respondent s objections as a bar to the Union's certification was therefore finally disposed of by the Board in the representation proceeding All the issues raised by the Respondent in its objections and exceptions, and now, have been decided by the Board, either expressly or by implication, whether correctly is not for Trial Examiner Charles W Schneider to say I have no authority to examine the accuracy of the Board s determination, or to question its conclusions The Board's disposition constitutes, at this stage of the proceedings, the law of the case As was said by Trial Examiner Nachman in a similar situation in *Schapiro & Whitehouse, Inc*, 148 NLRB 958, 959, 960 "If, as the Respondent contends, these findings of the Board are in error, then only the Board, or some court of competent jurisdiction, can correct such error "

Accordingly the General Counsel's motion for judgment on the pleadings is granted On the basis of the record before me I make the following

FINDINGS OF FACT

I JURISDICTION

Acme Industrial Products, Incorporated, is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the Commonwealth of Pennsylvania, with its principal office and place of business located at Philadelphia, Pennsylvania At all times material herein, it has been engaged in the operation of a machine shop for small parts

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[3] *Rio de Oro Uranium Mines Inc* 120 NLRB 91 94–95

[4] *N L R B* v *Huntsville Manufacturing Company* 203 F 2d 430 433

[5] *O K Van and Storage Inc* 127 NLRB 1537 1539 enfd 297 F 2d 74 (C A 5)

During the past year, Respondent, in the course and conduct of its business operations, performed services valued at in excess of $50,000 for customers located outside the Commonwealth of Pennsylvania.

II. THE LABOR ORGANIZATION INVOLVED

In its Decision and certification of representatives the Board certified the Union as a labor organization. It is therefore found that International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

In its answer to the complaint the Respondent denied that the unit alleged in the complaint was an appropriate one for collective bargaining. The basis for this denial is not disclosed.

The unit alleged in the complaint to be appropriate is as follows:

All production and maintenance employees of the Employer at its Philadelphia, Pennsylvania, plant, excluding all office clerical, technical, and professional employees, salesmen, watchmen, guards, and supervisors as defined in the Act.

This is the same unit as that found appropriate by the Board in its Decision and certification of representatives. Except for the addition of the words, "of the Employer at its Philadelphia, Pennsylvania, plant," it is the identical unit agreed to in the stipulation for certification upon consent election. It seems apparent that the additional phrase is merely a more precise description of the same unit. There is no suggestion that the election involved more than the Philadelphia plant. In the absence of any elaboration of the Respondent's denial it is found that the unit described in the complaint and the certification constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The Union having been so certified by the Board it is found to be the exclusive collective-bargaining representative of the employees in the appropriate unit within the meaning of Section 9(a) of the Act.

It being admitted in the answer to the complaint, it is further found that commencing on or about September 1, 1965, and at all times thereafter, the Respondent, though requested by the Union to bargain collectively concerning the employees in the appropriate unit, refused and continues to refuse to do so. This refusal to bargain constitutes an unfair labor practice.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

Upon the foregoing findings of fact and the record before me, I make the following:

CONCLUSIONS OF LAW

1. Acme Industrial Products, Incorporated, is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees of the Employer at its Philadelphia, Pennsylvania, plant, excluding all office clerical, technical, and professional employees, salesmen, watchmen, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since March 25, 1965, the Union has been, and is now, the exclusive representative for the purposes of collective bargaining of the employees in the appropriate unit, within the meaning of Section 9(a) of the Act.

5. By refusing to bargain collectively with the Union on or about September 1, 1965, and at all times since, 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 basis of the foregoing findings and conclusions and the record before me I recommend that the Respondent, Acme Industrial Products, Incorporated, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1 Cease and desist from refusing to bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, as the exclusive collective-bargaining representative of employees in the appropriate unit at its Philadelphia, Pennsylvania, plant

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

(a) Upon request bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, as the exclusive representative of all the employees in the appropriate unit 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 plant at Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix" Copies of said notice, to be furnished by the Regional Director for Region 4, shall, after being duly signed by an authorized representative of the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material

(c) Notify the Regional Director for Region 4, in writing, within 20 days from the receipt of this Decision, what steps the Respondent has taken to comply herewith [6]

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[6] In the event that this Recommended Order is adopted by the Board this provision shall be modified to read "Notify the Regional Director for Region 4 in writing within 10 days from the date of receipt of this Order what steps the Respondent has taken to comply herewith"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a 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, upon request, bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the 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 understanding in a signed agreement
>
> The appropriate unit is
>
> > All production and maintenance employees at our Philadelphia, Pennsylvania, plant, excluding all office clerical, technical, and professional employees, salesmen, watchmen, guards, and supervisors as defined in the Act

ACME INDUSTRIAL PRODUCTS, INCORPORATED,
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, 1700 Bankers Securities Building, Walnut and Juniper Streets, Philadelphia, Pennsylvania, Telephone No 597–7617