

WE WILL NOT dominate or interfere with the formation of the Committee (a collective-bargaining representative of our employees) or any other collective-bargaining representative of our employees.

WE WILL NOT interfere with, restrain, or coerce our employees in the right to self-organization, to form, join, or assist Building Service Employees International Union, Local No. 105, AFL-CIO, or any other labor organization of their own choosing.

WE WILL withdraw and withhold all recognition from, and completely disestablish, the Committee or any successor thereto, as a representative of any of our employees for the purpose of dealing with respect to grievances, wages, rates of pay, hours of employment, or any other conditions of employment.

All our employees are free to become or remain members of Building Service Employees International Union, Local No. 105, AFL-CIO, or any other labor organization.

FLOORS, 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, 609 Railway Exchange Building, 17th and Champa Street, Denver, Colorado, Telephone No. 297-3551.

Williams Furnace Co. and Sheet Metal Workers' International Association, Local Union 170, AFL-CIO, Petitioner. Case No. 21-RC-9806. May 12, 1966

DECISION AND DIRECTION

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted on November 17, 1965, under the direction and supervision of the Regional Director for Region 21. At the conclusion of the balloting, the parties were furnished with a tally of ballots which showed that of approximately 54 eligible voters, 49 cast ballots, of which 24 were for the Petitioner, 22 were against the Petitioner, and 3 were challenged. The three challenges were sufficient in number to affect the results of the election. Thereafter, the Employer filed timely objections to conduct affecting the election.

The Regional Director investigated the objections and challenges and, on December 30, 1965, issued his report thereon, recommending that the objections be overruled, that the challenge to the ballot cast by employee Carl Bond be sustained, and that the challenges to the ballots of employees Gary Delaware and William Kampe be overruled. Inasmuch as these two remaining ballots were sufficient in number to affect the results of the election, the Regional Director directed that they be opened and counted to determine the result of the election. Thereafter, the Employer and the Petitioner filed timely exceptions to the Regional Director's Report 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 Jenkins and Zagoria].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act.

4. In accord with the stipulation of the parties, the following employees constitute a unit appropriate for the purposes of collective bargaining: All production and maintenance employees of the Employer at 1490 Firestone Boulevard, Buena Park, California, including shipping, receiving, and warehousing employees, stock clerks, material handlers, truckdrivers, inspectors, and servicemen (including outside servicemen and working leadmen); but excluding all office clerical and professional employees, guards, and supervisors as defined in the Act.

The Board has considered the Regional Director's report, the exceptions and briefs, and the entire record in this case, and hereby adopts the Regional Director's findings and recommendations.¹

¹ In our opinion, the Employer's exceptions and brief raise no substantial and material issues with respect to these findings and recommendations which would warrant our reversal or modification of them.

We agree with the Regional Director that the leaflet distributed by the Petitioner does not warrant the inference of material misrepresentation which the Employer would attribute to it. The leaflet's legend might perhaps be subject to various interpretations. But since the Employer had raised the question of the low level of union employees' incentive pay, the leaflet distributed by Petitioner in reply cannot be fairly interpreted as asserting or implying that the incentive earnings were typical of those ordinarily earned by union employees of Day/Night. Accordingly, we find that its distribution during the critical period did not interfere with the election. *Hollywood Ceramics Company, Inc.*, 140 NLRB 221, 224.

We find no merit in the Employer's contention that experimental mechanic Bond performs tasks so similar to those production employees that he should be included in the production unit. Such sporadic "production" work as can be attributed to him relates to essential technical (if minor) correction of new production parts, and usually is performed in the test laboratory. In our opinion this fact merely emphasizes the correctness of the Regional Director's determination that Bond should be excluded from the production unit, as an employee whose principal duties and interests are more closely allied with test laboratory personnel.

We find no merit in the Petitioner's contention that William Kampe's incidental office duties require his exclusion from the production unit. His principal duties are the maintenance of proper time and production records, and at least 80 percent of his time is spent in plant clerical functions.

In the absence of exceptions we adopt *pro forma* the Regional Director's recommendation that the challenge to Delaware's ballot be overruled.

[The Board directed that the Regional Director for Region 21 shall, within 10 days from the date of this Direction, open and count these ballots.]

Lake Butler Apparel Company, Norman Stephenson, Union County Development Authority, Robert A. Driggers, Dana L. Duke, Clyde U. Crews, M. G. Langford, S. A. Bryan, C. L. Brown, A. E. Howard, Fred L. Thomas, Wilford Croft, S. M. Brown, and Hal Y. Maines *and* Amalgamated Clothing Workers of America, AFL-CIO. *Case No. 12-CA-2967. May 13, 1966*

DECISION AND ORDER

On September 1, 1965, Trial Examiner Phil Saunders 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, General Counsel, and the Charging Party filed exceptions to the Trial Examiner's Decision and supporting briefs. The Charging Party also filed a brief in support of the Trial Examiner's Decision.

The National Labor Relations 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 and briefs, and the entire record in the case, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner with the following modifications.

The Trial Examiner found, *inter alia*, that on and after April 25, 1964, Respondent Company has refused to bargain collectively in good faith in violation of Section 8(a)(5) of the Act. We agree, but we would date Respondent Company's refusal to bargain from April 19, 1964, when it first acquired knowledge of the Union's demand at which time the Union had a majority of 37 in a unit of 73 employees.

¹ We agree with the Trial Examiner's finding that the Union represented a majority, as indicated by the signed authorization cards, and with his finding, contrary to Respondent Company's contention, that the cards were not signed on the representation that they would *only* be used for the purpose of filing a petition for a representation election. Member Brown concurs in finding that the Union represented a majority of the employees, but does so for the reason that in his opinion the signed designation cards are the best evidence of the signatories' intent, absent a showing of fraud or coercion.