(e) Notify the Regional Director for Region 1, in writing, within 20 days from the date of the receipt of this Decision, what steps have been taken to comply herewith.[17]

[17] In the event that this Recommended Order is 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 Recommendations 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 offer Howard T. Diamond his former job and pay him for wages he lost since August 11, 1965.

WE WILL NOT threaten to discharge or discriminate against employees because of their union activities or threaten them with violence for engaging in union activities or interfere with them in any way because of their union activities.

All our employees have the right to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 25, or any other union, to engage in other concerted activities for mutual aid or protection, or to refrain from any or all such union or concerted activities.

CARMEN ADDARIO D/B/A ADDARIO'S EXPRESS AND ORLEANS EXPRESS CO., 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 and Service Act, as amended, after discharge 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, 20th Floor, Federal Office Building, Cambridge and New Dudbury Streets, Boston, Massachusetts 02108, Telephone 223–3300.

Rudnick Land & Cattle Co., and its Divisions—Piute Packing Co., and Rudnick Truck Lines *and* Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 87, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America

Kern Valley Packing Co. *and* Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 87, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. *Cases 31–CA–62 (formerly 21–CA–6617) and 63 (formerly 21–CA–6618). June 16, 1966*

DECISION AND ORDER

On March 25, 1966, Trial Examiner Louis S. Penfield issued his Decision in the above-entitled cases, finding that the Respondent

had not engaged in certain unfair labor practices and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions and the Respondent filed cross-exceptions to the Trial Examiner's Decision, and briefs in support of the exceptions and cross-exceptions; and the Respondent filed a brief in support of the Trial Examiner's Decision and in opposition to the General Counsel's exceptions.

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 these cases to a three-member panel [Chairman McCulloch and Members Brown and Zagoria].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the exceptions, cross-exceptions, and briefs and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding with all parties represented was heard before Trial Examiner Louis S. Penfield in Bakersfield, California, on October 19 and 20, 1965, on a complaint of the General Counsel and answer of Rudnick Land & Cattle Co., and its divisions Piute Packing Co., and Rudnick Truck Lines,[1] and Kern Valley Packing Co, herein jointly called Respondent.[2] The issues litigated were whether Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, herein called the Act.

Upon the entire record, including consideration of briefs filed by the General Counsel and Respondent, and upon my observation of the witnesses, I hereby make the following:

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[1] At the hearing the complaint was amended to show that in August 1965 a corporate reorganization took place whereby Piute Packing Co. had its corporate name changed to Rudnick Land & Cattle Co. and it became a division of Rudnick Land & Cattle Co. under the name of Piute Packing Co. The complaint was further amended to show that during the month of April 1965 Rudnick Truck Lines was established as a division of what was then Piute Packing Co and since the reorganization has continued as a division of Rudnick Land & Cattle Co The caption correctly reflects the corporate names as they presently exist

[2] The complaint issued on July 30, 1965, and is based on charges and amended charges filed on the following dates: In Case 31-CA-62 a charge filed on April 8, 1965, and amended charge on July 1, 1965, and a second amended charge on July 28, 1965 Copies of the complaint, the charges, and the amended charges have been duly served on Respondent. The name of Respondent, as set forth above, reflects the corporate names as changed by the amendment to the complaint noted in footnote 1 above. Respondent's answer is deemed amended to meet the circumstances as changed by this amendment. The term Respondent is used hereinafter to refer to the corporate entities as they existed both before and after the reorganization.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

Respondent is comprised of two separate corporate entities, Rudnick Land & Cattle Co., herein called Rudnick, and Kern Valley Packing Co., herein called Kern, which are separate legal entities but are commonly owned and managed. Each is engaged in the business of meatpacking and processing at separate plants located in Bakersfield, California. Each corporate entity in the course and conduct of its business operations receives goods valued in excess of $50,000 from points located outside the State of California. It is agreed, for purposes of this proceeding, that Rudnick and Kern may be regarded as a single employer engaged in commerce, or a business affecting commerce, within the meaning of Section 2(6) and (7) of the Act, and I so find.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 87, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called the Union, is a labor organization within meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that the Union is the statutory representative of certain employees of Respondent, that in November 1964 the Union and Respondent reached agreement on the provisions of a collective-bargaining contract, that in February 1965 the Union requested that Respondent execute a document purporting to embody the provisions of such agreement, and that at all times since Respondent has refused to execute such agreement thereby refusing to bargain within the meaning of Section 8(a) (5) of the Act. Respondent acknowledges the Union to be the statutory representative, acknowledges that it reached agreement with the Union in November 1964, but denies that it is now refusing, or has ever refused, to bargain with the Union, because it contends that the written document which the Union insists that it sign "does not contain the provisions of" the November agreement. As an additional reason for its refusal to sign, Respondent asserts that the agreement presented contains provisions violative of Section 8(e) of the Act.

It is agreed that the Union is the statutory representative of employees of Respondent in a single unit comprised of all truckdrivers, swampers, and office employees employed by both Rudnick and Kern, excluding all other employees, and supervisory employees as defined by the Act. I find such unit to be appropriate within the meaning of Section 9(b) of the Act, and further find the Union to be the exclusive representative of employees in such unit within the meaning of Section 9(a) of the Act.[3]

The authorized representatives of the parties who conducted the bargaining negotiations and who figure in this proceeding are as follows: for the Union, Virgil Dunham and George Branson; for Respondent, Richard Little, Sam Rudnick, and Philip Rudnick. Dunham and Branson testified concerning the negotiations for the Union, and Little and Philip Rudnick for Respondent. Although some differences in recall and emphasis appear, no substantial conflict exists among witnesses on either side of the controversy regarding the circumstances of the negotiations which they describe.

A. *The bargaining history prior to the 1964 negotiations*

The collective-bargaining relationship between Respondent and the Union has been a harmonious one which has existed for some 9 years. At all times bargaining has followed a pattern set by Teamsters Union Local No. 626 in Los Angeles where that local represents employees in meatpacking houses and bargains collectively for them. Respondent has never participated in the Los Angeles negotiations. It has

[3] Prior to the corporate reorganization both corporations bargained jointly with the Union. However, in some instances, at least, two separate but identical contracts were signed by each of the two separate corporate entities then existing. Whether or not this circumstance indicates the existence of two separate units in the past, a single contract intended to cover employees of both corporations was presented in 1964, and all parties to the proceeding now agree that a single unit covering employees of both Rudnick and Kern is appropriate.

been the practice for Respondent and the Union to meet following completion of the Los Angeles negotiations and to adopt their results with such modifications as might be separately negotiated.

Respondent's first written agreement with the Union was signed in May 1956. At that time, Respondent executed a one-page document entitled "Stipulation" which provided that Respondent would abide "by the agreement covering wages, hours, and working conditions which now exists in the contract covering the packing houses located in Los Angeles with Teamsters' Union No. 626 and all supplements." The stipulation also listed modifications or "exceptions" applicable to Respondent's Bakersfield operations. These exceptions covered such matters as premium rates, load limits, and special rates applicable to certain classifications of Respondent's drivers. The Los Angeles contract, although referred to in the "Stipulation," is not specifically incorporated by reference. This Los Angeles contract was not introduced into the record. Apparently, however, this master agreement, like later contracts, contained provisions which the parties orally agreed were not applicable to Respondent's operations.

In 1959, following the execution of a Los Angeles master agreement, Respondent and the Union commenced negotiations for their new agreement. Such negotiations resulted in the execution by Respondent and the Union of a document entitled "Labor Agreement" which is described as "a stipulation to the master agreement with certain changes pertaining" directly to Respondent's operations. At about the same time, the parties also executed another document entitled "Stipulation," which purports to supplement the "Labor Agreement" by providing a wage scale for swampers employed by Respondent. The so-called "Labor Agreement" does not specifically incorporate the Los Angeles master agreement. A copy of such master agreement, however, was submitted to Respondent at the opening of negotiations, and references to it in the "Labor Agreement" are unmistakable. Thus, we find that modifications agreed to by Respondent and the Union refer specifically to articles in the master agreement noting specific areas of agreement or disagreement with its terms. These include: (1) Agreement to use the same union-security clause; (2) agreement to check on the legality of the unfair products clause in the master agreement; (3) agreement on a similar 15 percent wage increase for all classifications; (4) deletion of rest-period provisions set forth in the master agreement; (5) amendment to vacation clauses as set forth in the master agreement; (6) agreement for the same contract duration; and (7) a special agreement as to payment of extra men used by Respondent. The "Labor Agreement" concludes with the following statement: "The Union will write a new contract, embracing all the other conditions contained in the old Labor Agreement, with the above additions and changes." It is not shown that any "new contract" was ever subsequently written. The sketchy nature of the stipulations, coupled with their direct references to the master agreement presented, signify an intent to have all the documents considered together as the operative collective-bargaining agreement, and I so find. Examination of the master agreement, however, discloses provisions not noted in the modifications which are conceded not to apply to Respondent's operations. Thus, provisions in the master agreement for rest periods, for Monday through Friday work with overtime after 8 hours, for double pay on Sundays, and for night premiums admittedly were not deemed to apply to Respondent's line drivers, and no attempt was ever made to have Respondent adhere to them. Accordingly, it would appear that by 1959, and perhaps before, Respondent had bound itself to a writing which did not accurately reflect the understanding of the parties, but whose terms were varied by the oral understanding that some of its provisions did not apply to Respondent's operations. At this time, Respondent did not press for more exactness in the writing, possibly because its relationship with the Union was good, and no problems concerning the discrepancy between the writing and the oral understanding had theretofore arisen. Respondent was not unaware of possible difficulties, however, for Little testified that "On numerous occasions in past negotiations" he had asked "that we have a tailored agreement."

In 1961 the Union approached the bargaining somewhat differently. The parties again followed the Los Angeles pattern and negotiated as before on certain modifications applicable to Respondent's operations. The modifications, however, were not embodied in a signed stipulation but were encompassed in three so-called appendixes labeled B, C, and D, which the Union thereafter attached and incorporated by reference with the Los Angeles master agreement. The entire agreement, complete with appendixes, was then presented to Respondent for execution.

Respondent's negotiators complained that "they couldn't sign a document of this order" and that they never had, since "there were provisions in there that didn't apply to us." These provisions, as in the case of the 1959 contract, related principally to existing practices with regard to Respondent's line drivers. The Union conceded that Respondent's line drivers were not subject to such provisions despite their inclusion in the master agreement. However, union representatives urged Respondent to sign the agreement anyway because "this was the only thing they had prepared for [Respondent] to sign." At that time Respondent acquiesced and executed the 1961 agreement as presented. It may be noted, however, that once again Respondent had executed a written agreement containing terms which were not specifically applicable to it. There is no showing, however, that during the term of this agreement the Union sought adherence by Respondent to any of these concededly inapplicable provisions.

B. *The 1964 negotiations*

The 1961 agreement remained in effect until September 1, 1964. Prior thereto the Union gave notice of a desire to negotiate a new agreement Pursuant to such notice the parties met on August 17, 1964, and the Union presented certain proposals. It advised Respondent that the membership had voted again to follow the Los Angeles pattern, and it invited Respondent to attend the Los Angeles negotiations which were to take place in the near future. The Union also submitted in writing a series of proposals to be discussed following the completion of the Los Angeles negotiations. These proposals included wage increases, vacation changes, the adoption of a dental program, increases in pension plan contributions, a revised swampers' scale, and a revised office workers' scale. However, no serious negotiations were undertaken on any matters at this time. Following the August 17 meeting, Little advised the Union that Respondent "did not desire to join the Los Angeles negotiations, that [it] wanted to do it on [its] own level."

The next meeting took place on November 19, 1964. The Los Angeles negotiations had, by this time, been completed. The Union presented Respondent with a document entiled "Supplementary Agreement" which purported to embody the changes in the previous master agreement which had been negotiated in Los Angeles. Although this "Supplementary Agreement" had been signed by the Los Angeles employers and Local 626, neither on November 19, nor at any time later, was Respondent asked to sign it.[4] The Union represented to Respondent that the "Supplementary Agreement" included all the changes which had been agreed upon at Los Angeles, but it undertook to use the "Supplementary Agreement" only as a basis for discussion during the course of the negotiations with Respondent. The "Supplementary Agreement" contained 10 provisions. At the November 19 meeting Respondent agreed to accept the provisions of paragraphs 2, 6, 7, 9, and 10. These involved the following: a general wage increase for drivers, increased health and welfare contributions, increased pension contributions, dental plan contributions, sick leave changes, and an agreement on a 3-year duration for the contract commencing October 1, 1964. In addition, Respondent and the Union reached agreement on changes in provisions of paragraph 3 so that they would apply to Respondent's operations. The parties also agreed to delete paragraph 4. They likewise agreed that paragraph 5 should be changed to bring the Bakersfield office workers' scale up to that in Los Angeles, but to do so in three increments during the term of the contract. Rates for swampers, not mentioned in the "Supplementary Agreement," were also the subject of discussion on November 19. Agreement was not forthcoming on swampers' rates at that time, however, but by November 21, after an exchange of proposals by telephone, agreement was attained. Paragraph 1 of the "Supplementary Agreement" reads as follows: "All terms and conditions of the previous labor agreement shall remain in full force and effect except as changed herein." Neither at the November 19 meeting nor

[4] The "Supplementary Agreement" does not state that it was intended to be an interim agreement, but apparently that was its purpose It was signed by the Los Angeles local and employers who had participated in the negotiations there presumably as a memorandum of the understanding reached The preparation and execution of a full agreement, however, embodying all provisions, including the modifications, was contemplated. The agreement which was later presented to Respondent in February 1965 was their Los Angeles master agreement as finally drawn up with locally negotiated modifications added.

thereafter was there any discussion of the significance of this paragraph, or of any provision of the "previous labor agreement" or its applicability to Respondent's operation except what has been set forth above. It may be noted, however, that the provisions of the "previous" master agreement were known to Respondent at the time since it had become bound thereby in signing the 1961 agreement.

According to the credited testimony of Respondent's representative Little, he told Dunham and Branson during the course of the November 19 meeting that he "was damned tired of pouring through this long document that we were getting and [he] wanted something tailored around our agreement that contained only provisions that pertained to our operations." Little states that the Union responded with "Oh, we will get that for you." Neither Dunham nor Branson recall making such statement, or recall making any commitment to get Respondent a tailored agreement, but they do not deny that the statements may have been made. I find that the events occurred as related by Little.

On or about November 21, 1964, after the parties had reached accord on the swampers' scale, the Los Angeles "Supplementary Agreement," together with the local modifications agreed upon, were submitted to the union membership for their approval. The membership ratified the understanding, and Union Representative Branson so advised Little who replied "Fine, I am glad that is behind us." Following notification of ratification, Respondent put into effect all the substantive provisions to which it had agreed, and at all times since then it has continued to abide by such provisions. These include all the terms of the "Supplementary Agreement" as modified by the local negotiations described above.

Some delay ensued pending the preparation of the Los Angeles master agreement. On February 24, 1965, the Union presented Respondent with a written document for signature purporting to incorporate the Los Angeles master agreement and the local modifications which had been agreed to by November 21. The document itself consists of a printed form some 17 pages long, most of which is comprised of the Los Angeles master agreement, but which includes also appendixes incorporating the modifications negotiated. This document, just as the master agreements of 1959 and 1961, also contains a variety of provisions principally relating to working conditions of drivers but also other matters, which admittedly are not applicable to Respondent's line drivers, or to certain other aspects of its operation. As noted above, none of these matters was discussed at the November 19 meeting. This agreement was left with Respondent with the understanding that it would be looked over, and that the Union would be notified regarding its execution. On examining the document Respondent concluded that the inapplicable provisions were matters to which it had not agreed in the November negotiations. For this reason, Respondent decided it was not prepared to execute the document presented.

Within 2 weeks from the receipt of this proposed agreement representatives of Respondent met with union representatives. Philip Rudnick had become president of Respondent in February, and the transportation operations of both corporations had been centralized in a separate division. The meeting was called by Respondent in March both to introduce the new president to the union representatives, and to explain the effect of the centralization. During the course of the meeting, however, the contract which had been presented came up for extended discussion, and Respondent apprised the Union that the agreement was not acceptable because it contained matters to which Respondent had not agreed. At the same time, Rudnick brought up some new issues as subjects of possible negotiation. It does not appear, however, that the signing of any agreement was in any way conditioned on obtaining agreement on these new matters. The real thrust of Respondent's position taken at this meeting, and thereafter, was that it would not sign the agreement presented because it contained provisions to which Respondent had not agreed in November, and which were not applicable to Respondent's operations. The Union, despite acknowledging that some of the provisions in the master agreement were not applicable to Respondent's operations, at all times remained adamant in its position, and insisted that Respondent had committed itself in November to accept the terms of the agreement presented, and that no changes in language or otherwise were acceptable to the Union.

C. *Discussion of the issue and conclusions*

The only issue before me is whether or not Respondent is obligated to execute the agreement presented in February. The General Counsel makes no claim

that Respondent has acted in bad faith, or in any other manner failed to fulfill its statutory bargaining duty. It is only asserted that Respondent and the Union reached accord in November, and that Respondent refused to bargain in February when it would not execute the document which allegedly embodied the understanding. The principle involved is a well-established one. For many years the statute itself has defined the bargaining duty as requiring the "execution of a written contract incorporating any agreement reached if requested by either party . . ." The converse, however, is equally true. If the agreement presented is not in substance the agreement reached, but, as Respondent contends here, is one containing matters upon which the parties did not reach accord, the duty to execute does not arise.[5] It is precisely this question that we must resolve.

The General Counsel views the bargaining history and the November negotiations as evidencing acceptance at that time by Respondent of the Los Angeles bargaining pattern in all its particulars, and the contract presented in February to be merely the written memorial of such understanding. Respondent does not dispute the existence of agreement in November on all basic issues, but it contends that the full master agreement presented in February containing, as it admittedly did, provisions not applicable to Respondent's operation, does not represent the actual agreement reached in November. The General Counsel acknowledges the February contract to contain provisions not applicable to Respondent's operations, but he points out that identical provisions appeared in the 1959 and 1961 contracts to which Respondent bound itself, that Respondent was made aware that such provisions would be carried over in the 1964 contract by the provisions of section 1 of the "Settlement Agreement," that Respondent signified its agreement in November on all matters, including section 1, and that Respondent cannot now be heard to repudiate a contract which embodies the full understanding.

The General Counsel's approach oversimplifies the bargaining picture. Bargaining between Respondent and the Union has been conducted with no great degree of precision from the outset of the relationship. The Los Angeles pattern in general has always been the standard, but the parties have always understood that the Los Angeles master agreements contained provisions not applicable to Respondent's operations. The relationship between Respondent and the Union traditionally has been a harmonious one. Thus while on occasion in the past, Respondent had made half-hearted protests, and had asked for a "tailored" agreement, it had not pressed its objections strenuously, but had accepted what the Union requested. Prior to 1961, the Los Angeles master agreement remained somewhat in the background. It was at all times referred to in the stipulations which Respondent and the Union executed, but the parties uniformly had oral understandings regarding the applicability of some of its express provisions to Respondent's operation. These oral understandings had been uniformly observed, and this resulted in Respondent's protests remaining minimal. The applicability question came into sharper focus in 1961 when the Union asked for the first time that Respondent sign a document incorporating the full master agreement. Respondent acquiesced only after making a stronger protest than it had theretofore done.

In 1964, the full master agreement was not initially presented to Respondent in November. Indeed, at the time the master agreement had not yet been prepared. Respondent was not even asked to sign the Los Angeles "Settlement Agreement," but this was used solely as a basis for discussion during the negotiations. The section 1 reference therein was in general terms, and, as we have seen, was not the subject of discussion. The November negotiations resulted in Respondent and the Union promptly reaching accord on all issues discussed, and this was followed by Respondent's immediately putting into effect the substantive terms of their understanding pending preparation of a full agreement. The parties appear to have viewed the ultimate shape of the full agreement differently. On the one hand, the Union envisaged it as the master agreement as modified by the local negotiations, while on the other hand, Respondent contemplated being presented with a tailored agreement suited to its own operations. While the understanding was full and complete as to the so-called "money" issues, the structure into which they were to be placed was separately assumed but not really considered during the course of the discussions in November. It is possible that

[5] *Henry I Siegel Co., Inc.*, 153 NLRB 1448; *Watertown Undergarment Corporation*, 137 NLRB 287.

in view of past acquiescence by Respondent, the Union concluded that no discussion was needed. Respondent, however, had clearly indicated its dissatisfaction with the past by its request for a tailored agreement, and it had been given some assurance by the Union, albeit not a very precise one, that this might come about. Insofar as this record shows, the Union made no effort whatsoever along such lines. In February, it proceeded to present the whole master agreement as a package including provisions which it conceded did not apply to Respondent's operation, and to demand acceptance and execution of this agreement in that form. It has advanced no explanation for its unwillingness to tailor the agreement, but has maintained a rigid position which tolerates no deviation from the terms of the document presented.

Under the circumstances I do not agree that the agreement presented in February must necessarily be viewed as the actual agreement which the parties had reached in November. Everyone agrees that in November there was an agreement which included specific provisions and a commitment to follow the general Los Angeles bargaining pattern. The specific provisions were put into effect immediately, and Respondent still stands willing to execute a contract embodying them.

It is not claimed that Respondent is not following the general Los Angeles area pattern. Respondent has balked, however, at executing a contract which also contains provisions admittedly not applicable to its operations. Respondent's entire approach seems taken in good faith, and to be a reasonable one. The statutory requirement on execution of agreements rests on the basic principle that failure to do so is in effect an expression of bad faith, since it frustrates the ultimate fruition of the statutory bargaining mandate. If, having gone through the motions of reaching an agreement, a party may thereafter avoid responsibility for it by refusing to sign its embodiment in writing, its initial good faith in reaching the agreement is open to question. Respondent, however, is not so acting. If any accord can be said to have been reached in November on the admittedly inapplicable provisions, it appears more nebulous than real. Even Respondent's prior acceptance of agreements incorporating inapplicable provisions had not been made without its voicing some objection. In November, although we find it accepting the area pattern and substantive terms, it reiterated even more strongly a plea for a tailored contract. At the most, Respondent failed to discuss with the Union in November exactly what it had in mind in this connection. It would not be unreasonable, however, for us to require the Union to assume that at the very least this meant the elimination of provisions to which Respondent was not required to adhere. The Union, on its part, did not undertake to explore the matter or to explain that it would later insist on execution of a contract containing verbatim all terms of the Los Angeles master agreement. I am therefore convinced, and find, that the only actual accord reached in November was limited to an acceptance of the Los Angeles general pattern together with the specific provisions later put into effect, and that it did not include acceptance of all the terms of the Los Angeles master agreement regardless of their applicability to Respondent's operations. Thus the contract presented in February clearly exceeds the limits of the mutual agreement in November, and the case does not fall within the statutory principle requiring execution of agreements reached. Accordingly, I find that the General Counsel has not established that Respondent has breached its statutory duty to bargain and engaged in conduct violative of Section 8(a)(5) of the Act. I shall recommend therefore that the complaint be dismissed.[6]

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

CONCLUSIONS OF LAW

1. Rudnick and Kern constitute a single employer engaged in commerce, or a business affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

[6] As noted above Respondent has also urged as a further reason for its not being ordered to sign the contract that such agreement contains provisions unlawful within the meaning of Section 8(e) of the Act. In view of the findings above set forth and my conclusion that inasmuch the contract presented does not embody the agreement reached Respondent is not required to sign it, I do not reach the 8(e) issue. Accordingly, I do not undertake to pass on the lawful or unlawful character of any clauses in the contract within the meaning of Section 8(e).

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Neither Rudnick nor Kern, jointly or severally, has engaged in unfair labor practices as alleged in the complaint.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, it is hereby recommended that the complaint be dismissed in its entirety.

Wilson & Co., Inc. *and* United Packinghouse, Food and Allied Workers, AFL–CIO. *Case 11–CA–2981. June 16, 1966*

DECISION AND ORDER

On May 17, 1966, 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 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 Brown and Zagoria].

The Board has reviewed the rulings of the Trial Examiner, including his granting of the General Counsel's motion for judgment on the pleadings, and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the Respondent's exceptions and 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 ON MOTION FOR JUDGMENT ON THE PLEADINGS

STATEMENT OF THE CASE

Upon a charge filed February 28, 1966, by United Packinghouse, Food and Allied Workers, AFL–CIO, herein called the Union, against Wilson & Co., Inc., herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 11, issued a complaint dated March 9, 1966, alleging the Respondent's refusal to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act. The complaint alleges the Union's certification following a secret-ballot election conducted by the Regional Director among the employees of Respondent's Wilson, North Carolina, branch