intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

It having been found that the Respondent has committed certain unfair labor practices, it will be recommended that it be ordered to cease and desist from such conduct, and to take certain affirmative action designated to dissipate its effects.

Having discriminately discharged Junior Lee Estes, the Respondent will be ordered to reinstate Estes to his former or substantially equivalent position of employment, without prejudice to his seniority and other rights and privileges, and to make him whole for any loss of earnings suffered as the result of Respondent's unlawful action. Backpay will be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289, with interest added thereto in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

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

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of the Act.
2. United Furniture Workers of America, AFL–CIO, is a labor organization within the meaning of the Act.
3. By discriminatorily discharging Junior Lee Estes because of his union affiliation and activities and for having testified at a Board hearing, the Respondent violated Section 8(a)(3), (4), and (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.
5. The Respondent has not engaged in unlawful surveillance of an employees' meeting held for the purpose of preparing for the present hearing in violation of Section 8(a)(1) of the Act, as alleged in paragraphs 5(a) and 7 of the complaint.

[Recommended Order omitted from publication.]

Bay Ran Maintenance Corporation of New York, Employer-Petitioner *and* Buffalo & Western New York Hospital & Nursing Home Organizing Committee, AFL–CIO. *Case 3–RM–345. November 7, 1966*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer William S. McGee. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer-Petitioner, hereinafter referred to as the Employer, filed a brief with the National Labor Relations Board.

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

The Board has considered the entire record in this case including the brief, and makes the following findings:

1. The Employer seeks an election in a unit of its building service and maintenance employees employed at the Sisters of Charity Hos-

pital of Buffalo, New York, hereinafter referred to as the Hospital. The only issue in the case is whether it will effectuate the policies of the Act for the Board to assert jurisdiction over the Employer's operations at the Hospital.

The Hospital itself is a nonprofit hospital and is thereby excluded from the Board's jurisdiction under the provisions of Section 2(2) of the Act. The Hospital provides care for patients and also maintains operating, X-ray, and outpatient facilities. At one time the Hospital used its own personnel for cleaning and maintenance services. However, at some point prior to the beginning of the current fiscal year (1965–1966)—the record does not reflect the exact date—the Hospital, through its administrator, Sister Rosa, entered into a contract pursuant to which these services are now furnished by the Employer. After the contract was signed, former hospital cleaning personnel were transferred to the Employer's payroll. There is no bargaining history for these employees.

The Employer, which is not exempt from the Board's jurisdiction under the provisions of Section 2(2) of the Act, is one of six wholly-owned subsidiaries of AB & F Maintenance Corporation. AB & F has its principal office and place of business in Washington, D.C. The Employer itself is engaged in performing cleaning and maintenance services for various hospitals and commercial buildings in a number of cities in the State of New York. The Employer is integrated with the five other subsidiary corporations which operate in the States of Maine, Maryland, Georgia, Alabama, Florida, and also in the District of Columbia. During the 12-month period preceding the hearing, the Employer purchased materials, supplies, and equipment having a value in excess of $50,000 from points directly outside the State of New York. During the same period the Employer rendered services having a value in excess of $50,000 to various enterprises in the State of New York.

Under its contract with the Hospital the Employer provides, for a fixed cost, certain cleaning services and all necessary supplies and equipment to carry out that function, except for water and electricity which are furnished by the Hospital. Significantly, the cleaning work performed by the Employer has no direct relationship to patient care. Thus, although the Employer's crews, daily, do general cleaning of all the Hospital's rooms, wards, laboratories, and X-ray, operating, and outpatient facilities, these crews do not clean such items as bedpans or pitchers, nor do they handle or clean sheets and other laundry. The staff of the Hospital itself has these responsibilities.

The Hospital does not, apparently, maintain any direct control over the management of these cleaning services.[1] The Employer has its own supervisory staff which oversees the performance of its crews. The Employer also determines the size of the crews and the hours when they work. Further, the Employer furnishes these employees with distinctive uniforms which are the same as the uniforms worn by the maintenance crews which the Employer provides at other establishments in the State of New York with which it has cleaning contracts.

The Employer, and not the Hospital, determines the labor relations policy with respect to these cleaning crews and, correspondingly, the Hospital does not concern itself with any of the Employer's personnel actions such as the layoff, suspension, recall, and discipline of employees, or handling of employee grievances. The Employer likewise establishes the wage rates for the cleaning personnel and provides them with the hospitalization insurance, paid holidays, paid vacations, and pensions.

In view of the nature of the work performed by the Employer's cleaning crews at the Hospital as well as the complete control which the Employer itself maintains over their day-to-day performance and their working conditions, subject only to termination of its contract if the functions are not performed to the satisfaction of the Hospital, we find that the maintenance and service activities of the Employer at the Hospital are not so intimately interrelated with the operations or purposes of the Hospital as to warrant withholding our exercise of statutory jurisdiction. We find, therefore, that the Employer is engaged in commerce within the meaning of the Act and that it would effectuate the policies of the Act to assert jurisdiction in this proceeding.[2]

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

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

4. In accordance with the stipulation of the parties, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All building service and maintenance employees employed by Bay Ran Maintenance Corporation of New York at the Sisters of Charity

[1] The record indicated only that the Hospital, if not satisfied with the performance of the maintenance employees, may cancel the Employer's contract upon 30 days' notice.

[2] *Herbert Harvey, Inc.*, 159 NLRB 254; *Siemons Mailing Service*, 122 NLRB 81.

Hospital in Buffalo, New York, but excluding all office clerical employees, professional employees, guards, and all supervisors [3] as defined in the Act.

[Text of Direction of Election [4] omitted from publication.]

[3] The record indicates that Jackson, who has the title of executive housekeeper, is in charge of all the Employer's maintenance personnel at the Hospital. The record further indicates that these employees are under the immediate supervision of Night Supervisor Davis and Day Supervisors Creasey and White. The parties stipulated that Davis, Creasey, and White assign and direct employees in a manner requiring the exercise of independent judgment and also that they have authority to adjust grievances and effectively to recommend wage increases. We find that Jackson, Davis, Creasey, and White are supervisors within the meaning of the Act and, accordingly, we exclude them from the unit.

[4] An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 3 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.

Barrett & Lesh, Inc., d/b/a Produce Wholesale Co. *and* International Brotherhood of Teamsters Local 959, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent. *Case 19–CA–3295. November 8, 1966*

DECISION AND ORDER

On July 22, 1966, Trial Examiner William E. Spencer 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.

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, and the entire record in this case,