

other rights and privileges, discharging, if necessary to effect such reinstatement, any employee hired since Respondent committed unfair labor practices on March 18, and in the event of a failure or refusal to reinstate any striker entitled to reinstatement as provided herein, make such striker whole in accord with "The Remedy" herein.

(c) Preserve until compliance with any order for reinstatement or backpay made by the Board in this proceeding is effectuated, and make available to the Board or its agents, upon request, for examining and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records relevant to a determination of the backpay and reinstatement rights provided under the terms of such order.

(d) Post at its place of business in Pomona, California, including all places where notices to employees are customarily posted, copies of the attached notice marked "Appendix." Copies of said notice, to be furnished by the Regional Director for Region 21, after being signed by a duly authorized representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in such conspicuous places. Respondent shall take reasonable steps to insure that said notices are not altered, defaced, or covered by any other material.⁷

(e) Notify the said Regional Director, in writing, within 20 days of the receipt of this Decision, what steps Respondent has taken to comply therewith.⁸

IT IS FURTHER RECOMMENDED that, unless on or before 20 days from the date of its receipt of a copy of this Decision and Recommended Order the Respondent notify the Regional Director that it will comply with the foregoing recommendations, the Board issue an order requiring Respondent to take the action aforesaid.

⁷ In the event that this Recommended Order is 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 is 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."

⁸ 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 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 WILL NOT interfere with, coerce, or restrain our employees by offering our striking employees higher wages than we have offered to them through Meat Cutters Local No. 439, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, hereafter called the Union.

WE WILL NOT offer our striking employees either higher wages, or "big surprises," or salaries or any

other benefits to induce them to desert a strike against us or to return to work for us. Neither will we make any threats such as that the plant will close down if the strikers do not return to work.

WE WILL NOT offer any of our employees who are on strike \$500 or any other amount of money to desert the strike and return to work.

WE WILL NOT offer to pay striking employees vacation pay to which they are not entitled if only they will desert the strike.

WE WILL NOT tell a striking employee or any employee that we will sign a contract if the employees vote the Union out.

WE WILL, upon request, bargain collectively with the Union as the exclusive representative of a bargaining unit consisting of all our production and maintenance employees, excluding all office clericals, guards, and supervisors as defined in the Act, with respect to wages, hours, and other conditions of employment. If we reach an agreement we will embody it in a signed contract.

WE WILL NOT by refusing to bargain as required above or by threats or promises or bypassing or attempting to undermine the Union or in any other way or manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request by, or on behalf of, any employee who went on strike on March 18, 1966, and was not permanently replaced on that date before we committed unfair labor practices, immediately reinstate such employee to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges, discharging, if necessary to effect such reinstatement, any employee hired since we committed unfair labor practices on March 18, 1966, and in the event of a failure or refusal to reinstate any striker entitled to reinstatement as provided herein we will reimburse such striker for any loss of pay he may suffer by reason of such failure or refusal.

CAL-PACIFIC POULTRY, 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, Eastern Columbia Building, 849 South Broadway, Los Angeles, California 90014, Telephone 688-5229.

Jay Kay Metal Specialties Corp. and Tool, Die and Moldmakers Guild, Independent, Petitioner. Case 29-RC-451.

March 31, 1967

DECISION ON REVIEW

On June 13, 1966, the Regional Director for Region 29 issued a Decision and Direction of 163 NLRB No. 86

Election in the above-entitled proceeding in which he found, applying the tests set forth in *American Potash*,¹ that the Employer's toolroom employees constituted a departmental unit appropriate for severance from an established unit of production and maintenance employees. Thereafter, the Intervenor, United Industrial Workers of North America of the Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO, pursuant to the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, filed a timely request for review of the Regional Director's Decision, contending that he had misapplied Board policy in directing an election in the requested unit.

By telegraphic order dated August 4, 1966, the National Labor Relations Board granted the request for review and stayed the election pending its decision on review. Thereafter, the Intervenor filed a timely brief on review and a request for oral argument.

The Board has considered the entire record in this case with respect to the issues under review, including the brief on review,² and makes the following findings:³

The Regional Director directed an election among the requested toolroom employees of the Employer on the basis of (1) the parties' posthearing stipulation that the Petitioner traditionally represents such employees, and (2) the finding that they constituted an appropriate toolroom departmental unit entitled to severance. The Intervenor, in its request for review, argued that the Regional Director improperly distinguished *Rohr Corporation*, 157 NLRB 1351, in which the Board found the requested tool-and-die makers to be "specialists who neither exercise the gamut of skills normally associated with the tool and die craftsmen, nor comprise a functionally distinct department" entitled to severance under *American Potash*. However, subsequent to the grant of review, the Board issued its *Mallinckrodt*⁴ decision in which it modified the requirements for craft severance. We shall, therefore, consider this unit request in light of the *Mallinckrodt* opinion.

The Employer is engaged in the manufacture and assembly of various types of electrical appliances at its main plant in Long Island City and at another facility in the Bronx, both in New York City. Since 1961, the Intervenor has been certified as the representative of the Employer's production and

maintenance employees, including the tool-and-die employees here sought.⁵ Prior to that time, dating from about 1954, the Employer bargained with another labor organization as to the employees in this unit. The present complement of employees in the unit represented by the Intervenor varies from 750 to 2,300 during the year.

The Employer purchases about 10 percent of its tools, dies, and molds from outside sources and manufactures the remainder in its toolroom department, which is located in an unenclosed but distinct area on the fourth floor of one of its four contiguous plant buildings in Long Island City. Working in the toolroom department, under the direct supervision of Maintenance Supervisor Beck, are 23 employees, of whom 3 are group leaders; all are in labor grades A, B, and C, 14 working on molds, 7 on dies, and 2 on both molds and dies.⁶ Located on the same floor as the toolroom are 15 employees, under other group leaders, who operate a number of lathes, grinders, milling machines, and drill presses. Some of these employees, who are in the production maintenance department, make simple jigs and fixtures. All of them do work which is of a repetitive nature. The group leaders of the production maintenance, hydraulic maintenance, compression mold and knife blade maintenance, and vendor mold and die suppliers departments all report to Beck.

The toolroom department employees work with all the machinery and tools of the tool-and-die making craft. Those in the A grade, 13 in number, design and build, or repair, complicated molds for production machinery, often working to very close tolerances. The nine in grade B do somewhat less complicated work on molds and generally assist the grade A employees. The one employee in grade C spends most of his time polishing and performing simple machine operations. About 10 percent of the time toolroom employees work in plant production areas making repairs on dies and molds and doing more complicated machinist work.

Although the Employer has no apprenticeship program for its toolroom employees, it makes a practice of hiring experienced tool, die, and mold makers who may progress on the job. The toolroom employees in grade A are the highest paid employees in the Employer's plants. Only a few maintenance machinists are in the same wage group as the grade B toolroom employees.

Notwithstanding the past inclusion of toolroom employees in a broader unit, the contracts, at least

¹ *American Potash & Chemical Corporation*, 107 NLRB 1418

² As the record and briefs adequately present the issues and the positions of the parties, the Intervenor's request for oral argument is denied

³ For the reasons expressed by the Regional Director, we find no contract bar. We note also that neither the Intervenor nor the Employer interposed their contract as a bar at any time prior to the hearing, and that the Intervenor did not affirmatively assert the contract as a bar until it filed a brief to the Regional Director

⁴ *Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB 387.

⁵ Excluded from such unit were employees represented by International Brotherhood of Electrical Workers and International Union of Operating Engineers

⁶ The Employer uses molds in producing plastic products, dies in producing metal products. One of these employees may fall in the machinist classification and, as will appear, all may do some machinist work

since 1961, contain the following provision with respect to wage rates: "The classification of moldmakers and model makers 'A', 'B', or 'C' shall be in the sole discretion of the Employer." The record indicates that Beck has negotiated with toolroom employees individually as to classifications and wage rates, both upon hire and later request for increases in their rates. Job bidding as required by the contract has not been applied to grades A or B toolroom positions.⁷

In view of the foregoing, we conclude, in agreement with the Regional Director, that the Petitioner's proposed unit constitutes an identifiable departmental group of employees engaged in the tool-and-die making craft which may have a separate community of interest for bargaining purposes. Further, notwithstanding the bargaining history of inclusion of such employees in a broader unit, they have retained their identity as a distinct group for purposes of negotiation of wage rates and other conditions of employment, and the Petitioner is a labor organization which has traditionally represented units of such employees. In the circumstances, we conclude that the bargaining history in the broader unit has not submerged the separate community of interest enjoyed by the Employer's toolroom department employees, and we find that they may constitute a separate appropriate unit, if they so desire, and an election among the employees in this voting group should be held to determine their wishes.

Accordingly, we shall remand the case to the Regional Director for Region 29 for the purpose of holding an election, pursuant to his Decision and Direction of Election, as modified herein, except that the period for determining eligibility shall be the payroll period immediately preceding the date above.⁸

⁷ Although the Petitioner made an offer of proof, which the Hearing Officer rejected, that the union-security and checkoff provisions of the contract were only recently applied to toolroom employees, we find it unnecessary to rely on such proffered evidence.

⁸ A corrected 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 29 within 7 days after the date of this Decision on Review. 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

British Rail-International, Inc. and Office & Professional Employees International Union, Local 153, AFL-CIO, Petitioner.
Case 2-RC-14394.

March 31, 1967

DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

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

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.

Upon the entire record in this case, the National Labor Relations Board finds:

The Petitioner seeks to represent all regular and regular part-time office, clerical, and sales employees at the Employer's New York office. The Employer urges that the petition should be dismissed on the grounds, *inter alia*, that the Board does not have, or in the alternative should not assert, jurisdiction, over a wholly owned subsidiary of a foreign government, that the requested unit is inappropriate, and that there is an existing collective-bargaining agreement which bars the petition.

The Employer, herein called BRI, a New York corporation, with its principal place of business in New York, New York, operates throughout the United States and Canada, where it is engaged in selling tickets for the British railways and vouchers for rooms and meals in British hotels in connection with rail travel in Britain, to travel agents, tour groups, and individuals. Its total annual sales are in excess of \$500,000, and the value of tickets sold directly across State lines exceeds \$50,000. It has branch offices in Los Angeles, California, and Toronto and Vancouver, Canada.

All stock of the Employer is owned by the British Railways Board, herein called BRB, an agency of the Ministry of Transport of the United Kingdom. The Employer's board of directors of six members