

Westinghouse Electric Corporation and American Federation of Technical Engineers, AFL-CIO, Petitioner.¹ Case 13-RC-10446.

March 31, 1967

DECISION ON REVIEW, DIRECTION, AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING, BROWN, AND ZAGORIA

On February 12, 1965, the Regional Director for Region 13 issued a Decision and Direction of Election in the above-entitled proceeding finding appropriate, in accord with the Petitioner's request, a unit confined to steam service field engineers² based at the Employer's Chicago, Illinois, district offices, excluding all senior service assistants and all other employees. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's unit determination, in which it questioned the employee status of the requested steam engineers on grounds that they perform duties of a managerial or supervisory character, and also asserted that, in any event, the unit was too narrow in scope because it excluded electric service field engineers. The Employer also concurrently filed a motion to reopen the record for the receipt of further evidence.

By telegraphic order of March 16, 1965, the National Labor Relations Board granted the Employer's request for review to the extent it related to the employee status of the requested engineers. The Board further stayed the election pending decision on review, and reserved ruling as to other issues raised by the request for review.³

On March 29, 1965, the Board, pursuant to the Employer's motion, remanded the proceeding to the Regional Director for the purpose of conducting a further hearing with respect to the alleged supervisory status of the requested steam engineers. On April 28 and 29, 1965, such further hearing was

conducted before Hearing Officer Stephen Rubin. The case was thereafter returned to the Board. Subsequently, the Petitioner filed a brief and the Employer filed a supplemental brief in which, among other things, the Employer moved that the petition be dismissed. For reasons set forth below, this motion is denied.

The Board has reviewed the rulings of the Hearing Officer made at the supplemental hearing and finds they are free from prejudicial error. The rulings are hereby affirmed.

The Board has considered the request for review and the entire record in this case with respect to the Regional Director's determination under review, and makes the following findings:

A. The Facts

Through its nationwide Steam Service Department, the Employer is engaged in the sale, installation, and service of the steam turbine, hydroelectric, and related electric-generating machinery and equipment it manufactures. It has organized this part of its operation into five area divisions, with a number of district offices under each division.⁴ Each district office has a staff of steam engineers employed to service customer orders within the district's territorial jurisdiction. The engineers here requested, approximately 18 in number, comprise the steam engineering complement based in the two Chicago, Illinois, district offices.⁵ Although there is some history of bargaining for steam engineers assigned to other districts, there is none for the requested engineers.⁶

The engineers here involved are salaried, and have some specialized technical or professional knowledge and training in installing, servicing, or repairing Employer-manufactured steam-generating equipment. They all have some orientation in mechanical engineering, and some have academic degrees.⁷ While all are employed in jobs similarly titled, senior employees with extensive on-the-job experience are rated on the internal records of the Employer as class "A" engineers. Others are rated as class "B" or class "C" engineers, the latter being the entrance rating. The Employer confines certain

¹ Federation of Westinghouse Independent Salaried Unions was granted permission to intervene in the proceedings before notice of hearing had issued on the basis of showing of interest among the requested engineers. However, although notified, it did not appear at the hearing, and has not since filed any documents in the case.

² Hereinafter sometimes referred to as either "steam engineers" or as "engineers."

³ The Board is now satisfied that, except for the matters on which review was granted, the Employer's request for review raises no material issues of fact or law. Accordingly, the Board hereby denies that part of said request for review as to which it heretofore reserved ruling.

⁴ Each area division is headed by an area manager, and each district office is headed by a district manager. The latter immediately supervises the operations of the district office and, with the assistance of one or more senior service assistants

(admitted supervisors) assigns to steam engineers within that office the work hereafter described.

⁵ Both these offices are located in the Merchandise Mart and are part of the Employer's Central Area division.

⁶ The Employer has bargained and is currently bargaining with the Intervenor for steam engineers employed in the New York City, and the Detroit, Pittsburgh, and Cincinnati districts. The latter three are part of the Central Area division. In each case, the engineers are part of larger units extending in scope to other salaried classifications. This bargaining history goes back many years and precedes the Employer's institution, in late 1963, of certain new engineering services of relevance to its position here.

⁷ The petition had originally described the engineers as "technical." The Regional Director described them as "professionals." None of the parties disputed this description in any documents filed with the Board.

lead assignments involving major work projects to a group of its A-rated engineers, using the others for the routine service and repair work or for subordinate engineering posts on major projects.

The record shows that all job duties of the engineers are assigned with reference to specific customer job orders. When the Employer receives a customer job order, it usually assigns a team of at least two steam engineers to perform the professional or technical work the order may call for, designating one as the "lead" engineer and any others as assistant or phase engineers.⁸ A lead engineer has overall responsibility for the successful completion of the project work, and his association with a particular project usually begins at the prejob stage and terminates with the completion of the project.⁹ An assistant engineer's responsibilities, on the other hand, are normally limited to one phase or portion of the project work, and his association with a given project is usually limited to the particular phase involved.

The major portion of the work assigned to steam engineers is performed at customers' sites.¹⁰ Engineers perform such work without supervision.¹¹ Each such assignment involves either an order for the repair or servicing of existing power units, or one for the assembly and installation of new units. In all cases, the completion of the ordered project work requires the cooperative efforts of both steam engineers and crews of skilled labor—the former to supply the professional and technical guidance for the project work, and the latter to do the manual tasks all project work entails.¹² As indicated below, such manual craftsmen may be supplied either by the customer or by the Employer, depending upon the terms of the formal prejob service contract between the customer and the Employer.

The Employer currently offers its customers two types of service arrangements. These are identified as: (1) a "technical supervision only" service; and (2) a "labor contract" service.¹³ In providing "technical supervision" service, the Employer furnishes parts and materials at listed prices, and engineering guidance at specified hourly rates per engineer. The Employer does not assume any obligation to supply or pay for the manual labor for the project work, and it confines its liability for the job to "matters of technical judgment only." In providing "labor contract" service, however, the Employer, in return for a total project fee, takes on all responsibility for the project work, including the obligation to hire and pay all laborers under terms and conditions it may establish independently,¹⁴ and to furnish all the specified materials and supplies. It gives the customer a completed job and an unconditional guarantee for the performance of the project work. The Employer makes either type of service available without regard to whether the work order entails installation of new machinery or the repair or maintenance of existing installations. It appears, however, that in practice the Employer contracts most new installation work on a labor-contract-service basis, and repair work on a technical-supervision basis.

Engineers assigned to technical supervision projects work directly with and through a customer's project supervisor and/or line foreman.¹⁵ The lead engineer, with the assistance of phase or assistant engineers, and in cooperation with the customer, makes out the overall schedules, plans, and layouts of the specific tasks the craftsmen are to do and the sequence in which they are to do them. In making the requisite determinations, the engineers take into consideration the number of craftsmen the customer

⁸ There is normally only one individual designated as a "lead" engineer for any customer work project, but there may be several assigned as phase or assistant engineers during the duration of a project, the precise number depending on the size of the project and/or the nature of the engineering problems involved.

The Employer specifies what duties each assistant engineer shall perform in advance of assignment to a given project. Among other things, it appears that some engineers have acquired special experience in particular phases of turbine installation and repair work (one example being the setting of controls), and are usually assigned such work when the order calls for it.

⁹ There is no contention, and no evidence, that leadmen have or exercise any supervisory authority over assistant engineers on any projects.

¹⁰ At the prejob stages of major projects, an engineer prepares a time, labor, and materials estimate and sits in with the Employer's officials at preliminary negotiations with a customer to give technical advice. The engineer has no authority, however, to commit the Employer in any way in such negotiations.

¹¹ While management officials occasionally visit the jobsite, none of them are regularly present to supervise the project work.

¹² The installation or servicing of the power plant or machinery customarily requires a combination of both the professional or technical know-how of the steam engineers and the physical efforts of laborers possessing craft-type skills of the kind associated with journeymen steamfitters, millwrights, mechanics, carpenters, plumbers, electricians, and the like. The record

identifies the workmen who performed the manual work described herein as "union" journeymen. The record also indicates that, in all cases, the craft crews are of sufficient size to require, under union conditions, the designation of a journeyman to head the crew as a line foreman. Such foreman may supervise several types of craftsmen.

¹³ This service was newly instituted in late 1963.

¹⁴ The necessary hiring arrangements are customarily made at the prejob stages by Employer officials who contract to obtain the needed project workmen through labor suppliers in the project area. While the Employer sometimes uses a labor broker as a source of labor supply, it more usually arranges to obtain project workmen directly through building trades labor unions. In either instance, its project workmen are employed under such union conditions as prevail in the project area and/or as are implemented by special negotiations.

¹⁵ On technical supervision projects, the line supervisors, like the individual workers, are employees of the customer. On smaller projects, the customer's project supervisor and line foreman may be the same individual. On larger projects, the customer may have a number of line supervisors with duties limited to a particular work crew, and an overall project supervisor with duties extending to the entire project. Where there is such a project supervisor representing the customer, the lead engineer works through him in issuing the plans, schedules, and supplementary professional or technical advice about the work.

chooses to make available for the project work,¹⁶ the nature of the prejob construction plan, and, once the work commences, the amount of work actually completed. The lead and/or assistant engineer also inspect the work as it progresses. In performing these functions, the engineers advise the line foreman what their day-to-day work plans and schedules call for by way of manual labor, and implement this advice with other necessary technical instructions about the work. The line foreman, in turn, actively supervises and directs the individual laborers' work activity. The line foreman (not the engineer) regularly distributes and assigns the work tasks described in the engineers' work plans to the individual members of the labor crew. Such foreman also regularly issues to each crewmember any verbal instructions about the work; checks each individual's work performance (as distinguished from the total work result), and administers any reprimands or disciplinary measures when required.

Engineers at project sites operated under labor contracts have some job duties similar in nature to those of engineers assigned to technical supervision service projects. These similar duties include such tasks as the planning, scheduling, and laying out of the work tasks of the craft crews, and the inspection of the work as it progresses to insure a satisfactory work result. However, consonant with the additional obligations the Employer has assumed *vis-a-vis* its customers, lead engineers on these projects are given certain additional administrative duties and responsibilities. These special duties include purchasing construction materials and supplies from specified sources, as well as incidental materials; requisitioning from labor unions or other suppliers of labor the necessary craftsmen and line supervisors; establishing a payroll and project account system; paying all bills; and making any incidental arrangements for subcontracting of certain work, should the construction plan so specify.¹⁷ In thus regulating the project work in accord with the Employer's contractual commitments, lead engineers have limited authority to vary certain parts of the construction plan and to direct occasional overtime work. Should they decide, however, that some course of action is necessary which would result in a substantial increase in the costs of the job, lead engineers must obtain the specific approval of higher management before proceeding.

While their duties on labor contract projects are primarily professional in nature, lead engineers, in performing their functions, may at times be called upon to make decisions of a supervisory character *vis-a-vis* the craftsmen doing the project work. Thus, there is evidence that line foremen, who immediately supervise the craft crews and make selective termination decisions in the first instance, seek the approval or concurrence of the lead engineer before making the decision final. The record further shows that union stewards representing the interests of project craftsmen have presented grievances to lead engineers of a jurisdictional nature and have accepted such engineers' determinations of the controversy involved.

Assistant engineers assigned to labor contract projects have responsibilities substantially identical to those of assistant engineers on technical supervision projects. Their primary function is to provide the leadman with technical support and guidance with reference to particular phases or portions of the construction work. In performing this function, they are expected to make the professional or technical judgments required in order to obtain a satisfactory work result. But, in so doing, they neither reprimand, discipline, nor otherwise take any independent action affecting the employee status of any individual workman; nor are they authorized to do so. Thus, according to undisputed evidence, the Employer has never directly or indirectly instructed or advised any engineers, except those assigned as leadmen on labor contract projects, that their responsibilities for project work contemplate or permit their initiation or exercise of any disciplinary or other supervisory action over project craftsmen. Moreover, according to the undisputed testimony of engineers who testified at the hearing, none except those who served as leadmen on labor contract projects ever assumed he had any supervisory authority, or ever attempted to exercise any such authority, in the course of planning or observing any project work, or in issuing technical instructions with respect to such work.

B. Conclusions

As appears from the foregoing facts, the scope of an engineer's functions and the nature and extent of the judgments an engineer is called upon to make varies from job to job, depending in part upon the

¹⁶ On most orders of this type, the customer is usually able to supply the requisite craftsmen from among his regular plant employees. Should it become necessary for the customer to hire other employees, it normally obtains them from labor union sources in the area under terms and conditions it negotiates independently of the Employer.

¹⁷ For purposes of establishing a payroll system and doing the paperwork necessary to requisition supplies, and to keep track of costs, the Employer furnishes each leadman with a kit containing

such things as timeslips and tax, insurance, and certification forms.

The Employer also provides the leadman with a project bank account in his (the engineer's) name to pay the wages and other previously contracted obligations of the Employer in connection with the project's operations. The lead engineer has authority to draw on this account also for extra purchases up to a preestablished amount (usually at least \$500) without getting specific approval from the district office.

type of contract involved, and in part upon whether the engineer's assignment is to a lead or to an assistant engineer position. In our view, the status of an engineer as a "supervisory" or "managerial" agent of the Employer, and his right therefore to be represented as an employee, varies accordingly.¹⁸

Contrary to the Employer's contention, the record does not justify a finding that engineers possess or exercise any managerial or supervisory authority, within the meaning of the Act, when serving on technical supervision projects either as lead or assistant engineers, or on labor contract projects as assistant engineers. We are persuaded, rather, that the duties and responsibilities engineers perform in such capacities are basically professional in nature. It is true, of course, that proper performance of all such engineering work requires a high degree of technical competence and the use of independent judgment with respect to matters of importance to the Employer's financial and other managerial interests. But such characteristics are typical of the work which Section 2(12) of the National Labor Relations Act, as amended, defines as "professional" work.¹⁹ So far as the record shows, the responsibilities thus entrusted to the independent judgment of the engineers involved do not include matters of policy such as the establishment of the Employer's contract with the customer, the determination of the contract's scope, or the making of any commitments which would entail a pledge of the Employer's credit in any significant amounts.²⁰ We therefore find no merit in the Employer's claim that some of the work responsibilities of lead or assistant engineers on technical supervision projects, or of assistant engineers on labor contract projects, are "managerial" in nature. Nor do we find that any of the regular duties of these engineers contemplates or requires the exercise, within the meaning of the Act, of "supervisory" authority over any of the project workmen whose work activity, as a group, the engineers plan for, lay out, and coordinate. When engineers are assigned by the Employer to technical supervision projects, it is conceded that on such projects the project workmen and their immediate supervisors are employed and paid by the customer—not the Employer. Therefore, and wholly

apart from any other considerations, established precedent precludes a finding that such engineers on such projects are employed as "supervisors," in the statutory sense.²¹ With respect to assistant engineers assigned to labor contract projects, the record evidence, summarized above, fails to establish either that they have been advised by the Employer's officials that they have any "supervisory" authority with reference to the project workmen, or that they customarily perform their duties in such a manner as to warrant attributing supervisory status to them.

We conclude, accordingly, that engineers on technical supervision service jobs (in either the lead or in assistant positions), as well as assistant engineers on labor contract service jobs, do not possess or exercise any managerial or supervisory authority. We shall therefore include within the unit found appropriate by the Regional Director,²² all Chicago-based steam service field engineers who have heretofore served only as lead engineers on labor contract projects.

The status of engineers assigned as leadmen on labor contract projects poses a more difficult issue. It is true, as the Petitioner points out, that a substantial portion of their work is primarily professional in character. However, we are satisfied that they also have certain special duties and responsibilities, *vis-a-vis* the craftsmen employed by the Employer for the project work, that are clearly supervisory in character. In these circumstances we find, in agreement with the Employer, that when engaged as lead engineers on labor contract projects, the individuals so assigned have supervisory status within the meaning of the Act.

Remaining as a problem is the unit placement and eligibility of those individual engineers who, during the course of their employment, have been or presently are sometimes called upon to serve as lead engineers on labor contract jobs. Depending upon their availability and the Employer's requirements, those given the lead engineer assignments are selected from a pool of senior engineers who otherwise perform nonsupervisory engineering work.

The Employer seeks the wholesale exclusion of all within this pool of senior engineers. It would

¹⁸ In evaluating the critical record facts, we have not regarded as relevant the title held by an engineer on any given work assignment. For it is clear that an individual's status under the Act is determined by his job content and responsibilities rather than by his title.

¹⁹ Our review of precedents in this area reveals a number of cases in which the Board has found, over this Employer's objections, that certain of its professional or technical employees with work responsibilities of a comparable character, having no less important bearing on the Employer's financial or other managerial interests than those of the instant engineers, were not so closely allied to management as to preclude their inclusion in units of professional or technical employees. See, for example, our rulings in *Westinghouse Electric Co.*, 113 NLRB 337 (as to manufacturing engineers), *Westinghouse Electric Co.*, 97 NLRB

1271, 1272 (as to method engineers), and *Westinghouse Electric Co.*, 92 NLRB 871, 872 (as to a tool engineer). Other cases with rulings of relevance here include *Puget Sound Power and Light Co.*, 117 NLRB 1825, and *Western Electric Co.*, 100 NLRB 420.

²⁰ As indicated by one or more of the cases cited *supra*, neither the fact that management officials may rely upon the engineers' recommendations in dealing and contracting with customers, nor the fact that they rely upon the engineers' time and material reports for purposes of billing customers, supports attributing "managerial" status to the engineers.

²¹ See, for example, *ILGWU (AFL-CIO) v NLRB*, 339 F.2d 116 (C.A. 2); *Textile Workers Union of America, et al.*, 139 NLRB 800, 802, and *Lindsay Newspapers, Inc.*, 130 NLRB 680.

²² We have not disturbed the Regional Director's findings as to the appropriate scope of the unit. See fn. 3, *supra*.

apparently justify such a class exclusion because of evidence showing that, over a 12-month business period covered by the record,²³ each of the six Chicago-based engineers then identified as part of the lead engineer pool actually performed some supervisory lead work. However, an analysis of the individual work records of these engineers establishes a wide variation, as between individuals, in the proportion of the work year's time each spent in supervisory lead engineer work, from a high of about 95 percent to a low of about 15 percent. This analysis further establishes that three of the six engineers spent more, and the others less, than one-half of their work year in such work.²⁴ We do not believe, therefore, that we should ignore the actual work experience of each individual engineer in resolving the unit and eligibility problems involved.

Nor, in the circumstances of this case, do we believe we should wholly deny the benefits of employee status to any engineer who acquires the major part of his work experience during a work year in nonsupervisory work, as here defined, simply because he has spent some of his time during such year in supervisory lead work. For it is clear that such engineers are primarily attached to the nonsupervisory work force and that they share a substantial community of interest with their fellow nonsupervisory engineers in the conditions governing the performance of unit work. Their situation is, we believe, similar to that of the seasonal supervisors we considered in the *Great Western Sugar Company* case,²⁵ and, under the concept of that case, the engineers here involved who are primarily attached to the nonsupervisory force should likewise be granted a right to representation limited to periods they are employed in nonsupervisory engineering work.

²³ The record reveals that all parties adopted a 12-month business period as a basis in offering arguments on the basic issue as to whether *all* engineers are regularly called upon to perform supervisory duties for a substantial part of their worktime. And the record otherwise persuades us that, in any event, use of a 12-month period for testing the status of any of the engineers here involved is equitable in view of the nature of the Employer's operations and the fluctuations in its engineering needs for supervisory lead work, on the one hand, or nonsupervisory work, on the other, which occur as a result of such external factors as customer choice. Accordingly, when speaking of a "work year" hereafter we shall be referring to a 12-month calendar period.

²⁴ The record shows that these wide variations in individual employment histories occurred despite the fact that in the period considered the Employer expended more of its total engineering hours in performing labor contract orders than it did in performing technical supervision orders. It is therefore evident that the factors which produced the wide disparity in the employment history of individual engineers were unrelated to the amount of work ordered on a labor contract basis. Accordingly, to the extent that the Employer claims that an excess of labor contract commitments over technical supervision commitments is relevant to a determination of the unit placement issue here involved, we find its argument to be without merit.

²⁵ *Great Western Sugar Company*, 137 NLRB 551. There the Board considered the question of whether individuals employed in a seasonal industry who spent the major portion of the work year as rank-and-file employees, but who were assigned

Thus, the record here reveals that the supervisory jobs which the senior engineers may be called upon to perform are not regularly and closely intermingled with their nonsupervisory work activity. Rather, depending on the Employer's assignment, their status shifts, full-time, from supervisory to nonsupervisory work for a measurable and continuous period of time, and their duties in each position are sharply demarcated. Moreover, when employed as supervisory leadmen, their right to exercise supervisory authority does not extend to any other engineers but is limited, rather, to the nonprofessional craft employees hired for the project work.²⁶

In accord with the principles established in the *Great Western Sugar* case, we shall therefore qualify as eligible to vote and include within the unit any engineer currently employed during the payroll period preceding the date of this Decision and on the election date who, during the 12 months preceding the date of this Decision, spent 50 percent or more of his working time (excluding leave or waiting time, if any) performing nonsupervisory duties, as defined herein. This formula shall be determinative notwithstanding the type of assignment any given engineers might have at the time of the election, with the condition that, in the event a bargaining representative is selected, it may not represent any engineer with respect to his supervisory duties.

DIRECTION

The case is hereby remanded to the Regional Director for Region 13 for the purposes of holding an election pursuant to his Decision and Direction of Election, with the following amendments:

(1) The eligibility status of engineers the

supervisory duties for a remaining period, should be excluded from the rank-and-file unit and denied a voice in the selection of a bargaining representative. The Board there held that such individuals had a right to be included in the unit, but only with respect to their rank-and-file duties. It held further, that, as each of them had a substantial interest in the choice of a rank-and-file bargaining representative, each of them was eligible to vote in the election, irrespective of his job assignment as of the date of the election.

²⁶ Here, as in *Great Western Sugar*, we have given due consideration to the fact that even with this limited grant of a right to representation to such engineers for nonsupervisory work only, there may be problems for both the Employer and the Union based upon fears of "divided loyalty." As we noted in that case, this problem is commonplace whenever an employer decides to promote a rank-and-file employee to be a supervisor, i.e., when there is a shift in employee status, up or down. The problem would seem to be minimal here, if it exists at all, as the supervisory authority of engineers here involved is exercised with reference to a separately organizable and differently oriented group of temporary workers wholly outside the scope of the unit. We note, in this connection that, should a union seek to represent any group of craft employees of the employer in a unit including also any of the subject engineers, Section 9(b)(1) of the Act would preclude establishment of such a unit in the absence of the express consent of the professional engineers, as manifested in a Board election.

Employer has heretofore assigned as "lead" engineers on labor contract projects shall be determined in accord with the formula set out in this Decision; and (2) the payroll period for determining eligibility shall be that immediately preceding the date above.

ORDER

The Employer's motion to dismiss the petition is hereby denied.

Sandy's Stores, Inc. and Local 1325, Retail Clerks International Association, AFL-CIO.
Case 1-CA-4818.

March 31, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS BROWN
AND ZAGORIA

On April 5, 1966, Trial Examiner George J. Bott issued his Decision in the above-entitled proceeding, finding that the 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. The Trial Examiner also found that the Respondent had not engaged in certain other alleged unfair labor practices. Thereafter, the General Counsel and the Respondent filed exceptions to the Trial Examiner's Decision and supporting briefs. The Respondent also filed a motion to amend its exceptions,¹ and an answering 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.

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 entire record in this case, including the Trial Examiner's Decision, the exceptions, and the briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner on'y to the extent they are consistent with the Board's Decision herein.²

¹ In the absence of any opposition thereto, we hereby grant this motion, in reaching our decision, we have considered Respondent's additional exceptions

² In the absence of exception, we adopt *pro forma* the Trial Examiner's findings that the Respondent did not violate Section 8(a)(1) by Supervisor Stryer's comments around the end of November 1964, to employee Linda Crawford, or by Respondent's granting of Christmas bonuses in 1964

³ The complaint alleges that the Respondent committed other unfair labor practices in violation of Section 9(a)(1) in addition to

1. We find, in agreement with the Trial Examiner, that on numerous occasions between June and December 1964, Respondent coercively interrogated employees about their union activities, threatened employees with reprisals for engaging in union activities, created an impression of surveillance of union activities, and promised and granted to employees benefits to discourage union activities, in violation of Section 8(a)(1).³

2. In agreement with the Trial Examiner, and for the reasons stated by him, we find that Respondent discharged employee Kearns on December 23, 1964, because of her union activity in violation of Section 8(a)(3) and (1).

3. The Trial Examiner found that the Respondent did not violate Section 8(a)(5) by refusing to bargain with the Union on August 26, 1964. We disagree, for the following reasons.

The basic facts are as follows. In June 1964, Local 1325, Retail Clerks International Association, AFL-CIO, herein the Union, began efforts to organize the employees of Sandy's Stores, Inc., the Respondent herein, at its store at North Attleboro, Massachusetts, including employees in leased departments. Between June 9 and August 25, 1964, the Union secured authorization cards from 57 employees. On August 25, 1964, the Union filed a representation petition in Case 1-RC-8016 in which it sought an election among all full-time and regular part-time employees in the above store and in leased departments at that store. On the same day, the Union wrote Respondent requesting recognition in that unit and offering to submit proof of its majority to an impartial person; the Union reminded the Respondent that its filing of the representation petition did not relieve the Respondent of its duty to bargain. By letter dated September 1, Respondent rejected the demand for recognition for the reason that the unit sought was inappropriate. On October 14, a representation hearing was held, and on November 4, 1964, the Regional Director issued a decision finding the unit sought was appropriate and directing an election.⁴ On December 2, 1964, the original charges were filed in the instant case.

The Trial Examiner initially found, and we agree, that the appropriate unit comprises all full- and regular part-time employees at the Respondent's North Attleboro store including employees in the leased departments.⁵ The Trial Examiner also found that on August 26, 1964, the date on which the Respondent received the Union's request for

those found herein, the General Counsel filed exceptions to the Trial Examiner's failure to find such violations. However, we find it unnecessary to consider or pass on such incidents and shall make no additional findings regarding these allegations, as in our opinion such findings would merely be cumulative and would not affect the remedy

⁴ Respondent filed no request for review of this decision

⁵ Thus, as noted, was the unit petitioned for by the Union and the unit found appropriate by the Regional Director in the representation proceeding