

**Universal Tool & Stamping Company, Inc. and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) and The Ward Group, Party of Interest.** Case 25-CA-3014

April 30, 1970

### DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND JENKINS

On June 30, 1969, Trial Examiner Paul Bisgyer issued his Decision in the above-entitled proceeding, finding that Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel and the Charging Party filed exceptions to the Decision and supporting briefs, Respondent filed cross-exceptions to the Decision and a supporting brief, Respondent filed briefs in answer to the General Counsel's and Charging Party's exceptions, and the Charging Party filed a brief in answer to Respondent's cross-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 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 Trial Examiner's Decision, the exceptions, the cross-exceptions, the briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the complaint herein be, and it hereby is, dismissed

CHAIRMAN McCULLOCH, dissenting:

I cannot agree with my colleagues' and the Trial Examiner's conclusion that the Ward group, by simply taking the UEU name, became in fact the UEU named in the contract with the Employer.

There is ample evidence that Local 1510, UAW (in effect UEU-UAW), is merely the *alter ego* of the former unaffiliated union, UEU. Thus, the affiliation meeting was called on the recommendation of all six union officers with more than adequate notice sent to the union members; an overwhelming number of employees, 202 of 250 in the Union, attended the meeting, and a substantial majority of those attending approved the affiliation in a properly conducted election. Subsequent to the election, the UEU-UAW retained possession of all the assets, records, and files of its predecessor

and four of the former UEU officers assumed similar positions in the newly titled local. In light of these circumstances, it is clear that Local 1510 was the continuation of and legitimate successor to the unaffiliated UEU.

Moreover, Respondent had knowledge of the affiliation before its officers signed the contract. Yet, during the weeks it delayed recognizing the affiliated union, it hastily turned over the previously checked-off dues to Ward on December 5 and promptly recognized his group as the contract representative of the employees on December 18 after only 40 employees had met the night before and voted to reorganize the "UEU." Given this conduct, I find it somewhat ingenuous to conclude that Respondent was merely an innocent caught between two colorable conflicting bargaining demands. But for Respondent's tacit cooperation with the Ward group, the UEU-UAW was ready and able to administer the current contract and function in every respect as the duly elected bargaining representative. The effect of my colleagues' decision is to make the selection of the employees' representative a matter of employer free choice. For the foregoing reasons, I would find that Respondent was in violation of Section 8(a) (5) of the Act.

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

PAUL BISGYER, Trial Examiner: This proceeding, with all the parties represented, was heard on March 26, 27, and 28, 1969, at Fort Wayne, Indiana, on the complaint of the General Counsel issued on October 24, 1968, which was subsequently amended,<sup>1</sup> and the answers of Universal Tool & Stamping Company, Inc., herein called the Respondent or Company. The Intervenor also filed an answer in the name of Universal Employees Union, herein called UEU, asserting the nonexistence of any organization known as "The Ward Group" designated in the original and amended complaints.

The pleadings present the question whether the Respondent violated Section 8(a) (5) and (1) of the National Labor Relations Act, as amended,<sup>2</sup> by continuing to recognize the UEU as the exclusive bargaining representative of the Company's employees pursuant to a concededly valid collective-bargaining agreement and refusing

<sup>1</sup> The complaint, as amended, is based on an original charge filed on January 8, 1968, and an amended charge filed on February 14, 1968, copies of which were duly served on the Respondent by registered mail on the respective dates of the filing of the charges.

<sup>2</sup> Sec. 8(a)(5) of the Act makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a)." The latter provision states that "[r]epresentatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment."

Sec. 8(a)(1) prohibits an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7" which, in turn, provides, among other things, that "[e]mployees shall have the right to bargain collectively through representatives of their own choosing."

to accord such recognition to Local 1510, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), herein called UAW or Local 1510, with whom the UEU had allegedly affiliated. At the close of the hearing, the parties waived oral argument but thereafter submitted briefs in support of their respective positions.

Upon the entire record, and from my observation of the demeanor of the witnesses, and with due consideration being given to the arguments advanced by the parties, I make the following:

## FINDINGS AND CONCLUSIONS

### I. THE BUSINESS OF THE RESPONDENT

The Respondent, an Indiana corporation, is engaged in the manufacture, sale, and distribution of automobile bumper jacks and related products at its plant in Bulter, Indiana, where it maintains its principal office and place of business. It annually ships from this plant manufactured products valued in excess of \$50,000 directly to points outside Indiana and receives goods and materials also valued in excess of \$50,000 from sources outside the State.

It is admitted, and I find, that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

### II. THE LABOR ORGANIZATIONS INVOLVED

UEU, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) and Local 1510 are labor organizations within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *The Facts*

The critical issue in this case turns on the identity of the labor organization entitled to represent the Respondent's employees<sup>3</sup> and to administer the current collective-bargaining agreement covering their terms and conditions of employment. The events giving rise to this problem are essentially not in dispute and are related below.

#### 1. Collective bargaining history; the strike; execution of the current contract

Since about 1958 UEU, an independent labor organization, has been the recognized bargaining representative of the Respondent's employees pursuant to successive

<sup>3</sup> There is no question of the appropriateness of the bargaining unit described in the complaint as consisting of

All employees of Respondent employed at its plant exclusive of office and clerical employees, engineers and draftsmen, and exclusive of all officers, direct company representatives, superintendents, foremen, assistant foremen, and all other supervisors as defined in the Act

contracts. In September 1967,<sup>4</sup> the Respondent and UEU initiated negotiations for a contract to supplant the then current one which was due to expire midnight of October 31.<sup>5</sup> Because of the parties' inability to reach agreement by the expiration date, UEU called the employees out on strike and the plant shut down. On November 7, while the strike was still in progress, negotiations were resumed and produced agreement through the efforts of a Federal mediator. The next day (November 8), at a previously scheduled UEU meeting summoned to consider affiliation with UAW, which will later be discussed, the membership voted to accept the contract. Later in the evening, the UEU bargaining committee went to the plant and reported the ratification vote to the Respondent's Secretary Mayer, its chief executive officer, who inquired about the truth of the rumor that UEU had affiliated with UAW. UEU President Rogers confirmed the affiliation and UEU Vice President Curcio added that UAW would therefore police and administer the contract for its 3-year term.<sup>6</sup> Expressing reluctance to sign the contract without first consulting the Company's attorney, Mayer deferred the formal execution of the contract to the following morning.

At the appointed time on November 9, the UEU bargaining committee<sup>7</sup> met with management and affixed their signatures to the contract with the clear understanding that it was UEU which was the contracting party as identified in the agreement. On November 13, the employees returned to work and plant operations resumed.

#### 2 UAW's appearance; UEU's alleged affiliation with that organization

On November 1, the first day of the strike, UAW International representative, James Perkins, accompanied by two employees of a neighboring plant, visited UEU Vice President Curcio at his home and discussed the benefits to be derived from UEU's affiliation with UAW and the steps to be followed to achieve affiliation. Pointing out that affiliation required the unanimous consent of UEU's officers, Perkins stated that, if the officers were not amenable to the idea of affiliation, the UAW could file with the Board a petition for a representation election. In the latter event, Perkins told Curcio, employ-

<sup>4</sup> Unless otherwise indicated, all dates refer to 1967.

<sup>5</sup> Representing the Respondent in these negotiations were Donald C. Mayer, secretary and chief executive officer, and three other company officials, Norman R. Ritenour, Russell K. Ulm, and Wayne B. Billings. The UEU bargaining team consisted of President Stanley Rogers, Vice President Frank J. Curcio, Secretary-Treasurer Rosie Brock, and executive committee members John McMillen, Ora Shambaugh, and Dale Ward.

<sup>6</sup> There is conflicting testimony by the Respondent's witnesses that Rogers also stated that the affiliation would not become effective for 3 years. In view of the affiliation action and UAW's efforts to secure recognition to administer the contract, which is later discussed, it is hardly likely that Rogers would make the statements imputed to him and that, in all probability, the Respondent's representatives misunderstood him. I therefore credit the testimony of Rogers and Curcio on which the above findings are based.

<sup>7</sup> Dale Ward, a member of the UEU's bargaining committee, was absent but signed the contract on November 14.

ees would have to be signed up quickly before UEU and the Respondent executed a contract which would bar a Board election. Accordingly, Perkins left about 180 membership application cards with Curcio for such contingent use. After Perkins also spoke to some 12 employees the next day concerning the merits of affiliation, Curcio arranged for him to meet at Curcio's home on November 3 with all UEU's officers, President Rogers, Secretary-Treasurer Brock, and himself, and committeemen Shambaugh, McMillen, and Ward. At this meeting, the subject of affiliation was thoroughly discussed and UEU's constitution and bylaws were reviewed to determine whether there was an impediment to affiliation. Since the constitution and bylaws were silent on the subject, Shambaugh individually polled UEU's officials who unanimously voiced approval of affiliating with UAW<sup>8</sup> and agreed to make such a recommendation to the membership with the understanding, however, that the ultimate decision still rested with the members. After the poll was taken, UEU's attorney, John Grimm, arrived at this meeting. Upon being informed of the proposed action, he, too, indicated that it was a good idea. Plans were then made for holding a membership meeting to consider and vote upon the affiliation proposition. Because the constitution and bylaws made no provision for affiliation, it was decided to call a special meeting as therein provided.<sup>9</sup>

On Saturday, November 4, UEU officers and the executive committee met in Brock's home where they addressed envelopes to UEU members in which they enclosed a notice of special meeting "called by The Executive Committee for the purpose of discussing and voting on a Resolution to affiliate" UEU with UAW. The meeting date was set for 2 p.m., Wednesday, November 8, at the employees' clubhouse. Two lists, previously furnished by the Respondent, were used to secure the names of the members and most of their addresses.<sup>10</sup> Only one notice was sent to an address

<sup>8</sup> According to Ward, he did not indicate his attitude toward affiliation but simply stated that he was willing to put the matter to a membership vote. However, the testimony of other participants in the meeting was to the contrary and there is no evidence that Ward opposed affiliation at any time while the subject was under consideration. I therefore do not credit Ward's testimony in this respect.

<sup>9</sup> Art. II of the constitution and bylaws provides:

Section 4. A special meeting of the Union may be called at any time by the President or the Executive Committee. Notice of such meeting shall be given by posting notice of such meeting on the bulletin board of the employer, not less than three days prior to such meeting and which notice shall fix the time and place of said meeting and state the business to be transacted at such meeting. No other business shall be transacted at a special meeting other than those matters stated in the notice of the call of such meeting.

As will later be shown, the Respondent and UEU insist that the more elaborate procedures of art. XI dealing with the amendment of the constitution and bylaws were applicable to effect an affiliation. Admittedly, these procedures were not followed nor did the affiliation vote satisfy the two-thirds vote of the members required for the adoption of an amendment.

<sup>10</sup> One list, which contained both names and addresses, was obtained from the Company's office in the latter part of June or beginning of July for use in connection with a UEU election. The other list was a dues checkoff list which was obtained from the office in the early part of October and was utilized when a vote was taken during

where more than one employee lived as members of the same family. Approximately 220 out of 251 members<sup>11</sup> appearing on the lists were sent notices that Saturday afternoon, with Brock mailing those directed to Indiana addresses<sup>12</sup> and Rogers mailing those with Ohio addresses. Although 25 members testified that they did not receive such a notice, they nevertheless attended the November 8 meeting and most of them voted on the affiliation question. A notice was also posted in a garage which served as strike headquarters. It is not denied that the foregoing method of notifying the membership did not literally conform with the constitution and bylaws which simply required the posting of notice on the plant bulletin board 3 days before the special meeting. However, such posting would obviously have been a futile gesture as the plant was shut down because of the strike.

In the meantime, as indicated above, the UEU negotiators reached agreement with the Respondent on a new contract on November 7. As the affiliation meeting had already been scheduled for the next day, the UEU officials decided to avail themselves of this occasion to submit the agreement to the membership for ratification.

On November 8, the special meeting was held. Except for International Representatives Perkins and Nichols and two or three other visitors, only members eligible to vote on acceptance of the contract and affiliation were permitted to attend. UEU Vice President Curcio and Secretary-Treasurer Brock stationed themselves at the entrance to the assembly hall and undertook the task of checking the eligibility of individuals seeking admission against an updated list of employee-members. Four employees who joined the UEU at the door by paying \$1 monthly dues<sup>13</sup> were also permitted to attend. Shortly before the meeting was opened, and at the suggestion of Perkins, the UEU officers and executive committeemen conferred<sup>14</sup> and reaffirmed their intention to proceed with the affiliation proposal, even though they had already reached agreement on a contract with the Respondent.

Following this conference, the membership meeting was called to order by President Rogers. After the

that month on a company contract proposal and subsequently on whether to strike. This list was updated by inclusion of names of employees who joined UEU after its receipt. Since it did not contain any addresses, the officers and committeemen checked telephone books or relied on their own knowledge for addresses of members not recorded on the June or July list.

<sup>11</sup> It appears that on November 8 there were about 360 employees in the bargaining unit. Those not belonging to UEU were not sent any notice of the special meeting.

<sup>12</sup> I have no doubt that Brock mailed the Indiana notices the afternoon of November 4. However, there is a conflict in testimony as to whether she did so by handing the letters directly to the Butler postmaster. I find this conflict unnecessary to resolve.

<sup>13</sup> To be eligible for membership in UEU, an employee must have 90 days' service in the Company and pay \$1 monthly dues. It appears that one of these employees, Charles Price, might have had a few days less than the 90 days' service. However, in accepting him into membership Brock acted on seniority information which she had previously secured from the Respondent's office.

<sup>14</sup> While attending this conference, Curcio and Brock were relieved of their duties at the door by two members.

contract was ratified by voice vote, Perkins and Nichols were introduced to the audience. Perkins then discussed at length the benefits of affiliation and explained UAW's policies and objectives. He also stated that, if affiliation were voted, UEU's officers and executive committeemen would retain their positions in the affiliated organization. As for the contract the membership had ratified, Perkins made it clear that all UAW could do would be to police and administer it for its duration and process grievances thereunder.<sup>15</sup> A few comments were made by Nichols after which questions were invited from the floor. Thereupon, Curcio read aloud the Resolution of Affiliation and copies were distributed among the membership. Among other things, the resolution provided:

- A. That this organization presently known as Universal Employees' Union be and is hereafter known as Local 1510 of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW).
- B. That all assets and property of this organization, including but not limited to its bank account, its bargaining relationship with the Universal Tool and Stamping Company, Inc. be hereafter held by this organization under the name and style of Local 1510 of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW).
- C. That this organization apply promptly to the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) for affiliation therewith and for a charter evidencing such affiliation as Local 1510 of said International Union.
- D. That this organization continue its relationship with the Universal Tool and Stamping Company, Inc. as the duly recognized bargaining representative of the production and maintenance employees of said Company.
- E. That the officers and committeemen of this organization take all steps necessary to accomplish the objectives set forth hereinabove.

After the resolution was read, UEU's attorney, John Grimm, presented the recommendation of the officers and the executive committee supporting affiliation but assuring the members that the final decision was for them to make.

Ballots and pencils were then handed out to the members with instructions to place a mark in the "Yes" or "No" square denoting their choice. In addition, a cardboard box, in which to deposit completed ballots, was produced and exhibited to show that it was empty. Thereupon, the voters proceeded to mark their ballots on tables, the backs or seats of their chairs, ledges,

or any other available place and to deposit them in the ballot box through a specially cut out slit. At the conclusion of the voting, Executive Committeeman Shambaugh assumed charge of the tallying. He was assisted by Brock, Committeeman McMillen, and possibly another member, who noted and tallied the vote as Shambaugh called out the indicated choice. All this was conducted in the open with members standing around at the table observing the count. The final tabulation showed that the resolution in favor of affiliation was carried by a vote of 125 to 77.

In accordance with the affiliation resolution, a letter signed by Rogers, Curcio, and Brock, as officers of the "former" UEU, was sent on December 4 to the UAW International, notifying it that the UEU officers and members had voted to affiliate with UAW as Local 1510 and requesting that a local charter be issued. The charter and materials were received later in the month.

On December 9, Local 1510 held its first membership meeting attended by about 69 employees, including Rogers, Curcio, and Brock. UEU Executive Committeemen Ward and Shambaugh, who did not desire to serve in that capacity in Local 1510, were not present. Since Rogers, Curcio, Brock, and Executive Committeeman McMillen agreed to continue serving in their former positions,<sup>16</sup> nominations and elections were held only to fill the secretary and other new positions prescribed by the UAW constitution, and those relinquished by Ward and Shambaugh. After the elections, the subject of dues deductions was raised. Because the Respondent did not remit to Local 1510 the dues deducted pursuant to previously filed UEU checkoff authorization,<sup>17</sup> several employees expressed a desire to cancel their checkoff. To accomplish this, the UAW members were advised to give Brock their UEU membership cards which she would surrender to the Company with notification that these individuals withdrew from UEU and wanted their checkoff authorization terminated. Thereupon, UEU membership cards were handed to Brock.

The following week Brock turned over to the Company's payroll clerk about 86 UEU cards which she had received at the December 9 meeting and thereafter. On this occasion Brock informed the clerk that the individuals named on the cards had withdrawn from UEU and wanted their dues checkoff canceled. This request was complied with. In January 1968, Brock presented about 20 additional cards to the payroll clerk. This time the clerk declined to accept them but suggested that they be given to Ward. This was done and Ward, in turn, delivered them to the Company, which thereupon discontinued the dues deductions from the wages of the indicated individuals. Ward also turned in about 15 other UEU cards personally received from employees.

<sup>15</sup> I find it highly improbable and contrary to the affiliation action and UAW's persistent efforts to secure recognition that Perkins said at this meeting that, since the members had voted to accept the contract, there was nothing UAW could do until the contract expired when he would talk to members again. I therefore reject employee Goldie Jones' testimony to this effect.

<sup>16</sup> Brock, who previously occupied a dual office of secretary-treasurer, agreed to serve as treasurer.

<sup>17</sup> The last payment made by the Respondent to Brock on behalf of UEU was on October 19 and covered dues collected in August and September. The next payment covering dues deductions for October and November was made on December 5 to UEU which Ward tried to keep alive.

Since the affiliation meeting, Local 1510 has been in possession of the UEU books, records, files, and bank accounts. On December 8, Brock closed the UEU checking account and transferred the funds to a new checking account opened in the name of "UAW Local 1510." On December 15, a similar change and transfer of funds were made in UEU's savings account. Local 1510 has continued to hold monthly meetings since its initial one on December 9.

### 3. UAW's requests for recognition

On November 8, after the affiliation meeting, Rogers, identifying himself as president of Local 1510, directed a letter to the Respondent's chief executive officer, Donald C. Mayer, in which he informed him that UEU's membership voted to affiliate with UAW and that the name of the "Union" was changed to "Local 1510, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW." The letter further noted that:

All officers and functional leaders remain the same, and we anticipate no change in our day to day relationship with the Company. The continuity of organization in the Local Union has been completely preserved and we intend to honor and carry out fully all responsibility as the recognized bargaining representative of the Company's employees

Attached to the letter was a copy of the affiliation resolution.

In an effort to establish a friendly bargaining relationship, UAW representatives thereafter made several oral and written requests for a meeting with the Respondent. However, the Respondent refused their requests for the asserted reason that its attorney had the matter of recognition under consideration. Finally, on December 18, the Respondent's attorney advised International Representative Perkins that, as UEU was party to the collective-bargaining agreement, it was the only organization the Respondent could recognize. When Perkins alluded to the affiliation action taken by the membership, the Respondent's attorney questioned its validity. The conversation ended with Perkins stating that he would file an unfair labor practice charge with the Board, which he did on January 8, 1968.

### 4. Survival of the UEU after November 8

Despite the affiliation vote, it is quite clear that there were UEU members still interested in retaining UEU as an independent labor organization to represent them. Active in this respect was Dale Ward, a member of the executive committee, who, together with Ora Shambaugh, another committeeman, declined to transfer their allegiance to UAW. On two occasions in November after the affiliation meeting, Ward told Plant Superintendent Ritenour that he was concerned that there were employees who had not been given notice of that meeting and that the affiliation action was not taken in conformity with the required procedures for amending the UEU constitution and bylaws. Significantly, it appears that

not more than 120 UEU members out of about 250 whose dues were being deducted by the Respondent pursuant to checkoff authorizations canceled their authorizations after this matter was discussed at UAW's December 9 meeting, although the Respondent has remitted such moneys to the UEU since December 5. At the time of the hearing, the Respondent had on file approximately 200 checkoff authorizations for the benefit of UEU.

Several days before December 17, a notice addressed to "Members of Universal Employees Union" was posted on the plant bulletin board, notifying them that:

a special meeting is being called by the remaining members of the executive committee for the purpose of discussing and voting on the election of officers to fill official positions where vacancies were created by withdrawals from the membership and for such other business as may be necessary to conduct concerning the continued establishment of the U.E.U. as the "collective-bargaining agent" for the production employees of Universal Tool & Stamping Co., Inc

On December 17, the scheduled date, some 40 UEU members attended this meeting at which Ward was elected president,<sup>18</sup> Shambaugh, a member of the executive committee, and others to the remaining office and committee vacancies. In addition, UEU's constitution and bylaws and its previously executed collective-bargaining agreement with the Respondent were ratified.

The next day, Ward informed Ritenour of his election as UEU president and that their contract was again ratified at this meeting. In response, Ritenour declared that he was available to discuss any grievance with him. By letter dated December 19, UEU's attorney also formally advised the Respondent of the election of new officers of UEU which was necessitated by "the defection of several former officers of this union." Asserting UEU's status as the bargaining agent of the Company's employees, the letter stated that UEU "expect-[ed] the company to honor its contract with" that organization. In addition, the letter referred to the fact that UEU had previously delivered to the Company "a series of petitions signed by members of the U.E.U. showing that over 180 Universal employees support this union." Concluding, the letter stated that UEU was advised that "several loyal U.E.U. members were duped into signing applications for membership in some other union or rump group, which claims the right of representation," and that many of these individuals have given that union or group written notice of withdrawal. With respect to the petitions mentioned in the letter, they affirm the opposition of the signers, "members of Universal Employees' Union," to affiliation with any national labor organization and their desire "to maintain—[their] local labor organization . . . to be recognized as the Bargaining Agent" of the Company's employees. Moreover, the evidence shows that eight petitions containing the purported signatures of 168 employees, some of whom were not UEU members

<sup>18</sup> Ward was reelected president in July 1968

of had also signed UAW membership cards, were submitted to the Respondent at various times between the latter part of December and January 1968.<sup>19</sup>

It is quite clear that since December 19, if not before, the Respondent, in the face of UAW's conflicting claim has recognized UEU as the exclusive bargaining representative of the Company's employees and that UEU has been administering the collective-bargaining agreement, handling grievances and conferring regularly with the Respondent concerning terms and conditions of employment.

### B Concluding Findings

It is the position of the General Counsel and UAW that, by reason of UEU's affiliation with UAW pursuant to a membership vote which was conducted under appropriate safeguards and after reasonable notice, UAW was essentially the *alter ego* or continuation of UEU under another name and as such was entitled to UEU's representational and contractual rights. Therefore, they argue, the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize UAW as the employees' exclusive bargaining representative and dealing, instead, with UEU, an independent labor organization revived by a minority faction headed by UEU President Ward. Totally in disagreement with these contentions, the Respondent and UEU maintain that UAW did not succeed to UEU's bargaining rights because the affiliation action was invalid as it was not taken in conformity with the amendment requirements of the UEU constitution and bylaws and the balloting was not conducted under conditions insuring a free and honest choice or after an adequate opportunity to participate in the voting was afforded all employees of the bargaining unit irrespective of their UEU membership. On the contrary, they argue that the Respondent, under settled law, was obligated to recognize and bargain with UEU as the contracting union which had never ceased to exist but continued to function as an independent labor union despite the purported affiliation. In any event, the Respondent contends that it acted in good faith and to find it guilty of an unlawful refusal to bargain with UAW under the circumstances confronting it would amount to a deprivation of its constitutional rights.

It is well established that an employer is required to continue to recognize a union with which it has a collective-bargaining contract so long as that contract bars a Board representation election.<sup>20</sup> This obligation,

which is rooted in judicially approved contract bar principles the Board has adopted in light of the need to stabilize bargaining relations with due regard being accorded to the statutory right of employees freely to select their bargaining representative, is not affected by the union's loss of majority support during the contract term.<sup>21</sup> To ignore this obligation would subject the employer to a violation of Section 8(a)(5) and (1) of the Act.<sup>22</sup> However, there may be circumstances when a contract no longer serves as a stabilizing force in bargaining relations as when a contracting union becomes defunct and ceases to exist or a schism develops from a basic intraunion dispute. In such a case the employer is generally relieved of his bargaining duty until the question of representation is resolved at a Board election.<sup>23</sup> On the other hand, where a union is actually the continuation of another union under a different name as a result of affiliation, disaffiliation, merger, or the formation of a new organization and the predecessor union ceases to exist or unequivocally abandons its bargaining rights, its successor in the proper case, may be entitled to the predecessor's bargaining and contractual rights.<sup>24</sup> In that event, an employer's refusal to recognize and deal with the successor organization violates Section 8(a)(5) and (1) of the Act.<sup>25</sup>

Applying these principles to the facts of the present case, I am led to the conclusion that the Respondent did not commit any unfair labor practice in refusing

enfg as modified 126 NLRB 1080 *Harbor Carriers of the Port of New York v NLRB* 306 F.2d 89, 91 (C.A. 2) setting aside 136 NLRB 815 on factual grounds cert. denied 372 U.S. 917. *Hotel Corporation of Puerto Rico Inc d/b/a Miramar Charterhouse* 144 NLRB 728. *Landrum Mills Hotel Corporation d/b/a Hotel La Concha* 144 NLRB 754. *Sears Roebuck & Company* 110 NLRB 226, 228. *The Youngstown Steel Door Company* 116 NLRB 986. Under prevailing rules the maximum term of a contract which would bar an election is 3 years. *General Cable Corporation* 139 NLRB 1123. *General Dynamics Corporation* 175 NLRB No 154.

<sup>21</sup> *Marcus Trucking* supra at 593. *Sears Roebuck* supra at 229.

*Marcus Trucking v NLRB* supra. *Harbor Carriers v NLRB* supra. *Miramar Charterhouse* supra. *Hotel La Concha* supra. and *Sears Roebuck* supra.

<sup>23</sup> *Hershey Chocolate Corporation* 121 NLRB 901. cf. *Polar Ware Company* 139 NLRB 1006 where the Board held that a contract precluded a representation election even though members of the contracting union had voted to affiliate with the petitioner since the contracting union was not defunct and no schism as defined in *Hershey* existed.

<sup>24</sup> *NLRB v Harris Woodson Company Inc* 179 F.2d 720 (C.A. 4) enfg 85 NLRB 1215 (bargaining order amended to substitute successor after change in affiliation). *Union Carbide and Carbon Corporation v NLRB* 244 F.2d 672 (C.A. 6) enfg 116 NLRB 488 (bargaining order and certification amended to substitute successor consolidated union). *North Electric Company* 165 NLRB 942 and *Equipment Manufacturing Inc* 174 NLRB No 74 (certification amended to reflect the name of union with which the certified independent union affiliated) cf. *Bedford Gear & Machine Products Inc* 150 NLRB 1 and *Missouri Beef Packers Inc* 175 NLRB No 179 where the Board declined to amend a certification since the certified union was still a functioning and viable organization opposed to the amendment. see also *The Prudential Insurance Company of America* 106 NLRB 237 and *The Louisville Railway Company* 90 NLRB 678 where the Board held that a contract which was assigned to a newly formed union by the contracting union barred a representation election despite a subsequent attempt to revive the contracting union after its dissolution.

<sup>25</sup> *Canton Sign Co* 174 NLRB No 133 (the employees' bargaining representative merged with another union). *The East Ohio Gas Company* 140 NLRB 1269 (the independent union representative affiliated with another labor organization).

<sup>19</sup> Since the only critical issue before the Trial Examiner is the UAW's right to recognition by reason of affiliation, he did not permit the parties to litigate the authenticity of the signatures on these petitions or whether coercion was practiced in securing them. For the same reason the Trial Examiner refused to receive in evidence 199 UAW membership application cards offered by the General Counsel or permit their validity to be litigated. These cards were allegedly signed by employees over a period of time from the early part of November 1967 through February 1968 or possibly later. The General Counsel represented that some of these cards were signed by employees who also signed the petition.

<sup>20</sup> *NLRB v Marcus Trucking Co Inc* 286 F.2d 583, 593 (C.A. 2)

to recognize and bargain with UAW. On the contrary, I find that the Respondent performed its statutory duty in continuing to accord recognition to the independent UEU as the employees' exclusive representative under their collective-bargaining agreement. As shown above, after the affiliation vote, the Respondent and UEU officers and executive committeemen signed the agreement with the clear understanding that UEU was the contracting union. I am unable to find on the evidence before me, as the argument of the General Counsel and UAW suggests, that upon signing this agreement UEU ceased to exist as an independent labor organization capable of representing the Respondent's employees and administering their contract. It is not without significance that, not only did 77 employees oppose affiliation, but also not more than 120 UEU members out of a total membership of approximately 250 notified that Respondent that they withdrew from UEU and desired to cancel their previously filed dues checkoff authorizations in favor of that organization. Clearly, this action was taken during a period of time subsequent to UAW's first membership meeting on December 9, where the matter was discussed. Moreover, at the time of the hearing, the Respondent had some 250 authorizations from employees for dues deductions payable to UEU. The fact that the affiliation vote not surprisingly created a short period of uncertainty as to the identity of the bargaining representative while the Respondent considered which union it was duty bound to recognize no more undermined UEU as a viable organization than it did UAW. Nor did UEU necessarily become defunct simply because it was temporarily unable to function effectively until a month later when, under the leadership of Ward, a meeting of its members was held to supplant the old officers and an executive committeeman who had transferred their allegiance to UAW and assumed comparable positions in that organization.<sup>26</sup> As the Board observed in *Hershey*, *supra* 911, "mere temporary inability to function does not constitute defunctness; nor is the loss of members in the unit the equivalent of defunctness if the representative otherwise continues in existence and is willing and able to represent the employees."<sup>27</sup>

I find that UEU, far from being defunct, was at all material times fully able and willing to represent the Respondent's employees and, indeed, has been acting in such capacity in administering the parties' collective-bargaining agreement, handling employee grievances, and regularly conferring with management with respect to terms and conditions of employment. In addition, UEU has maintained its organizational structure and holds periodic membership meetings. For these reasons, it cannot be said that UAW is the same union as UEU

under a different name entitled to administer the contract, as the General Counsel and UAW vigorously urge. At best, it was a new organization claiming to represent the employees at a time when the contract, which had virtually its full 3-year term to run yet, precluded a question of representation from being raised.<sup>28</sup> Reaching the same conclusion in an analogous case,<sup>29</sup> the Board stated in language particularly applicable to the situation here presented:

In [the cited] case, the certified bargaining representative did not disappear after the disaffiliation action. Some but not all members shifted to the new organization; most but not all officers transferred their allegiance to the Retail Clerks. The certified unaffiliated Council continued to exist and to represent employees at [the employer's stores]. The Retail Clerks therefore stands forth not as the *alter ego* of the certified unaffiliated Council, but like any other union which, during the life of a valid bargaining contract, has succeeded in diverting to itself from the recognized bargaining representative the support of a majority of employees in the bargaining unit. As, at the time the Retail Clerks made its request for bargaining, the Respondent's contract with the unaffiliated Council still had approximately 1 year to run, the demand created no question concerning representation. If, instead of making the demand, the Retail Clerks had filed a representation petition, the Board would have dismissed it. For the same reasons, the Respondent was free to ignore the demand and to continue dealing with the bargaining representative recognized by the outstanding collective-bargaining agreement. [Footnote omitted.]

I therefore hold that the Respondent did not violate Section 8(a)(5) and (1) of the Act because of its refusal to recognize UAW and its continued recognition of the unaffiliated UEU.<sup>30</sup> Accordingly, dismissal of the amended complaint in its entirety is recommended.

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

#### CONCLUSIONS

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. UEU and UAW are labor organizations within the meaning of Section 2(5) of the Act.
3. The Respondent has not engaged in the unfair labor practices alleged in the complaint, as amended.

#### RECOMMENDED ORDER

Upon the basis of the foregoing findings and conclusions, and upon the entire record in the case, and

<sup>26</sup> In *Harbor Carriers of the Port of New York v NLRB*, 306 F.2d 89, 94 (C.A. 2), the court stated, "Defection of officers and seizure of assets are by no means indications that the old organization is continued in the new."

<sup>27</sup> To the same effect *Crane And Breed Casket Company*, 175 NLRB No. 35, and *Polar Ware*, *supra*. *The Louisville Railway and The Prudential Insurance* cases, *supra* relied on by the General Counsel and UAW, are plainly distinguishable since unlike the contracting unions in those cases, UEU never ceased to exist

<sup>28</sup> *Polar Ware*, *supra*

<sup>29</sup> *Sears Roebuck and Company*, 110 NLRB 226, 229

<sup>30</sup> See citations in fn. 20, *supra*. In view of my determination herein, it is unnecessary to consider the other contentions advanced by the Respondent and UEU

pursuant to Section 10(c) of the National Labor Relations Act, as amended

herein against the Respondent Universal Tool & Stamping Company, Inc , be, and it hereby is, dismissed

It is ordered that the complaint, as amended, issued