Prince Pontiac, Inc. *and* **Steven A. Gibson Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW** *and* **Local 815, affiliated with the International Production, Service and Sales Employees Union, Party to the Contract.** Cases 29-CA-1187 and 29-CA-1274

March 20, 1969

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

On September 18, 1968, Trial Examiner A. Norman Somers issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in certain unfair labor practices as 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, Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, filed exceptions and supporting briefs.

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 and briefs, and the entire record in the case, and hereby adopts the findings, conclusions,[1] 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 in its entirety.

[1]While we agree with the Trial Examiner's finding that the Respondent had a representative complement of employees when it executed the contract with Local 815 on September 16, 1967, we do so on the basis of all the circumstances present herein, including the required percentages set forth in *General Extrusion Company, Inc.*, 121 NLRB 1165, 1168

TRIAL EXAMINER'S DECISION

A. NORMAN SOMERS, Trial Examiner: This case, with all parties represented by counsel, was heard before me in Brooklyn, New York, on May 12 and 13, 1968, on the consolidated complaint of the General Counsel (hereafter the complaint) issued March 29, 1968, on the charges filed respectively by Steven A. Gibson in Case 29-CA-1187 and by Local 259 UAW, AFL-CIO (hereafter Local 259) in Case 29-CA-1274 [1] The complaint alleges that the Respondent, in violation of Section 8(a)(2) and (1) of the Act, assisted Local 815, the Party to the Contract, by executing with it "on or about August 29, 1967" and maintaining a collective-bargaining agreement despite the fact, as alleged, that when the contract was made Local 815 lacked a majority, or at least an uncoerced majority, of employees in the covered unit, and further, the Respondent then lacked a representative complement of employees in the unit (The contract included union-security provisions, and for that reason is derivatively alleged to have violated Section 8(a)(3) as well.)

The General Counsel, the Respondent, and Local 815 presented oral argument, and the General Counsel and Respondent have filed briefs, all of which have been duly considered. Upon the entire record[2] and my observation of the witnesses, I hereby make the following.

FINDINGS OF FACT

I THE BUSINESS OF THE EMPLOYER

Respondent, Prince Pontiac, Inc., is a New York corporation engaged at a place of business in Wantaugh, New York, in the sale and service of automobiles and related products. Respondent (based on a projection since September 21, 1967) has a gross annual revenue of at least $500,000, and it purchases and receives annually at least $50,000 of automobiles and accessories from out of the State. It is not disputed and I find that Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 259, UAW, AFL-CIO, the Charging Party in Case 29-CA-1274, and Local 815, the Party to Contract, are labor organizations within the meaning of the Act

III THE ALLEGED UNFAIR LABOR PRACTICE

A. *The Allegations of the Complaint and the Issue of the Sufficiency of the Charges as a Predicate for Them*

As mentioned, the complaint alleges that Respondent violated Section 8(a)(1) and (2) by assistance given to Local 815 in entering into a contract with it under circumstances rendering the contract invalid (and violated Section 8(a)(3) because of union security clauses in the contract). The complaint alleges that Respondent and Local 815 entered into this contract, on or about August 29, 1967,[3] despite the fact that when the contract was made, Local 815 did not have a majority or at least an uncoerced majority of membership or authorization cards, and in any event did not have a representative complement of employees in the unit.[4] On August 29, Respondent had three employees in the unit — two porters and a mechanic. On Monday, September 11, Respondent put on two more mechanics (Charging Party

[1]The charge of Gibson was filed and served December 26, 1967 The charge of Local 259 was filed March 14, and served by registered mail March 15, 1968

[2]As corrected by an order of the undersigned included in the record as TX Exh. 2

[3]The year is 1967 in all instances except where otherwise indicated

[4]The unit, in essence, consists of Respondent's service employees The

Gibson and another) bringing the composition to five On Saturday, September 16, when Respondent had these five employees, Respondent and Local 815 executed a 2-year contract (G. C Exh 3) which these two contracting parties assert was the only contract they made and is the one now in effect between them

The General Counsel claims, however, that these contracting parties made an earlier contract on August 29 This consists of a document, in evidence as General Counsel's Exhibit 5, which is identical with the September 16 document except for the date and the further fact that the August 29 document does not contain the signatures of the contracting parties as does the one of September 16 On the other hand, there are elements which apparently link the document of August 29 with the one of September 16. As stated, in contents and in the typewriting they are completely alike. However, there is one sentence at the end of the "wage schedule," which appears in the August 29 document in handwriting and in the corresponding place in the September 16 document in typewriting. At the right of the handwritten line in the August 29 document are the initials in handwriting "SP" and "PJC" Saul Postman, president of Local 815, denied he wrote these initials and claimed they were "a bad imitation," and Philip J Carlton, president of Respondent, claimed "I didn't bring my reading glasses" At the hearing, each president wrote his initials five times on a separate paper (G. C Exhs 6 and 7) No handwriting expert testified in the case but it would seem apparent that the initials on the August 29 document were written by the persons who wrote their initials at the hearing before us. Further, while the handwritten sentence reads "Mechanics can do Lube and Oil changes," the capital "L" in lube as written resembles a "T" The September 16 document reproduces in typewriting that sentence in a manner reflecting the peculiarities of the handwriting in the August 29 document. It appears in typewriting as "Mechanics can do tube [sic] and oil changes" Also, Company President Carlton admitted that that sentence was specifically discussed by him and Postman before its incorporation into the contract.

Because of this and other circumstances, the General Counsel asserts that these contracting parties made their agreement on August 29 when Respondent had three employees and that they duplicated that document, except for the date, on September 16, when Respondent had five employees The General Counsel claims that even a complement of five would be unrepresentative — a matter to be later discussed — but if the number is three it is clearly unrepresentative in the light of the ultimate composition of the unit as achieved — an average complement of 16

This brings us to the adequacy of the charges as a valid foundation for the complaint. Insofar as the General Counsel relies upon events occurring when Respondent had three employees, he must derive his support from the charge of Gibson. Gibson's charge was filed and served December 26 *(supra,* fn 1). Though this was within six months after the events alleged in the complaint, the question is whether its contents are a valid foundation for the allegations of the complaint Gibson's charge does not accuse Respondent of an 8(a)(2) violation, or of assisting Local 815 or any other labor organization The charge alleges that Respondent discharged Gibson on December 15 in violation of Section 8(a)(1) and (3) "solely and only because of my activities on behalf of Local 259." Gibson's charge also has the standard "other acts" paragraph followed by the words "and has otherwise violated the Act."[5] The 8(a)(1) and (3) specification based on the allegedly discriminatory reason for his discharge on December 15 because of his activities on behalf of Local 259 was not included in the complaint, and was indeed withdrawn. The Regional Director, on March 29, 1968, the same day the complaint issued, wrote Gibson with copies to the parties stating

> This is to inform you that I have approved the withdrawal of those portions of the charge in the above-entitled matter alleging that Carlton Ford, Inc. [sic] engaged in unfair labor practices and the discriminatory discharge of Steven A Gibson The other portions of the charge are being processed further

Thus, the only predicate in Gibson's charge for the allegation of the complaint is the residual "other acts" sentence followed by the words "and has otherwise violated the Act"

On the other hand, the charge filed by Local 259, does furnish a substantive predicate for the allegations of the complaint. That charge contains the matter in Gibson's charge *(supra,* fn 5) and also the accusation that Respondent, in violation of Section 8(a)(2), dominated and assisted Local 815.[6] Though that charge makes no reference to any invalidly entered contract, its assertion of 8(a)(2) assistance to Local 815 is sufficiently related to the matter in the complaint to constitute a valid predicate to these allegations. The rub there, however, is in the six-months limitation of Section 10(b). Local 259's charge was filed and served, respectively, on March 14 and 15, 1968, and so under the *Bryan Manufacturing* doctrine,[7] the General Counsel cannot under that charge rely on events preceding September 15 Accordingly, unless Gibson's charge validly supports the complaint, the General Counsel must fall back on Local 259's charge and in that instance, he is confined to events beginning September 15, when Respondent had five employees.[8]

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contract describes the classifications as "maintenance, mechanics, parts, body and fender repairs" The functional divisions in the payroll are porters and mechanics

[5] Gibson's charge reads

> On or about December 15, 1967, the Employer discharged me solely and only because of my activities on behalf of Local 259, United Automobile Workers, AFL-CIO, in violation of Section 8 (a) (1) and (3) of the Act
> By the above and other acts, the above-named employer has interfered with, restrained and coerced employees in the exercise of their rights guaranteed under Section 7 of the Act, and has otherwise violated the Act

[6] The portion of the charge of Local 259 other than that contained in Gibson's charge, states

> Since September 15, 1967, and theretofore [sic] the Employer, in violation of Section 8(a)(1) of the Act, interfered with, restrained or coerced its employees in the exercise of their rights guaranteed in Section 7, and continues to so interfere with, restrain or coerce said employees, and in violation of Section 8(a)(2), dominated or interfered with the formation or administration of a labor organization, to wit, Local 815, International Production Service & Sales Employees Union, or contributed financial or otherwise to it

[7] *Local Lodge No 1424 (Bryan Mfg Co)* v *N L R B*, 362 U S 411

[8] The discussion above has concerned only one ground of the claimed invalidity of the contract — the absence of a representative complement This is because the other ground, that when the contract was signed, Local 815 did not have a majority or at least an uncoerced majority of employees in the unit is not supported The General Counsel depends on testimony of Gibson that on September 15, which is a few days after he was hired, Carlton, Respondent's president, introduced Serge Diaz, organizer of Local 815, to him and three of the five employees then working, and recruited

B. *Whether Gibson's Charge Though Timely Filed and Served, Was a Valid Predicate for the Allegations of the Complaint*

1. Governing principle: though a charge is not a pleading, neither may it be a total blank concerning what the accused party is being accused of

The General Counsel relies on the principle that "a charge is not a pleading but merely serves to initiate an investigation to determine whether a complaint shall issue."[9] That is not disputed or disputable, and neither is the proposition in the sentence he quotes from the Second Circuit opinion in the *Pecheur Lozenge* case,[10] as follows

> This Court and other courts have rejected attempts . . to restrict the Board's complaint to the *precise* violations specified in the charge [Emphasis supplied.]

On the other hand, he omits the immediately ensuing sentence, which is crucial to the issue The court stated

> In *N L R B* v *Dinion Coil Co., supra* [201 F.2d 484, 491 (C A. 2)], this Court held that "the complaint may allege violations not alleged in the charge if (a) *they are closely related to the violations named in the charge,* and (b) occurred within six months before the filing of the charge." [Emphasis supplied]

The General Counsel cites a still later case of that court, *N L R.B* v *Pallette Stone Corp* , 283 F.2d 641 (C.A. 2). But he does so in support only of the truism that the charge initiates the investigation to determine the allegations in the complaint Yet the court there too repeated the pronouncements in *Dinion Coil* and *Pecheur Lozenge* that the allegations of the complaint must be "closely related" to those in the charge

The General Counsel's brief, as stated, does not mention that standard, neither does he undertake to show how the violations in the complaint are related to Gibson's charge, whether on the face of that charge or from evidence in the record Gibson testified that before he was employed on September 11, he was interviewed the latter part of August by Respondent's general manager, Anderson, that he asked Anderson what the benefits would be, and that Anderson replied they would be the benefits that come with union membership, and that Anderson thereupon brought him to the service area, where in two places he saw something posted which looked like a labor contract and which contained the number, as best he remembered (though he was not sure), of Local 815 The General Counsel links that with the August 29 document, which on its face is the prototype of the executed September 16 document, and which the General Counsel contends was *the* contract but was duplicated from the August 29 document during the time when the composition expanded from three to five by the hiring of two new mechanics who included Gibson himself. There was no reference on Gibson's direct examination to Local 259 or to his withdrawn claim that he was discharged for activities on its behalf However, on cross-examination, counsel for Local 815, in impeaching Gibson's credibility and particularly to demonstrate his bias, elicited from Gibson that before his discharge on December 15, he, Gibson, had been supplied with membership cards by Local 259 (to which he had once belonged) and had solicited his fellow employees to sign up with Local 259, and further that after his discharge on December 15, he was again in touch with Local 259 and as a result thought that his charge would or could lead to his being reinstated and to his becoming steward of Local 259 at Respondent's place Yet in spite of this, Gibson's charge contained no suggestion that his discharge had any connection with Local 815, which he did not even mention in the charge, and so far as appears in the pretrial affidavit (which is not in evidence but whose contents appear interstitially to the extent that cross-examining counsel for Local 815 used it in impeachment of Gibson) there is no indication that he claimed his discharge had any connection with Local 815 And in his own testimony on cross-examination, he specifically disclaimed that his discharge had any connection with Local 815 Why he was in fact discharged does not appear, except that (as also elicited on cross) he had been frustrated in his aspirations to be made a foreman

Thus, his charge indicates no connection between his discharge and Respondent's relations with Local 815, either on the bases of what is stated in the charge or was developed at the hearing. So the allegation that Respondent violated Section 8(a)(2) hinges solely on the residual "other acts" clause with the added words, "and has otherwise violated the Act" *Supra,* fn 5. To be sure, the "other acts" sentence has been held to be valid support for a complaint alleging specific acts in violation of Section 8(a)(1), even if the charge alleges a violation of 8(a)(3), which does not appear in the complaint, and the complaint alleges specific 8(a)(1) violations not stated in the charge This is because a charge is a sufficient foundation for the allegations of the complaint, if it "informs the alleged violator of the general nature of the violations charged against him and enables him to preserve the evidence relating to the matter"[11] Where, however, the complaint alleges a different category of violation from one in the charge, then if the charge does not by its content show the relationship, it must at least appear on the basis of the evidence. Illustrative is the case of *Pecheur Lozenge, supra,* fn. 10 The charge there alleged violations of 8(a)(1) and (3), while the complaint alleged and the Board found violations of 8(a)(1), (3), and (5). The Court was at pains to show that the 8(a)(5) violation alleged in the complaint was "interrelated" with the 8(a)(1) and (3) violations stated in the charge The Court explained that the 8(a)(1) and (3) violation in the charge consisted of the employer's refusal to reinstate striking employees, and that this refusal involved the dealings between the employer and the union (the employees' bargaining representative), which in their very content consisted of refusals by the employer to bargain collectively with the union. A comparable situation is presented in *Red Ball Freight, Inc* , 157 NLRB 1237, which the General Counsel cites under the general and undisputed proposition that a charge initiates the investigation to determine whether a complaint should issue The General Counsel in his brief in the instant case states that *Red Ball* "concerns a complaint alleging 8(a)(2) assistance based upon a charge alleging discrimination" However, in that case, as the Board

disputed and for reasons later stated has not been credited *Infra,* fn 12 We proceed here to whether Gibson's charge in its contents supports the complaint

[9] Citing, among many other cases, *Triboro Carting Corp* , 177 NLRB 775, 777 (enfd 251 F 2d 959 (C A 2), *per curiam* in open court)

[10] *N L R B* v *Pecheur Lozenge Co* , 209 F 2d 393, 401 (C A 2), enfg as modified 98 NLRB 496, cert denied 347 U S 953

[11] *N L R B* v *Raymond Pearson, Inc* , 243 F 2d 456 (C A 5) Accord

arises are the same as the facts on which the allegation of Section 8(a)(1) and (3) are based" and were specifically found. The General Counsel makes no such claim here, and so the only nexus between the 8(a)(2) violation in the complaint and Gibson's charge is a derivative one. This, as the Board held in *Champion Pneumatic Machinery Co*, 152 NLRB 300, is hardly enough As the Board, approving the Trial Examiner's rationale, stated *(id.* at 303):

> But I cannot read the "other acts" language of the original charge as embracing any and all violations of Section 8(a)(2), (3), (4), and (5) which might have occurred within the 6 months prior to the filing of that charge Any such construction would all but write the limitations provision out of the Act, as the General Counsel would have carte blanche, once an allegation of "other acts" was included in a charge, to range far and wide over the entire field of employer unfair labor practices. The purpose of the limitations provision — to give an employer timely notice of the conduct alleged to have violated the Act — would be defeated by such a construction To be sure, the charge is not a pleading, and the General Counsel is not limited to the precise matters alleged therein. But the courts in sustaining the General Counsel's power to extend his complaint beyond the allegations of the charge have insisted that the new violations be "closely related to the violations named in the charge" *N L R.B* v *Dinion Coil Company, Inc.* 201 F.2d 484, 491 (C A 2), see also *N L R.B* v *Pecheur Lozenge Co., Inc*, 209 F 2d 393, 401 (C A 2), cert. denied 347 U S 953

In *Champion Pneumatic,* the charge alleged the employer raised wages and transferred employees to discourage membership in the charging union in violation of Section 8(a)(3) and (1). The General Counsel amended the complaint to include an 8(a)(2) violation based on the employer's having formed and assisted an Employee Grievance Committee. Though the General Counsel at least claimed there was a factual relationship between the alleged 8(a)(3) conduct and the newly alleged 8(a)(2) conduct, the Trial Examiner nevertheless, with Board approval, found the 8(a)(2) violation was not "closely related" to the 8(a)(3) and (1) violations stated in the charge within the principle of *Dinion Coil* and *Pecheur Lozenge* Here, not only does no relationship appear but no such relationship between what was stated in the charge and what was alleged in the complaint was sought to be developed or even claimed.

The conclusion is that Gibson's charge is not a valid foundation for the complaint This leaves only the charge of Local 259

C *The Alleged Violations Predicated on the Charge of Local 259*

As mentioned, the 6-month period preceding Local 259's charge carries one to no earlier than September 15. As also mentioned, the General Counsel contends that even if one were to accept September 16 as the day Respondent and Local 815 executed the only contract between them, the five employees Respondent then had were still not a representative complement. This, in fact, is the sole substantive issue before us.[12]

Though the General Counsel contends that five employees too are not a representative complement, he nevertheless relies on the 30 percent ratio articulated in *General Extrusion Co.*, 121 NLRB 1165. The Board there decided that a contract "does not bar an election if executed prior to a substantial increase in personnel." Concerning this, the decision in the *General Extrusion* case states that "a contract will bar an election only if at least 30 percent of the complement employed at the time of the hearing had been employed at the time the contract was executed *and* (italics in text) 50 percent of the job classifications in existence at the time of the hearing were in existence at the time of the contract was executed" The numbers of the job classifications are not specified, nor does the General Counsel rely upon them. The General Counsel indicates that the 30 percent ratio applies in an unfair labor practice case on the question of validity of the contract, citing *Kaynard* v. *Cowles Communications Co*, 66 LRRM 2052, 2063, fn. 12, of that case.[13]

N L R B v *Reliance Steel Products*, 322 F 2d 49 (C A 5), *North America Rockwell Corp* v *N L R B*, 389 F 2d 866 (C A 10)

[12] The General Counsel claims further that on September 15, Respondent engaged in a separate violation of 8(a)(2) in a specific act of assistance to Local 815's organizing activity This is not sustained by a preponderance of the evidence

Concerning this, the General Counsel relies on the testimony of Gibson that on September 15, Serge Diaz, organizer of Local 815, entered the working premises in the presence of Company President Carlton, and upon being introduced by Carlton (who immediately left), Diaz discussed union benefits to four of the five employees, and this consumed about 15 to 20 minutes of working time Gibson testified that Diaz discussed this with him and McCormack (whose employment began September 11) and Steele and D'Angelo (whose employment, along with one more employee began in August) He further testified that Diaz passed out union membership and checkoff authorization cards which Gibson and McCormack signed, and that Diaz appointed McCormack as temporary steward Carlton and Diaz categorically denied the incident These two denied that Carlton introduced Diaz to the employees or had accompanied Diaz Diaz further denied that his solicitation of any employees occurred other than outside Respondent's premises

Whatever reservations one might have about the reliability of the testimony of Carlton and Diaz on other matters (which concern events preceding the 6-month period) on this specific item before us, the quality of Gibson's testimony, uncorroborated, does not outweigh the denials of Carlton and Diaz

It is further noted that the September 15 incident does not concern Local 815's majority at time of execution of the contract The other three employees were signed up before August 29, when they were Respondent's only employees These three were a unanimous designation assuming the contracting parties had made a prior contract on August 29 as the General Counsel claims, and in any event constituted a majority on September 16, when the contract in evidence in this case was signed

[13] This was a proceeding in the District Court under Sec 10(j) to restrain giving effect (pending Board decision) to contracts alleged in the complaint to have been made in violation of Sec 8(a)(2) and (1) on the part of the employer and 8(b)(1)(A) on the part of the contracting unions One basis for such alleged invalidity was that the contract stemmed from recognition given by the employer to the respective unions at a time when the employer did not have representative complement of employees in the units involved In sustaining the General Counsel's petition that a *prima facie* case was made, the Court in *Cowles (ibid)* deemed the 30-percent rule in *General Extrusion* to be relevant also to the issue of the validity of a contract in an unfair labor practice proceeding The Board, in its decision later issued in that case, *Cowles Communications, Inc*, 170 NLRB No 177, sustained the complaint and held the contracts invalid See *id* TXD Though the crucial date there was when the employer *recognized* the contracting unions, the issue is the same whether the unrepresentative complement existed when the contract was executed or when the employer granted the recognition which underlay the contracts' execution Though the complaint in the case before us alleges the complement was unrepresentative at the time the contract was made, and does not specifically allege that the complement was unrepresentative at the time of recognition, nevertheless, if the charge of Local 259 were not limited to a period earlier than September 15, it could well have been appropriate to consider whether the contract, though executed September 16, overlay a

The composition of the employees on September 16, when the contract was executed, is appraised against the ultimate composition. The General Counsel indicates this ultimate composition to have been between 14 and 18 employees with an average of 16 The stipulated figure as of the last day of each week from August 18, 1967, to May 3, 1968 (G. C Exh 8) shows that as of May 3 (the week prior to the one preceding the hearing in this case) the employees were 16 in number, and on the last day of the hearing, it was 12 (due to the fact that 4 employees had just quit). Applying that 30 percent ratio, the complement at the time of execution met that ratio though by a hair's breadth.[14]

CONCLUSION

Since the five persons employed at the time of the execution of the contract on September 16 exceeded 30 percent of the average complement either ultimately achieved or as existing on the date of the hearing, Respondent had a representative complement of employees at the time of the execution of the contract. It follows that Respondent's execution of the contract with Local 815 did not constitute assistance in violation of Section 8(a)(2) and (1) or a violation of Section 8 (a)(3) because of the union security provisions in them.

RECOMMENDED ORDER

On the basis of the findings and conclusions here stated and on the whole record, it is hereby recommended that the case be dismissed.

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prior recognition granted to Local 815 when Respondent had only three employees This, however, would carry us to a period earlier than the limitations period of Local 259's charge

[14] See *West Penn Hat & Cap Corp*, 165 NLRB No 77, fn 1

In the cases where the contract was invalidated by reason of an unrepresentative complement (whether as of the time of execution of contract or granting of recognition out of which the contract flowed) the original number was well below 30 percent of the ultimate composition as realized It was also such compared to the ultimate composition *as anticipated* (a factor not developed or discussed in this record) By way example *A O Smith* 122 NLRB 321, 327 (4 out of an anticipated 15 and 25 as actually achieved), *The Englander Co* (first case) 114 NLRB 1034, 1041 (10 out of an anticipated "substantially greater" force, achieving 75 about seven months after recognition), *The Englander Co* (second case) 118 NLRB 707, 731 constituting "a small fraction of the anticipated force", *Young & Greenwalt Co*, 157 NLRB 408, 411 (where among numerous other factors, the complement at the time of recognition was only about 25 percent of the average number of employees working during the following three months, and where even then the complement was not large enough to operate the plant efficiently once production began) And in the previously mentioned case of *Cowles Communication* 170 NLRB No 177, there were 14 at time of recognition as against 55 to 60 as actually achieved when production began and as originally anticipated