

IN the Matter of INTERNATIONAL FILTER COMPANY, A CORPORATION
and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 8

Cases Nos. C-56 and R-21.—Decided April 8, 1936

Machinery Industry—Unit Appropriate for Collective Bargaining: community of interest; craft; eligibility for membership in only organization making bona fide effort at collective bargaining; occupational differences—*Representatives:* proof of choice; membership in union; resolution—*Certification of Representatives:* after investigation but without election—*Collective Bargaining:* refusal to meet with representatives; employer's duty as affected by absence of grievances or problems on part of employees—*Interference, Restraint or Coercion:* questioning employees regarding union affiliation.

Mr. Harold A. Crane for the Board.

Mr. Otto A. Jaburek, of Chicago, Ill., for respondent.

Mr. Fred. G. Krivonos, of counsel to the Board.

DECISION

STATEMENT OF CASE

The International Association of Machinists, District No. 8, hereinafter termed the union, having duly filed a charge with the Regional Director for the Thirteenth Region, the National Labor Relations Board, by its agent, the said Regional Director, issued and duly served its complaint dated January 31, 1936, against the International Filter Company, a corporation, Chicago, Illinois, respondent herein, alleging that the respondent has engaged and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, approved July 5, 1935, hereinafter termed the Act.

In brief, the complaint alleges that the respondent, a Delaware corporation, licensed in Illinois, with its principal office and place of business in Chicago, Illinois, hereinafter termed the Chicago plant, is engaged in the manufacture, assembly, sale and distribution of water softeners and filtration plants and allied machinery in interstate commerce; that the machinists, machinists' helpers, tool and die makers, punch and drill press operators, screw machine tenders, and other machine shop production workers employed by the respondent at the Chicago plant constitute a unit appropriate for the purposes

of collective bargaining; that, before October 1, 1935, a majority of these employees designated the union to represent them for the purposes of collective bargaining with the respondent; that by virtue of Section 9 (a) of the Act, the union has been and is the exclusive representative of all employees in such unit for the purposes of collective bargaining; that on or about October 5, October 8, and October 11, the union, by its business agents, sought to bargain collectively with the respondent on behalf of such employees; and that on such dates and at all times thereafter the respondent refused to bargain collectively with the union as the exclusive representative of all such employees; thereby engaging in the unfair labor practices alleged.

The respondent's answer, in substance, alleges that the National Labor Relations Act is void in toto on the grounds that it is violative of Article I, Section 8, Article III, Sections 1 and 2 and the Fifth, Ninth and Tenth Amendments of the Constitution of the United States; alleges that the respondent is without knowledge as to the appropriate bargaining unit or as to the designation of the union by a majority of its employees in the unit for the purposes of collective bargaining as alleged in the complaint; but denies that the determination of these questions is material. The answer also denies that the union requested the respondent to bargain collectively and denies that it refused to bargain collectively as alleged. The answer further denies that the respondent's operations constitute interstate commerce, or that the unfair labor practices alleged in the complaint affect commerce. The answer concludes with allegations on information and belief that the union is engaged in an organization campaign to "induce and compel" employees of the respondent to join the union and to compel the respondent to enter into closed shop agreements; that the complaint herein is in furtherance of such purpose; that disputes between the respondent and its employees have been amicably adjusted and that none of the respondent's employees has any justifiable grievances against it.

The union also filed a petition for an investigation and certification of representatives by the Board under the provisions of Section 9 (c) of the Act, alleging, *inter alia*, that a question affecting commerce had arisen concerning the representation of the employees in the bargaining unit described (the same unit alleged in the complaint). Pursuant to said Section 9 (c) and Article III, Section 3 of the National Labor Relations Board Rules and Regulations—Series 1, the Board ordered the Regional Director for the Thirteenth Region to conduct an investigation and to provide for an appropriate hearing in the matter.

Pursuant to notice thereof duly served on the respondent, Robert M. Gates, duly designated Trial Examiner, conducted a hearing commencing February 20, 1936 at the United States Court House, Chicago, Illinois, upon the complaint (Case No. C-56) in conjunction, under the provisions of Section 9 (c) of the Act, with the hearing on the question of representation set forth in the petition (Case No. R-21). The respondent appeared by counsel and participated in the hearing. The Board was represented by counsel. Full opportunity to be heard, to cross-examine witnesses and to produce evidence was afforded to all parties.

At the hearing, the respondent's motion to intervene on the question of representation (Case No. R-21) was granted and its answer to the petition was received. Various other motions and objections made by the respondent in the course of the hearing and the Trial Examiner's rulings thereon are considered below.

Acting pursuant to Article II, Section 35 and Article III, Section 11 (c) of the said Rules and Regulations, the Board ordered the proceedings to be transferred and continued before it.

Upon the entire record in the proceedings, including the stenographic report of the hearing and all evidence, oral and documentary, offered and received at the hearing, the Board makes the following:

FINDINGS OF FACT

A. THE RESPONDENT AND ITS BUSINESS

I. The respondent, International Filter Company, is and has been since August 3, 1923, a corporation organized and existing by virtue of the laws of the State of Delaware. The respondent is duly licensed to do business in the State of Illinois (Exhibit B-9), and has an office and its principal place of business in the City of Chicago, Illinois.

II. (a) The respondent is engaged in the business of manufacturing, assembling, selling and distributing water softening and filtration plants and allied machinery.

(b) The water softeners and filtration plants manufactured, sold and distributed by the respondent are for private, commercial and municipal use, and consist of two general types of machinery: pressure filters and softeners; and larger and more complicated gravity filters. About 50 to 60 percent of the respondent's sales consist of the large gravity filters for use by municipalities (cities and towns). The respondent also manufactures the gravity filters for industrial use. These proportions may vary with conditions.

(c) The pressure filters and softeners consist of a steel tank and piping, valves, control gauges, and, in the case of filters, an alum

chamber for chemical. The tank is not made by the respondent, but is either shipped directly to the respondent's customer by the tank maker or is kept in stock in certain sizes and shipped to order. The other parts are manufactured by the respondent and are kept on hand, either in stock, or as an assembled machine, depending on the size.

(d) The large gravity filter is, usually, part of a plant built of concrete. This equipment is very large in size and contains complicated control mechanism, such as rate-of-flow controllers, loss-of-head gauges to determine pressure losses, rate-of-flow gauges, chemical feeding machines, agitating mechanism to mix chemicals with the water, meters for measuring the flow in and out of the plant, hydraulic switches, and the like, made and assembled at the Chicago plant.

(e) The raw materials used by the respondent in making these machines includes castings, pipe, rod, bar stock, sheet, brass, rubber, bakelite, some aluminum "and the thousand and one items that go into it". The pipe is cut into various lengths at the Chicago plant as required, and drilled with holes, adapted for strainers; the castings are fully machined; the gauges and controllers are made at the Chicago plant by processing a number of raw materials and assembling the parts; other raw materials are processed and made into parts for the machinery produced by the respondent. These parts are manufactured and kept in stock.

(f) Raw materials purchased by the respondent are generally kept on hand one to two months before being processed. Processed parts are generally kept in stock two to six months before being assembled for shipment. Some parts are processed in lots with a view to orders or contracts on hand. Much of the stock of parts kept on hand is for the large water softening and filtration plants manufactured by the respondent.

(g) Most of the water softening and filtration plants made by the respondent are built to specifications provided by the purchaser. There is a great deal of variation of detail in construction of the plants ordered; and the fittings and equipment for the construction of plants ordered vary as to the size and capacity of various parts. Some of the equipment used in filling orders is of standard size, although special for each particular job; but portions and parts have to be made particularly for each job according to specifications.

(h) A substantial proportion, approximately 15 percent, of the "thousand and one items" of raw materials used by the respondent in its operations, is caused by the respondent to be purchased and transported in interstate commerce from states other than the State of Illinois to its plant in Chicago, Illinois. A considerable propor-

tion, approximately 80% of the products sold by the respondent, is caused by the respondent to be sold and transported in interstate commerce to states other than the State of Illinois from its plant in Chicago, Illinois.¹

(i) The declaration filed by the respondent in the matter of the registry of its trade mark in the United States Patent Office, Department of Commerce, Washington, D. C., subscribed and sworn to by P. N. Engel, the respondent's president, on March 14th, 1935, declares "that said trade mark is used by said corporation in commerce among the several states of the United States." (Exhibit B-11.) The respondent's trade mark appears on its advertising circulars in current use describing its products. (Exhibits B-27; B-30.)

(j) The operations of the respondent constitute a continuous flow of trade, traffic and commerce among the States.

B. THE UNION

III. The International Association of Machinists, organized in 1888 and affiliated with the American Federation of Labor, is a labor organization composed of machinists, machinists' helpers, tool and die makers, punch and drill press operators, screw machine tenders, and other machine shop production workers, who are eligible to membership therein. District No. 8 is composed of 16 union locals, located in Chicago. These locals are composed, mainly, of union members residing in a particular section; but a few of the locals are confined to special branches of the craft, like tool makers. Each local is composed of employees of a number of employers. The employees of the respondent who are members of the union thus are members of six different locals of District No. 8, because of their residence in various parts of the Chicago area. It is a regular practice for the business representatives of District No. 8 to represent

¹The following testimony in the record is illustrative of the respondent's receipt of materials from points outside the State of Illinois and shipments to such points: Edward J Peyton, office manager for the National Carloading Co., freight forwarders, testified that his office records showed 9 shipments of freight to the respondent's plant from points of origin outside of the State of Illinois for the period from October 1, 1935 to January 31, 1936. He also testified that his office records showed the following shipments of its products by the respondent for the same period:

Month	To points outside of Illinois	To Illinois points
October, 1935.....	30 shipments, 46,544 lbs.....	2 shipments, 3,415 lbs
November, 1935.....	22 shipments, 28,882 lbs.....	None
December, 1935.....	26 shipments, 77,320 lbs.....	None
January, 1936.....	32 shipments, 29,320 lbs.....	None

The record also contains a stipulation that records of the Chicago and Eastern Railway Company disclose the receipt of six separate consignments of freight during the period from February 6 to 17, 1936, consigned to points outside of Illinois, and aggregating 4,000 pounds in weight.

shop groups or employees of a particular employer, and who may belong to several different union locals, for the purposes of collective bargaining with their employer. William H. Jones and Julius J. Uhlmann are the business representatives of District No. 8, which positions they occupied during the months of September and October, 1935.

C. THE BARGAINING UNIT

IV. (a) The respondent employs 70 workers in its Chicago plant, other than those engaged in a supervisory capacity or clerical or office work. Of these, 46 are employed as machinists on various machines and machine operations, bench machinists, tool and die makers, punch and drill press operators, screw machine tenders, and other machine shop production workers. These workers are, for the most part, skilled mechanics, craftsmen who have served apprenticeship, and are eligible to membership in the International Association of Machinists. The remaining 24 workers in the respondent's plant comprise 12 in the shipping department, who also do general labor; 2 in the tool crib, in charge of keeping and handing out tools; 2 helpers who paint machines; 3 in the stock room; 3 pattern makers; and 2 in the laboratory. None of these 24 workers is eligible to membership in the union. The situation of the 46 machinists and allied craftsmen eligible to union membership in respect to collective bargaining is different from that of the other workers. These 46 workers are allied by common problems of skill and community of interest; they alone of the respondent's employees are eligible to membership in the union. They constitute a homogeneous and distinct group among the respondent's employees.

(b) In the absence of evidence in the record of any request or expressed desire by the 24 workers not eligible to membership in the union for representation by the union or anyone else for the purpose of collective bargaining, and for the reasons outlined above, and in the other circumstances of this case, and in order to insure to employees of the respondent the full benefit of their right to self-organization and collective bargaining, and otherwise to effectuate the policies of the Act, the machinists, machinists' helpers, tool and die makers, punch and drill press operators, screw machine tenders, and other machine shop production workers employed by the respondent in its Chicago plant, hereinafter termed the machinist employees, constitute a unit appropriate for the purposes of collective bargaining.

D. THE RESPONDENT AND THE UNION

V. (a) In July and August, 1935, in the course of an organizing campaign in Chicago, the union passed out circulars and handbills at the door of the respondent's Chicago plant, explaining the nature,

purpose and benefits of the union and urging those eligible to join. (Exhibits R-2 and 3.)

(b) Early in September, 1935, several of the respondent's machinist employees, who had talked over the matter of joining the union among themselves, called at the office of District No. 8 and stated that the respondent's employees were desirous of being organized. Subsequently, on or about September 19, 1935, more than 30 of the respondent's employees,² held an organization meeting for the purpose of joining the union. Jones and Uhlmann were present. The nature and purposes of the union were discussed. Every employee of the respondent present filled out an application card for membership in the union. On or about September 23, 1935, a second meeting was held by employees of the respondent. Again more than 30 were present, the same group, plus one or two more, and Jones and Uhlmann. Some who had not paid their initiation fee at the first meeting, did so. Again the nature and purposes of the union were discussed. Jones and Uhlmann, by unanimous consent of the respondent's machinist employees present, were designated to enter into negotiations with Engel, the respondent's president, for the purpose of collective bargaining with the view of reaching a collective working agreement.

(c) By October 1, 1935, Jones and Uhlmann had received application cards and initiation fees from 36 of the respondent's machinist employees.³ These were distributed among the locals nearest the employees' homes. One of the respondent's employees had been a member of the union for 7 years. By October 3rd, 35 were initiated into the union at the various locals.⁴ Of these, 27 of the machinist

² The testimony of witnesses present at the meeting states the number present from 30 to 34.

³ Exhibit B-34 is Uhlmann's typewritten list of 36 applications received, made at the time he sent the applications to the various locals, and indicating the number of the local to which each application was sent.

⁴ The respondent's employees became members of locals 199, 337, 390, 366, 134 and 113. The financial secretaries of the first three locals testified, with reference to the local records, as to the receipt of their applications, their initiation, membership and good standing. Uhlmann, whose duties require him to oversee the books of the various locals in District No. 8, testified as to the membership in locals 366, 134 and 113. Thus, the machinist employees of the respondent are members of these various locals as follows:

Local No	New members by Oct 1, 1935	Old members	In good standing at time of hearing	Delinquent at time of hearing
199	8		5	3
337	10	1	9	2
390	10		6	4
366	3		3	
134	3		3	
113	1		1	
Total	35	1	27	9

Uhlmann's list (Exhibit B-34) includes 9 applications sent to local 199. The testimony of the financial secretary of the local, however, lists only 8 employees of the respondent as applicants and members. This accounts for the discrepancy between the 36 new members listed by Uhlmann and the total of 35 shown in the above table, and testified to as having been initiated.

employees of the respondent were members of the union in good standing at the time of the hearing in this proceeding.

VI. Of the 46 machinist employees of the respondent in the bargaining unit, set forth in finding IV above, 36 or 37, a great majority, had, by October 1, 1935, designated the union and its business agents as their representatives for the purposes of collective bargaining, thus constituting District No. 8, by virtue of Section 9 (a) of the Act, the exclusive representative of all of the respondent's employees in the bargaining unit for the purposes of collective bargaining.

VII. (a) On October 4 or 5, 1935, Jones and Uhlmann called in person at the office of the respondent in Chicago. They gave their cards to the girl at the switchboard and asked to see Engel, the respondent's president. The business card of Jones (Exhibit B-33) clearly indicates that he is the business representative of the union, and gives the telephone numbers of the union's headquarters in Chicago. After a few moments, the girl told them that Engel was busy. They sat down and waited awhile. In about a half hour, the girl informed them that Engel would be busy all day and could not see them. They left with the girl a verbal request that Engel telephone them when he could see them.

(b) The next day, there having been no telephone call from Engel in response to the request, Jones telephoned the respondent's office, gave his name, and asked to talk to Engel. He was told that Engel was out of town. A similar phone call by Jones two days later brought the same response. The next day Uhlmann, in Jones' presence, telephoned the respondent, and was told the same story. Later the same day, Uhlmann telephoned again, disguising his identity. He was told Engel was busy but would call him later if he left his number. Uhlmann then told Jones that Engel was in town. When Jones telephoned the respondent's office again, he was again told Engel was out of town. He replied that he knew Engel was in town and was switched to Engel's secretary, Miss Phillips. Although the testimony of Jones and Miss Phillips as to the details of the ensuing conversation conflicts sharply, it is clear that he was again informed that Engel was out of town.

(c) Thereafter, Uhlmann sent a letter on the union's stationery, dated October 10, 1935, to Engel (Exhibit B-36), requesting a conference. The letter recites that a number of the respondent's employees had become members of the union, thus exercising their rights under the "Labor Relations Act", and that Uhlmann had called at the respondent's office in person and several times by telephone in an effort to meet Engel, but without success. The respondent's vice-president, W. H. Green, replied to Uhlmann in a letter dated October 14, 1935, (Exhibit B-38) that "we know of no problems which require any discussion and, therefore fail to see any need of

any meeting. Please be advised that the company is engaged in manufacturing, which is not interstate commerce, and is, therefore, not subject to the National Labor Relations Act (Wagner Bill). Further, we are advised by counsel, whom we deem competent, that the act is unconstitutional".

(d) Uhlmann testified that at this time he felt the situation to be "hopeless and useless" and that the union therefore made no further direct efforts to negotiate with the respondent.

(e) At about this time, the union requested the services of a conciliator of the United States Department of Labor. John E. O'Connor, a Commissioner of Conciliation, United States Department of Labor, on instructions from Washington, called at the office of the respondent on October 16, 1935. He was told Engel and his secretary were out, and he left his card and telephone number with a request that Engel phone him. Upon receiving no call from Engel, he phoned the respondent's office, asked to talk to Engel, and was connected with Engel's secretary, Miss Phillips, who, in reply to his inquiry concerning the controversy between the respondent and its employees, replied that she knew of no difficulties.

(f) Preston F. Pew, in charge of the respondent's plant operations, having heard reports of meetings of the machinist employees, interviewed, between October 10 and 12, 1935, about 20 of these employees as to their union membership. He learned that 14 or 15 were members of the union. He made a verbal report of his inquiry to Engel.

(g) The evidence is clear that Engel, who testified he was out of the city part of the week between October 4 and 10, 1935, and all of the week between October 10 and 16, 1935, was informed by his secretary and others of the efforts of Jones and Uhlmann to meet him and knew of the reasons for their efforts, but avoided meeting Jones and Uhlmann and did nothing to arrange a meeting with them as they requested. He knew from Pew that some of his machinist employees had joined the union, and he knew of and had seen Uhlmann's letter of October 10th, and Green's reply of October 14th. He also knew of O'Connor's efforts to meet him.

(h) Thereafter, about November 12, 1935, L. W. Beman, Regional Director for the Thirteenth Region, called upon Engel to investigate charges filed by the union against the respondent under the Act. Beman suggested that Engel meet with representatives of the employees involved. In a letter dated November 26, 1935 (Exhibit B-25), Engel refused such a meeting on the ground that there were no grievances on the part of such employees against the respondent and that the only object of the union representatives in meeting with the respondent were "to induce us to enter into an agreement with the union, the effect of which would be to force a number of our employees who have no desire for union affiliation into it." Before

issuing the complaint against the respondent Beman called upon Engel again on January 3, 1936, in the course of investigating the union's charges, and again suggested that Engel meet representatives of his employees.

VIII. At a meeting of the union's shop group composed of employees of the respondent, about the middle of October, 1935, a committee of the respondent's employees was appointed to try to meet Engel. The committee, however, before the meeting had adjourned, decided to take no action, since they doubted they would be able to arrange to talk to Engel if the business agents had failed.

E. CONCLUSIONS

IX. (a) The respondent's conduct set forth in finding VII above constitutes a clear and unequivocal refusal to bargain with the exclusive representatives of all of its machinist employees in the bargaining unit described in finding IV above.

(b) The requirements of the Act as to collective bargaining are simple and clear. It is an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees, and correlatively, it is the duty of the employer to enter, upon request, into negotiations with the chosen representatives of his employees, with the intention in good faith to reach an agreement with them in respect to rates of pay, wages, hours of employment and other conditions of employment.

(c) The respondent, on or about the dates in October, 1935, alleged in the complaint, and at all times thereafter artfully dodged or flatly refused a meeting with the union's business representatives, designated by a majority of the machinist employees to represent them for the purposes of collective bargaining, although Engel knew who they were and the nature of their business with him.

(d) The respondent, in its reply to Uhlmann's letter of October 10th (finding VII (c) above), in its reply to O'Connor (finding VII (e) above), in its replies to Beman (finding VII(h) above), in its answer to the complaint, and through the testimony of Engel and other of its officials, has sought to evade its duty to bargain collectively with its machinist employees on the ground that these employees had or have no problems or grievances to discuss, that recognition of the union and meeting with union representatives requires entering into a closed shop agreement, and that the Act does not apply to the respondent's business and is unconstitutional. The presence or absence of "problems" or "grievances" on the part of employees has nothing to do with their right, under the Act, to self-organization and collective bargaining through representatives of their own choosing. The respondent's evasions and flat refusals, on

the basis of its plea of no problems and no grievances, of a meeting with the chosen representatives of its machinist employees for the purposes of collective bargaining, cannot avail it as an excuse or defense of its refusal to fulfill its statutory duty so to bargain. The respondent's position that meeting with union representatives *ipso facto* draws it into a closed shop agreement is too specious to merit serious consideration. Our experience has been that the cry of "closed shop" is constantly being raised by employers who seek an excuse to evade their duty to bargain collectively under the Act and to obstruct and deny the right of employees to do so. There is not an iota of evidence that the union representatives in this case proposed a closed shop as part of an agreement. The respondent never permitted the chosen representatives of its machinist employees an opportunity to propose anything. The Act requires that the employer bargain collectively with the representatives of his employees by entering into negotiations with them in good faith with the *bona fide* purpose of making an agreement concerning rates of pay, wages, hours of employment and other conditions of employment. An unfounded apprehension that employees may demand a closed shop is no excuse for a flat refusal to bargain collectively. As for the respondent's final position, that the Act does not apply to the respondent is unconstitutional—a position which its letter of October 14, 1935 (finding VII), (c) above), states to have been taken upon the advice of counsel—ignorance or misconception of the law does not excuse one from its observance.

X. The respondent's conduct set forth in finding V above constitutes interference, restraint and coercion of its machinist employees in the bargaining unit described in finding IV above in the exercise of the rights guaranteed to employees in Section 7 of the Act. Employees are guaranteed the right to self-organization and collective bargaining by Section 7. The respondent's deliberate refusal to bargain collectively, as set forth above, is an interference with and restraint and coercion of them in the exercise of that right. It is probable that the delinquency of nearly 25 percent of the respondent's machinist employees in their union membership after the respondent's refusal to bargain collectively, as set forth above, was in a large measure due to such refusal. See finding V (c) above, note 4. See also finding VIII above.

F. THE RESPONDENT'S CONDUCT IN RELATION TO INTERSTATE COMMERCE

XI. At a meeting of the shop group, late in November or early in December, after Jones and Uhlmann had reported their inability to meet with Engel, the group took a strike vote by secret ballot. The results were 20 to 1 in favor of a strike. The matter was left in the hands of Jones and Uhlmann; there was no action taken by the union.

XII. The respondent's conduct as set forth in findings VII to X above tends to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

G. THE AFFIRMATIVE ALLEGATIONS IN THE RESPONDENT'S ANSWER

XIII. The affirmative allegations in the respondent's answer (paragraph 12), set forth in the statement of the case above, are gratuitous and irrelevant to the issues in this proceeding. The subject matter of the allegations concerning the union's intention to "compel" the respondent to enter a closed shop and those raising the question of "no problems and no grievances" are discussed in finding IX (d) above. Moreover, the allegations concerning the union's intention to "induce and compel" the respondent's employees to join the union, to "compel" the respondent to enter closed shop agreements, and that the complaint in this case is in furtherance of such purpose, are completely unsupported by evidence.

THE PETITION (CASE NO. R-21)

The Board's findings IV, V and VI above, as to the appropriate bargaining unit and the designation of the union by a majority of the respondent's machinist employees as their representatives for the purposes of collective bargaining, serves as a certification. The determination of these questions under the union's petition for certification of representatives, or the taking of a secret ballot under Section 9 (c) of the Act is therefore unnecessary. Consequently the petition for certification will be dismissed.

MOTIONS AND OBJECTIONS

In view of the denial of the petition, above, consideration of the various motions made by the respondent in the course of the hearing in respect to the petition and the rulings thereon becomes immaterial.

The Board affirms the Trial Examiner's ruling refusing the respondent's motion that counsel for the Board elect whether to proceed on the complaint or the petition. There is no inconsistency in proceeding on both, as explicitly provided in Section 9 (c) of the Act. A refusal to bargain may, conceivably, be coupled with a question concerning the representation of employees; the provision for a joint hearing merely expedites the proceedings where a charge and petition relate to the same parties.

The respondent, in the course of the hearing, made various motions to dismiss and to strike the complaint because of the unconstitutionality of the Act, as alleged in its answer to the complaint. The Trial Examiner's denial of these motions is affirmed, as is his denial of the motion to dismiss the complaint on the ground that the testimony fails to sustain its allegations.

We find in the record no prejudicial rulings by the Trial Examiner in respect to various objections to the introduction of evidence and motions to strike, and his rulings in this respect are affirmed.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. The International Association of Machinists, District No. 8, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The machinists, machinists' helpers, tool and die makers, punch and drill press operators, screw machine tenders, and other machine shop production workers employed by the respondent, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. By virtue of Section 9 (a) of the Act, the International Association of Machinists, District No. 8, having been designated and selected, on or about October 1, 1935, by a majority of the respondent's machinist employees as their representative for the purposes of collective bargaining, has been at all times thereafter the exclusive representative of all of the respondent's machinist employees for such purposes.

4. The respondent, by refusing to bargain collectively with the representative of its machinist employees, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (5) of the Act.

5. The respondent, by interfering with, restraining and coercing its machinist employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

6. The unfair labor practices in which the respondent has engaged and is engaging constitute unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act.

ORDER

On the basis of the findings of fact and conclusions of law set forth above, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders:

1. That the respondent, International Filter Company, a corporation, and its officers and agents, shall:

(a) Cease and desist from in any manner refusing to bargain collectively with the International Association of Machinists, District No. 8, affiliated with the American Federation of Labor, the exclusive

representatives designated therefor by its machinist employees, in respect to rates of pay, wages, hours of employment, or other conditions of employment.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act: Upon request, bargain collectively by entering into negotiations with the International Association of Machinists, District No. 8, affiliated with the American Federation of Labor, designated as their exclusive representatives for the purposes of collective bargaining by its machinist employees, as set forth in the findings of fact above, with the object of reaching an agreement covering rates of pay, wages, hours of employment and other conditions of employment.

2. The petition for certification of representatives, filed by International Association of Machinists, District No. 8 (Case No. R-21), is hereby dismissed.