rooms, and several plant food concessions. Such facilities are practically the only ones available to employees within the plant area. In accord with our practice, we find that the interests of commissary or restaurant employees are sufficiently related to those of the production and maintenance employees to warrant their inclusion in the unit.[18]

Accordingly we find that the following employees at the Employer's plants at Dayton and Washington Court House, Ohio, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees,[19] including the time writers, assistant clerks, head clerks, and factory clerks,[20] high school co-operative students, model makers, instrument repairmen in the instrument control laboratory, analyzers, inspection investigators, instructors, job leaders, subwatchmen, chauffeurs, and commissary employees, but excluding all office clerical employees, university co-operative students, technical employees, professional employees,[21] temporary employees at Old River and Sugar Camp,[22] all employees presently represented by the American Federation of Labor printing craft unions,[23] guards, job foremen, and all other supervisors as defined in the Act.[24]

[Text of Direction of Election omitted from publication in this volume.]

[18] *Kohler Company, supra,* and cases cited therein.

[19] The parties agree that the maintenance employees in the plant engineering department, the outside department employees, garage department employees, and group leaders, should be included within this category. It is clear from the record, and we find, that group leaders are not supervisors within the meaning of the Act.

[20] The parties agree that the 6 clerks in the receiving department and the 11 clerks in the traffic department should be included in this category.

[21] The parties agree that the registered nurses, the part-time dentist, and the two part-time physicians should be excluded in this category.

[22] In accordance with the agreement of the parties.

[23] Dayton Typographical Union No. 57; Dayton Electro-typers Union (Local No. 114) I. S. & U.; Dayton Photo-Engravers Union (Local No. 60); Dayton Stereotypers Union No. 15; and Dayton Printing Pressmen and Assistants' Union No. 24.

[24] If the Petitioner does not desire to participate in an election at this time, we shall permit it to withdraw its petition without prejudice upon notice to the Regional Director, within 10 days after issuance of the Decision and Direction of Election herein. *Flora Cabinet Company, Inc.,* 94 NLRB 12, and case cited therein.

POOLE FOUNDRY AND MACHINE COMPANY *and* LODGE 211, INTERNATIONAL ASSOCIATION OF MACHINISTS. *Case No. 5-CA-352. July 9, 1951*

Decision and Order

On March 9, 1951, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor

practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

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 Intermediate Report, the Respondent's exceptions and brief, and the entire record in the case,[1] and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the additions and modifications set forth below.

The Union was certified by the Board in 1946 as the collective bargaining agent of the production and maintenance employees of the Respondent, and thereafter executed 2 collective bargaining agreements with the Respondent on behalf of these employees. On December 27, 1949, the Union and the Respondent signed a settlement agreement disposing of charges which had been filed by the Union alleging, among other things, that the Respondent had refused to bargain with the Union in violation of the Act. This settlement agreement provided that the Respondent would bargain with the Union and would post notices at its plant for 60 days informing the employees of its intention to do so. The Respondent posted the required notices and met in 2 bargaining conferences with the Union in February 1950. No agreement resulted from these meetings. On March 9, 1950, certain employees of the Respondent filed a petition to decertify the Union.[2] On March 15 the Respondent was apprised by the Regional Office of the Board of the pendency of this petition. At its next bargaining conference with the Union, the Respondent assumed the position that in view of the pendency of the decertification petition, which allegedly was supported by 64 of the Respondent's 66 employees, it would not bargain with the Union unless the Union furnished proof that it actually represented a majority of the Respondent's employees. On April 19,1950, the Regional Director notified the parties that he was dismissing the decertification petition. The Petitioners appealed this dismissal to the Board which, on May 12, 1950, denied the appeal on the ground that the "Employer and the IAM are entitled to a reasonable time within which to effectuate the provisions of the settlement agreement executed in Case No. 5–CA–194 free from rival claims and petitions, which reasonable

[1] The request by the Respondent for oral argument is denied, because the record, exceptions, and brief, in our opinion, adequately present the issues and the position of the parties.
[2] 5–RD–42.

time has not yet elapsed." Despite this final dismissal of the decertification petition, the Respondent has admittedly continued to refuse to bargain with the Union on the ground that the Union had not proven its majority status.

The Trial Examiner found, and we agree, that this refusal was in violation of Section 8 (a) (5) and (1) of the Act.[3] As the Union had been certified in 1946 and as there is nothing to rebut the presumption established by the certificate that the Union's majority continued even after the certification year, we find that at the time of execution of the settlement agreement the Union continued to be majority representative of the Respondent's employees.[4] By executing the settlement agreement, the Respondent acknowledged its obligation to bargain with the Union. The issue here is how long after the execution of the settlement agreement that obligation continued.

It is well settled that after the Board finds that an employer has failed in his statutory duty to bargain with a union, and orders the employer to bargain, such an order must be carried out for a reasonable time thereafter without regard to whether or not there are fluctuations in the majority status of the union during that period.[5] Such a rule has been considered necessary to give the order to bargain its fullest effect, i. e., to give the parties to the controversy a reasonable time in which to conclude a contract. Similarly, a settlement agreement containing a bargaining provision, if it is to achieve its purpose, must be treated as giving the parties thereto a reasonable time in which to conclude a contract. We therefore hold that after providing in the settlement agreement that it would bargain with the Union, the Respondent was under an obligation to honor that agreement for a reasonable time after its execution without questioning the representative status of the Union. We further find that such a reasonable time had not yet elapsed when, on April 10, 1950,[6] the Respondent refused to bargain with the Union on the ground that it did not represent the majority of its employees.

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[3] The Trial Examiner notes in his Intermediate Report that the Respondent did not appeal the dismissal of the decertification petition by the Regional Director. As neither the Act nor the Board's Rules and Regulations, however, permit such action by an employer, no inference adverse to the Respondent can be drawn from its failure to appeal therefrom.

[4] *United States Gypsum,* 90 NLRB 964. The Trial Examiner states in his Intermediate Report that the Respondent *conceded* that the Union represented a majority of the Respondent's employees at the time the settlement agreement was executed. This statement is based upon an inference the Trial Examiner draws from a colloquy between himself and counsel for the Respondent. While we would not make the same inference from this colloquy, we find, for the reasons set forth above, that at the time of the execution of the settlement agreement the Union continued to be the representative of the Respondent's employees.

[5] *N. L. R. B.* v. *Tower Hosiery Mills,* 180 F. 2d 701, cert. den. 340 U. S. 811, and cases cited therein.

[6] The Intermediate Report finds that the first refusal to bargain occurred on April 11, 1950. However, the record establishes that the first refusal took place in the conference between the Respondent and the Union on April 10, 1950, which refusal the Respondent confirmed by a letter to the Union on April 11.

We do not agree with the Trial Examiner that such a refusal to bargain was justified until April 19, 1950, when the Respondent was informed by the Regional Director that the decertification petition had been dismissed. The test of the legality of the refusal to bargain in a case of this nature is whether or not a reasonable time has elapsed between the execution of the settlement agreement and the refusal to bargain, not whether or not the employer believed in good faith that a question concerning representation might exist.[7] Accordingly, we find that on April 10, 1950, the Respondent refused, and continues to refuse, to bargain with the Union in violation of Section 8 (a) (5) and (1) of the Act.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the Act as amended, the National Labor Relations Board hereby orders that Poole Foundry and Machine Company, Baltimore, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Lodge 211, International Association of Machinists, as the exclusive representative of all its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(b) In any manner interfering with the efforts of Lodge 211, International Association of Machinists, to bargain collectively with the Respondent.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Lodge 211, International Association of Machinists, as the exclusive representative of all the employees in the appropriate unit, and embody any understanding reached in a signed agreement.

(b) Post at its Baltimore, Maryland, plant, copies of the notice attached to the Intermediate Report marked "Appendix A."[8] Copies of such notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken

[7] The Board has held that where, as here, a petition is untimely filed, it raises no real question concerning representation. *Gulf Shipside Storage Corporation*, 91 NLRB 181.

[8] This notice, however, shall be and it hereby is amended by striking from the first paragraph thereof the words, "Recommendations of a Trial Examiner" and substituting in lieu thereof the words, "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Fifth Region, in writing, within ten (10) days from receipt of this Decision and Order, what steps the Respondent has taken to comply herewith.

Intermediate Report

STATEMENT OF THE CASE

Upon a charge duly filed by Lodge 211, International Association of Machinists, herein called the Union, the General Counsel of the National Labor Relations Board, herein respectively called General Counsel and the Board, by the Regional Director for the Fifth Region (Baltimore, Maryland), issued a complaint dated January 15, 1951, against Poole Foundry and Machine Company, Baltimore, Maryland, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charge were duly served upon the Respondent; copies of the complaint and notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices the complaint alleges, in substance, that the Respondent: (1) Since April 11, 1950, has continuously refused to bargain with the Union as the exclusive representative of all its employees in an appropriate unit; and (2) by such refusal has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act.

Thereafter the Respondent duly filed its answer, in which it denied having engaged in the unfair labor practices alleged, and in which it set forth certain affirmative allegations discussed more fully below.

Pursuant to notice, a hearing was held in Baltimore, Maryland, on February 6 and 7, 1951, before the undersigned duly designated Trial Examiner. The General Counsel and the Respondent were represented by counsel, the Union by officials. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

Counsel waived opportunity to argue orally before the Trial Examiner. Briefs have been received from General Counsel and the Respondent.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Poole Foundry and Machine Company is a Maryland corporation which owns and operates a plant in Baltimore, Maryland, where it is engaged in the business of machining and manufacturing couplings. During 1950 the Respondent purchased for use at its plant raw materials valued at more than $250,000, of which about 85 percent was shipped to it from points outside the State of Maryland. During the same period the Respondent produced finished products valued at more than $665,000, of which about 99 percent was sold and shipped to points outside Maryland.

II. THE LABOR ORGANIZATION INVOLVED

Lodge 211, International Association of Machinists, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The issues*

It is General Counsel's contention, opposed by the Respondent, that the Respondent was legally obligated to bargain with the Union for a period of at least a year following execution of a settlement agreement between the parties and approved by the Regional Director in December 1949, and that by declining to enter into a contract in April 1950, and thereafter, until the Union had proven its majority, the Respondent refused to bargain in good faith.

B. *The facts*

Following a Board election in 1946, the Union was certified as the exclusive bargaining representative for all employees of the Respondent in an appropriate unit. In 1947 and again in 1948 the parties executed 1-year agreements. During negotiations in 1949, the Union filed unfair labor practice charges against the Respondent.[1] In a letter to the Regional Director the Respondent denied engaging in unfair labor practices. On December 27, 1949, the Union and the Respondent signed a settlement agreement disposing of the charges, and the agreement was approved by the Regional Director.

In substance, the settlement agreement provided that the Respondent should post at its plant notices, for a period of 60 days, informing its employees that it would bargain collectively with the Union as the exclusive representative of all its employees in an appropriate unit, duly described. On March 6, 1950, the Respondent was notified, in writing, by a Board agent as follows:

> The completion of this posting period, and as there has been no reported violation of the other provisions of the Settlement Agreement, it appears that full compliance has been effected. Accordingly our files in the case are being closed.

Following execution of the settlement agreement, the Union first sought negotiations during the latter part of January 1950. A meeting was held on February 2. Various proposals were discussed and agreement was reached on a number of provisions. Another meeting was held on February 28, and again apparently amicable negotiations occurred. On March 21 the union representative, William J. Sheldon, forwarded to the Respondent's representative, Attorney John H. Hessey, certain counterproposals in accordance with an understanding reached at the previous meeting, and on March 27 Sheldon wrote to Hessey, seeking another meeting to discuss these counterproposals. The next day Hessey replied to this letter, stating that he had been in communication with a Board representative concerning a "petition filed by some of the employees," that he was to meet with this Board representative on April 3, and that after this conference he would "be in a position to confer" with Sheldon.

Hessey and Sheldon met again on April 10, at which time Sheldon was told, according to Hessey's credible testimony, that:

> . . . from all indications the Union did not represent the men, that I had received notice of the petition for decertification, that I had been advised

[1] Case No. 5–CA–194.

> that 64 out of the 66 employees had signed it, and that we felt if that were the situation, we ought to have proof of the fact that he (Sheldon) would represent them.

Sheldon declined to consent to an election. No contractual terms were discussed at this meeting. Hessey, as a witness, thus explained why no further negotiations took place:

> . . . because I said that any meetings we had would have to be without prejudice to any rights that we had, because we were going to take the position that they did not represent the men. We couldn't do that and bargain too.

On April 11 Hessey wrote to Sheldon, stating in part:

> . . . the Company feels that it should have positive assurance that District Lodge No. 12 does represent a majority of its employees before continuing negotiations.

Hessey and Sheldon met on April 28. Sheldon asked to "get the contract signed." Hessey testified:

> I then called his attention to my letter of April 11, and the fact that I can't bargain in view of the position which I have taken.

On May 12 Sheldon wrote to Hessey, requesting, among other things, that Hessey set dates for further negotiations. It does not appear that Hessey replied to this letter. In any event, Hessey testified that since April 11, 1950:

> I have not entered into any negotiation with Mr. Sheldon with respect to a new contract.

Relevant facts as to the decertification petition, revealed by documents from the Regional Office files and placed in evidence, show as follows. On March 9, 1950, 5 employees of the Respondent filed a petition for decertification at the Regional Office, claiming that 64 employees in the appropriate unit supported the petition.[2] On March 15 the Regional Director formally notified the Union and the Respondent that this petition had been filed, and that a field examiner had been assigned to investigate the matter. On March 29 a field examiner wrote to the petitioners, voicing hope that they had obtained legal counsel and had considered his recommendation that the petition be withdrawn without prejudice as being filed untimely. An informal conference was called, in the same letter, for April 3. On April 19 the Regional Director formally notified the petitioners, the Respondent, and the Union, that following investigation of the petition he was "dismissing the petition in this matter." On April 27, Thomas H. Hedrick, purporting to represent the petitioners, formally requested the Board to review the action of the Regional Director in dismissing the petition. On May 12, 1950, all parties were formally notified by the Executive Secretary of the Board that:

> The Board has considered your request for review of the Regional Director's refusal to issue Notice of Hearing in the above matter and has decided to sustain the Regional Director and dismiss the appeal for the reason that the Employer and the IAM are entitled to a reasonable time within which to effectuate the provisions of the settlement agreement executed in Case No. 5–CA–194 free from rival claims and petitions, which reasonable time has not yet elapsed.

C. *Conclusions*

The complaint alleges, the answer admits, the settlement agreement of December 1949 stated, and the Trial Examiner concludes and finds that a unit of the

[2] Case No. 5–RD–42.

Respondent's employees appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act consists of:

> All production and maintenance employees, including tool makers, machinists, machine operators, helpers and apprentices, except for office clericals, watchmen, and all supervisors as defined by the Act.

The complaint alleges that at all times since December 5, 1946, the Union has been the representative for the purposes of collective bargaining designated by a majority of the Respondent's employees in the appropriate unit. At the hearing counsel for the Respondent conceded, in effect, that at least as recently as December 27, 1949, the date of the settlement agreement, the Union was the majority representative.[3] The Trial Examiner concludes and finds that at all times material herein the Union has been, and is now, by virtue of Section 9 (a) of the Act, the exclusive representative of all the employees in the said unit for the purposes of collective bargaining.

The complaint alleges and counsel for the Respondent as a witness conceded, in effect, that since April 11, 1950, the Respondent has refused to bargain collectively with the Union as the exclusive representative of its employees. At the hearing, however, and in his brief, counsel for the Respondent urged that upon being informed by the Regional Office of the existence of the decertification petition the Respondent reasonably and in good faith declined to bargain further unless and until the Union again consented to an election.

The Trial Examiner finds merit in this contention only for the limited period from April 11 to April 19, 1950, the latter date being that of the Regional Director's formal notification to the Respondent that the decertification petition was dismissed. Until April 19 there appears to have been justification and merit in the Respondent's action, in view of the fact that on March 15 the Regional Director had notified it of the petition's existence. Once being formally advised, in effect, that any possible question as to representation was no longer being entertained by the Board's Regional Director, the Respondent refused to bargain at its own risk and responsibility. Its action from April 19 rested solely upon substitution of its own judgment for that of the Board agent. Congress vested in the Board alone the authority to determine whether or not a question of representation exists. The Respondent, so far as the record shows, filed no petition raising the question. Nor did the Respondent, also so far as the record shows, appeal the Regional Director's ruling upon the decertification petition. Finally, as noted above, the Respondent was notified by the Board itself that the Regional Director's action was sustained, and that "a reasonable time" had not yet elapsed "within which to effectuate the provisions of the settlement agreement . . . free from rival claims and petitions."

The Trial Examiner does not here presume to determine what period the Board considers to be "reasonable." It is clear, however, that even before the

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[3] This finding rests upon the following excerpt from the transcript:

TRIAL EXAMINER. Do you concede that they did at that time?

Mr. HEROLD. We didn't have any reason to believe that they did not have a majority at that time.

TRIAL EXAMINER. You did not raise any question as to majority?

Mr. HEROLD. No, sir, not at that time.

TRIAL EXAMINER. And the presumption is that you accepted their claim of majority, or you wouldn't have agreed to bargain with them.

Mr. HEROLD. That is correct.

TRIAL EXAMINER. That as of the date of the settlement, you in effect conceded that the Union did represent a majority?

Mr. HEROLD. That is the inference, I think, you might draw from that. We raised no question as to whether or not they had a majority at that time. We had no reason to believe they did not.

Board's ruling on May 12, and at all times since then, the Respondent has refused to bargain. By this action the Respondent has plainly refused to "effectuate the provisions of the settlement agreement."

In summary, the Trial Examiner concludes and finds that at all times since April 19, 1950, the Respondent has refused to bargain in good faith with the Union as the exclusive bargaining agent of all its employees in the appropriate unit. Thereby the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It has been found that the Respondent has refused to bargain collectively with the Union, thereby interfering with, restraining, and coercing its employees. It will therefore be recommended that the Respondent cease and desist therefrom and, also, that it bargain collectively with the Union with respect to wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed contract.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Lodge 211, International Association of Machinists, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees at the Respondent's Baltimore plant, including tool makers, machinists, machine operators, helpers and apprentices, excluding office clericals, watchmen, and supervisors as defined by the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Lodge 211, International Association of Machinists, was, on December 27, 1949, and at all times since has been, the exclusive representative within the meaning of Section 9 (a) of the Act of all employees in the aforesaid unit for the purposes of collective bargaining.

4. By refusing to bargain collectively with Lodge 211, International Association of Machinists, as the exclusive bargaining representative of the employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By said acts the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommended Order omitted from publication in this volume.]