Louis Rosenberg, Inc. *and* Bonnaz, Embroideries, Tucking, Pleating and Allied Crafts Union, Local 66, International Ladies' Garment Workers Union, AFL–CIO and Local 1614, International Brotherhood of Electrical Workers, AFL–CIO and Local 810, Steel, Metal, Alloys and Hardware Fabricators and Warehousemen, International Brotherhood of Teamsters, AFL–CIO, Parties to the Contracts.[1] *Cases Nos. 2–CA–5049 and 2–CA–5279. February 16, 1959*

DECISION AND ORDER

On March 28, 1958, Trial Examiner Reeves R. Hilton 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices and recommended that the complaint be dismissed with respect to such allegations. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications and additions.

The Trial Examiner found that the strike of August 17, 1956, had the dual purpose of seeking recognition for Local 66 as the bargaining representative of Respondent's employees and protesting the discriminatory discharge of employee Mary Boza. He also found that there was in existence at this time a contract between the Respondent and Local 1614, the provisions of which included a no-strike clause. On the ground that the first objective of the strike did not relate to an unfair labor practice,[2] the Trial Examiner held that the strike was unprotected under the *Mastro Plastics* doctrine.[3] The General

[1] The Unions appearing in the caption are herein respectively called Locals 66, 1614, and 810.

[2] The General Counsel, who alleged at the hearing that the Respondent violated Section 8(a)(5) of the Act by refusing to bargain with Local 66, excepts to the Trial Examiner's dismissal of this allegation only insofar as the Trial Examiner finds Local 66 to be a minority union. For the reasons stated in the Intermediate Report, we find in agreement with the Trial Examiner that there were in the appropriate unit 52 employees less than a majority of whom designated Local 66 as their representative.

[3] *Mastro Plastics Corp.*, 350 U.S. 270, 279–284, wherein the Supreme Court held that employees retain their right to strike in the face of a no-strike clause only if they strike *solely* against the unfair labor practices of the employer.

Counsel contends that the strike was protected under *Mastro Plastics* because its sole purpose was to protest Boza's unlawful discharge. As we find for other reasons set forth below that the strike was protected, it is unnecessary for us to reach or pass upon the propriety of the application of the *Mastro Plastics* principle in this proceeding.

The record shows that on June 14, 1955, the Respondent and Local 1614 executed a complete contract which contained a no-strike clause and provided for the negotiation of a new agreement 60 days prior to the expiration date of midnight June 14, 1956. The contract was signed by Norman Rosenberg, secretary-treasurer of the Respondent, Milton Silverman, Local 1614 business manager, and Local 1614 shop committee members who, in accordance with past practice, participated in the Union's negotiations with the Respondent. In the spring of 1956, Henry R. Malamy,[4] the Local 1614 representative, and the shop committee discussed a new contract with Rosenberg who indicated that he could not grant any of the Union's demands. The next meeting with Rosenberg was arranged by Malamy and took place at the latter's office on the evening of June 14, 1956, without the shop committee being present. At that time Malamy and Rosenberg signed a 1-year extension agreement, dated June 14, 1956, amending the contract which was due to expire that midnight.[5] It provided for a 30-day instead of a 3-week probationary period for employees, higher hourly starting and minimum wages, arbitration of unresolved issues pertaining to a "general increase," nightshift differential, holidays and vacations, and a continuation of all other terms in the prior contract. The agreement provided further that all terms agreed upon and/or awarded by the arbitrator should be effective and retroactive to June 15, 1956.

However, on the next day, June 15, Malamy and the shop committee met in Rosenberg's office where it appears no mention was made of the extension agreement.[6] According to Rosenberg, they "continued to negotiate" on substantially the same topics covered by the extension agreement.[7] Rosenberg took the position that he still could not grant anything that Local 1614 asked for and offered only to pay certain lower paid employees 5 cents above the minimum rate. When the employees at their meeting on the same day rejected the wage offer and voted for arbitration against Malamy's advice, the latter stated that they would be working without a contract. On

[4] As indicated in the Intermediate Report, Malamy did not testify at the hearing.

[5] The agreement was also subsequently signed by Josephine Johnson, shop steward, and Silverman as Local 1614 business manager.

[6] Rosenberg testified that he himself did not refer to the extension agreement and was not sure that Malamy did so. In addition, Shop Committee Member Boza and another employee, Alfonso Yambay, testified that they did not learn of the extension agreement until August 17 and 20, respectively.

[7] Boza also testified to this effect.

July 15, 1956, and on August 14, 1956, the employees again rejected wage offers made through Malamy and voted for arbitration.

It is clear from the foregoing that when Rosenberg and Malamy on June 14, 1956, departed from customary practice in meeting without the shop committee and signing the extension agreement they were engaging in formalities which were but empty gestures. That there was no actual meeting of the minds on the evening of June 14 is amply demonstrated by the continuation of full-scale negotiations the next day on the very same issues which presumably had been settled by the extension agreement. Moreover, as noted above, the apparent failure to refer to or rely on the extension agreement at the June 15 meeting indicates that little weight was attached thereto as a conclusive and binding agreement. It is also significant that Malamy warned employees on June 15 that they would be working without a contract if they did not at that time come to an agreement with the Respondent. Finally, it is evident from the repeated wage offers on June 15 and thereafter that this issue was kept open and that there was a failure to observe the June 15 effective date of the agreement for such a crucial item as wages.

Accordingly, we find that the extension agreement was a nullity from its inception. As the prior contract expired on June 14, 1956, we further find that, in the absence of an outstanding no-strike clause, the strike, which had as one of its objectives a protest against the discriminatory discharge of Boza, was protected as an unfair labor practice strike and the Respondent's failure to reinstate the strikers violated Section 8(a)(3) of the Act. We shall therefore order the Respondent to offer the following strikers immediate and full reinstatement to their former or substantially equivalent positions and make them whole for any loss of pay suffered as a result of the discrimination against them:[8]

Luisa A. Acosta
Luis A. Adorno
Carmen Alvarez
Mariana Benitez
Mary Boza
Leola Calder
Monseratte Limonte
Israel Maisonette
Concepcion Martinez
Joaquin Melendez
Carmen G. Moran
Heraclio Falci Nelson
Maria Montanez Ramos
Maria Rivera
Valentina Rivera
Felix Rosario
Elias Sanchez
Maria G. Solis
Gregoria Torres
Pedro Torres
Alfonso Yambay

[8] As the Trial Examiner found that only Mary Boza was discriminated against, we shall, in accordance with our usual policy, exclude the period from the date of the Intermediate Report to the date of the Order herein in computing back pay for all the listed strikers except Boza. *Fry Products, Inc.*, 110 NLRB 1000, 1005.

We agree with the Trial Examiner that the Respondent's union-shop contract with Local 810, covering a single employee, was not unlawful.

Contrary to our dissenting colleagues, we agree with the Trial Examiner that the statute does not preclude representation of individual employee units by an authorized representative. In this respect the dissenting opinion of Member Bean misconstrues the *Luckenbach Steamship* case (2 N.L.R.B. 192) cited therein, by omitting several significant sentences. The relevant language from that decision follows:

> The National Labor Relations Act creates the duty of employers to bargain collectively. But the principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain. The Act therefore does not empower the Board to certify where only one employee is involved. *This conclusion does not mean that a single employee may not designate a representative to act for him; he had such a right without the Act, and the Act in no way limits that right. By the same token, this conclusion in no way limits the protection which the Act otherwise gives such an employee.* [Emphasis supplied.]

The fact that the Board will not certify a one-man unit does not, of course, mean that the unit is inherently inappropriate under Section 9(a) of the Act. It is a basic rule of statutory construction that the plural includes the singular, unless the context indicates otherwise. Code of Laws of the United States, title I, chapter 1, section 1. We do not believe that Section 9(a) of the Act requires the interpretation that an individual employee is foreclosed from bargaining with his employer, if he so desires, through an outside representative.

ORDER

Upon the entire record in this proceeding and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Louis Rosenberg, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in and activities on behalf of Bonnaz, Embroideries, Tucking, Pleating and Allied Crafts Union, Local 66, International Ladies' Garment Workers Union, AFL–CIO, or any other labor organization, by discharging employees or in any other manner discriminating against its employees in regard to their hire or tenure of employment.

(b) Interrogating its employees concerning their membership, affiliation, or sympathy with the above or any other union.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Bonnaz, Embroideries, Tucking, Pleating and Allied Crafts Union, Local 66, International Ladies' Garment Workers Union, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, or to refrain from engaging in such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized in Section 8(a)(3) of the Act.

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

(a) Offer to Luisa A. Acosta, Luis A. Adorno, Carmen Alvarez, Mariana Benitez, Mary Boza, Leola Calder, Monseratte Limonte, Israel Maisonette, Concepcion Martinez, Joaquin Melendez, Carmen G. Moran, Heraclio Falci Nelson, Maria Montanez Ramos, Maria Rivera, Valentina Rivera, Felix Rosario, Elias Sanchez, Maria G. Solis, Gregoria Torres, Pedro Torres, Alfonso Yambay, immediate and full reinstatement to their former or substantially equivalent positions and make them whole for any loss of pay suffered as a result of the discrimination against them in the manner described above.[9]

(b) Post at its plant at New York City, copies of the notice attached hereto, marked "Appendix."[10] Copies of said notice, to be furnished by the Regional Director for the Second Region, shall, after being duly signed by the Respondent's official representative, be posted immediately upon receipt thereof, and be maintained by the Respondent for a period of at least 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notice shall not be altered, defaced, or covered by any other material.

(c) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records necessary or useful to analyze the amount of back pay due and the rights of the strikers under the terms of this Order.

(d) Notify the Regional Director for the Second Region in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply therewith.

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[9] *F. W. Woolworth*, 90 NLRB 289.

[10] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

IT IS FURTHER ORDERED that the complaint be and hereby is, dismissed insofar as it alleges that the Respondent violated Section 8(a) (2) and (5) of the Act.

MEMBER BEAN, dissenting in part:

I am unable to agree with my colleagues of the majority in affirming the Trial Examiner's finding that the Respondent did not violate the Act by making a union-security contract for the one chauffeur. It seems quite apparent, and my colleagues appear to agree, that, *prima facie*, the Respondent thereby unlawfully encouraged union membership by discrimination in regard to tenure of employment. It appears equally clear to me that the Respondent cannot justify this discrimination on the ground of the proviso to Section 8(a)(3), which authorizes the making of a union-security contract only with a labor organization which is the "representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement."

That one employee may not constitute an appropriate unit for collective bargaining was settled in *Luckenbach Steamship Co., Inc.*, 2 NLRB 192, 193, in which the Board held that:

> The National Labor Relations Act creates the duty of employers to bargain collectively. But the principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain. The Act therefore does not empower the Board to certify where only one employee is involved. . . .

This decision as well as the plain meaning of the statute, which contains the word "employees" in the plural, makes it clear that there is here no statutory foundation for the existence either of an exclusive bargaining contract or a union-security contract since there is lacking an indispensible party to such a contract.

The legislative purpose which the Congress had in mind in providing for a union-security contractual provision was to compel the minority of the employees within the unit, who were represented by the exclusive bargaining agent without their consent, to pay their proportionate share of the cost of collective bargaining. It being clear to me that a one-man unit is inappropriate for collective-bargaining purposes and does not fall within the statutory authorization for a union-security contract, I believe the purpose of the compulsory exaction is defeated and such contract may well infringe upon the employee's negative right guaranteed by Section 7 by compelling membership and the payment of dues and initiation fees without the correspondent benefit of collective bargaining on the part of such single employee.

The majority does not dispute my observation that the Act permits a union-shop contract to be made only by the collective-bargaining

representative as provided in Section 9(a), and that the Union is not such a representative because but *one* chauffeur is here involved. When the majority dispute only a statement that I do not make, to wit—that the Act precludes or forestalls *bargaining* for a single employee unit—they scarcely have done other than admitting the validity of my point as applied to a *union-security contract.*

MEMBER JENKINS, dissenting in part:

I agree with Member Bean that the Respondent violated the Act by executing and maintaining a union-security contract covering one employee. In so doing I rely exclusively on the clear and unambiguous language of the proviso clause of Section 8(a)(3) which states that any security clause in derogation of the rights of employees conferred in Section 7 may only be incorporated in the appropriate collective-bargaining unit. The Board has repeatedly and consistently held that a single employee cannot constitute an appropriate bargaining unit.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discharge or otherwise discriminate against any employee for the purpose of discouraging membership in Bonnaz, Embroideries, Tucking, Pleating and Allied Crafts Union, Local 66, International Ladies' Garment Workers Union, AFL–CIO, or any other labor organization.

WE WILL NOT interrogate our employees concerning their membership, affiliation, or sympathy with the above or any other union.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection and to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

WE WILL offer to Luisa A. Acosta, Luis A. Adorno, Carmen Alvarez, Mariana Benitez, Mary Boza, Leola Calder, Monseratte Limonte, Israel Maisonette, Concepcion Martinez, Joaquin Melendez, Carmen G. Moran, Heraclio Falci Nelson, Maria

Montanez Ramos, Maria Rivera, Valentina Rivera, Felix Rosario, Elias Sanchez, Maria G. Solis, Gregoria Torres, Pedro Torres, Alfonso Yambay, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination against them.

All employees are free to become, remain, or to refrain from becoming or remaining members in good standing in the above-named union or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

LOUIS ROSENBERG, INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon separate charges, as amended, filed by Bonnaz, Embroideries, Tucking, Pleating and Allied Crafts Union, Local 66, International Ladies' Garment Workers Union, AFL–CIO, herein called Local 66, the General Counsel of the National Labor Relations Board, through the Regional Director for the Second Region (New York City), issued an order consolidating the cases, a notice of hearing, and complaint, dated April 29, 1957, against Louis Rosenberg, Inc., herein called the Respondent or the Company and Local 1614, International Brotherhood of Electrical Workers, AFL–CIO, party to the contract, herein called Local 1614. Copies of the charges, order of consolidation, complaint, and notice of hearing were duly served upon the Respondent and Local 1614. In brief, the complaint alleges that on or about August 16, 1956, and thereafter, the Respondent, by unlawfully interrogating and theatening its employees with discharge because of their membership in or activities on behalf of Local 66, by discharging Mary Boza, by refusing to reinstate 21 striking employees, by executing and maintaining a collective-bargaining agreement with Local 1614, containing a union-shop provision, at a time when Local 1614 was not the duly designated bargaining representative for the employees, and by refusing to bargain with Local 66 for its employees in a unit appropriate for the purposes of collective bargaining, thereby engaged in conduct in violation of Section 8(a)(1), (2), (3), and (5) of the Act. The answer while admitting certain allegations of the complaint denies the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before the duly designated Trial Examiner in New York City on November 12, 1957, and all parties were represented by counsel. Prior to that date the General Counsel, by letter dated November 8, 1957, advised the parties and counsel that on November 12, he would, "by appropriate motion or order," amend the complaint by adding Local 810, Steel, Metal, Alloys and Hardware Fabricators and Warehousemen, International Brotherhood of Teamsters, AFL–CIO, as party to the contract, herein called Local 810, and that the Respondent by executing and maintaining a collective-bargaining agreement with Local 810 covering one chauffeur, when Local 810 did not represent that employee, thereby violated Section 8(a)(1) and (2) of the Act. At the opening of the hearing the General Counsel presented an order signed by the Regional Director, dated November 12, amending the complaint in the manner described above. Counsel for the Respondent and Local 1614 questioned the authority of

the Regional Director, under the Board's Rules, to amend the complaint in these circumstances and also pointed out that no charges or amended charges had been filed against Local 810. In substance, counsel conceded that the filing of a new charge or amended charge might not be essential in view of the Supreme Court's holding in the *Consolidated Edison* case.[1] In ruling upon the amendment I construed the letter of November 8, and ensuing order as either an appropriate amendment by the Regional Director prior to the opening of the hearing, or as a motion to amend the complaint addressed to the Trial Examiner, which I granted subject to a reasonable time within which Local 810 and the parties might prepare their respective cases. Accordingly, the hearing, with the consent of counsel, was thereupon continued until December 9, 1957. On the latter date the hearing was resumed and concluded on December 12. All the parties were represented by counsel and were afforded opportunity to be heard, to introduce relevant evidence, to present oral argument and to file briefs. At the conclusion of the General Counsel's case, counsel for the Respondent moved to dismiss the complaint, which I granted in respect to those portions of the complaint alleging the Respondent had unlawfully refused to bargain with Local 66, for the reason that the General Counsel failed to establish that Local 66 had been designated as the bargaining representative by a majority of the employees in the unit alleged. Counsel failed to file briefs.

After the close of the hearing the General Counsel filed a motion to withdraw the complaint, dated January 10, 1958, on the basis of a settlement agreement providing for the posting of notices and an offer of reinstatement to Mary Boza, plus $150 for any loss she may have sustained by reason of her discharge. The settlement agreement was signed by all parties, except Local 66, and was approved by the Regional Director.[2] On January 20, I duly notified all counsel and Local 66, that oral argument would be held on the General Counsel's motion to withdraw the complaint on January 30, 1958, at a designated time and place at New York City. Counsel for the General Counsel and the Respondent appeared at the oral argument but counsel for Local 66 neglected to make an appearance. At the conclusion of the argument I denied the motion.[3]

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE COMPANY'S BUSINESS

The parties stipulated that the Company, a New York corporation, maintains its office and place of business in New York City where it is engaged in the manufacture, sale, and distribution of leather covered and metal buckles, covered novelties, and related products. During the year ending September 30, 1956, the Company manufactured, sold, and distributed products valued in excess of $190,000, of which products valued in excess of $43,000 were shipped directly to customers in States other than the State of New York, and products valued at more than $57,000 were furnished to companies, each of whom annually produces, ships, and delivers goods, or furnishes services, valued in excess of $50,000 outside the State wherein the particular company is located. The Company concedes the interstate character of its operations. I find the Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.[4]

II. THE LABOR ORGANIZATIONS INVOLVED

Local 66, Local 1614, and Local 810, are each labor organizations within the meaning of Section 2(5) of the Act.

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[1] *Consolidated Edison Company of New York, et al.* v. *N.L.R.B.*, 305 U.S. 197, 231–239.

[2] The agreement which was received in evidence as part of Trial Examiner's Exhibit No. 1 is neither dated nor signed, so I am substituting an executed copy of the agreement which was filed with me in lieu of the document actually received in evidence.

[3] It was the General Counsel's position that if the motion was granted the Regional Director would withdraw the complaint then dismiss the charge, thereby preserving the Charging Party's right of appeal. I denied the motion for the reason that Section 102.9 of the Board's Rules and Regulations provides that after hearing the charge may be withdrawn "upon motion with the consent of the Trial Examiner" and the Board has held such motion must be filed by the Charging Party. (*Chauffeurs, Teamsters, Warehousemen and Helpers Local No. 135, etc. (Marsh Foodliners, Inc.)*, 114 NLRB 639, 640, footnote 1. See also, *Marine Engineers Beneficial Association No. 13 (Taylor & Anderson, et al.)* v. *N.L.R.B.*, 202 F. 2d 546 (C.A. 3).)

[4] *The Brass Rail, Inc.*, 110 NLRB 1656; *Pacific Fine Arts*, 116 NLRB 1607.

III. THE UNFAIR LABOR PRACTICES

A. *The agreements between the Company and Local 1614 and Local 810*

Norman Rosenberg, secretary-treasurer of the Company in charge of the business, stated that the Company and Local 810 had a collective-bargaining agreement covering all its employees, exclusive of office and clerical help, salesmen, and nonworking supervisory employees, effective from June 5, 1953, to June 15, 1954. On June 16, 1954, the parties executed an agreement providing for a general wage increase of 5 cents per hour and maintaining in effect all other terms in the above agreement until June 15, 1955. On May 24, 1955, the parties signed a similar agreement extending the contract to June 15, 1956. However, on June 14, 1955, the Company and Local 1614 executed a complete agreement, containing a union-security clause and checkoff of union dues, covering the employees in the unit described above, effective until midnight June 14, 1956. The original agreement between the Company and Local 810, the first extension thereof, and the agreement between the Company and Local 1614, were signed by Rosenberg and Milton Silverman as representative of the respective locals and the shop committee.

B. *The pleadings in respect to the succeeding agreements and the alleged refusal to bargain with Local 66*

The complaint, as amended, alleges that sometime subsequent to August 17, 1956, the Company and Local 1614, executed an agreement covering all its employees, excluding office and clerical employees, a chauffeur, salesmen, guards, professional employees, and supervisors although Local 1614 had not been designated as the representative by a majority, or an uncoerced majority, of the employees in that unit or a unit including the chauffeur. There is also an allegation that sometime subsequent to August 17, 1956, the Company and Local 810 executed an agreement covering one chauffeur although Local 810 had not been designated by the chauffeur and that the unit was an inappropriate one for the purpose of collective bargaining. Each of the agreements contained a union-security clause.

The amended complaint further alleges that on and after August 17, 1956, the Company refused to bargain collectively with Local 66, which had been selected by a majority of the employees in an appropriate unit consisting of all employees, exclusive of office clerical employees, salesmen, guards, professional employees, and supervisors as defined in the Act.

These allegations are generally denied in answers filed by the Company, Local 1614 and Local 810.

C. *The evidence on these issues*

Rosenberg testified that about 2 weeks prior to the expiration of the contract, June 15, 1956, Henry R. Malamy, representative for Local 1614 came to his office and presented demands for a new agreement, which they discussed. Malamy also stated that the chauffeur should be a member of Local 810, which was satisfactory to the chauffeur, and Rosenberg replied it made no difference to him, except that any benefits obtained by the other employees would be given to him. The members of the shop committee, Josephine Johnson, Mary Boza, and Vera Baker, were then called in and the discussion of the demands continued. It is not clear just how the meeting ended. Nothing further occurred until the afternoon of June 14, when Malamy telephoned Rosenberg to explain that he had been unable to see him and since the contract was about to expire he wanted to discuss the matter that day. Rosenberg told him he could not come to the plant because the employees had been sent home early (because of a subway strike) and suggested they meet the first thing in the morning. Malamy said he could not meet at that time, so they agreed to meet at Malamy's office that evening, which they did, without the shop committee being present. Rosenberg first testified the only reason for the meeting was to sign an extension of the agreement, that "We didn't actually discuss anything" and the committee members did not attend because this was not a negotiating session. Later he said he and Malamy went over the terms on which they were in agreement as well as those not agreed upon and Malamy had an agreement drawn up, dated June 14, 1956, which they signed. This agreement provides for the extension of the contract to June 15, 1957, a higher hourly starting and minimum rate, arbitration of unresolved issues pertaining to general wage increases, night shift differential, holidays and vacations, and that all other terms in the prior agreement remain the same. The agreement bears the signatures of Silverman and Johnson as shop steward. Rosenberg admitted Silverman did not sign the extension agreement in his presence and he was not questioned in regard

to Johnson's signature. Although Local 810 had no contract with the Company at that time, an agreement was signed by Rosenberg and Malamy containing the same language as the agreement with Local 1614, except that it specifies the pay rate for the chauffeur and excludes the provision setting forth the issues to be arbitrated. However, the parties agreed that the arbitrator's award should be effective insofar as the chauffeur was concerned. The agreement also bears the signature of Silverman, as president of Local 810, but he did not sign in Rosenberg's presence. Rosenberg stated he received both agreements signed by Silverman a day or so after he had signed them, and specifically denied Silverman signed the agreements after August 17.

In substance, Silverman testified he signed agreements in the past with the Company for both Local 1614 and Local 810, and since the extension agreements were dated June 14, he probably signed them on that date or the following day.

On June 15 Rosenberg met with Malamy and the committee at which time they discussed a general wage increase, night differential, and additional holidays and vacations. The subject of a pension plan was also brought up but rejected by the Company. Since Rosenberg had automatically raised the pay rate of employees in some classifications to meet the requirements of the minimum wage law, and he had to pay that rate to newly hired employees, he agreed with Malamy and the committee that experienced employees in those classifications should be paid 5 cents an hour above the minimum rate. Rosenberg was not certain whether any mention was made of the extension agreements at the meeting. There is no evidence concerning the manner in which the meeting concluded.

About August 14, Rosenberg, Malamy and the shop committee appeared at a hearing held before an arbitrator of the New York State Mediation Board on the unresolved issues outlined above and sometime thereafter the arbitrator entered his award in the matter.[5] Rosenberg said that the subject of the extension agreement was brought out at the hearing. He also stated that the Company may have signed a complete agreement after the issuance of the award.

Boza was employed by the Company for about 12 years prior to her discharge on August 15, 1956, and was, and had been for several years, a member of the shop committee during 1956. She stated that in April or May 1956, Malamy and the committee met with Rosenberg for the purpose of negotiating a new agreement and that they discussed wage increases, vacations, and a few other items. Rosenberg told the group he could not grant any of these requests and the meeting apparently ended. Boza did not see Malamy until June 15, when he came to the plant and he and the committee met with Rosenberg. The contract was again discussed but no agreement was reached and Rosenberg asked them to go along with him for another year. Malamy and the committee then left and a meeting of all the employees was held in the rear of the plant at which time Malamy asked the workers to accept an increase covering the lower paid employees, but not the older employees. When the workers expressed dissatisfaction with the suggestion Malamy told them the only alternative was arbitration.. The employees voted on the question and decided in favor of arbitration of the matter. Malamy stated they would be working without a contract and the meeting ended. On July 15, Malamy came to the plant and informed Boza he would ask Rosenberg for a general wage increase of 5 cents an hour if it was all right with her and she told him to talk to the employees, which he did. Some of the workers asked Boza about the increase, so she reported the matter to Johnson, the shop steward. Johnson went to Malamy, who was at the door of the office, and he came back to where the employees had gathered. The workers then voted on whether it was a 5-cent increase or arbitration and a majority voted in favor of arbitration. On August 14, Malamy came to the plant and when the employees again voted for arbitration Malamy told Johnson, Baker, and Boza the arbitration hearing was set for that morning and to attend the hearing with him. This group and Rosenberg were present at the hearing but were unable to reach any agreement so the arbitrator was to decide the matter. Although Boza knew that previous contracts had been extended by agreement of the parties she did not know or learn of any extension of the 1955–56 contract until about August 17.

Alfonso Yambay, an employee and a member of Local 1614, testified substantially the same as Boza in respect to the meeting of the employees with Malamy on June 15, and added that Malamy told the employees if they wanted arbitration they would be working without a contract. He also stated that on August 14,

[5] Although I denied motions to quash *subpoenas duces tecum* served upon the Company and Local 1614 to produce the award and overruled company counsel's objection to questioning Rosenberg on this subject, the General Counsel did not pursue the matter beyond this point.

Malamy met with the employees at the plant and offered them a 5-cent an hour increase. When the employees refused to accept the offer, Malamy stated they would have to go to arbitration. Yambay said the first time he heard of any agreement between the Company and Local 1614 was about August 20, when the Company posted a sign to the effect while the employees were engaged in a strike sponsored by Local 66, under circumstances set forth below. He stated he first saw the contract on August 23, when Malamy presented it to the employees at a meeting held in connection with the strike. When the employees asked why he had not shown them the contract on June 15, Malamy gave no direct answer and stated the meeting was called for another purpose.

Neither Malamy nor Johnson testified at the hearing.

D. *The discharge of Boza and subsequent events*

Boza testified that in early August the employees were dissatisfied with Local 1614 because Malamy had not been to the plant, so on August 10, she and another employee, Beatrice Meyers, went to Local 66 and spoke to Morris Fudin and Murray Gross, manager-secretary of the Local. As a result of their visit Gross scheduled a meeting for the employees for the evening of August 15.

Boza reported for work as usual on August 15, and about 11 o'clock in the morning Foreman Joseph Rifkin told her to report to Rosenberg. Boza went to the office where she met Rosenberg, Johnson, Baker, and Ira Rosenberg. Rosenberg asked her if she was attempting to bring in a new union and trying to get the employees to attend a union meeting set for that day. Boza stated she had heard rumors to that effect and when Rosenberg inquired if it was true, she answered it was not. Rosenberg told her to change her clothes, that she was fired, and instructed Rifkin, who had entered the office, to accompany her to the ladies' room, not let her speak to anyone and bring her back to the office to be paid off. Rifkin carried out these instructions and Boza was discharged. That evening Boza met some of the employees as they were leaving the building and they asked if she was still going to the union meeting. Boza said she was going, so she and eight other employees went to the office of Local 66 and met Gross who discussed and showed them a Local 66 contract. The nine individuals then signed application cards for membership in Local 66.

On August 16, Boza went to the building where the plant was located and met some employees who told her the workers had held a meeting and would not return to work unless she was reemployed.

On August 17, she stated about 19 or 20 employees, out of 30 or 35 employees, picketed in front of the building and continued to picket for about 7 weeks.

Yambay stated that about 11:50 the morning of Boza's discharge Rosenberg called a meeting of all the employees and announced he had fired Boza under authorization of Local 1614 and if anyone wanted to follow Boza he or she could do so. Yambay asked the reason for Boza's discharge and Rosenberg replied she was trying to bring another union into the shop and that he disagreed with her action because he knew Local 1614 was a better union for the employees. After talking to some of the employees Yambay inquired if Rosenberg would reinstate Boza provided they were willing to forget about Local 66 and he stated he would not reinstate Boza under any circumstances, that he would shut down before doing so. An argument ensued between Yambay and Rosenberg during which he accused Yambay of being Boza's assistant, that he should be fired and the meeting finally ended. The next day Yambay worked for about 4 hours, only nine employees reported, then went home. Later he went to the office of Local 66 where he met Boza and some other employees. After talking to union officials, a majority of the employees decided not to return to work unless Boza was reinstated and to go along with Local 66, rather than Local 1614. On August 17, the employees went on a strike which lasted for about 7 weeks.

Gross said he talked to Boza and other employees on August 15, and introduced them to George Triestman, business agent and organizer for Local 66. Triestman testified he spoke to the employees on August 15 and 16, and that 19 of them signed applications for membership, which he turned over to Gross. On August 17, Gross telephoned Rosenberg to inform him that he represented a majority of the employees and requested that he meet with him. Rosenberg said he was dealing with another union and would contact him later. Rosenberg made no mention of any agreement with Local 1614. Shortly thereafter Malamy called Gross and gave him an argument for bothering Rosenberg. The same day Gross sent a letter to Rosenberg confirming his telephone conversation and requesting a meeting for the purpose of discussing an agreement. A few days later Gross received a

letter from Rosenberg, dated August 20 ,stating that the Company had an agreement with Local 1614, which did not expire until June 15, 1957.

Rosenberg said that on August 15, he discussed Boza's activities with Johnson and Baker, of the union committee, and they agreed to her discharge. He then called in Boza and fired her, in the presence of the committee and possibly Rifkin, for the reason, as he explained to her, that she was soliciting for another union, during working hours, which he did not believe to be right because the Company had an agreement with Local 1614. Admittedly, the Company had no rule regarding solicitation. Shortly thereafter, Rosenberg called a meeting of the employees and advised them that Boza had been discharged for trying to bring in another union, which was wrong for she knew the Company had an agreement with Local 1614 and had attended an arbitration hearing the day before. He further stated that if any of the employees agreed with Boza and did not like working for the Company, they were free to leave.

On August 16, the employees picketed at the freight and passenger entrances of the building. On August 17, Gross telephoned Rosenberg to state he represented a majority of the employees and requested a meeting with him. Rosenberg answered he had an agreement with another union, that he could not negotiate with him, but would call him back. Rosenberg notified Malamy, who came to the plant, whereupon Rosenberg called Gross and repeated his previous position. He then gave the phone to Malamy who stated he represented the union having the agreement with the Company. Rosenberg admitted an exchange of letters with Gross concerning the representation of the employees.

E. *The strike*

As appears above, Boza and Yambay said the strike lasted about 7 weeks and Rosenberg estimated picketing continued for some 2 weeks. Rosenberg testified that the Company filed a complaint against Local 66 and the strikers for injunctive relief in the Supreme Court of the State of New York, New York County. According to the undisputed statement of counsel for the Company, the complaint was filed about August 27, 1956. Thereafter oral argument was had on some unspecified date and later the Court issued an opinion, again the date is not stated, granting an injunction *pendente lite.* On September 24, the Court entered its order in the case. Company counsel stated, without challenge, that picketing ceased the date the opinion was handed down, whatever date that was.

Boza could not recall the wording of the picket signs but admitted she signed an affidavit in connection with the State court proceedings to the effect that the employees were on strike "to better their lot and to protest my discharge." After examining a photograph of the picket scene, Boza said one of the signs read "on strike for better conditions" Local 66. In substance Boza testified she would not have returned to work unless the Company recognized Local 66, because she believed she needed protection in her job.

Yambay stated that at a meeting on August 16, the employees agreed to strike to secure the reinstatement of Boza and recognition of Local 66. He further stated that he performed picket duty and that 2 signs were carried; 1 contained the phrase "unfair labor practice" and the other "better working conditions."

Gross testified that Boza's discharge caused the strike and if the Company had been willing to reinstate her Local 66 would have petitioned the Board for an election. In its answer filed in the State court action, executed by Gross, Local 66 averred that a majority of the employees were on strike in protest of the Company's "unfair labor practices and to obtain better wages, hours and other working conditions." According to the answer the placards carried by the pickets read:

WORKERS OF
LOUIS ROSENBERG, INC.
395 Broadway
ON STRIKE
For Better Conditions
EMBROIDERERS UNION
Local 66, I.L.G.W.U.
A.F. of L. C.I.O.
225 W. 39th St.

1. The offer of reinstatement to the strikers

Rosenberg asked the strikers to return to work when they came in for their pay on August 17, and later authorized Malamy to make similar offers to them.

Boza said that about 1 week after the commencement of the strike Malamy called a meeting of the striking employees at the office of Local 1614, and practically all the strikers attended as well as a representative of Local 66. Boza testified that Malamy "said a lot of things," but she could not remember just what he did say, other than to offer the strikers a pay increase. She could not recall whether Malamy announced he was authorized to offer reinstatement to the strikers at the same rate of pay and without loss of seniority.

Yambay attended the above meeting, held about August 23, at which time Malamy told the strikers that while he did not consider them as employees and did not care what happened to them, he was authorized by Rosenberg to offer them reinstatement. Malamy then "read out the union membership cards of all of us and our addresses," for the purpose of sending out union newspapers, but he did not mention Boza's name.

2. The demand of Local 66 for reinstatement of the strikers

Rosenberg conceded that he received a letter, dated September 24, 1956, from counsel for Local 66, wherein application for reinstatement was made on behalf of 21 striking employees, including Boza. Counsel stipulated the Company did not reinstate any of the strikers.

F. *The appropriate bargaining units and the representative of the employees*

In substance the amended complaint alleges that Local 1614 did not represent a majority, or an uncoerced majority, of all the employees, with the usual exclusions, when it signed an agreement with the Company sometime after August 17, 1956. The amended complaint also alleges that a unit consisting of a single chauffeur, as specified in the agreement with Local 810, executed sometime after August 17, is inappropriate for the purposes of collective bargaining.

On the basis of the record I find that a unit consisting of all employees, excluding office clerical employees, salesmen, guards, professional employees, and supervisors is appropriate for the purposes of collecting bargaining. I am of the opinion, and find, that the foregoing unit excluding the chauffeur is also an appropriate unit. The General Counsel contends that the Company's agreement with Local 810 is invalid for the reason that the unit of a single employee is inappropriate. While it is true the Board will not certify a union, or direct an election, in a unit involving but one employee [6] there is nothing in the Act which prohibits an employer and a union from entering into an agreement covering a single employee.

Rosenberg submitted an affidavit in support of the injunction action wherein he stated that the employees commenced picketing on August 16, and at that time the Company had 27 employees in its shop, 4 in the receiving and shipping department, all included in the agreement with Local 1614, and 1 chauffeur covered by the contract with Local 810. Rosenberg explained that while the affidavit reflects the number of employees working that day, he did not check the payroll to ascertain the precise number of employees thereon nor the exact number of employees working that date. The payroll and daily timecards of the Company, for the period August 8 through August 21, were produced at the hearing and examined fully by counsel. These records disclose that during this period the Company had 52 employees in the foregoing unit or units.[7] According to Rosenberg all of the employees, with the exception of four who had been employed for less than 30 days, were members of Local 1614 or Local 810, at that time. Rosenberg also produced dues checkoff authorizations for Local 1614, signed by 28 employees covering the period June through August 1956.[8]

As already stated I granted the Company's motion to dismiss the alleged refusal to bargain with Local 66, for the reason that Local 66 did not represent a majority of the employees on and after August 17, when it requested recognition. In opposing the motion the General Counsel argued that Local 66 had established its majority for, according to Rosenberg's affidavit, there were 32 employees in the unit, and it produced 19 applications for membership signed by employees in the

[6] *Producers Rice Mill, Inc.*, 106 NLRB 119, 122.

[7] The records show the number of employees who actually worked on the respective dates as follows: August 8, 40; August 9, 42; August 10, 40; August 13, 39; August 14, 39; August 15, 30; August 16, 22; August 17, 13; August 20, 20; and August 21, 22. Rosenberg said about 20 percent of the total working force was usually absent.

[8] The authorizations were not offered in evidence by the General Counsel.

unit. While the averments in Rosenberg's affidavit might be considered as a factor in determining the number of employees in the unit, they are by no means conclusive or controlling of the issues. In view of Rosenberg's explanation of his affidavit and the payroll and daily timecards of the Company, I find that there were 52 employees in the unit and Local 66 had not been designated as the bargaining representative by a majority of the employees therein. I find that the evidence fails to support the allegations of the complaint that Local 1614 and Local 810, did not represent a majority of the employees in the units described above. On the contrary I find that Local 1614 and Local 810 were the duly designated representatives in the respective bargaining units at all times material.

Concluding Findings

Rosenberg conceded Boza was discharged because of her activities on behalf of Local 66. I, therefore, find that by discharging Boza for that reason the Company violated Section 8(a)(3) and (1) of the Act. By interrogating Boza concerning her activities in respect to Local 66, I find the Company violated Section 8(a)(1) of the Act. Company counsel contends that since Boza was offered reinstatement by Malamy, who was authorized to do so by the Company, it should not be required to make another offer of reinstatement to her. The testimony of Yambay reveals that Malamy called a meeting of the strikers around August 23, at the office of Local 1614, at which time he declared he was authorized to offer reinstatement to the strikers and then called out their names and addresses, for the purpose of sending union newspapers to them. Yambay specifically stated that Boza's name was not even mentioned at the meeting. On the basis of Yambay's undisputed testimony, I find no valid offer of reinstatement has been made to Boza.

Shortly after Boza's discharge, Rosenberg informed the employees Boza had been discharged for attempting to bring in another union and if they were in agreement with Boza, they could leave the Company. Yambay testified to the same effect and added that Rosenberg announced he would shut down the plant before reinstating Boza. I find that by engaging in this conduct the Company violated Section 8(a)(1) of the Act.

Having found that Local 1614 and Local 810, were the statutory representatives of the employees in appropriate units, the next question to be determined is whether a preponderance of the evidence supports the General Counsel's position that the agreements were not executed until sometime after August 17, 1956. The only evidence as to the date of the execution of the agreements comes from Rosenberg and Silverman. Although Rosenberg definitely stated he and Malamy signed the agreements on June 14, portions of his testimony are inconsistent. Thus, at the outset of his testimony he said his meeting with Malamy was for the sole purpose of signing extension agreements, therefore the shop committee was not present, nevertheless they did discuss contract terms and finally agreed on the issues to be submitted to arbitration. Again, while the agreement with Local 1614 bears the signature of Shop Committee Member Johnson, there is no testimony as to when she actually signed, but then Rosenberg was not questioned on this point. Silverman said he executed the agreement about June 14 or 15. Both Boza and Yambay testified they first heard of the extension agreements after August 17, and Rosenberg was not sure whether that fact was mentioned at the meeting of June 15, with Malamy and the shop committee. However, Rosenberg was certain that he received the executed agreements from Silverman a day or so after he signed them and the fact that the agreements had been executed was brought out at the arbitration hearing held on August 14. Despite the presence of some inconsistencies and vagaries in Rosenberg's version of the events, the undisputed testimony reveals that the agreements were signed about June 15, and I so find.[9] I further find that while the agreement with Local 810 may purport to be an extension of a nonexistent contract and may not have been artfully worded, it was a valid collective-bargaining agreement between the Company and Local 810 covering wages for the chauffeur.

I find no evidence to sustain the allegations of the amended complaint that the Company gave unlawful assistance and support to Local 1614 and Local 810, or rendered financial or other support to these organizations in violation of Section 8(a)(2) of the Act.

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[9] The General Counsel makes no contention, either by allegation in the amended complaint or statement at the hearing, that Local 1614 failed to comply with the provisions of Section 8(d) of the Act in respect to the termination, modification, or extension of the contract.

The Company contends that the employees engaged in the strike in violation of the no-strike clause of the agreement with Local 1614, and since the purpose thereof was to secure reinstatement of Boza and recognition of Local 66, the strike was not an activity protected by the Act.

The agreement, which I have found was extended about June 15, provides:

> During the term of this agreement there shall be no strikes, sit-downs, work stoppages or lockouts, unless either party shall refuse to arbitrate as set forth herein, or abide by an arbitrator's award, in which event the other party shall not be bound by the terms of this paragraph.

From the evidence I find that Boza's discriminatory discharge on August 15, prompted the employees to strike the following day. It is also clear, from the testimony of Boza and Yambay, and I find, that from the outset the purpose of the strike was to obtain reinstatement of Boza and recognition of Local 66. Although Local 66 did not initiate the strike, it immediately sponsored and supported the cause of the strikers.

The Board, under the *Scullin-Dyson* doctrine,[10] has held that economic strikes in violation of no-strike contract clauses are not protected activity. In those cases the Board noted the absence of prior breach of contract or unfair labor practices on the part of the employer. Later, in *Mastro Plastics Corp.*[11] the respondent contended that any strike during the term of a no-strike contract clause, breached the agreement and was therefore not entitled to the protection of the Act, under the *Scullin-Dyson* doctrine. The Board found that the strike, unlike those in the *Scullin-Dyson* cases, was caused and prolonged by the respondent's unfair labor practices and the no-strike provision did not indicate an intention by either party to waive the usual right of self-help to correct abuses "unrelated to the actual operation of the contract or the normal relationship of the parties but arising . . . from a willful and serious violation of law designed to destroy the very foundation of that contract and that relationship." The Board held that under the circumstances the no-strike clause did not contemplate or incorporate a waiver of strike action on the part of the employees and the strike was an activity protected by the Act. The Board's order was enforced by the Court of Appeals for the Second Circuit.[12] The Supreme Court in affirming that decision stated, ". . . we conclude that the contract did not waive the employees' right to strike solely against the unfair labor practices of their employers."[13]

Here the objective of the strike was twofold, to protest the unfair labor practice committed by the Company in discharging Boza and to compel the Company to recognize a minority union when the Company had a valid agreement with another labor organization. Considering the strike in the light of the foregoing decisions, I conclude that the dual purpose of the strike distinguishes this case from *Mastro Plastics*, for there the Supreme Court specifically held that a no-strike clause did not waive the employees' right "to strike *solely*" against the unfair labor practices of their employers. Accordingly, I find the strike was not an activity protected by the Act.[14]

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 II, 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 thereof.

V. THE REMEDY

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

Having found that the Respondent has engaged in interrogation of employees

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[10] *Scullin-Steel Company*, 65 NLRB 1294; *Joseph Dyson & Sons, Inc.*, 72 NLRB 445.

[11] 103 NLRB 511, 513–515.

[12] 214 F. 2d 462.

[13] *Mastro Plastics Corp.* v. *N.L.R.B.*, 350 U.S. 270, 279–284.

[14] Although not necessary under these findings, I find that Yambay's testimony, while fragmentary and incomplete, is sufficient to warrant the inference that Malamy, on behalf of the Company, offered reinstatement to the strikers at the meeting held on August 23, which offer obviously was refused.

concerning Local 66, and has interfered with, restrained, and coerced its employees in derogation of their rights secured by Section 7 of the Act, I shall recommend that it cease and desist therefrom.

Having found that the Respondent on August 15, 1956, discriminatorily discharged Mary Boza and has since failed to reinstate her, I shall recommend that the Respondent be ordered to offer her immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority and other rights and privileges, and make her whole for any loss she may have suffered because of the discrimination against her by payment of a sum of money equal to the amount she normally would have earned as wages from the date of the discrimination to the date of the offer of reinstatement, less her net earnings during said period, with back pay computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth,* 90 NLRB 289. The Respondent shall upon request make avaiable to the Board or its agents payroll and other records to facilitate the checking of the amount of back pay.

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

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local 66, Local 1614 and Local 810, are each labor organizations within the meaning of Section 2(5) of the Act.
3. By discriminatorily discharging Mary Boza the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
6. The Respondent has not engaged in unfair labor practices in violation of Section 8(a)(2) and (5) of the Act, as alleged in the complaint as amended.
7. The Respondent has not engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act, by refusing to reinstate the strikers as alleged in the complaint as amended.

[Recommendations omitted from publication.]

Westinghouse Electric Corporation *and* International Union of Electrical, Radio and Machine Workers, AFL–CIO. *Case No. 6–CA–1162. February 16, 1959*

DECISION AND ORDER

On August 11, 1958, Trial Examiner Eugene E. Dixon issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, 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.

The Board has reviewed the ruling of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.