a certification of representatives to the Petitioner for such unit, which the Board, under the circumstances, finds to be appropriate for purposes of collective bargaining.

However, if a majority of the employees in voting group A do not vote for the Intervenor, such group appropriately will be included in the same unit with the employees in voting group B, and their votes will be pooled with those in voting group B.[6] If a majority of the employees in the pooled group select the Petitioner, the Regional Director is instructed to issue a certification of representatives to the Petitioner for the pooled group which the Board in such circumstances finds to be an appropriate unit for purposes of collective bargaining.

[Recommendations omitted from publication.]

[6] If the votes are pooled, they are to be tallied in the following manner: The votes for the Intervenor shall be counted as valid votes but neither for nor against the Petitioner; all other votes are to be accorded their face value, whether for the Petitioner or for no union.

Foreign Car Center, Inc., formerly Bob Snead, Inc. *and* Machinists Lodge 695, International Association of Machinists, AFL–CIO. *Case No. 19–CA–1948. October 7, 1960*

DECISION AND ORDER

On May 3, 1960, at the close of the hearing in the above-entitled proceeding, Trial Examiner Wallace E. Royster, *en banc*, granted the Respondent's motion to dismiss the complaint. The complaint, as dismissed, alleged that the Respondent, by disavowing its contract with the Union in midterm and thereafter refusing to recognize the Union as the exclusive bargaining representative, refused to bargain in violation of Section 8(a)(5) and (1) of the Act.

The facts are as follows: On or about December 9, 1958, Bob Snead, Inc., signed an exclusive bargaining contract with the Union, covering several classifications of mechanics, to rununtil June 1961. Although formerly employing at least two mechanics, at the time this contract was executed and continuing until the date of the hearing herein, Bob Snead, Inc., and its successor, Foreign Car Center, Inc., employed only one mechanic.

In December 1959, Oliver Beatty, sales manager for Bob Snead, Inc., informed a union representative that a new corporation, Foreign Car Center, Inc., would take over the operations of Bob Snead, Inc., and that Foreign Car Center, Inc., would not be bound by the Union's existing contract with Bob Snead, Inc.

On January 4, 1960, Beatty became the president and a minority stockholder of Foreign Car Center, Inc. Thereafter, the new cor-

poration refused to acknowledge the existing contract and refused to recognize the Union as the bargaining representative of its single mechanic.

The Trial Examiner found that the "employing agency has remained the same" notwithstanding the change in name of the employer and Beatty's acquisition of an ownership interest therein; and that Foreign Car Center, Inc., is the alter ego of Bob Snead, Inc. However, the Trial Examiner also found that the contract covered a unit consisting solely of a single employee and hence concluded that the unit was inappropriate for collective bargaining. The Trial Examiner therefore dismissed the complaint.

The General Counsel appealed from the action of the Trial Examiner in dismissing the complaint. The General Counsel contends that there were two employees in the unit at the time of the execution of the contract. We reject this contention. Concededly at the time of the execution of the contract, there was actually at work only one employee in the unit. As part of a settlement agreement of prior unfair labor practice charges, Bob Snead, Inc., had agreed, at the time of the execution of the collective-bargaining contract, to reinstate another mechanic who had been discharged. However, the mechanic thereafter declined reinstatement. Under these circumstances, we find that the discharged mechanic was not an employee of the employer at the time of the execution of the contract or at any time thereafter. And, contrary to a further contention of the General Counsel, there is no presumption that the contract unit is appropriate arising from the fact that the parties thereto contemplated that additional mechanics would be hired during the term of the contract where, as here, since the execution of the contract, there has been but one employee in the unit.

We conclude that the Trial Examiner properly dismissed the complaint. The Board has held that it will not certify a one-man unit [1] because 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 a one-man unit.[2] By parity of reasoning, the Act precludes the Board from directing an employer to bargain with respect to such a unit. While we have held that the Act does not preclude bargaining with a union on behalf of a single employee, if an employer is willing,[3] we have never held that an employer's refusal to bargain with a representative on behalf of a one-man unit is a refusal to bargain within the meaning of Section 8(a)(5).

[1] *Cutter Laboratories*, 116 NLRB 260, at 261 *Sharon Wire Company, Inc*, 115 NLRB 372, at 373; *Louis F Dow Company*, 111 NLRB 609, at 610

[2] *Luckenbach Steamship Company, Inc*, 2 NLRB 192

[3] *Louis Rosenberg, Inc*, 122 NLRB 1450, at 1453 In this case, the Board (Members Jenkins and Bean, dissenting) held that execution of a union-security agreement on behalf of a single employee was not unlawful

Accordingly, we affirm the action of the Trial Examiner and shall dismiss the complaint.

[The Board dismissed the complaint.]

MEMBERS FANNING and KIMBALL took no part in the consideration of the above Decision and Order.

American Feed Company *and* Local 22, American Federation of Grain Millers, AFL–CIO, Petitioner. *Case No. 2–RC–10857. October 10, 1960*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Haywood E. Banks, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 [Chairman Leedom and Members Rodgers and Jenkins].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. The Petitioner contends that a contract between the Intervenor, Local 210, International Brotherhood of Teamsters, Chauffeurs, Drivers, Warehousemen and Helpers of America, and the Employer, executed on June 3, 1960 and due to expire on June 8, 1962, cannot bar an election because it contains a "hot cargo" clause proscribed by Section 8(e) of the Act. The Intervenor asserts that the contract is a bar because (1) the inclusion of such clauses does not destroy the effectiveness of contracts as bars to elections; (2) if the clause is deemed an illegal "hot cargo" clause, the contract contains a savings clause which cures the defect for contract-bar purposes; and (3) the clause is not a "hot cargo" clause. The clause in question provides in pertinent part that: "There is hereby excluded from the job duties, course of employment or work of employees covered by this agreement, any work whatsoever in connection with the handling or performing any service whatsoever on goods, products or materials coming from or going to the premises of an Employer where there is any controversy with a Union."

A majority of the Board recently held that a contract which contains a "hot cargo" clause violative of Section 8(e), like contracts which