and it was more than a "technical" violation of those provisions. Consequently, and despite the unfair labor practice which caused the strike, we hold that the reinstatement provisions of the order exceeded the Board's authority to make such "requirements as will effectuate the policies of the Act."

In *The American News Company, Inc.*, 55 NLRB 1302, the Board refused to reinstate strikers who struck to compel a wage increase in violation of wage stabilization laws and regulations, finding that the strike was neither provoked nor preceded by unfair labor practices on the part of the employer. In *Scullin Steel Company*, 65 NLRB 1294, affd. 161 F. 2d 143 (C.A. 8), the Board refused to reinstate strikers who struck in violation of a no-strike agreement in the collective-bargaining contract, a holding reaffirmed in *National Electric Products Corporation*, 80 NLRB 995, and *Mid-West Metallic Products, Inc.*, 121 NLRB 1317. In *W. L. Mead, Inc.*, 113 NLRB 1040, the Board held that, absent an express no-strike clause in the contract, the Union's summary resort to strike action in disregard of its obligation to proceed through a final binding arbitration award constituted legal ground for the discharge of the strikers.

The trend of both Board and court decisions has been to require employers, labor organizations, and employees to observe the law, the congressional policy as expressed in the statute, and the obligations of their own collective-bargaining contracts. I cannot say that the trend is not a salutary one. Accepting that principle as guidance to the instant situation I find that the strike to compel the Employer to recognize a minority union as exclusive representative of his employees in violation of Section 8(a)(2) and (1) of the Act is unprotected activity. If the application seems harsh in the instant case the consequences could have been avoided by resort to the Board's procedures for determining the issue which occasioned the strike instead of risking the hazards of self-help.

I find that neither the discharge of the strikers nor the failure to reinstate them, either upon the conditional mass offer made on July 11, or upon subsequent individual unconditional application, violated Section 8(a)(1) or (3) of the Act.

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

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Union of Operating Engineers, AFL–CIO, Local No. 351, is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has not engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act.

[Recommendations omitted from publication.]

The Ideal Electric and Manufacturing Company *and* International Union of Electrical, Radio and Machine Workers, AFL–CIO, Petitioner. *Case No. 8–RC–4129. December 14, 1961*

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election issued by the Board on April 10, 1961,[1] an election by secret ballot was conducted on April 26, 1961, under the direction and supervision of the Regional Director for the Eighth Region among the employees in the unit found appropriate by the Board. Following the election, the parties were furnished a tally of ballots which showed that of approximately 302 eligible voters, 257 valid ballots were cast, of which 60 were for the

[1] Not published in NLRB volumes.

Petitioner, 193 were for the Intervenor, Independent Electrical Workers Union, 4 votes were against the participating labor organizations, and 9 ballots were challenged. The challenges were insufficient in number to affect the results. Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election.

In accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation and on May 23, 1961, issued and duly served upon the parties his report on objections, in which he recommended that the objections be overruled and that the Intervenor be certified as the bargaining representative of the employees in the appropriate unit. Thereafter, the Petitioner filed timely exceptions to the Regional Director's report. In connection with its exceptions, it urged the Board to reconsider and modify its *Woolworth* rule.[2] It also requested oral argument thereon. The Intervenor and the Employer filed briefs in support of the Regional Director's report. The Industrial Union Department, AFL–CIO, herein called the IUD, was permitted to file an *amicus curiae* statement in support of the Petitioner's exceptions. The Board, on August 31, 1961, granted the request for oral argument, issued a notice of hearing for such purpose, and invited interested parties to participate. Thereafter, the IUD filed an *amicus curiae* brief and the Textile Workers of America, AFL–CIO, filed an *amicus curiae* statement. On September 22, 1961, a hearing was held before the Board in which the Petitioner, Intervenor, Employer, and IUD participated.[3]

The Board has considered the entire record, the briefs of the parties, the other briefs and statements, and the oral argument, and concludes as follows:

In its objections, the Petitioner alleged that during the election campaign the Employer negotiated and signed a new contract with the Intervenor and granted wage increases and other benefits under the contract to its employees and that by such conduct the Employer interfered with employee free choice in the election. The instant petition was filed on January 18, 1961, at a time when the Intervenor was the contractual bargaining representative of the employees involved. The Regional Director found that on January 24, the existing contract between the Intervenor and the Employer was reopened and thereafter negotiations for a new contract were initiated. During the negotiations the Intervenor held monthly meetings at which the membership was informed that the contract had been reopened and that negotiations were in progress. On April 1, the contracting parties reached agreement and signed a new contract effective that date pro-

[2] *F. W. Woolworth Company*, 109 NLRB 1446.

[3] At the oral argument, the Employer was granted permission to file a supplemental brief and such brief was subsequently filed.

viding a wage increase and additional benefits. On April 3, 1961, the president of the Intervenor informed the department stewards and an undisclosed number of other employees that a new contract had been signed. Prior thereto, the Intervenor called a special membership meeting, which was attended by a substantial number of the employees in the unit. At that meeting the proposed terms of the contract were discussed and ratified. The Decision and Direction of Election herein issued on April 10. The increase in wages appeared in the paychecks received by the employees on April 14, the first payday after the effective date of the contract.

The Regional Director concluded that, as the negotiations of the above contract occurred prior to the Board's Decision and Direction of Election, and as it could reasonably be inferred that the employees involved had knowledge of the contract negotiated and benefits conferred prior to that date, the conduct in question under the Board's application of the *Woolworth* doctrine could not be urged as a basis for setting aside the election. The Petitioner in its exceptions takes issue with the factual conclusions of the Regional Director and, in addition, requests the Board to reconsider and revise its *Woolworth* rule. It was with respect to the latter contention that the Board granted oral argument.

In the *A & P* case,[4] the Board, recognizing the degree of control which a party may exercise over the Board's election processes by the timing of conduct which interferes with the election, adopted a policy whereby any substantial interference which occurred during the crucial period before an election might constitute a basis for setting aside the election. In that case, limits of the crucial preelection period were set for both contested and uncontested cases, expressed as follows:

> . . . whether or not charges have been filed, the Board has decided to consider on the merits any alleged interference which occurs or has occurred after either (1) the execution by the parties of a consent-election agreement or a stipulation for certification upon consent election, or (2) the date of issuance by the Regional Director of a notice of hearing, as the case may be; . . . The Board will not, however, consider election objections based upon interference which may occur prior to these dates.

About 2 years later, in 1954, in *Woolworth*, the Board modified the *A & P* rule by moving the cutoff date in contested cases closer to the election—using as the cutoff date the issuance of the Board's Decision and Direction of Election. This had the advantage of eliminating from postelection consideration conduct too remote to have prevented the free choice guaranteed by Section 7 but resulted in the Board's not

[4] *The Great Atlantic and Pacific Tea Company*, 101 NLRB 1118, 1120.

considering much of the activity occurring during the election campaign and enhanced the possibility of intentional delay at the hearing stage by a party contestant seeking to campaign improperly before the cutoff date. Recently the Board delegated its decisional authority in representation cases to its Regional Directors.[5] Administrative experience under the delegation, though brief, has shown a marked decrease in the elapsed time between the filing of petitions and the elections held pursuant to them. Thus remoteness no longer necessitates the delayed cutoff date adopted in *Woolworth*. At the same time the recent delegation does not appear to have removed the possibility of intentional delay by parties at the hearing stage under the *Woolworth* cutoff policy.

The Board has now reconsidered the entire problem and concludes, in all the circumstances, that the date of filing of the petition rather than the issuance of decision and direction, or of notice of hearing, should be the cutoff time in considering alleged objectionable conduct in contested cases. From that time, when the Board's processes have been invoked and a prompt election may be anticipated pursuant to present procedures, we believe that conduct thereafter which tends to prevent a free election should appropriately be considered as a postelection objection. Accordingly, we overrule our decision in *Woolworth* to the extent indicated.

Finally, we have concluded that in order to avoid undesirable confusion as to the impact of this new policy on cases currently pending before the Board, we shall not apply the new policy enunciated herein to the instant case or to others now pending but shall apply it only to cases in which the petition is filed on or after the date of issuance of this decision.[6]

Turning then to the Petitioner's contentions relating to the Regional Director's findings previously set forth, under the *Woolworth* rule, we are of the opinion that they raise no substantial issues of fact or policy which would warrant reversing his recommendation that the objections be overruled. Accordingly, the objections are hereby overruled and as the tally of ballots shows that the Intervenor has received a majority of the valid ballots cast in the election, we shall certify the Intervenor as the exclusive bargaining representative of the employees in the appropriate unit.

[The Board certified Independent Electrical Workers Union as the designated collective-bargaining representative of the employees of the Employer in the unit found appropriate.]

[5] See 26 Fed. Reg. 3911 (May 4, 1961).

[6] Member Fanning would apply the new policy to the instant case, as the Board has done in the past in the *A & P* and *Woolworth* cases, and accordingly would set aside the election.