8. Pursuant to a stipulation between the parties, the hearing in the district court to determine the Petitioner's special appearance and objections to the court's jurisdiction has been held in abeyance pending the issuance of the Advisory Opinion herein.

9. No representation or unfair labor practice proceeding involving the same labor dispute is pending before the Board.

10. Although served with the Petition for Advisory Opinion, the Employer filed no response as provided by the Board's Rules and Regulations.

On the basis of the above, the Board is of the opinion that:

1. The Employer is a general contractor engaged in the building and construction industry at Little Falls, Minnesota.

2. The current Board standard for the assertion of jurisdiction over nonretail enterprises within its statutory jurisdiction requires an annual minimum of $50,000 inflow or outflow across State lines, direct or indirect. *Siemons Mailing Service*, 122 NLRB 81, 85.

3. During the fiscal year ending August 31, 1962, the Employer made purchases of materials in excess of $50,000 from local suppliers, who themselves received the materials from outside the State of Minnesota. During the more recent 6-month period between September 1, 1962, and March 1, 1963, the Employer made similar local purchases of out-of-State processed or manufactured materials valued at $27,027.34, which, projected over a 1-year period, would exceed $50,000.[1] As these purchases of out-of-State materials constitute indirect inflow as defined in the *Siemons* decision and as they exceed $50,000 annually, on an actual or projected basis, the Employer's operations would satisfy the Board's standard for the assertion of jurisdiction over nonretail enterprises.

Accordingly, the parties are advised under Section 102.103 of the Board's Rules and Regulations, that, on the facts present herein, the Board would assert jurisdiction over the Employer's operations with respect to labor disputes cognizable under Sections 8, 9, and 10 of the Act.

[1] See *City Line Open Hearth Inc.*, 141 NLRB No. 74; *Quality Coal Corporation*, 139 NLRB 492; *Sequim Lumber and Supply Company*, 123 NLRB 1097.

Dubo Manufacturing Corporation *and* United Steelworkers of America, AFL–CIO. *Cases Nos. 8–CA–2700 and 8–CA–2820. May 1, 1963*

NOTICE

On August 28, 1962, Trial Examiner Sidney Sherman issued his Intermediate Report in the above-entitled proceedings and the proceedings were thereafter transferred to the Board. Subsequently,

Dubo Manufacturing Corporation, herein called the Respondent, United Steelworkers of America, AFL–CIO, herein called the Union, and the General Counsel, filed exceptions to the Intermediate Report and supporting briefs.

The charges, filed by the Union on January 30, 1962,[1] alleged that the Respondent had violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union as the representative of its employees; had violated Section 8(a)(3) by discharging and refusing to reinstate certain of its employees because they had engaged in concerted, protected activities; and violated Section 8(a)(1) of the Act by threatening its employees with reprisals because they had engaged in concerted, protected activities. On February 6, 1962, the Union petitioned the United States District Court for the Northern District of Ohio, Eastern Division, for an order requiring the Respondent to arbitrate grievances filed by 12 of the discharged employees named in the charges filed with the Board.[2] On May 25 and June 25, 1962, complaints were issued by the General Counsel alleging as violations the matters encompassed in the Union's unfair labor practice charges referred to above.

In June 1962 the district court issued an order directing the arbitration of the several grievances previously filed with respect to the employees' discharges.

The Board policy is to effectuate, wherever possible, the intent of Congress expressed in Section 203(d) of the 1947 Labor Management Relations Act, namely, "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement." In effectuating that congressional intent, the Board has recognized existing arbitration awards,[3] and in certain circumstances has required parties before resorting to Board processes to utilize the grievance and arbitration procedure in agreements to which they are signatory.[4] These policy considerations are clearly applicable here where not only do the parties have available a procedure to settle the dispute, but a United States District Court has ordered them to utilize it. It would certainly frustrate the intent expressed by Congress if the Board were now to permit the use of the Board's processes to enable the parties to avoid their contractual obligations as interpreted by the court.

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[1] Amended charges were filed on May 24 and June 6, 1962

[2] The Respondent had previously refused to process these grievances which had been filed by the Union on January 6, 1962 The grievances were filed by those 12 of the original dischargees who had been refused reinstatement, and requested a determination that they had been unjustly discharged and were entitled to reinstatement

[3] See *Spielberg Manufacturing Company*, 112 NLRB 1080 *International Harvester Company*, 138 NLRB 923, *Oscherwitz and Sons*, 130 NLRB 1078

[4] See *Montgomery Ward & Co , Incorporated*, 137 NLRB 418

Accordingly, the parties are hereby notified that, based upon the considerations expressed herein, the Board will defer action on the 8(a)(3) allegations in the complaint pending completion of the arbitration directed by the district court, and notification thereof to the Board.

The parties are further notified that the Board will not, however, hold in abeyance its action on the 8(a)(1) and 8(a)(5) allegations of the complaint, but will instead review the Trial Examiner's findings thereon and will issue its Decision with respect thereto forthwith.

MEMBERS FANNING and BROWN took no part in the consideration of the above Notice.

Formica Corporation, Subsidiary of American Cyanamid Co.[1] ***and*** **Local 757, International Union of Electrical, Radio and Machine Workers, AFL-CIO.** *Case No. 9-RM-46. May 1, 1963*

DECISION AND ORDER CLARIFYING CERTIFICATION

On April 12, 1950, the Board issued a certification of representatives in the above-entitled proceeding, certifying the Union as the bargaining representative of "all production and maintenance employees at the Hamilton County, Ohio, plant or plants of the Employer, including employees in the machine shop, toolroom, and shop clerks, but excluding office clerical employees, nurses, professional employees, all guards and supervisors as defined in the Act."

On December 12, 1962, the Union filed a motion to clarify certification, in which it seeks to have included within the certified unit all gravure services department employees who do not come within the specific exclusions set forth in the unit description. The Employer filed a motion to dismiss, alleging that the employees in the gravure services department, who had been transferred from classifications within the bargaining unit, are engaged in work which is properly outside the unit. On January 29, 1963, the Board issued an order referring the proceeding to the Regional Director for the Ninth Region for the purpose of conducting a hearing on the issues raised by the parties. Thereafter, on February 21, 1963, a hearing was held before Mark Fox, 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 herein to a three-member panel [Chairman McCulloch and Members Rodgers and Leedom].

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[1] The name of the Employer at the time of the Union's certification was The Formica Co.