the trivial amounts involved, under the circumstances I shall make no affirmative recommendation in this connection.

I shall recommend that the Company offer immediate and full reinstatement to Busefink to his former or a substantially equivalent position without prejudice to his seniority and other rights and privileges, and that the Company and the IUE, jointly and severally, make Busefink whole for any loss of pay suffered as a result of the discrimination against him by paying him a sum of money equal to the amount he would have earned from the date of his discharge until offer of reinstatement, less net interim earnings, the backpay to be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289. The IUE may terminate its liability for further accurate of backpay by notifying the Company that it does not object to Busefink's immediate reinstatement and that it requests such reinstatement, and the IUE shall not be liable for any backpay after 5 days from the giving of such notice. As a valid union-security contract has been in effect at all times since Busefink's discharge, the Company and/or the IUE shall deduct from the net backpay the amount of IUE dues which Busefink owed under the contract to the IUE at the time of his discharge and the amount of all dues unpaid since then which Busefink would have been required to pay to maintain such membership as a condition of employment; such amounts shall be paid over to the IUE by the Company and/or withheld by the IUE, and the IUE shall thereupon credit Busefink's membership account in such amount.

No violation has been found in regard to the checkoff authorization of the five-mentioned employees. I nevertheless feel impelled to mention my disagreement with the suggestion that, should such violation be found, a proper remedy would include reimbursement to these five employees of all dues withheld thereunder. A valid union-security agreement has been in effect at all times since the incident, and the agreement requires these five, as it does all other employees, to pay membership dues as a condition of employment. To order restitution of dues in these circumstances would in my opinion, be nothing short of "a windfall to the employees and an unjust penalty" exceeding any authority granted under this Act. *N.L.R.B.* v. *American Dredging Company*, 276 F. 2d 286, 288 (C.A. 3). See *Republic Steel Corporation* v. *N.L.R.B.*, 311 U.S. 7, 11–12; *Consolidated Edison Co. of New York, Inc.* v. *N.L.R.B.*, 305 U.S. 197, 235–236.

Conclusions of Law

1. The Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The IUE and the Society are labor organizations within the meaning of Section 2(5) of the Act.
3. The Company has violated Section 8(a)(1) and (3) of the Act by discharging Busefink.
4. The IUE has violated Section 8(b)(1)(A) and (2) by causing the Company to discharge Busefink and by seeking and threatening the discharge of Bendik, Bower, Burgess, Pukelis, and Ulam unless these employees paid back dues for a period not covered by a union-security contract.
5. The aforesaid unfair labor practices are unfair labor practices within Section 2(6) and (7) of the Act.
6. The Company did not violate the Act as to Morris, and neither the Company nor the IUE violated the Act in regard to the checkoff authorizations of Bendik, Bower, Burgess, Pukelis, and Ulam, and the Company also did not require or threaten to require these five employees to pay back dues for the no-contract period as a condition of employment.

[Recommendations omitted from publication.]

Robert P. Scott, Inc. *and* International Hod Carriers, Building and Common Laborers Union of America, Local No. 16, AFL-CIO. *Case No. 28-CA-636 (formerly 33-CA-636). December 8, 1961*

DECISION AND ORDER

On November 29, 1960, Trial Examiner Howard Myers 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 Intermediate Report attached hereto. Thereafter, the Respondent and Charging Party filed exceptions to the Intermediate Report, with supporting briefs, while the General Counsel filed a brief in support of the Intermediate Report. Subsequently, by order dated May 8, 1961, the Board remanded this matter to the Regional Director for the purpose of obtaining additional commerce data. After further hearing, the Trial Examiner, on August 3, 1961, issued his Supplemental Intermediate Report, which is attached thereto, containing further findings of fact, conclusions of law, and recommendations with respect to the evidence adduced at such reopened hearing. Thereafter, the Respondent filed exceptions to the Supplemental Intermediate Report, while the General Counsel filed an additional 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 [Chairman McCulloch and Members Leedom and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearings and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Supplemental Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications.[1]

On April 8, 1960, the Union secured proper authorization cards from 20 out of the approximately 30 employees in the appropriate unit. On April 11, 1960, union representatives told Scott, Respondent's president, that the Union represented a majority of his employees and requested recognition. At that time, Union Representative Baldwin handed Scott the authorization cards and Scott inspected them. Scott then stated he would not negotiate, that he could "fire all these men" and operate his business any way he wanted. The next day, the Union again requested recognition and Scott repeated his refusal to negotiate, adding to his remarks of the previous day that he "would never need a Union" and "would never work Union." [2]

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[1] The Respondent contends that its operations do not meet applicable Board standards for the assertion of jurisdiction We disagree. The record shows *inter alia* that during the 12 months immediately prior to the issuance of the complaint the Respondent sold or supplied goods and services valued at $53,289 to Wylie Co., Inc, and that Wylie Co, Inc, together with two other Wylie enterprises—the three companies constituting, as the Trial Examiner found, a single employer for jurisdictional purposes—sold goods and rendered services during the same period outside the State of New Mexico valued at over $400,000. Accordingly, we find, as did the Trial Examiner, that the Respondent is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction in this proceeding. See *Siemons Mailing Service,* 122 NLRB 81, 85–86.

[2] On April 13, rather than April 26 as stated in the Intermediate Report, Respondent's employees went out on strike because of Respondent's failure to recognize the Union.

The Respondent now contends that Respondent was justified in refusing to recognize the Union because it had a good-faith doubt as to its majority status. However, it is clear from the facts outlined above that the sole basis for Scott's refusal to negotiate with the Union on April 11 and 12 was his categorical determination not to deal with any union. On neither date did he question the Union's majority either directly or indirectly. Rather his only comment after he had been handed and had inspected the 20 authorization cards was that he could "fire all these men." Consequently we find that, under the circumstances, Respondent did not have a good-faith doubt on either April 11 or 12 and times material thereafter concerning the Union's majority status and that the Union did represent, as Respondent knew, a majority at such times. Thus, the Respondent was obligated to recognize the Union upon request.[3] Under these circumstances, the Respondent's attempt to place in issue the majority status of the Union by filing a representation petition on April 18 came too late. An election on the petition would only have proven what Respondent already knew at the times it refused to bargain and would only have delayed the recognition Respondent was obligated to extend the Union. Consequently, the filing of the petition could not operate so as to free the Respondent of its obligation to recognize the Union on April 11 and 12.[4] Accordingly, we find as did the Trial Examiner that the Respondent has refused to bargain with the Union within the meaning of Section 8(a)(5) and (1) by failing to recognize the Union as the exclusive representative of its employees in the appropriate unit[5] on and after April 11, 1960.

ORDER[6]

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Robert P. Scott, Inc., Albuquerque, New Mexico, its officers, agents, successors, and assigns, shall:

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[3] See *United Mine Workers of America* v. *Arkansas Oak Flooring Co*, 351 U S 62, 74–75.

[4] See *Bilinski Sausage Manufacturing Company, Inc*, 132 NLRB 229

[5] The Respondent also contends that it was justified in refusing to bargain as the Union did not specify the unit for which it claimed to be the majority representative. However, the Respondent did not at any time prior to this proceeding seek to justify its refusal to bargain on such grounds. Furthermore, the unit set forth in the Respondent's petition of April 18, 1961, is substantially the same as that specified in the charge and complaint and found appropriate by the Trial Examiner. Moreover, as it encompassed "all Respondent's . . . employees" with the usual exclusions, the unit confirms to the Union's claims made on April 11 that it represented Respondent's employees. Consequently, we find that the Respondent did not entertain any reasonable doubts at times here material concerning the unit for which the Union sought recognition.

[6] The Charging Party took exception to the fact that the Trial Examiner failed to include in the remedial order a provision requiring reinstatement of the strikers herein upon unqualified request. We see no merit in this exception. The record shows that the Respondent has rehired all strikers who have sought to return to work, and there is no evidence that it would not rehire the remaining strikers upon their appropriate request for reinstatement.

1. Cease and desist from:

(a) Refusing to bargain collectively with International Hod Carriers, Building and Common Laborers Union of America, Local No. 16, AFL–CIO, as the exclusive representative of the employees in the following appropriate unit:

> All employees engaged in construction work at the Respondent's Albuquerque, New Mexico, operations, excluding office clerical employees, technical employees, watchmen, guards, and supervisors as defined in the Act.

(b) In any like or related manner, interfering with the efforts of the above-named Union to bargain collectively with the Respondent Company.

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

(a) Upon request, bargain collectively with International Hod Carriers, Building and Common Laborers Union of America, Local No. 16, AFL–CIO, as the exclusive representative of all employees in the appropriate unit, with respect to rates of pay, wages, hours of employment, and other terms or conditions of empolyment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its establishment in Albuquerque, New Mexico, copies of the notice attached hereto marked "Appendix A."[7] Copies of said notice, to be furnished by the Regional Director for the Twenty-eighth Region, shall, after having been duly signed by the Respondent, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Twenty-eighth Region, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith.

[7] 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"

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 bargain collectively with International Hod Carriers, Building and Common Laborers Union of America, Local No. 16, AFL–CIO, as the exclusive statutory bargaining representative of all employees in the bargaining unit described below with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our Albuquerque, New Mexico, employees exclusive of office clericals, technical employees, guards, watchmen, and supervisors as defined by the Act.

WE WILL NOT in any like or related manner interfere with the efforts of the above-named Union to bargain collectively with us as the representative of our employees in the appropriate unit.

ROBERT P. SCOTT, 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 AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge duly filed on April 14, 1960,[1] by International Hod Carriers, Building and Common Laborers Union of America, Local No. 16, AFL–CIO, herein called the Union, the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel[2] and the Board, through the Regional Director for the Sixteenth Region (Fort Worth, Texas), issued a complaint, dated June 14, against Robert P. Scott, Inc., herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the National Labor Relations Act, as amended from time to time, 61 Stat. 136, herein called the Act.

Copies of the charge and complaint, together with notice of hearing thereon, were duly served upon Respondent and copies of the complaint and notice of hearing were duly served upon the Union.

Specifically, the complaint alleged that since April 11 Respondent has refused to bargain collectively with the Union as the designated bargaining representative of Respondent's employees in a certain appropriate unit despite the fact that the Union had been selected and designated on April 8 as such representative by a majority of the employees in said unit.

Respondent duly and timely filed an answer denying the commission of the unfair labor practices alleged.

Pursuant to due notice, a hearing was held on July 28 and September 6, 7, and 8, at Albuquerque, New Mexico, before the duly designated Trial Examiner. Each party was represented at the hearing by counsel. Full opportunity was afforded the parties to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally at the conclusion of the taking of the

[1] Unless otherwise noted all dates mentioned herein refer to 1960.

[2] This term specifically includes counsel for the General Counsel appearing at the hearing.

evidence, and to file briefs on or before October 10.[3] Briefs have been filed by counsel for each party which briefs have been carefully considered.

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

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS OPERATIONS

Respondent, a New Mexico corporation, has its principal offices and place of business in Albuquerque, New Mexico, where it is engaged as a curb and gutter contractor. During the 12-month period immediately preceding the issuance of the complaint herein, Respondent's gross business amounted to approximately $400,000, of which amount approximately $81,000 was received from Wylie Brothers Paving Company for goods delivered to and for services performed for said concern. During the same period, Wylie Brothers Paving Company purchased construction material, either from concerns located outside the State of New Mexico or from concerns located within the State of New Mexico, which, in turn, received said goods directly from outside the State of New Mexico of a value in excess of $50,000. During the aforesaid 12-month period Respondent also performed services and delivered construction material to Sproul Homes, Inc., valued in excess of $52,000 and to Bellamah Homes in excess of $36,000. Respondent, Sproul, and Bellamah each purchased, during said period, construction material valued in excess of $50,000 from said firms located within the State of New Mexico.

Upon the basis of the foregoing facts, it is found, in line with established Board authority, that Respondent is engaged in, and during all times material was engaged in, business affecting commerce with the meaning of Section 2(6) and (7) of the Act and that its operations meet the standards fixed by the Board for the assertion of jurisdiction.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization admitting to membership employees of Respondent.

III. THE UNFAIR LABOR PRACTICES INVOLVED

The Refusal To Bargain Collectively With the Union

A. *The appropriate unit*

The complaint alleged that all Respondent's Albuquerque, New Mexico, employees, exclusive of office clericals, technical employees, guards, watchmen, and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Respondent's answer denied this allegation. In Case No. 33–RM–70 (not published in NLRB volumes) (a representation proceeding involving the same employer and the same labor organization here involved) Respondent sought to have the Board officially determine whether the Union was in fact, as it claimed, the collective-bargaining representative of Respondent's production and maintenance employees engaged in construction work exclusive of its professional, technical, and clerical employees, guards, and supervisors as defined by the Act. In addition, the evidence is convincingly clear that most of Respondent's nonsupervisory employees are shifted from one job to another. Under the circumstances, the Trial Examiner finds that all Respondent's Albuquerque, New Mexico, employees, exclusive of office clericals, technical employees, guards, watchmen, and supervisors as defined by the Act, at all times material herein constituted, and now constitute, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, with respect to labor disputes, grievances, wages, rates of pay, hours of employment, and other conditions of employment. The Trial Examiner further finds that said unit insures to said employees the full benefit of their right to self-organization, to collective bargaining, and otherwise effectuates the purposes of the Act.

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[3] At the request of Respondent's counsel the time to file briefs was extended to October 24. On October 6, Respondent's counsel, after having served copies thereof upon counsel for the other parties, filed with the Trial Examiner a motion to correct certain inaccuracies appearing in the stenographic report of the hearing The motion is hereby granted and the motion papers are received in evidence and marked "Trial Examiner's Exhibit No 1"

B. *The Union's majority status in the appropriate unit*

Uncontroverted credited evidence establishes that as of April 11, 12, and 13, Respondent had in its employ approximately 30 nonsupervisory cement finishers, cement finisher tenders, truckdrivers, laborers, grader operators, tractor operators, front end loader operators, and motor operators.

On behalf of the General Counsel there were offered and received in evidence 20 signed cards expressly authorizing the Union to represent the signers thereof for the purpose of collective bargaining. The genuineness of the signatures appearing on the cards was in some instances proved directly by the testimony of the signers and in some instances by witnesses to the signatures.

The Trial Examiner has compared the names appearing on the aforesaid cards with the names of the persons which the record discloses were in Respondent's employ on April 11, 12, and 13 and finds that on those dates 20 employees in the appropriate unit had on April 8, signed cards designating the Union as their collective-bargaining representative. The Trial Examiner accordingly finds that on April 8, and at all times thereafter, the Union was the duly designated collective-bargaining representative of Respondent's employees in the unit heretofore found to be appropriate. Accordingly, pursuant to Section 9(a) of the Act, the Union was at all times material, and now is, the exclusive representative of all the employees in said appropriate unit for the purposes of collective bargaining with respect to grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment.

C. *The refusal to bargain*

1. The pertinent facts [4]

On March 25, Pete Baldwin, the Union's business agent, contacted Robert P. Scott, Respondent's president and principal owner, at a paving job which Respondent was then performing for Wylie Brothers Paving Company, herein called Wylie Brothers, the general or prime contractor on this particular job. Baldwin told Scott, even though the Union did not at that time represent any of Respondent's employees, that Respondent had to pay its employees the scale provided in the then existing Union-Wylie Brothers contract Scott replied that he was paying the scale established by the New Mexico Labor Commission for the particular job. Considerable discussion then ensued concerning the difference between the State scale and the scale set forth in the Union-Wylie Brothers contract, a copy of which Baldwin exhibited to Scott This contract contained a clause whereby subcontractors, such as Respondent, were to be bound by its terms including the wage scale. Being unable to persuade Scott to execute an agreement with the Union and abide by the Union-Wylie Brothers contract wage scale. Baldwin contracted Marshall Wylie, president of Wylie Brothers, and requested Wylie to try to induce Respondent to abide by the terms of the Union-Wylie Brothers contract Baldwin also told Wylie if Respondent refused to abide by the terms of the aforesaid contract the Union would shut down the job Wylie contacted Scott and told Scott that the Union had been endeavoring to persuade him to make Respondent sign an agreement with the Union.

During the 2-week period immediately following March 25, the Union conducted an organizational campaign among Respondent's employees

During the day of either April 7 or 8, Baldwin, accompanied by Joe Bermudez, the Union's business manager, contacted Scott at the jobsite in question. Bermudez asked Scott, even though the Union did not represent a majority of Respondent's employees, if Respondent was going to cooperate with the Union and agree to abide by the said Wylie Brothers-Union contract Scott declined to do so. Scott testified that the reason he refused to do so was because "I didn't know anything about this I had had no experience with the union and had operated as a nonunion open shop employer and that I was not interested in signing with the Union."

On Friday evening, April 8, a meeting of Respondent's employees was held at the union hall at which 20 of Respondent's employees signed union authorization cards.

On Monday morning, April 11, Baldwin and Bermudez went to the aforemen-

[4] In the light of the entire record, all of which has been carefully read and parts of which have been reread and rechecked several times, and being mindful of the contentions of the parties with respect to the credibility problems here involved and of the fact that it would unduly protract this report greatly to summarize all the testimony or to spell out the confusion and inconsistencies therein, the findings contained in this section compose a composite picture of all factual issues involved

tioned jobsite and there told Scott that the Union represented a majority of Respondent's employees and requested Scott to recognize the Union as the collective-bargaining representative of Respondent's employees. At the same time one of the aforementioned union representatives handed Scott the 20 authorization cards which Respondent's employees had signed the previous Friday evening. Scott, after removing the band which was around the cards when they were handed to him, "took them one at a time and looked through all of them" and then stated that they were cards of his employees but he refused the union representatives' request to recognize or deal with the Union as the collective-bargaining representative of the employees in the appropriate unit.

Later in the day of April 11, Baldwin and Bermudez informed Wylie that the Union represented a majority of Respondent's employees and that Respondent, through Scott, had refused to recognize the Union as the collective-bargaining representative of the employees involved or to negotiate an agreement on their behalf. Wylie stated that he would talk "to Scott and see if he wouldn't meet with [Baldwin and Bermudez] again to discuss the possibility of recognition." That evening, Wylie telephoned Scott and when he asked Scott "what he thought about signing up with the union," Scott replied, to quote from Wylie's credited testimony, "He wasn't going to sign a contract with [the Union]. . . . he was going to continue to operate an open shop . . . he wasn't interested in signing a union contract."

On the evening of April 11, the 20 Respondent employees who had executed union authorization cards on April 8, together with 5 or 6 other employees of Respondent, met at the union hall There, Baldwin outlined to those present what had transpired between him and Scott and Scott's refusal to recognize the Union as the collective-bargaining representative or to negotiate a contract. Baldwin then explained that the employees could either strike or petition the Board for an election to establish the Union's majority status. The employees present voted to strike.

On the morning of April 12, Baldwin and Bermudez returned to the jobsite and again requested Scott to recognize and bargain with the Union as the collective-bargaining representative of Respondent's employees. Scott replied, to quote from Baldwin's credited testimony, "He would not and again stated that he had never needed the Union and would never need the Union and waved his hand toward [certain employees then working on the job] and said 'I can fire them all. I can replace them and I will never work Union' . he had never been Union in the past . . he would never be Union in the future"

On April 26, 26 of the Respondent's approximate 30 nonsupervisory employees struck. The pickets wore or carried signs reading, "ROBERT P. SCOTT UNFAIR, REFUSES TO BARGAIN WITH EMPLOYEES REPRESENTATIVE, LABORERS LOCAL #16" The pickets were removed on July 29, but the employees, except for some five who had returned to work, were still on strike at the time of the hearing.

2 Concluding findings

It is true that prior to the evening of April 8, the Union did not represent a majority of Respondent's employees in the appropriate unit and therefore Respondent did not violate Section 8(a)(5) of the Act by refusing to recognize the Union prior to that date However, the Union made an explicit and unequivocal demand for recognition on April 11, and again on April 12, after a majority of the employees in the appropriate unit had authorized the Union to represent them. Respondent refused on each of said occasions, although Scott examined the 20 signed union authorization cards, to accord the union representative status to which it was entitled The credited evidence likewise supports a finding, which the Trial Examiner now makes, that at all times since April 11, Respondent had steadfastly refused to recognize or deal with the Union as the designated collective-bargaining representative of its employees in the appropriate unit. Accordingly, based upon the record as a whole, the Trial Examiner finds that Respondent's conduct on April 11, and thereafter, constituted a refusal to bargain in violation of Section 8(a)(5) of the Act, and since such conduct and action necessarily interfered with, restrained, and coerced its employees in the exercise of their statutory rights, Respondent thereby also violated Section 8(a)(1) of the Act

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and, such of them as have been found to constitute unfair labor

practices, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, violative of Section 8(a)(1) and (5) of the Act, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent on April 11, 1960, and at all times thereafter, has refused to bargain collectively with the Union as the duly designated representative of the employees in an appropriate unit, the Trial Examiner will recommend that Respondent, upon request, bargain collectively with the Union as the exclusive representative of said employees, and, if an agreement is reached, embody such understanding in a signed agreement.

Upon the basis of the foregoing findings of fact, and upon the record as a whole, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. International Hod Carriers, Building and Common Laborers Union of America, Local No. 16, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. All Respondent's Albuquerque, New Mexico, employees, exclusive of office clericals, technical employees, guards, watchmen, and supervisors as defined by the Act, constitute, and at all times material constituted, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

3. International Hod Carriers, Building and Common Laborers Union of America, Local No. 16, AFL–CIO, was on April 8, 1960, and at all times thereafter has been, the exclusive statutory representative of all the employees in the above-described appropriate unit, for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. By refusing on April 11, 1960, and at all times thereafter, to bargain collectively with International Hod Carriers, Building and Common Laborers Union of America, Local No. 16, AFL–CIO, as the exclusive statutory representative of the employees in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (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.

[Recommendations omitted from publication.]

SUPPLEMENTAL INTERMEDIATE REPORT AND RECOMMENDED ORDER

On November 29, 1960, the duly designated Trial Examiner issued his Intermediate Report and Recommended Order, herein called the report. On the same date, the case was transferred to the Board. On December 20 and 23, 1960, respectively, Respondent and the Union filed exceptions to the report.

On May 8, 1961, the Board issued an order reopening record and remanding proceeding to Regional Director "for the purpose of obtaining additional commerce data, by hearing or otherwise. The additional commerce data shall include, but not be limited to, the direct and indirect flow of goods and services of Respondent." Said order further provided that in the event a further hearing becomes necessary, such hearing shall be held before the Trial Examiner and that at the conclusion of said hearing, if any be held, he prepare and serve upon the parties a Supplemental Intermediate Report containing findings of fact, conclusions of law, and recommendations with respect to the evidence adduced at said reopened hearing.

Pursuant to the aforesaid Board order of May 8, 1961, the Trial Examiner, upon due and timely notice to the parties, held a hearing at Albuquerque, New Mexico, on June 27 and 28, 1961. Each party was represented by counsel and they were afforded full and complete opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to issue as to commerce, to argue orally at the conclusion of the taking of said evidence, and to file briefs on or before July 14, 1961. A brief has been received from the General Counsel which has been carefully considered.

Upon the entire record in the reopened hearing, and from his observation of the witnesses appearing thereat, the Trial Examiner makes, in addition to the commerce data findings made in his report on November 29, 1960, the following:

Respondent is a New Mexico corporation engaged as a curb and gutter contractor. During the 12-month period immediately preceding the issuance of the complaint herein, Respondent's gross business, consisting of the sale of goods and of services within the State of New Mexico, amounted to a value of $519,622.21. Of this amount, goods and services valued at $53,289 were sold and supplied to Wylie Co., Inc.; goods and services valued at $48,419.32 were sold and supplied to Sproul Homes, Inc.; and goods and services valued at $57,274.51 were sold and supplied to Dale J. Bellamah.

With respect to the business operations of the above-named three concerns with whom Respondent did business during the period in question, the credited evidence establishes:

Wylie Co., Inc., a New Mexico corporation, is engaged in, and during all times material was engaged in, the general construction business and is one of three companies owned and operated by Claude Wylie and his brother, Marshall. The other two companies, owned and operated by the Wylie brothers, are Wylie Brothers Contracting Company, a New Mexico corporation engaged in the general construction business, and Wylie Paving Company, a partnership composed of Claude and Marshall Wylie, engaged in the paving business. All three Wylie businesses have the same address, do not compete with each other, and are managed by Marshall Wylie, Claude Wylie, and Branch B. Raglin. During the 12-month period immediately preceding the issuance of the complaint herein, Wylie Brothers Contracting Company sold goods and rendered services to the State of Arizona valued between $400,000 and $500,000 for road construction work on the Navajo Reservation under a contract with the Bureau of Indian Affairs. The three Wylie companies, referred to herein, are actually one business enterprise and comprise a single employer and meet the standards fixed by the Board for the assertion of jurisdiction.[1]

Sproul Homes, Inc., a New Mexico corporation, is engaged in, and during all times material was engaged in, home building and is one of four corporations majority owned and entirely operated by Elmer C. Sproul, Fred C. Sproul, and Robert Cline. The other three companies thus owned and operated are Sproul Homes, Inc., a Colorado corporation, engaged in home building; Security Supply Company, a New Mexico corporation, engaged in purchasing and selling of building materials; and Security Supply Company, a Colorado corporation, engaged in purchasing and selling of building materials. The Colorado Sproul Homes, Inc., was absorbed, at some date and for reasons not here material, by the New Mexico Sproul Homes, Inc., and the Colorado Security Supply Company was also absorbed, at some date and for reasons not here material, by the New Mexico Security Supply Company. All four corporations have or had the same address, are or were managed by the same people, and are or were operated as a single business enterprise. During the 12-month period immediately preceding the issuance of the complaint herein, the New Mexico Security Supply Company's out-of-State purchases of goods and supplies exceeded $50,000 in value. During the same 12-month period, the New Mexico Sproul Homes, Inc.'s, out-of-State sales of goods and services approximated in value in excess of $5,000,000. The four so-called Sproul companies are, and always have been, one business enterprise and are, and always have been, operated as a single employer and as such meet the standards fixed by the Board for the assertion of jurisdiction under the doctrines laid down by the Board in above-cited *Mohican* and *Alamo-Braun* cases.

Dale J. Bellamah is, and at all times material was, the president and principal owner of corporations engaged in the purchase and sale of real estate, subdividing, home construction, and the like. The so-called Bellamah corporations pertinent to the instant proceeding and which are owned and operated by a holding company known as Dale Bellamah Corporation are: Dale Bellamah Homes, Inc., a New Mexico corporation engaged in home building at Las Cruces, New Mexico; Dale Bellamah Land Co., Inc., a New Mexico corporation engaged in the purchase, development, and the sale of land for residential and commercial purposes; Dale Bellamah Homes of El Paso, either a New Mexico corporation licensed to do business in Texas or a Texas corporation, engaged in home building at El Paso, Texas; Dale Bellamah Homes of Lubbock, either a New Mexico corporation licensed to do business in Texas or a Texas corporation, engaged in home building at Lubbock, Texas; Dale Bellamah Estates, Inc., a New Mexico corporation engaged in home building at Albuquerque, New Mexico; Dale Bellamah Homes of Santa Fe, a New

[1] See *Mohican Trucking Company*, 131 NLRB 1174, citing with approval *J W Saltsman, doing business as Saltsman Construction Company* 123 NLRB 1176, and *Madison County Construction Co*, 115 NLRB 701 See also *Alamo-Braun Beef Company and George Braun Packing Co*, 128 NLRB 32

Mexico corporation engaged in home building at Santa Fe, New Mexico; Dale Bellamah Builders, Inc., a New Mexico corporation engaged in home building at Alamogordo, New Mexico; Dale Bellamah Contractors, Inc., a New Mexico corporation engaged in home building at Hobbs, New Mexico; Dale Bellamah Building Company, Inc., a New Mexico corporation engaged in the building business at Albuquerque, New Mexico; Dale Bellamah Homes of Roswell, a New Mexico corporation engaged in home building at Roswell, New Mexico.

Dale Bellamah exercises personal management and control of all the corporations mentioned in the preceding paragraph and operates them as a single business enterprise. There is no competition between these companies, and each operates in an area determined exclusively by Bellamah.

The credited evidence discloses that during the 12-month period here involved, Respondent herein did business with Bellamah and billed Bellamah for the work performed and goods supplied with no independent knowledge with which Bellamah corporation he was doing business.

During the aforesaid 12-month period, the out-of-State sales and services rendered of Dale Bellamah Homes of El Paso, of Dale Bellamah Homes of Lubbock, and of Dale Bellamah Corporation (the holding company) exceeded $100,000 in value. During the same period, the holding company's (through Dale Bellamah Estates, Inc, and Dale Bellamah Homes, Inc.) purchases of goods and services rendered exceeded $100,000 in value. The record is convincingly clear, and the Trial Examiner finds, that during all times material Bellamah operated his corporations as one business enterprise and as one employer and that his business operations meet the standards fixed by the Board for the assertion of jurisdiction under the *Mohican* and *Alamo-Braun* doctrines.

The facts as found clearly establish that Respondent, during the 12-month period immediately preceding the issuance of the complaint herein, sold goods and rendered services, valued at $158,982.83, to concerns directly engaged in commerce within the meaning of the Act.[2]

During the 12-month period immediately preceding the issuance of the complaint herein, Respondent purchased and received replacement equipment valued at $121,264 42 from sources within the State of New Mexico. These purchases consist of:

1. One Euclid front end loader purchased from Lively Equipment Company, Albuquerque, New Mexico, who, in turn, purchased said loader from Euclid Division of General Motors Corporation and it was shipped to Lively's Albuquerque establishment from Cleveland, Ohio. Said loader cost Respondent about $18,000.

Respondent also purchased from Lively some curb and gutter forms at a cost of about $10,000. Said forms were shipped to Lively's Albuquerque establishment from either Pittsburgh, Pennsylvania, or from Matoon, Illinois.

2. A purchase from Oden Chevrolet Company, Albuquerque, New Mexico, of a new passenger automobile cost Respondent about $2,300, and a new $2,649.26 Chevrolet pickup truck. The automobile was shipped to Oden's Albuquerque establishment from the Kansas City, Missouri, plant of General Motors, and the truck was received from a New Mexico Chevrolet dealer who, in turn, received it from outside the State of New Mexico.[3]

3. A purchase of a new $2,706 95 truck from Frontier Ford, Albuquerque, New Mexico, a new car Ford dealer. Said truck was shipped ot Frontier's Albuquerque establishment from one of the Ford Motor Company's plants located outside the State of New Mexico. Frontier's annual out-of-State purchases of new automobiles approximate $4,000,000.

4. A purchase from Jones Motor Company, Albuquerque, New Mexico, a new car dealer, of a $3,877.65 new passenger automobile, which was shipped to Jones' Albuquerque establishment from the Ford Motor Company's Kansas City, Missouri, plant. Jones' annual out-of-State purchases of new automobiles exceed $500,000.

5 A purchase from Western Tractor, Inc., Albuquerque, New Mexico, of two Ford tractors at a cost to Respondent in excess of $10,000. These tractors were shipped to Western's Albuquerque establishment from Denver, Colorado. Western's annual out-of-State purchases of tractors approximate $225,000.

6. A purchase from Leonard Motor Company, Albuquerque, New Mexico, of a $21,000 ready-mix concrete truck which was shipped to Leonard's Albuquerque

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[2] *Sumner Sand & Gravel Company*, 128 NLRB 1368, citing with approval *Siemons Mailing Service*, 122 NLRB 81 See also *Hart Concrete Products Co*, 94 NLRB 1565; *White's Uvalde Mines*, 117 NLRB 1128

[3] There is no Chevrolet plant within the State of New Mexico.

establishment from a point located in the State of Texas or from a point located in the State of Wisconsin.

7. A purchase of a new $6,731.09 Cadillac passenger automobile from Galles Motor Company, Albuquerque, New Mexico, which automobile was shipped to Galles' Albuquerque establishment from the Detroit, Michigan, plant of the Cadillac Division of General Motors Corporation. Galles' annual out-of-State purchases of new automobiles amount to about $225,000.

Upon the basis of the foregoing facts, it is again found, in line with established Board authority, that Respondent is engaged in, and during all times material was engaged in, business affecting commerce within the standards fixed by the Board for the assertion of jurisdiction.

Acme Fast Freight, Inc. *and* John Tomarelli

Lodge 1618, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, AFL-CIO *and* John Tomarelli. *Cases Nos. 2-CA-7128 and 2-CB-2804. December 8, 1961*

DECISION AND ORDER

On June 29, 1960, Trial Examiner George J. Bott issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the General Counsel and Respondents filed exceptions to the Intermediate Report and supporting briefs.[1]

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 exceptions and briefs, and the entire record in this proceeding,[2] and finding merit in the Respondents' exceptions, hereby adopts the findings and conclusions of the Trial Examiner only to the extent consistent with our decision herein.

For the reasons set forth in the Intermediate Report, we agree with the Trial Examiner that Tomarelli did not make a full and complete tender to the Respondent Union of all dues and fees which he was lawfully required to tender until after the Respondent had effectively requested his discharge. We also find in this record insufficient evi-

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[1] Pursuant to leave of the Board, briefs *amici curiae* were filed on behalf of Aluminum Workers International Union, AFL-CIO, American Federation of Technical Engineers, AFL-CIO, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AFL-CIO, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Tobacco Workers International Union, AFL-CIO.

[2] As the record and briefs adequately present the issues and positions of the parties and Intervenors *amici*, the several requests for oral argument, including that of American Federation of Labor and Congress of Industrial Organizations, are hereby denied.