**Youngstown Sheet and Tube Company *and* United Steelworkers of America, AFL-CIO, Local 1011.** Case 13-CA-16636

September 29, 1978

## DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On June 14, 1978, Administrative Law Judge Lowell Goerlich issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

Respondent has excepted, *inter alia,* to that portion of the Administrative Law Judge's recommended Order which vacates the strike vote of June 21, 1977, allows a new strike vote, and restores all collective-bargaining rights and privileges as they existed on June 8, 1977. The General Counsel joins with Respondent with respect to this exception.

Both Respondent and the General Counsel contend correctly that the collective-bargaining agreement between Respondent and the Union Local requires the participation of the International Union in any strike vote authorization. Since the International Union is not a party to this proceeding, we agree with Respondent and the General Counsel that Section 10(c) of the Act prohibits the Board from adopting that portion of the Administrative Law Judge's recommended Order which vacates the vote of June 21, 1977. We shall modify the recommended Order accordingly.

[1] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.,* 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

We make the following corrections in the Administrative Law Judge's Decision. In fn. 2, both references to "Local 3117" should be to "Local 3127." Further, 24, not 21, issues were resolved for Local 3127. In fn. 9, only the three sentences beginning with "if the package was rejected . . ." are quoted from the Respondent's brief. The remainder of the footnote is the commentary of the Administrative Law Judge.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Youngstown Sheet and Tube Company, East Chicago, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete the final paragraph.
2. Substitute the attached notice for that of the Administrative Law Judge.

## APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all parties participated and offered evidence, the National Labor Relations Board found that we unlawfully interfered with our employees' strike vote election held on June 21, 1977, at our Indiana Harbor Works.

WE WILL NOT unlawfully threaten our employees that if they authorize a strike all bargaining proposals will be automatically withdrawn and all answers to previously resolved issues will be withdrawn from the bargaining table, or convey threats of like import.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

YOUNGSTOWN SHEET AND TUBE COMPANY

## DECISION

### STATEMENT OF THE CASE

LOWELL GOERLICH, Administrative Law Judge: The charge filed by United Steelworkers of America, AFL-CIO, Local 1011, herein called the Union, on July 6, 1977, was served by registered mail on Youngstown Sheet and Tube Company, Respondent herein, on July 8, 1977. A complaint and notice of hearing was issued on August 19, 1977. The complaint charged that Respondent "interfered with, restrained and coerced the rights of its employees . . . in a letter to employees that if a strike was authorized by employees in a pending strike vote election, all company proposals for contract agreement would be withdrawn from the bargaining table and all answers to previously resolved issues would be withdrawn from the bargaining table," in violation of Section 8(a)(1) of the National Labor Relations Act, as amended, herein referred to as the Act.

Respondent filed a timely answer denying that it had engaged in any of the infair labor practices alleged but admitted that on June 15, 1977, it had addressed a letter to its employees which contained the following statement:

> I want you to be aware that, in the event a strike is authorized, all Company proposals described in the attachments to this letter are automatically withdrawn. Additionally, all issues previously resolved were resolved with the understanding that the Company's answers would be withdrawn if a strike is authorized.

The case came on for hearing at Chicago, Illinois, on February 17 and April 3, 1978. Each party was afforded full opportunity to be heard, to examine and cross-examine witnesses, to argue orally on the record, to submit proposed findings of fact and conclusions, and to file briefs. All briefs have been carefully considered.

## FINDINGS OF FACT,[1] CONCLUSIONS, AND REASONS THEREFOR

### I. BUSINESS OF THE RESPONDENT

Youngstown Sheet and Tube Company is, and has been at all times material herein, an Ohio corporation.

At all times material herein, Respondent has maintained its principal office at Youngstown, Ohio, and has maintained a manufacturing plant at Riley and Dickey Roads in East Chicago, Indiana, (also known as the Indiana Harbor Works), where it is engaged in the business of manufacturing, producing, processing, selling, and distributing basic steel.

During the past fiscal or calendar year, a representative period, Respondent, in the course and conduct of its business operations described above, sold and shipped goods valued in excess of $50,000 directly from its plant in Indiana to points outside the State of Indiana.

During the past fiscal or calendar year, a representative period, Respondent, in the course and conduct of its business operations described above, purchased and received goods valued in excess of $50,000 at its plant in Indiana directly from points outside the State of Indiana.

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

### II. THE LABOR ORGANIZATION INVOLVED

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The Facts*

The 1977 negotiations between the United Steelworkers of America, AFL-CIO (herein referred to as the International Union), and the Coordinating Committee Steel Companies, of which Respondent was a member, were pursuant to and governed by the Experimental Negotiating Agreement dated May 1, 1974, known as "ENA-77." ENA-77 required that all collective-bargaining issues, except those defined as "local collective bargaining issues shall be either resolved [by the parties to ENA-77] or decided by [an] Impartial Arbitration Panel" created by the agreement. Strikes, work stoppages or concerted refusals to work, and lockouts in support of collective-bargaining issues *other than local collective-bargaining issues* were prohibited under the agreement. However, in respect to local issues the agreement provided that "[a]ny local issue not disposed of by April 1, 1977, shall be referred to and dealt with by the respective Chairmen of the Union-Company negotiating committee. Should any such issue or issues initiated by the Union remain unresolved as of June 10, 1977, the Union Co-Chairman shall decide whether the issue or issues shall be withdrawn or put to a secret ballot vote" and "[s]hould any local collective bargaining issue or issues initiated by a Company remain unresolved as of June 10, 1977, the Company shall decide whether the issue or issues shall be withdrawn or become the basis for a lockout at the plant involved."

The basic agreement was settled as of April 9, 1977; however, certain local issues at Respondent's Indiana Harbor Works had not been resolved by June 10, 1977. In conformity with ENA-77, it was decided that these issues be "put to a secret ballot vote."

The International had established at the Indiana Harbor Works for the purpose of servicing the collective-bargaining agreements the following three Locals: Local 1011, representing approximately 7,500 employees in a production and maintenance unit; Local 3127, representing approximately 300 employees in a clerical unit; and Local 2775, representing approximately 105 employees in a plant protection unit.

In respect to the strike vote, ENA 77 provided that each member of the above Locals was entitled to vote on whether to strike over a local collective-bargaining issue, regardless of whether the local collective-bargaining issue was initiated by the particular Local Union which represented that employee in local issue bargaining and regardless of whether the Local Union which represented that employee had, in fact, resolved all of the local collective-bargaining issues it had presented to the Company. Thus, members in all three Locals participated in the strike vote which was scheduled for and conducted on June 21, 1977, in conformity with ENA-77.[2] The secret strike vote re-

[1] The facts found herein are based on the record as a whole and the observation of the witnesses. The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *N.L.R.B.* v. *Walton Manufacturing Company and Loganville Pants Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited either as having been in conflict with the testimony of credible witnesses or because it was in and of itself incredible and unworthy of belief. All testimony has been reviewed and weighed in the light of the entire record. No testimony has been pretermitted.

[2] In response to the request of the Union dated May 20, 1977, for a final answer on disputed local issues, Respondent by letter dated June 8, 1977, listed 128 local issues as resolved for Local 1011, 21 as resolved for Local 3117, and 5 as resolved for Local 2775. Unresolved local issues were listed as 51 for Local 1011, 1 for local 2775, and none for Local 3117. In addition, the letter included a " 'package proposal' contingent on there not being a strike at the particular plant in connection with the 1977 negotiations." The "package proposal" proposed the resolution of pay periods and pay dates for the

*(Continued)*

vealed that a majority of the voters in Local 1011, the Union with the greatest number of unresolved issues, voted in favor of the strike while in Local 3127, with one unresolved issue, and in Local 2775, with no unresolved issues, a majority of the voters voted against the strike.[3]

Prior to the strike vote, the positions of the three Locals were set forth in a strike vote pamphlet which had been distributed to the membership on June 17 and 18, 1977. Respondent prepared a response to the Local's pamphlet which was mailed on June 16, 1977. The letter informed the employees of the status of negotiations and specified the details of Respondent's proposed package. It also included the reasons why the employees should vote against the strike. Among other things, it included the following paragraph:

> I want you to be aware that, in the event a strike is authorized, all Company proposals described in the attachments[4] to this letter are automatically withdrawn. Additionally, all issues previously resolved were resolved with the understanding that the Company's answers would be withdrawn if a strike is authorized.

Bargaining in regard to local issues had followed the dictates of ENA-77 and the memorandum of understanding on local issue handling dated January 1, 1977. In the memorandum it was provided:

> Following a complete and thorough discussion of each local issue at the plant level, the local parties shall prepare and jointly sign a "Local Issue Form," using the form attached hereto, recording the nature and disposition of each such local issue.

The local issue form provided for a statement of the issue, disposition, and signatures of the parties. When a local issue was resolved, it was "signed off" on the form[5] and was not again returned to the bargaining table. As is evident from the issue referred to in the foregoing footnote, resolved issues were sometimes implemented.[6] Nevertheless, Respondent claimed through the testimony of George W. Liniger, manager of employee services at Indiana Harbor Works, that "nothing is settled until everything is finalized and settled." Testifying along this line, Liniger said, "We have always told the union traditionally that anything that we were signing off was in the nature of a tentative settlement, and that we would have to get down to the final line and we have an agreement on everything or we have an agreement on nothing." On the other hand, Norman Purdue, president of Local 1011, testified, "When a local issue was resolved, at that time the person representing the union . . . would sign it off. Management would then sign the local issue. It would be considered as one that was resolved no longer to be negotiated upon, and we figured it was one of local issues that was out of the way and settled."[7] ENA-77 provided that March 1, 1977, was the cutoff date for the submission of issues "except for those issues which thereafter arise as a result of changed conditions, may subsequently be initiated by either party under the procedures of the agreement at the plant level."

### B. *Conclusions and Reasons Therefor*

The General Counsel asserts that Respondent violated Section 8(a)(1) of the Act when it advised its employees on June 16, 1977, that if its employees authorized a strike all company proposals and answers to resolved issues would be withdrawn. Or, in other words, if the employees voted for a strike, bargaining would start at scratch or, as expressed by Respondent, "we were back to ground zero again in February [the time negotiations commenced] and they [the Union] had nothing."[8] Respondent asserts that its representations to its employees were lawful and simply recited the ground rules governing bargaining, i.e., "the company has made a 'package proposal' contingent on there not being a strike at the particular plant in connection with the 1977 negotiations."[9]

Respondent's letter of June 15, 1977, assured employees that, if they voted against the strike, resolved issues would remain firm and the benefits therefrom retained, and the Company's package would lie on the bargaining table for

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clerical and technical unit, overtime meal tickets for all employees involving six issues, company local issues I-A and I-B, low yield incentive, union claim of shutdown of bar mill, and grievances relating to Central States Operating Company Services and Equipment at Indiana Harbor. In this correspondence, there was no indication that Respondent intended to withdraw its answers to the resolved issues if the employees voted for a strike.

[3] The strike vote tally was as follows: Local 1011 had 2,684 yes votes and 2,653 no votes; Local 3127 had 22 yes votes and 184 no votes; Local 2775 had 7 yes votes and 49 no votes.

[4] The attachments were "the remaining unresolved true local issues with the Company's most recent response" and "the Company Package proposal still on the table."

[5] A sample local issue "signed off" form contains the following:

> Statement of Issue:
>
> We ask a shanty be built to house and protect the weighers and assistant tester on the 2 Stand: The Company has agreed to this for two years.
>
> Disposition:
>
> A shanty is now being built and the Carpenter Shop estimates it should be installed during the week of 3/6/77.

[6] The credited record reveals that in response to a resolved issue a water fountain was installed.

[7] Robert Rospierski, chairman of the grievance committee testified:

> Q. As you signed off local issues, at any time did anyone from Youngstown Sheet and Tube state that such issues could be withdrawn at a later date?
>
> A. No; on the contrary what was said by George Liniger, head of Industrial Relations, was that we need to go ahead and sign off some of these issues and get them off the table so that we can continue with those unresolved issues.

[8] Liniger's testimony.

[9] In its brief, Respondent presents a more complete statement of its position:

> If the package was rejected, however, everything in the package was removed from the table, including conditionally agreed-on items, and negotiations in Liniger's words "are back to day one." Although theoretically the negotiations could start over from scratch at this point, as a practical matter not everything which had been previously discussed would be renegotiated. All items that had been on the table up to that point, however, either tentatively agreed to or unresolved, were now considered unresolved. These were the "ground rules" which Respondent apparently set for itself. Credible proof does not establish that the Union agreed to these "ground rules." The rules do not appear in ENA 77 or the memorandum of understanding on local issue handling. In fact, the latter, which required a "Local Issue Form" for recording the nature and disposition of each such local issue, contemplated the removal of any resolved local issue from the bargaining table and ENA 77 contemplated that only unresolved local issues would be submitted to a strike vote or lockout. Until Respondent insisted that resolved issues would become unresolved if the employees chose to strike, it seems clear that the parties had been following the contemplated procedure described above. Indeed, as noted, some of the resolved issues had been implemented.

the taking. Such message manifested the same ominous overtones as the employer's message in *Yama Woodcraft, Inc., d/b/a Cal-Pacific Furniture Mfg. Co.*, 228 NLRB 1337 (1977). In that case it was stated:

> Respondent's message, that in the event of a strike it would institute its contract proposal for the benefit of the employees who did not support the strike, was calculated to subvert the Union and to wean employees away from the Union and to deal directly with them concerning matters over which it was obligated to bargain with the Union.

Such misconduct was held to be in violation of Section 8(a)(1) of the Act. The same legal conclusion obtains in the instant case.

On the other hand, if the employees had voted in favor of the strike they would have experienced the withdrawal of any benefits which had accrued to them from signing off of the 154 resolved issues and would have been exposed to the detriment[10] implicit in commencing bargaining negotiations from scratch. Thus, Respondent's letter contained promises of benefits and threats of reprisal which constituted a violation of Section 8(a)(1) of the Act.[11]

Additionally, Respondent's threat that all benefits accruing from the signed-off resolved issues would be withdrawn, that its package offer would be rescinded, and that any future bargaining would start at "ground zero" or from scratch is similar in coercive nature to employers' threats to commence collective-bargaining from scratch if employees voted for a union. In this connection the Board has said in *Plastronics, Inc.*, 233 NLRB 155 (1977), "Such statements [collective-bargaining 'begins from scratch,' 'starts at zero,' or 'starts with a blank page'] are objectionable when, in context, they effectively threaten employees with the loss of existing benefits and leave them with the impression that what they may ultimately receive depends in large measure upon what the Union can induce the employer to restore." Likewise, in the instant case, the Employer's method of "package bargaining" as described in its brief and its message of June 15, 1977, was calculated to leave the employees with the impression that if they voted for the Union's strike restoration of any loss of benefits which had accrued to them by reason of the signed-off 154 resolved issues would ultimately depend upon what the Union could induce Respondent to again accept. Thus, there was a likely risk that the employees might receive less if they voted in favor of the strike because of the bargaining position adopted by Respondent even before collective bargaining recommenced.

Moreover, the Respondent compounded its misconduct by injecting bad-faith bargaining into the negotiations in that by the letter Respondent threatened to withdraw agreed-upon contract proposals without good cause.[12]

"It is well established that withdrawal by the employer of contract proposals, tentatively agreed to by both the employer and the union in earlier bargaining sessions, without good cause, is evidence of a lack of good faith bargaining. . . ." *American Seating Company of Mississippi* v. *N.L.R.B.*, 424 F.2d 106, 108 (C.A. 5, 1970).

The record further reveals that prior to the letter of June 15, 1977, Respondent had not notified the Locals or their members that, in the event a strike vote was authorized, it would withdraw its answers to the signed-off resolved issues. Thus, the letter announced a new bargaining position to the employees that had not been communicated to the Union. Such action taken by Respondent was an unlawful attempt to bypass the Union and deal directly with the employees and resulted in the undermining of the Union as the exclusive bargaining agent. Cf. *Medo Photo Supply Corporation* v. *N.L.R.B.*, 321 U.S. 678 (1944).

Accordingly, it is found that Respondent violated Section 8(a)(1) of the Act when on June 15, 1977, in a letter to its employees it advised its employees, in essence, that if a strike was authorized all company proposals would be automatically withdrawn and all answers to previously resolved issues would be withdrawn from the bargaining table, and by such misconduct Respondent unlawfully interfered with the strike vote conducted on June 21, 1977.

## CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of the Act.
2. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the policies of the Act for jurisdiction to be exercised herein.
3. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

It having been found that Respondent has engaged in certain unfair labor practices, it is recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Respondent argues that "[e]ven if the Company's statements to employees in the June 15 letter were found to violate Section 8(a)(1), therefore, no policy under the Act would be effectuated by issuing an order requiring the Company to refrain from engaging in conduct alleged in the Complaint in the future and post a notice." I am prone to agree with Respondent that little, if anything, toward the effectuation of the policies of the Act would be accomplished by an Order or notice at this stage of the proceeding. Thus, I am convinced that if the Act is to be effectuated, as envisioned by the statute, an Order should be entered for the restoration of the *status quo ante* to the extent feasible. Cf. *Allied Products Corporation, Richard*

[10] For example, if Respondent had carried out its threat, Local 2775, whose issues had been fully resolved, would have been forced to have started from scratch and renegotiated. Moreover, benefits which had been gained from the implementation of a signed-off resolved issue would have been taken away and the issue would have been subject to renegotiation.

[11] Under these circumstances protection for the letter's publication cannot be claimed under Sec. 8(c) of the Act. Cf. *Westinghouse Electric Corporation, Distribution Equipment Division*, 232 NLRB 56 (1977).

[12] In the instant case the contemplated withdrawal of the answers to signed-off resolved issues was in reprisal for voting in favor of a strike.

*Brothers Division*, 218 NLRB 1246 (1975). Accordingly, I recommend that the strike vote election be vacated and held for naught and that a new strike vote election be allowed, with the restoration of all collective-bargaining rights and privileges, as they existed on June 8, 1977, the date on which Respondent stated its "last position" on local issues before the strike vote. Such an Order will avoid the Government's spinning its wheels and will gratify the Act's remedial objectives. The Board has recently said in *Liberty Mutual Insurance Co.*, 235 NLRB 1387 (1978), that included in its duty to take "such affirmative action . . . as will effectuate the policies of [the] Act," is the requirement that the Board restore the *status quo ante* and fashion remedial orders "in such a manner as to prevent or deter recurrence of the unlawful activity which is the subject of the action." The recommended remedy conforms with these requirements. Indeed, unless Respondent is deterred from its present course of misconduct there can be no end to the kind of unlawful interference found herein. Any future strike vote election will be imperiled. The remedy will have "wholesome prophylactic effects." *Id.*

Accordingly, upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

## ORDER[13]

The Respondent, Youngstown Sheet and Tube Company, Youngstown, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully threatening employees that if they authorize a strike all company bargaining proposals will be automatically withdrawn and all answers to previously resolved issues will be withdrawn from the bargaining table, or conveying threats of the same import.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which will effectuate the purposes of the Act:

(a) Post at its Indiana Harbor Works, East Chicago, Indiana, plant copies of the attached notice marked "Appendix."[14] Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by it 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the strike vote election held on June 21, 1977, be vacated and held for naught and that a new strike vote election be allowed with the restoration of all collective-bargaining rights and privileges as they existed on June 8, 1977.

[13] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[14] In the event that this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."