

In the Matter of ALLIED MILLS, INC. and AMERICAN FEDERATION OF  
GRAIN MILLERS, LOCAL 110 (AFL)

*Case No. 3-CA-78.—Decided April 7, 1949*

DECISION

AND

ORDER

On February 4, 1949, Trial Examiner Hamilton Gardner issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (5) and 8 (a) (1) of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report, and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel.\*

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 brief filed by the Respondent, and the entire record in the case,<sup>1</sup> and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with minor modifications.<sup>2</sup>

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor

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\*Houston, Reynolds, and Murdock.

<sup>1</sup> The request of the Respondent for oral argument is denied because the record and the brief submitted by Respondent, in our opinion, adequately present the issues and the positions of the parties.

<sup>2</sup> We note a minor error in the description of the unit as set forth in the second conclusion of law and in the recommended order of the Trial Examiner. The correct unit description, as set forth in the findings of fact of the Intermediate Report, is hereby adopted. Moreover, the charge and complaint allege only a refusal to bargain after May 28, 1948. Therefore, we shall not make any finding herein that the Respondent by executing and establishing its "Retirement Plan" without first notifying and consulting with the Union, violated the Act.

Relations Board hereby orders that the Respondent, Allied Mills, Inc., Buffalo, New York, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with respect to its "Retirement Plan" with American Federation of Grain Millers, Local 110 (AFL), as the exclusive representative of all production and maintenance employees at its Buffalo plant, excluding office and clerical employees, professional employees, guards, watchmen, and supervisors as defined in the Act:

(b) Unilaterally making changes in its "Retirement Plan" which would affect the employees in the aforesaid appropriate unit without prior consultation with American Federation of Grain Millers, Local 110 (AFL).

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

(a) Upon request, bargain collectively with respect to its "Retirement Plan" with American Federation of Grain Millers, Local 110 (AFL), as the exclusive representative of all the employees in the aforesaid unit;

(b) Post at its plant at Buffalo, New York, copies of the notice attached hereto marked "Appendix A."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof, and maintained by it for sixty (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 said notices are not altered, defaced, or covered by any other material;

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

## 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

**WE WILL NOT refuse to bargain collectively upon request with  
AMERICAN FEDERATION OF GRAIN MILLERS, LOCAL 110 (AFL), as**

<sup>3</sup> In the event that this Order is enforced by a decree of a Circuit Court of Appeals, there shall be inserted before the words, "A DECISION AND ORDER" the words, "DECREE OF THE UNITED STATES CIRCUIT COURT OF APPEALS ENFORCING."

the exclusive representative of all of the employees in the bargaining unit described herein with respect to the "Retirement Plan" and

WE WILL NOT in the future make changes in our "Retirement Plan" which would affect the employees in the bargaining unit described herein without prior consultation with the above-named Union.

The bargaining unit is: all production and maintenance workers in our Buffalo, New York, plant, excluding office and clerical employees, professional employees, guards, watchmen, and supervisors.

ALLIED MILLS, INC.,  
Employer.

By \_\_\_\_\_  
(Representative) (Title)

Dated \_\_\_\_\_

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

*Ricard Lipsitz, Esq.*, Buffalo, N. Y., for the General Counsel.

*Messrs. Dudley, Stowe & Sawyer*, by *Horace C. Winch, Esq.*, Buffalo, N. Y., for the Respondent.

*Peter J. Crotty, Esq.*, Buffalo, N. Y., for the Union.

#### STATEMENT OF THE CASE

This case arose upon a first amended charge filed on October 27, 1948, by American Federation of Grain Millers, Local 110 (AFL), against Allied Mills, Inc. Upon the basis of such charge, the General Counsel of the National Labor Relations Board, acting through the Regional Director of the Third Region (Buffalo, New York), issued a complaint against the named company on October 27, 1948. This alleged that the company had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (5) and 8 (a) (1) and Section 2 (6) and (7) of the Labor Management Relations Act, (61 Stat. 136). Copies of the complaint and the charge upon which it was based, together with notice of hearing thereon, were duly served upon the Union and the Respondent.<sup>1</sup>

The complaint alleged in substance that the Respondent engaged in unfair labor practices on May 28, 1948, and thereafter, by refusing to bargain collectively with the Union, as the exclusive representative of its employees within an appropriate bargaining unit, with respect to a Retirement and Pension Plan. Thereby, it alleged, the Respondent had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

<sup>1</sup> References in this Report will be: American Federation of Grain Millers, Local 110 (AFL), as the Union; Allied Mills, Inc., as the Respondents; the General Counsel or his representative at the hearing, as the General Counsel; the National Labor Relations Board, as the Board; the Labor Management Relations Act as the Act.

The Answer of the Respondent admitted the jurisdictional facts of the complaint. It denied generally any unfair labor practices; pleaded "that prior to May 28, 1948, it unilaterally set up and executed a retirement and pension plan for its employees"; and denied refusal to bargain regarding its plan "as required by the definition of collective bargaining contained in Section 8 (d)" of the Act.

Pursuant to notice, a hearing was held in Buffalo, New York, on December 20, 1948, before Hamilton Gardner, the undersigned Trial Examiner designated by the Chief Trial Examiner. The General Counsel, the Union and the Respondent were represented by counsel. Full opportunity was afforded all parties to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues. At the conclusion of the hearing the undersigned granted a motion of the General Counsel to amend the complaint in minor matters to conform to the proof. The General Counsel thereupon moved to strike certain parts of the answer. This motion was taken under advisement by the undersigned. It is now denied. Counsel for the Respondent then moved to dismiss the complaint. Ruling on the motion was then reserved by the Trial Examiner. It is now denied. Oral argument was made at the beginning and ending of the hearing by all counsel. The parties were advised of their right to file proposed findings of fact, conclusions of law and briefs. Very helpful briefs have been received from the General Counsel and from counsel for the Respondent. These have been carefully considered.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The Respondent is an Indiana corporation licensed to do business in New York. It operates approximately 15 plants throughout the United States in which it manufactures livestock and poultry feeds and processes soy beans. Its plant in Buffalo, New York, is the only one involved here.

During the year 1947, which is typical of the period considered in this case, the Respondent purchased supplies and materials amounting to about \$11,000,000 of which approximately 92 percent was transported from points outside the State of New York. In the same period the Respondent sold its products in the amount of \$13,000,000 of which about 92 percent was shipped to customers in States other than New York.

The Respondent admits it is engaged in commerce within the meaning of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

American Federation of Grain Millers, Local 110 (AFL) is a labor organization admitting employees of the respondent to membership.

##### III. THE UNFAIR LABOR PRACTICES

###### A. *The refusal to bargain*

###### 1. The appropriate unit and representation by the Union of a majority therein

The Respondent's answer admits that all production and maintenance employees at its Buffalo plant, excluding office clerical, and professional employees, guards, watchmen, and supervisors as defined in the Act, constitute a unit ap-

propriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. I so find.

The Respondent similarly admits that at all times since May 24, 1948, and for many years prior thereto, the Union has been the representative of a majority of its employees in its Buffalo plant for collective bargaining purposes. Accordingly, I find that on May 24, 1948, and at all times thereafter, the Union was the duly designated bargaining representative of a majority of the employees in the unit above described and that, in accordance with the provisions of Section 9 (a) of the Act, the Union was on said date, and at all times thereafter, has been and now is the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

## 2. The refusal to bargain

### a. *History of "Retirement Plan"*

The material facts in this proceeding are not in dispute. What is at issue are questions of law.

Although the complaint alleges that the Respondent's refusal to bargain on its "Retirement Plan" began on May 24, 1948, some previous occurrences furnish helpful background.

The Union and the Respondent have an unbroken history of written contracts covering their labor relations since 1933, which have been negotiated annually. About March 1, 1945, the Respondent announced in a 15 page printed booklet its "Retirement Plan for Employees of Allied Mills, Inc. and Subsidiaries." The Union was not previously consulted, but each Union member was sent a copy of the booklet.

The plan is elaborate and detailed. Its purpose, as stated by the Respondent's president, was:

It is our hope that the benefits provided by the Retirement Plan, together with individual savings, and the benefits received under Social Security will provide modest incomes at retirement for employees who remain with the Company, sufficient to provide some measure of security.

The plan is operated under a trust agreement with a Chicago bank and administered by trustees appointed by the Respondent. "No employee contribution is required. The cost of the Plan will be paid entirely by the Company." The amount of monthly payments to be received upon retirement is determined by length of service and the amount of wages earned. The retirement age is set at 65 years.

No retirements for age were made in the war years, but on April 11, 1946, the Respondent posted a notice on its bulletin board stating that on December 31, 1946, such action would be taken as to employees who were 65. Out of the approximately 135 workmen 3 were then so terminated.

The Union thereupon protested to the Respondent about the discharges but the latter would not reinstate the three men nor bargain on the question of the "Retirement Plan." The Union then filed a charge with the Board on April 8, 1947, alleging unfair labor practice because of these facts, but it was withdrawn on June 11, 1947. About the last mentioned date, the annual negotiations for the contract to run from July 1, 1947, to June 30, 1948, were started. The Union made a written request to the Respondent for certain changes, including "an adequate pension plan." But the Respondent would not bargain on this subject

and no mention of it occurred in that particular annual contract. Toward the end of 1947 the Union filed a second charge because of impending forced discharges under the plan. This was withdrawn when the current contract was signed.

b. *The current contract*

First negotiations on the present contract began on April 29, 1948, when Peter J. Rybka, business agent of the Union, sent a letter to Elmer J. Koehnlein, manager of the Respondent, requesting a meeting for the purpose of negotiating the new annual agreement. Rybka and Koehnlein were thereafter the chief representatives of their respective principals, as in fact they had been for some time previously. To the Rybka letter was attached a document headed: "Changes and Additions requested by the Union." Paragraph 16 read:

*Pension Plan:*

The Union request that the Company negotiate a satisfactory Pension Program for its employees. Questions of mandatory retirement, amount of pension, years of service, etc., are to be worked out through the channels of collective bargaining.

Then ensued a series of meetings to work out a final written contract. These were attended by Rybka and other Union representatives for the employees and by Koehnlein and others for the Respondent. For the most part, by previous custom, the Union dealt with Allied Mills, Inc., and six other companies in Buffalo in the same business in these negotiations. The final written contract, however, was signed by the Union and the individual Respondent. The first of these meetings was held on May 24, 1948. Among other things discussed was the "Retirement Plan." Rybka called attention to the Union's request concerning a retirement and pension plan, as quoted above. The Respondent's manager, Koehnlein, replied that "the company's position remained unchanged and that pensions were strictly a company prerogative, a managerial function, and that they would not bargain on the question of pensions." Subsequently, conferences were held on June 9, 14, and 17; July 21; and August 3, 1948. At most, if not all of these meetings, Rybka, for the Union, brought up the "Retirement Plan" for consideration and each time was informed by Koehnlein that on the advice of counsel his company did not regard it as a subject of collective bargaining. No question is raised as to the good faith of all parties concerned.

The parties finally agreed on the terms to be embodied in the contract. The Union wrote the Respondent on August 10, 1948, that its membership had accepted the terms of the new contract. This letter made the following reservation:

The one remaining issue between your Company and our Union is the negotiation of a suitable pension plan which is still unsettled and you have advised that the Company's position relative to making this issue a subject matter for collective bargaining is still unchanged. That position is a refusal to recognize pensions as a proper subject for collective bargaining.

The letter further stated that the Union felt it necessary to file an unfair labor charge with the Board, (which is the present proceeding).

The Company replied on August 18, 1948, stating in part:

In reference to the pension plan, we wish to advise that until the Inland Steel Company case has been finally adjudicated, our position must remain the same as it has been in the past.

The contract was officially signed on August 23, 1948, with the effective date of July 1, 1948. It remains in effect until June 30, 1949.

No further negotiations on the Retirement Plan have been attempted since August 18, 1948, but Koehnlein, the Company's manager, while testifying at the hearing, stated that the Respondent's position on the matter remained unchanged.

The contract, which is in the record, is completely silent as to the "Retirement Plan." But it does contain other provisions which may be significant here.

11. The plant committee representing the employees may enter into *supplemental agreements* with the Milling Company covering *working conditions* providing that such supplemental agreements are in writing and do not conflict with the principals laid down in this agreement. [Emphasis supplied.]

14. In the event of controversy, *any and all controversies* shall be settled, if possible, by the employees and the management of the Milling Company . . . [A system of arbitration is then provided.] [Emphasis supplied.]

25. . . . Either party hereunto desiring a change in any section or sections of this agreement shall notify the other party in writing of the desired changes at least sixty (60) days prior to the 30th of June, 1949 . . .

#### Conclusions

The question of the bargaining of a retirement and pension plan, as between an employer and his employees, is no longer an open one. The Board has recently held in the *Inland Steel Co.* case, on facts almost identical with the present ones, that it is a proper subject for collective bargaining and that an employer's refusal to negotiate constituted a violation of Section 8 (a) (5) of the Act. After approving the scholarly Intermediate Report of the Trial Examiner in that proceeding, the Board, in its own exhaustive decision held:

With due regard to the terms and purposes of the Act and the evils which it sought to correct, we are convinced and find the term "wages" as used in Section 9 (a) must be construed to include emoluments of value like pension and insurance benefits; which may accrue out of their employment relationship . . . Realistically reviewed, this type of wage enhancement or increase, no less than any other, becomes an integral part of the wage structure, and the character of the employee representative's interest in it, and the terms of its grant, is no different than in any other case where a change in the wage structure is effected.

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We conclude, therefore, as did the Trial Examiner, that where, as here, the employees in an appropriate unit have designated an exclusive bargaining representative, the employer of such employees is under a statutory duty to bargain collectively with the accreditable representative concerning the terms of a pension and retirement program.<sup>2</sup>

The Employer in the *Inland Steel Co.* case then petitioned the Court of Appeals for the Seventh Circuit to set aside the Board's order. In an extensive opinion that court sustained the Board and gave sanction to the doctrine that the subject of a retirement and pension plan is a matter for collective bargaining.

<sup>2</sup> *Inland Steel Co.*, 77 N. L. R. B. 1.

It is our view, therefore, and we so hold that the order of the Board, insofar as it requires the Company to bargain with respect to retirement and pension matters, is valid.<sup>3</sup>

In his brief, the General Counsel discusses the *J. H. Allison and Co.* case.<sup>4</sup> Inasmuch as the *Inland Steel Co.* case was decided later and its facts are so more nearly analogous to those of the present case, it will not be further referred to. The still later *W. W. Cross & Co.* case is also not so similar as the *Inland Steel Co.* case.<sup>5</sup>

As the law now stands, the subject matter of a retirement and pension plan is bargainable as part of "wages, hours and other terms and conditions of employment," as defined in Section 8 (d); and an employer who refuses upon proper request to enter collective bargaining negotiations concerning it violates Section 8 (a) (5).

Such being the case, an employer is required to bargain on a pension and retirement plan to the same extent, with the same continuity and under the same obligation as on any other subject of "wages, hours and other terms and conditions of employment."

It is well established and needs no citation of authorities that the obligation to bargain on these matters is a continuing one. The very words of both the National Labor Relations Act and the Labor Management Relations Act in Section 8 (d) "to meet at reasonable times" shows this. The Board has so applied them. Hence the duty of this Respondent to bargain about its "Retirement Plan" requires it to meet "at reasonable times" for that purpose. The fact is that although the Respondent has continued to meet with the Union and has negotiated on other terms and conditions of employment which were embodied in a written contract, it has steadfastly refused to discuss the "Pension Plan" and has stood on its so-called right that such plan is purely a managerial prerogative.

Counsel for the Respondent devotes the greater part of his brief to an argument that the Respondent is relieved from the obligation (which he does not admit) to bargain concerning a retirement and pension plan by the last paragraph of Section 8 (d). The pertinent part reads:

. . . and the duties so imposed shall not be construed as requiring either party to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract.

The undersigned has been unable to find any decision of the Board or the courts interpreting or applying this particular paragraph.

Nor does the legislative history shed much light on it. Counsel for both parties cite a statement by Senator Taft:

Section 8 (d): The amendment to this sub-section providing that the duty to bargain collectively should not be construed as requiring either party to discuss or agree to any modification of the terms of a contract if such

<sup>3</sup> *Inland Steel Co. v. N. L. R. B.*, (C. A. 7), 170 F. (2d) 247. Petition for certiorari has been filed with the United States Supreme Court on this phase of the matter, as well as on another not involved. As to the question of retirement and pension, the Supreme Court has not acted when this report was written.

<sup>4</sup> 70 N. L. R. B. 377.

<sup>5</sup> 22 L. R. R. M. 1131.

modification is to become effective before the contract may be reopened has been construed on the floor to mean "Parties will be bound by contract without an opportunity for further collective bargaining." *The provision has no such effect. It merely provides that either party to a contract may refuse to change its terms or discuss such a change to take effect during the life thereof without being guilty of an unfair labor practice.* Parties may meet and discuss the meaning of the terms of their contract and may agree to modification on change of circumstances, but it is not mandatory that they do so.<sup>6</sup> [Emphasis supplied.]

This statement merely bears out what the paragraph appears to say on its face, namely, that some protection and stability are meant to be given *written* contracts between employer and employee. *It refers to terms and conditions which have been integrated and embodied into a writing.* Conversely it does not have reference to matters relating to "wages, hours and other terms and conditions of employment," which have not been reduced to writing. [Emphasis supplied.] As to the written terms of the contract either party may refuse to bargain further about them, under the limitations set forth in the paragraph, without committing an unfair labor practice. With respect to unwritten terms dealing with "wages, hours and other terms and conditions of employment," the obligation remains on both parties to bargain continuously.

As applied to this case, it has been shown that no terms respecting the Respondent's "Retirement Plan" were written into the current contract. It has also already been pointed out that the subject is bargainable and that the duty to bargain concerning it is continuous. Indeed, the contract itself seems to approve these very negotiations. Paragraph 11 specifically authorizes written supplemental agreements "*covering working conditions.*" And Paragraph 14 provides for adjustment and, if necessary, the arbitration of "*any and all controversies.*" [Emphasis supplied.] Under these provisions and under the facts there can be no question of waiver by the Union.

So this argument of counsel for the Respondent falls of its own weight.

To sum up: I find that the Respondent by unilaterally executing and establishing its "Retirement Plan" without first notifying and consulting with the Union; by refusing to negotiate with the Union on May 24, 1948, and thereafter concerning such "Retirement Plan"; by refusing to negotiate with the Union concerning a grievance which the Union protested concerning the past and contemplated retiring of employees who had reached age 65; and by retiring employees in the unit who had reached age 65, without first consulting the Union, has failed and refused to bargain collectively; and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

I find that the activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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<sup>6</sup> *Legislative History of the Labor Management Relations Act, 1947*, U. S. Government Printing Office, p. 1625.

## V. THE REMEDY

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

It has been found that the respondent by acting unilaterally with regard to its "Retirement Plan" and without consulting with the Union on this subject, has refused to bargain collectively. It is accordingly necessary, in order to effectuate the policies of the Act, to require the Respondent, upon request, to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit with respect to its "Retirement Plan," and to refrain in the future from acting unilaterally in any matter involving its "Retirement Plan" whereby employees in the appropriate unit may be substantially affected without prior consultation with the Union and the undersigned will so recommend.

Because of the basis of the Respondent's refusal to bargain as indicated in the facts found and because of the absence of any evidence that danger of other unfair labor practices is to be anticipated from the Respondent's conduct in the past, I will not recommend that the Respondent cease and desist from commission of any other unfair labor practices. Nevertheless, in order to effectuate the policies of the Act, I will recommend that the Respondent cease and desist from the unfair labor practices found, and from in any manner interfering with the efforts of the Union to bargain collectively with it.

Upon the basis of the above Finding of Fact and upon the entire record in the case, I make the following:

## CONCLUSIONS OF LAW

1. American Federation of Grain Millers, Local 110 (AFL), is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance workers employed by the Respondent at its plant at Buffalo, New York, excluding foremen, assistant foremen, supervisory, office and salaried employees, bricklayers, timekeepers, technical engineers, technicians, draftsmen, chemists, watchmen, and nurses, constitute a unit appropriate for collective bargaining within the meaning of Section 9 (b) of the Act.

3. American Federation of Grain Millers, Local 110 (AFL), was, on May 24, 1948, and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purpose of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with American Federation of Grain Millers, Local 110 (AFL), as exclusive bargaining representative of the employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By said acts, the Respondents interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

## RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondent, Allied Mills, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with respect to its "Retirement Plan" with American Federation of Grain Millers, Local 110 (AFL), as the exclusive representative of all production and maintenance workers in the Respondent's Buffalo, New York, plant, excluding foremen, assistant foremen, supervisory, office, and salaried employees, bricklayers, timekeepers, technical engineers, technicians, draftsmen, chemists, watchmen, and nurses;

(b) Unilaterally making changes in its "Retirement Plan" which would substantially affect the employees in the aforesaid appropriate unit without prior consultation with American Federation of Grain Millers, Local 110 (AFL);

(c) In any manner interfering with the efforts of American Federation of Grain Millers, Local 110 (AFL), to bargain collectively with it.

2 Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Upon request, bargain collectively with respect to its "Retirement Plan" with American Federation of Grain Millers, Local 110, (AFL), as the exclusive representative of all the employees in the aforesaid unit;

(b) Consult with American Federation of Grain Millers, Local 110 (AFL), prior to taking any action substantially affecting any employees in the appropriate unit, in accordance with the terms and provisions of its "Retirement Plan";

(c) Post at its plant at Buffalo, New York, copies of the notice attached to the Intermediate Report herein marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (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 said notices are not altered, defaced, or covered by any other material;

(d) File with the Regional Director for the Third Region, on or before twenty (20) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the Respondent has complied with the foregoing recommendations.

It is further recommended that unless the Respondent notifies said Regional Director in writing within twenty (20) days from the receipt of this Intermediate Report that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any

party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or brief, the party filing the same shall serve a copy thereof upon each of the other parties. Statement of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said 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.

Dated at Washington, D. C., this 4th day of February 1949.

HAMILTON GARDNER,  
*Trial Examiner.*

**"APPENDIX A"**

**NOTICE TO ALL EMPLOYEES**

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify all employees that:

WE WILL bargain collectively upon request with AMERICAN FEDERATION OF GRAIN MILLERS, LOCAL 110 (AFL), as the exclusive representative of all the employees in the bargaining unit described herein with respect to the "Retirement Plan" and

WE WILL NOT in the future unilaterally make changes in our "Retirement Plan" which would substantially affect the employees in the bargaining unit described herein without prior consultation with the above-named Union.

WE WILL NOT in any manner interfere with the efforts of the above-named Union to bargain with us.

The bargaining unit is all production and maintenance workers in our Buffalo, New York, plant, excluding foremen, assistant foremen, supervisory, office, and salaried employees, bricklayers, timekeepers, technical engineers, technicians, draftsmen, chemists, watchmen, and nurses.

ALLIED MILLS, INC.,  
*Employer.*

By \_\_\_\_\_  
(Representative) (Title)

Dated \_\_\_\_\_

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.