In the Matter of YAWMAN & ERBE MANUFACTURING COMPANY *and* OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 34, A. F. OF L.

Case No. 3-CA-171.—Decided April 28, 1950

DECISION

AND

ORDER

On November 23, 1949, Trial Examiner Robert L. Piper 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 Section 8 (a) (1), of the National Labor Relations Act, as amended, 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. The Respondent's request for oral argument is hereby denied, as the record and brief, in our opinion, adequately present the issues and positions of the parties.

Pursuant to the provisions of Section 3 (b) of the Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Murdock].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, insofar as they are consistent with this Decision and Order.

As more fully set forth in the Intermediate Report, the Respondent and the Union executed contracts in 1946, 1947, and 1948, covering the usual subjects of wages, hours, and other conditions of employment. The 1948 contract expired February 24, 1949, and before its expiration the Respondent and the Union pursuant to appropriate notices entered into negotiations for a new contract. Approximately five meetings were held between the parties. The Union asked for four

principal changes, namely, a 15-percent across-the-board wage increase, a $1 minimum hourly wage for all employees, a union shop, and an extra week's vacation for employees with the most seniority. The Respondent refused these requests and asked the Union to renew its 1948 contract without change. The Union orally and by letter requested the Respondent to furnish it with a list of all employees in the unit, together with their current salaries and salaries as of January 1, 1946, 1947, and 1948. The Respondent refused this request, and the Trial Examiner found that such refusal constituted a refusal to bargain in violation of Section 8 (a) (5) and (1) of the Act.

In excepting to the finding, the Respondent primarily contended that the information requested had no relationship to the bargaining negotiations. We find merit in this exception insofar as it is applicable to the wage information for 1946 and 1947, as the record before us fails to disclose the relevancy of such information to the negotiations under consideration. We accordingly reverse the Trial Examiner's finding that the refusal to furnish the 1946 and 1947 data constituted a part of the refusal to bargain.

However, we find, contrary to the Respondent, that the wage information sought for the year 1948 was clearly relevant to the 1949 wage negotiations. As noted above, the Respondent rejected the Union's wage demands and would only agree to the wages paid under the old contract. This posture of the negotiations brought directly into issue the wages being paid under the 1948 contract and a disclosure of such wages by the Respondent was necessary to enable the Union to bargain intelligently.[1] Most certainly the going rate is a factor to be considered by a union in determining whether or not to press or eliminate its demand for a general wage increase. Likewise, current wages are directly related to the demand for a minimum. Without such information, there is no basis for determining to what extent, if any, the minimum wage would affect any employees in the unit. Further, the information requested for 1948 would enable the Union to ascertain if any wage inequities existed among employees in the unit and to frame its contract demands so as to eliminate any possible discrepancies. In sum, the Respondent's refusal to divulge information as to the current salaries of the employees in the unit placed the Union in the position of dealing *in vacuo* on subjects relating to wages, as there existed no area known to the Union in which it could vary its wage position.[2] Under all the circumstances, we are satisfied that the re-

[1] It should be noted that the past contracts did not contain any wage schedules.

[2] We disagree with the Trial Examiner, however, that the information requested was also relevant because the parties were negotiating on all subjects contained in the 1948 contract, in addition to those raised by the Union. The record reveals that the parties were apparently in agreement on all subjects of a new contract, except for those raised by the Union's requested changes.

quest for the 1948 wage information was a reasonable demand relating generally and directly to the contract negotiations.

We find no merit in the Respondent's further contention that the "Union refused upon request to furnish any reason connected with the bargaining negotiations for desiring the information." [3] The record fails to show that the Respondent specifically requested a reason or that the Union specifically refused to assign a reason for desiring the information. On the contrary, as the Trial Examiner found, during the negotiations the Union stated that, in view of certain claims of union members as to wage inequities the wage information was necessary to enable it to compare the wage rates of union employees with those of nonunion employees.[4] In any event, we are satisfied that the Respondent's refusal to furnish the requested information or any part thereof was not due to a lack of articulation by the Union, but rather the Respondent's erroneous view that even during contract negotiations the information could be properly withheld.

In view of the foregoing, we find, as did the Trial Examiner, that the Respondent has violated Section 8 (a) (5) and (1) of the Act, by refusing to furnish to the Union the names, positions, and current wage rates of employees within the unit.[5]

The remedy

After the issuance of the Intermediate Report, the Union advised the Board that it had reached an agreement with the Respondent and therefore requested permission to withdraw the charges in this proceeding. For reasons stated herein, the request is hereby denied.

It is well settled that the discontinuance of unfair labor practices does not render moot the charges based thereon. Furthermore, although it appears that the Respondent and the Union have recently entered into a collective bargaining agreement, the Union does not claim, nor are we advised that, prior to the execution of such agreement, the Respondent discontinued its unfair labor practices by furnishing the Union with the wage information the refusal of which we have found to constitute a violation of Section 8 (a) (5) and (1) of the Act. For these reasons and in view of the fact that the Re-

[3] Unlike the Trial Examiner, we do not view the Respondent as having abandoned this contention.

[4] Unlike the Trial Examiner, we do not rely on the Union's letter of April 29, 1949, as stating a reason when it pointed out that it represented all employees for bargaining. At most, this indicated why the Union believed it was entitled to the information, but did not give a reason why it wanted the data.

[5] See *The Cincinnati Steel Castings Company*, 86 NLRB 592; *Dixie Manufacturing Company, Inc.*, 79 NLRB 645; *National Grinding Wheel Company, Inc.*, 75 NLRB 905; *J. H. Allison Company*, 70 NLRB 377, enforced 165 F. 2d 766 (C. A. 6); *Aluminum Ore Company*, 39 NLRB 1286, enforced 131 F. 2d 485 (C. A. 7).

spondent has shown a disregard for its bargaining obligations, we find that effectuation of the policies of the Act requires that the Respondent be directed to bargain with the Union.[6] We shall further direct the Respondent, upon request, to furnish the Union with the names, positions, and current wages of the employees in the unit described herein.

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 Relations Board hereby orders that the Respondent, Yawman & Erbe Manufacturing Company, Rochester, New York, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from refusing to bargain collectively with Office Employees International Union, Local No. 34, A. F. of L., as the exclusive representative of all office and nonproduction factory employees at the Respondent's Rochester, New York, plant, including the nurse, time-study clerks, and telephone department employees, but excluding the secretary to the executive officers, the assistant to the employment manager, and all supervisors as defined in the Act, by refusing to furnish current wage information.

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

(a) Upon request, furnish Office Employees International Union, Local No. 34, A. F. of L., with the names, positions, and current wages of the employees in the unit described herein, in order to enable Office Employees International Union, Local No. 34, A. F. of L., to discharge its functions as statutory representative of the employees in the appropriate unit;

(b) Post at its plant at Rochester, New York, copies of the notice attached hereto, marked Appendix A.[7] 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 be 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 receipt of this Decision and Order, what steps the Respondent has taken to comply herewith.

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[6] *American National Insurance Company*, 89 NLRB 185.

[7] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted, before the words, "A DECISION AND ORDER" the words, "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

MEMBER MURDOCK, concurring in part and dissenting in part:

I fully agree with my colleagues that the Respondent's refusal to supply the Union with a list of all employees, their job classifications and wages for the year 1948, in connection with negotiations for the 1949 contract, constituted a refusal to bargain in violation of Section 8 (a) (5) and (1) of the Act. I dissent, however, from their reversal of the Trial Examiner's finding that the Respondent's contemporaneous refusal to supply the Union with the same information for the years 1946 and 1947 was also violative of Section 8 (a) (5) and (1). The reversal of the Trial Examiner's finding with respect to the 1946 and 1947 information is predicated upon the asserted fact that the record does not affirmatively disclose the specific relevancy of this earlier information to the negotiations for the 1949 contract.

In my view the Union was also entitled to the 1946 and 1947 information and we should find the refusal to furnish it a part of the violation even though the record does not disclose the specific purpose for which the information was to be used. The Union obviously believed that the information would be useful to it in the 1949 negotiations. Conceivably it may have wanted to know the recent pattern of wage rates as between different classifications and between union and nonunion employees as well as the current structure. Furthermore, this is one of those areas where the specific need for information may not be apparent until it has been made available. I would not substitute my judgment for that of the union as to what information is necessary to enable it to bargain effectively. So long as wage information of this character cannot be said to be patently irrelevant, I believe the Union is entitled to it, subject, of course, to the qualification that an employer should not be compelled to provide information the furnishing of which would impose an impossible or unreasonable burden. There is no such claim here.

Moreover, it should be noted that if the Respondent had not improperly refused the 1946 and 1947 information when it was first requested in connection with the negotiations for the earlier contracts,[8] the Union would not have been in the position of having to ask for *3* years' information at the time of the 1949 negotiations.

[8] The complaint of course only alleges the refusal to furnish the information in 1949 to be an unfair labor practice, and we cannot find the earlier refusals to be a violation. Nevertheless, it is clear that the Union was just as much entitled to the 1946 information in connection with the 1947 negotiations, and to the 1947 information in connection with the 1948 negotiations, as we now find it was entitled to the 1948 information in connection with the 1949 negotiations.

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 NOT refuse to bargain collectively with OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 34, A. F. OF L., as the exclusive representative of all our employees in the appropriate unit described below, with respect to furnishing to said union information concerning the names, positions, and current wage rates of our employees within said unit.

WE WILL furnish the above-named union upon request information in regard to the names, positions, and current wage rates of our employees within said unit to enable said union properly to discharge its functions as the statutory representative of the employees in said unit.

The bargaining unit is:

All office and nonproduction factory employees at our Rochester plant, including the nurse, time clerks, time-study clerks, and telephone department employees, but excluding the secretary to the executive officer, the assistant to the employment manager, and all supervisors as defined in the Act.

YAWMAN & ERBE MANUFACTURING COMPANY,
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 AND RECOMMENDED ORDER

Mr. David F. Doyle, for the General Counsel.

Nixon, Hargrave, Middleton & Devans, by *Mr. William H. Morris*, of Rochester, N. Y., for Respondent.

Mrs. Claire B. Hall, of Rochester, N. Y., for the Union.

STATEMENT OF THE CASE

Upon a charge filed on May 13, 1949, by Office Employees International Union, Local No. 34, A. F. of L. (hereinafter called the Union), the General Counsel of the National Labor Relations Board (hereinafter called the Board), by the Regional Director for the Third Region (Buffalo, New York), issued a complaint

dated September 29, 1949, against Yawman & Erbe Manufacturing Company (hereinafter called Respondent), alleging that Respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8 (a) (1) and (5), and 2 (6) and (7) of the National Labor Relations Act, as amended (hereinafter called the Act), 61 Stat. 136, 29 U. S. C. Supp. I, Secs. 141, *et seq.* Copies of the charge, the complaint, and a notice of hearing were duly served upon Respondent.

With respect to the unfair labor practices, the complaint alleged in substance that on or about April 21, 1949, and at all times since, Respondent refused to furnish certain information requested by the Union, thereby refusing to bargain collectively with the Union as the exclusive representative of Respondent's employees within an appropriate bargaining unit.

Respondent's answer admitted certain allegations of the complaint, including the refusal to furnish the requested information, but denied that the Union was a labor organization within the meaning of the Act, that the Union was the exclusive representative of the employees, and that the refusal to furnish the information requested was an unfair labor practice. As a further defense, the answer affirmatively alleged that the Union refused upon request to indicate the purpose for which such information was sought.

Pursuant to notice a hearing was held at Rochester, New York, on October 13, 1949, before the undersigned, Robert L. Piper, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and Respondent were represented by counsel, the Union by a representative. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross examine witnesses, and to introduce evidence bearing upon the issues.

At the close of the General Counsel's case-in-chief, Respondent's motion to dismiss the complaint for lack of proof was denied. At the close of the hearing, counsel for the General Counsel and Respondent argued orally on the record. Thereafter, pursuant to leave granted, the General Counsel and Respondent filed briefs which have been 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 RESPONDENT

Respondent is a New York corporation maintaining an office and plant at Rochester, New York, where it is engaged in the manufacture, sale, and distribution of steel office furniture, supplies, and related products. During the year 1948, a representative period, Respondent in the conduct of its business operations purchased raw materials and supplies of a value in excess of $250,000, more than 50 percent of which was purchased outside the State of New York, and sold finished products of a value in excess of $500,000, more than 50 percent of which was sold outside the State of New York. Respondent admitted, and I find, that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Although Respondent's answer denied that the Union was a labor organization within the meaning of the Act, Respondent stipulated at the hearing that the Union was such a labor organization. I find that the Union is a labor organization admitting to membership employees of Respondent.

III. THE UNFAIR LABOR PRACTICES

A. The appropriate unit

The complaint alleged, Respondent admitted, and I find, that all office and nonproduction factory employees at Respondent's Rochester plant, including the nurse, time clerks, time-study clerks, and telephone department employees, but excluding the secretary to the executive officer, the assistant to the employment manager, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute, and at all times material herein constituted, a unit appropriate for the purposes of collective bargaining within the meaning of the Act.

B. *Representation by the Union of a majority in the appropriate unit*

On March 1, 1946, in an election held under the supervision of the Board's Regional Director, a majority of Respondent's employees in the aforesaid appropriate unit designated the Union as their representative for the purposes of collective bargaining. On March 15, 1946, the Regional Director certified the Union as the exclusive bargaining representative of the employees in the aforesaid unit. Although Respondent's answer denied that the Union was the exclusive bargaining representative of the employees in the aforesaid unit, Respondent stipulated at the hearing that the Union was the bargaining representative of a majority of the employees in the aforesaid unit. I find that the Union at all times material herein was, and now is, the duly designated exclusive representative of the employees in the appropriate unit for the purposes of collective bargaining within the meaning of the Act.

C. *The refusal to bargain*

The facts are substantially undisputed, and the only issue concededly is a narrow one: Did or did not Respondent's refusal during the 1949 bargaining negotiations to furnish the Union certain requested information constitute a refusal to bargain within the meaning of the Act?

After being certified by the Board on March 15, 1946, the Union proceeded to bargain collectively with Respondent, and contracts were executed in 1946, 1947, and 1948. These contracts covered the usual subjects, including wages, hours, and job classifications. During the course of these negotiations, the Union asked Respondent to furnish the Union with a list of all employees, including their job classifications and wages. Respondent refused to do this. This was not alleged as an unfair labor practice in the complaint. The 1948 contract expired February 24, 1949, and prior thereto, after appropriate notices, the Union and Respondent entered into negotiations for a new contract. The four principal changes asked by the Union were a 15 percent across-the-board wage increase, a $1 minimum hourly wage for all employees, an extra week's vacation for employees with the most seniority, and a union shop. Respondent refused these requests and asked the Union to renew its 1948 contract without change. About five negotiation meetings were held, two in February, one in March, one in April or late March, and the last in May 1949. No progress was made with respect to the Union's or Respondent's demands. A number of the employees in the unit were not members of the Union.

At the second negotiation meeting in 1949, the Union orally asked Respondent to furnish it with a list of all employees in the unit, together with their current salaries and salaries as of January 1, 1946, 1947, and 1948. Respondent refused to do so. On April 21, 1949, the Union sent Respondent a letter requesting the same information, pointing out that the Union was the "certified bargaining agent for wages, hours and working conditions." On April 29, Respondent through its attorneys replied by letter and again refused the information. At the last meeting in May and again at the hearing, Respondent reiterated its refusal to furnish this information to the Union.

Although Respondent's answer affirmatively alleged that the Union refused to give a reason upon request why it wanted this information, the record reveals that such reason was given and Respondent admitted it at the hearing. Wallace Wolf, a director of Respondent who handles labor relations and represented Respondent during the negotiations, testified that the Union advanced certain claims of union members and told Respondent it wanted the information in order to compare the wage rates of union employees with those of nonunion employees, all of whom the Union represented as exclusive bargaining agent. It was undisputed that the Union did not know the salaries paid to nonunion employees. In addition, the letter of April 21, 1949, clearly states a reason when it points out that the Union represents all of the employees for bargaining as a preface to requesting the information. Respondent, in view of the evidence, apparently has abandoned its position that the Union refused to advance a reason why it needed the information, because its brief makes no mention of that defense.

Respondent's contention is that the information requested is not material or relevant to any of the subject matters under negotiation, and consequently its refusal to furnish such information is not a refusal to bargain. Respondent bases this contention on the four demands of the Union during negotiations, and urges that a list of the names, positions, and wages of all employees, both currently and in the past, could have no relevance to any of the union demands. The record also reveals that Respondent, when it refused the information at the negotiation meetings, requested the Union to produce any examples of inequities it might have, and advised the Union that Respondent would be glad to consider them and correct any such cases it was convinced existed.

I do not find merit in Respondent's contention. In addition to the four principal demands of the Union, it was undisputed that the negotiations covered the subjects in the 1948 contract, which included, among other things, wages, hours, and job classifications. I believe the request of the Union to be entirely reasonable, and certainly within the scope of the subject properly to be dealt with by the Union as bargaining representative. The Union's demands for a wage increase and a minimum hourly wage also made this information relevant. As exclusive bargaining representative of *all* of the employees in the unit, the Union was properly concerned with the wages of all and any inequities which might exist. Because it was undisputed that the Union did not know, and had no apparent way of obtaining, the information with respect to employees in the unit who were not members of the Union, it would seem that Respondent's position that the Union should produce any instances of inequities was unreasonable. How, without the information requested, could the Union determine if inequities existed in wages paid to nonunion and union employees for like or comparable work?

The cases are in accord that a refusal to furnish such information constitutes a refusal to bargain. While similar situations have been considered by the Board and the courts a number of times, I believe the *Aluminum Ore* case[1] more nearly approaches the fact situation present in this case. In that case the union asked for a blanket increase in wages, and the company refused it, insisting upon granting wage increases on an individual merit basis. The union, receding from its position, asked the company to negotiate a wage increase on a group or classification basis. This the company also refused, proceeding with its merit increases. The union then asked the company for a list of all employees in the unit, together with rates of pay currently and for the 3 past years, job classifications, and job descriptions. The company refused, contending it would deal with any wage inequities on a grievance basis. The facts are quite similar to the instant case. There, as in this case, the principal demand was for an across-the-board increase. The information requested and the position of the company were almost identical. In finding such refusal of information to be a refusal to bargain, the Board said, "Under the circumstances, the information sought by the Union was necessary to an understanding of the respondent's division of its employees among "related groups" and also for a comparison of wage rates in the light of such division. Without this information, the respondent's statement to the Union of its reasons for allocating the raises as it did, was incomplete and without meaning. As a result, the Union could not intelligently discuss the very matters raised by the respondent in their conferences. Furthermore, the respondent was obviously the only possible source of information as to what it meant by the "related groups" which it alleged to be the basis of the wage adjustments. Even if it were conceded, as the respondent contends, that the Union could actually have secured the wage history of all the jobs in the unit from the employees themselves,[2] such a prospect at the time of the respondent's refusal of that information must have seemed doubtful and certainly attended with great difficulty and loss of time. In this situation, an employer bargaining in good faith would not have withheld the information requested, nor would the employees be privileged against its disclosure since the information is essential to the intelligent bargaining on their behalf required by the Act."

The Court of Appeals affirmed this finding of the Board.

The preponderance of credible evidence convinces me, and I so find, that Respondent, by refusing to furnish the information requested by the Union, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, 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

The activities of Respondent set forth in Section III, above, occurring in connection with the operations of Respondent described in Section I, above, have

[1] *Aluminum Ore Company,* 39 NLRB 1286, enfd. as mod., 131 F. 2d 485 (C. A. 7, 1942); Cf. *Sherwin-Williams Company,* 34 NLRB 651; *J. H. Allison & Company,* 70 NLRB 377, enfd. 165 F. 2d 766 (C. A. 6, 1948); *Pool Manufacturing Company,* 70 NLRB 540; *National Grinding Wheel Company, Inc.,* 75 NLRB 905; *Dixie Manufacturing Company,* 79 NLRB 645; *Vanette Hosiery Mills,* 80 NLRB 173; *The Cincinnati Steel Castings Company,* 86 NLRB 592.

[2] In the *Aluminum Ore* case, all of the employees belonged to the Union.

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.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent has refused to bargain collectively with the Union by refusing to furnish the Union the names, positions, and current and past wage rates of employees within the unit, it will be recommended that Respondent upon request bargain collectively with the Union by supplying such information to the Union.[3]

Because of the limited scope of Respondent's refusal to bargain and the absence of any evidence that the danger of other unfair labor practices is to be anticipated from Respondent's conduct, it will not be recommended that Respondent cease and desist from the commission of any other unfair labor practices.[4]

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

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

2. All office and nonproduction factory employees of Respondent at its Rochester plant, including the nurse, time clerks, time study clerks, and telephone department employees, but excluding the secretary to the executive officers, the assistant to the employment manager, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. At all times since March 15, 1946, the Union has been and now is the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By failing and refusing to furnish the Union with the names, positions, and current and past wage rates of employees within the unit, thereby failing and refusing to bargain collectively with the Union as the exclusive 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) of the Act.

5. By said acts, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has engaged 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.

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[3] *J. H. Allison & Company, supra; National Grinding Wheel Company, Inc., supra.*

[4] *J. H. Allison & Company, supra.*

RECOMMENDATIONS

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

1. Cease and desist from refusing to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit by failing and refusing to furnish the Union the names, positions, and current and past wage rates of such employees.

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

(a) Upon request furnish the Union with the names, positions, and current and past wage rates of the employees in the appropriate unit in order to enable the Union to discharge its functions as the statutory representative of the employees in the appropriate unit;

(b) Post at its plant at Rochester, New York, copies of the notice attached hereto, marked Appendix A. Copies of such notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by Respondent's authorized representative, be posted by 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(c) Notify the Regional Director for the Third Region, in writing, within twenty (20) days from the receipt of this Intermediate Report and Recommended Order what steps Respondent has taken to comply herewith.

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

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, 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, 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. Statements 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 made promptly 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 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 23rd day of November 1949.

ROBERT L. PIPER,
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 our employees that:

WE WILL NOT refuse to bargain collectively with OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 34, A. F. OF L., as the exclusive representative of all our employees in the appropriate unit described below, with respect to furnishing to said union information concerning the names, positions, and current and past wage rates of our employees within said unit.

WE WILL furnish the above-named union upon request information in regard to the names, positions, and current and past wage rates of our employees within said unit such as will enable said union properly to discharge its functions as the statutory representative of the employees in said unit.

The bargaining unit is:

All office and nonproduction factory employees at our Rochester plant, including the nurse, time clerks, time-study clerks, and telephone department employees, but excluding the secretary of the executive officer, the assistant to the employment manager, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

YAWMAN & ERBE MANUFACTURING COMPANY,
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.