In the Matter of J. H. ALLISON & COMPANY *and* AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL NO. 402, OF THE AMERICAN FEDERATION OF LABOR

Case No. 10–C–1725.—Decided August 26, 1946

Mr. Thomas T. Purdon, for the Board.
Mr. Jack Chambliss, of Chattanooga, Tenn., for the Respondent.
Mr. A. C. Allen, of Madison, Tenn., for the Union.
Mrs. Catherine W. Goldman, of counsel to the Board.

DECISION

AND

ORDER

On February 8, 1946, Trial Examiner Rein issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the Trial Examiner's rulings 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, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the exceptions, additions, and modifications hereinafter set forth.

We agree with the Trial Examiner that the respondent has violated Section 8 (5) of the Act.

The facts of this case, discussed more fully in the Intermediate Report, reveal that the respondent has dealt with the Union as the bargaining representative of its employees for approximately 5 years and has executed exclusive bargaining contracts with the Union. From time to time during this period, the respondent has granted upon a unilateral basis individual wage increases, which it characterizes as "merit" increases. At the time of the events complained of herein, the parties were operating under a contract dated January 7, 1945, which was to remain in effect for 1 year and which covered the subjects

customarily provided for in bargaining contracts. With respect to wages, the contract set forth a scale of minimum wage rates; it did not mention the subject of merit wage increases. A few months after the execution of this contract, the respondent, in accordance with its past practice, granted approximately 31 merit increases. Upon learning of the grants, the Union's representative on May 2, 1945, requested the respondent to furnish the Union with a list of the employees who had received the increases and the amounts granted in order that the Union might negotiate concerning the matter. The respondent refused the Union's request on the ground that merit wage increases are not the proper subject of collective bargaining, but are an exclusively managerial function, and that the Union could obtain the desired information from its members. On several occasions thereafter the Union repeated its request that the respondent furnish it information concerning the merit increases which had been granted, and the respondent remained adamant in its refusal to do so. During negotiations for a contract for the succeeding year, 1946, the Union requested the respondent to include in the contract a clause concerning the Union's rights with respect to merit increases and other changes in wages. The respondent, presumably adhering to its previously announced position that merit increases are not a bargainable issue, refused the Union's request. The Union then dropped its request, stating that the matter would probably be settled in the proceedings which it had instituted before the Board.

Upon these facts, we agree with the Trial Examiner that the respondent has not fulfilled its obligation to bargain collectively with the Union. We find no merit in the respondent's contention that merit increases are a prerogative of management. Like the Trial Examiner, we are of the opinion that merit increases are an integral part of the wage structure, and as such, constitute a proper subject for collective bargaining. In concluding that the respondent has violated its duty under Section 8 (5), however, we find it necessary to determine whether the respondent was under an obligation to bargain concerning merit increases during the term of the 1945 contract which the Union had entered into without provision therein for merit increases in the wage structure, although the practice of granting merit increases upon a unilateral basis had existed for a number of years. We base our finding of a refusal to bargain upon the respondent's failure during the formulation of the 1946 contract to negotiate concerning merit wage increases, a proper subject of collective bargaining, and upon the respondent's continuing refusal to furnish to the Union information concerning merit wage increases which had been granted, information necessary to the Union in order for it adequately to represent the employees on the subject of merit increases.

THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, we shall order the respondent to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondent has refused to bargain collectively with the Union concerning merit wage increases. Accordingly, we shall order the respondent, upon request, to bargain collectively with respect to merit increases and to furnish the Union full information in this regard. Because the respondent has rigidly maintained that such increases are not the subject of collective bargaining, but are a matter upon which it is free to act unilaterally, we also find it necessary, in order to effectuate the policies of the Act, to require the respondent to refrain in the future from granting merit wage increases without prior consultation with the Union.

Because of the limited scope of the respondent's refusal to bargain 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, we shall not order the respondent to cease and desist from the commission of any other unfair labor practices.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, J. H. Allison & Company, Chattanooga, Tennessee, and its officers, agents, successors, and assigns shall:

1. Cease and desist from refusing to bargain collectively with respect to merit wage increases with Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with the American Federation of Labor, as the exclusive representative of all production workers, including truck drivers and drivers' helpers employed at the respondent's plant at Chattanooga, Tennessee, exclusive of clerical employees, salesmen, guards, and supervisory employees.

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 merit wage increases with Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with the American Federation of Labor, as the exclusive representative of all its employees in the aforesaid appropriate unit;

(b) Upon request, furnish to Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with

the American Federation of Labor, full information with respect to merit wage increases, including the number of such increases, the amount of such increases, and the standards employed in arriving at such increases;

(c) Refrain from granting merit wage increases without prior consultation with the Union;

(d) Post at its plant at Chattanooga, Tennessee, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Tenth Region, after being duly signed by the respondent's representative, shall 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;

(e) Notify the Regional Director for the Tenth 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 that:

> We will bargain collectively upon request with Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with the American Federation of Labor, as the exclusive representative of all the employees in the bargaining unit described herein with respect to merit wage increases;
>
> We will, upon request, furnish to the above-named union, full information with respect to merit wage increases, including the number of such increases, the amounts of the increases, and the standards employed in arriving at such increases; and
>
> We will refrain from granting merit wage increases without prior consultation with the Union.

The bargaining unit is: all production workers, including truck drivers and drivers' helpers, exclusive of clerical employees, salesmen, guards, and supervisory employees.

J. H. Allison & 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.

MR. GERARD D. REILLY, dissenting:

I cannot agree with the majority that the respondent did on May 2, 1945, and at all times thereafter, refuse to bargain with the Union in violation of Section 8 (5) of the Act.

On May 2, 1945, the respondent and the Union were parties to a contract, reached by collective bargaining, embodying agreements on wages, hours and other conditions of employment. The contract, however, contained no provision for merit increases or for a disclosure by the respondent of information concerning merit increases.

The majority holds, contrary to the respondent, that merit increases are a proper subject of collective bargaining. On this point I am in full accord with my colleagues. However, to my mind the issue in this case is the seasonableness of the Union's demand.

The Union has enjoyed approximately 5 years of bargaining relations with the respondent and the parties entered into a new contract on January 7, 1946, which is now in effect. Respondent urges, *inter alia*, that on May 2, 1945, the parties were not negotiating for a contract and that it was not incumbent upon respondent to disclose information concerning merit wage increases at that time. I believe respondent's position on this point is sound. The contract in force on May 2, 1945, contained a minimum wage scale but was silent as to maximum wages. Accordingly, it is my opinion, since the parties had reached an agreement on wages to be paid for a definite period of time, that the Act does not require an employer to furnish information upon which it has based certain merit increases, not in violation of the provisions of the existing contract, after only 4 months of the contract year have elapsed.

The majority decision professes not to determine this issue. It seems to me, however, that, because the Trial Examiner predicated so much of his conclusions upon a theory which I believe, for the reasons I have stated, to be erroneous, the record in this case compels us to pass upon it. I believe it is unwise, granting that maximum as well as minimum wages are bargainable subjects, to hold that the respondent company refused to bargain in the negotiations for the new agreement. The findings of the Trial Examiner which are not in dispute reveal that the respondent and the Union, as a result of these negotiations, reached an understanding which was embodied in a collective agreement for an additional year. There is no obligation under Section 8 (5) for an employer to agree to anything.[1] Consequently, it cannot be said that an employer failed in his duty under the Act when

[1] *Jones & Laughlin Steel Corporation*, 301 U S. 1, Hughes, J., at p. 45.

he "traded off" a demand on one issue for a substantial concession on another. Had the parties reached an impasse, then we would have been confronted by quite another question.

INTERMEDIATE REPORT

Mr. Thomas T. Purdom, for the Board.
Mr. Jack Chambliss, of Chattanooga, Tenn., for the Respondent.
Mr. A. C. Allen, for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Tenth Region (Atlanta, Georgia), issued its complaint dated December 10, 1945, against J. H. Allison and Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance that the respondent on or about May 2, 1945, and at all times thereafter, refused to bargain collectively with the Union as the exclusive bargaining representative of the respondent's employees within an appropriate bargaining unit, although a majority of the employees in such unit had designated and selected the Union as their representative for the purposes of collective bargaining, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. The respondent thereafter filed its answer in which it admitted that the Union had been designated and selected as collective bargaining representative by a majority of the employees in an appropriate unit as described in the complaint, but denied that it had refused to bargain with the Union or that it had engaged in any unfair labor practices.

Pursuant to notice of postponement of hearing, a hearing was held on January 21, 1946, at Chattanooga, Tennessee, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented at the hearing by counsel and the Union by an international representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties Toward the close of the hearing, a motion of counsel for the Board to conform the pleadings to the proof was granted without objection. At the close of the hearing the respondent and the Board argued orally before the undersigned. Although advised of their opportunity to do so, none of the parties filed a brief.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

J. H Allison & Company, a Tennessee corporation, maintains its principal office and place of business on Middle Street in the city of Chattanooga, County

of Hamilton, and the State of Tennessee. It is engaged there in the purchase and slaughter of livestock, including cattle and hogs, and in the manufacture, sale, and distribution of meat products and related products, such as offal, tankage, tallow, and hides. In the course of its business the respondent has caused a substantial amount of materials to be purchased, delivered, and transported in interstate commerce from and through the States of the United States other than the State of Tennessee to its plant in Chattanooga, Tennessee, and has caused a substantial amount of the products manufactured, sold, and distributed by it as a part of its business to be supplied, delivered, and transported in interstate commerce to and through the States of the United States other than the State of Tennessee from its plant in Chattanooga, Tennessee.

At the hearing the respondent conceded that it was engaged in commerce within the meaning of the Act and was subject to the jurisdiction of the Board.

II. THE ORGANIZATION INVOLVED

Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with the American Federation of Labor, is a labor organization, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

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

At the hearing the respondent stipulated that the Union had been designated and selected by a majority of the employees in an appropriate unit as alleged in the complaint, and that the Union was accordingly the exclusive representative of the employees in said unit The undersigned finds, in accordance with this stipulation, that all production workers, including truck drivers and drivers' helpers of the respondent employed at its plant in Chattanooga, Tennessee, exclusive of clerical employees, salesmen, guards and supervisory employees, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act The undersigned further finds, in accordance with such stipulation, that on and at all times after January 1, 1945, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid bargaining unit, and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was on January 1, 1945, and at all times thereafter has been and is now the exclusive representative of all 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

There are no contested material issues of fact in this proceeding. The sole issue arises from a difference between the respondent and the Union as to the interpretation of the scope of the respondent's obligation to bargain collectively as required by Section 8 (5) of the Act.

The respondent and the Union have enjoyed bargaining relations for approximately 5 years. During this period they have incorporated the agreements reached between them in written collective bargaining contracts One such contract was in force at the time of the incident now urged as a refusal to bargain, and a subsequent contract dated January 7, 1946, was thereafter duly executed. This latter contract between the parties is now in force. These contracts provide for recognition of the Union as exclusive bargaining representative, a form

of closed shop, and numerous other provisions with regard to hours of work, vacation pay, and other matters not material here. With regard to wage rates, the contracts provide only for minimum wage scales. Many of the employees, however, in accordance with their respective skills, were paid higher than the minimum rates. From time to time, the parties bargained concerning the actual wage rates to be paid to particular classifications of employees and came to oral agreements on this question. During the period of the war, these negotiations were subject to the jurisdiction of the National War Labor Board, and on occasion the wage rates were fixed by that Board.

Some time in 1944, the Union filed with the National War Labor Board a request for a general wage increase of 14 cents per hour. In a directive order dated March 28, 1945, the Regional War Labor Board for the area denied the Union's request. Shortly after this directive order was received, the respondent gave to approximately 31 employees individual increases of from one to three cents an hour.[1] These increases were termed by the respondent as "merit" increases. The union representative, upon hearing of these increases, asked the respondent on May 2, 1945, to furnish the Union with a list of the employees who had received the increases, and the amounts thereof He stated at the time that such information was necessary as a basis for further collective bargaining negotiations on wage rates. The respondent refused to furnish this information. Subsequently, the respondent and the Union jointly filed with the War Labor Board a Form 10 application which was thereatter approved. This permitted an increase in the rate ranges for various classifications of the respondent's employees. In accordance with the approval of this application, the respondent gave further increases to individual employees. Following its initial request for information with regard to these so-called merit increases, the Union made additional requests for that information but these requests were again refused by the respondent. Lastly, in the negotiations leading to the execution of the present contract on January 7, 1946, the Union suggested that the contract contain a clause which would insure the Union's right to such information, but after some discussion the matter was dropped and the contract executed without such clause.

The respondent stipulated at the hearing that it had granted these individual wage increases, and that it had, although requested by the Union, refused to furnish to the Union information with regard to the number of increases granted and the amount of such increases. Its contention was that this was not a matter for collective bargaining and that accordingly, the Union was not entitled to this information. The respondent argued that a distinction should be made between what it considered negotiated wage increases and these merit increases. A negotiated wage increase, according to the respondent, was one that would be made after being requested by the Union or an individual. In all such cases the respondent insisted that it had and would recognize the Union as the exclusive representative of its employees. A merit increase, on the other hand, argued the respondent, was one which was given unilaterally without request or discussion either with the Union or the individual receiving the increase. According to James A. McCall, the respondent's vice president, it is "based on an individual's performance of his duties; one that is based on his regularity, his loyalty, his willingness to come out and maybe work when things get tight." These increases were given after a survey of production records and the individuals learned about them for the first time when the increases appeared on

[1] At the time of the hearing, there were approximately 110 employees in the appropriate unit.

their pay checks. Summing up his position on these increases, McCall testified as follows:

> We feel that the granting of these individual merit increases is a matter that is determined on the basis of an individual's performance, and that the Union is not involved in that, as a negotiated increase; that is, it isn't collective bargaining; that the fact that it is based on merit removes it from a bargaining and a negotiation, which indicates that it is something that is discussed and compromised, perhaps; but we have felt that an individual merit increase is a reward for increased production or skill . . . We think that it is not the . . . proper function of the Union under our contract to discuss individual merit increases.[2]

It is evident that the respondent is attempting here to carve out from collective bargaining negotiations one method of increasing wage rates and arrogating to itself sole jurisdiction over such subject matter. No such doctrine of exceptionalism is justified by the provisions of the Act. The Act provides in unequivocal terms that the representative of the majority of the employees within an appropriate unit must be recognized as the exclusive representative "for the purposes of collective bargaining in respect to *rates of pay, wages*, hours of employment, or other conditions of employment."[3] Certainly there is nothing in the language of this provision which could lend justification to the respondent's argument that the Union should be recognized as the representative for most issues involving wage rates but not for this question of merit increases. The question of rates of pay and wages goes to the heart of the subject matter of collective bargaining. The serious effect upon the prestige and status of the Union, were it to be shut off from so major a portion of collective bargaining matters, was shown by the testimony at the hearing to the effect that wage increases to some employees but not to others produced resentment and unrest within the ranks of the Union.

Nor is it any answer for the respondent to urge, as it does here, that the Union might have obtained this information from its own members. Since it is a proper subject for collective bargaining, it is the responsibility of the respondent to furnish this information and it cannot urge that the Union seek some other recourse which may under the circumstances prove impossible, or at least inconvenient and embarrassing. That the respondent recognized this is shown by the testimony of its own vice president to the effect that he realized that some employees might not desire to let the Union know they had received an individual increase in wages.

The respondent urges as further defenses that this practice of granting merit increases has been a long standing practice never previously challenged by the Union, and that, aside from this question of merit increases, its relationship with the Union has at all times been satisfactory. The first ground is tantamount to an argument that the Union had waived its collective bargaining rights by overlooking past violations. No such doctrine has been recognized at any time, either by the Board or the Courts.[4] As to the second ground, it cannot be said that the respondent by complying freely and willingly with 7 or 8 tenths of the Act, or any other fraction of the Act, can thereby acquire for itself an immunity from the remaining obligations imposed by the Act.

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[2] This witness also testified that the respondent never issued any statement of policy to the employees generally concerning these merit increases and the basis on which they were made.

[3] Italics supplied.

[4] Cf *McQuay-Norris Manufacturing Company* v. *N. L. R. B.*, 116 F. (2d) 748 (C. C. A. 7), enf'g 21 N. L. R. B. 709, cert. den. 313 U. S. 565.

The problem presented in this case is by no means a novel one It has been considered most fully in the decision of the Seventh Circuit in *Aluminum Ore Co.* v. *N. L. R. B.*[5] The Court there stated,

> . . . we do not believe that it was the intenet of Congress in this legislation that, in the collective bargaining prescribed, the union, as representative of the employees, should be deprived of the pertinent facts constituting the wage history of its members . . it seems to go to the very root of the facts upon which the merits were to be resolved. In determining what employees should receive increases and in what amounts, it could have been only helpful to have before the bargainers the wage history of the various employees, including full information as to the work done by the respective employees and as to their respective wages in the past, their respective increases from time to time and all other facts bearing upon what constituted fair wages and fair increases . . From this refusal, we think the Board was justified in concluding that petitioner had failed to cooperate wholeheartedly in collective bargaining (At p 487)

A more general discussion, but also clearly applicable here, may be found in *Order of Railroad Telegraphers* v. *Railway Express Agency*[6] where the Supreme Court said:

> Collective bargaining was not defined by the statute which provided for it, but it generally has been considered to absorb and give statutory approval to the philosophy of bargaining as worked out in the labor movement in the United States. From the first the position of labor with reference to the wage structure of an industry has been much like that of the carriers about rate structures. It has insisted that exceptional situations often have an importance to the whole because they introduce competitions and discriminations that are upsetting to the entire structure.
> *Hence effective collective bargaining has been generally conceded to include the right of the representatives of the unit to be consulted and to bargain about the exceptional as well as the routine rates, rules, and working conditions.* (At pp. 346–7.) [Italics supplied.]

It is accordingly clear, from these and other authorities, that the arguments here advanced by the respondent are without merit.[7] The obligation to bargain collectively under the Act includes within its scope all matters relating to wage rates or increases in wage rates, whatever the nature of these increases might be, and no authority exists for the respondent's attempt to erect a distinction between certain types of wage rates subject to collective bargaining and others which remain an individual management prerogative.

It further appears that at the time of the execution of the present contract, the Union requested that the contract contain a clause which would insure the right of the Union to be consulted with regard to such merit increases or any other "changes in wages, or material changes in working conditions so that we [the Union] might be able to bargain with them [the respondent] on such changes." The respondent refused to agree to the insertion of such a clause. Whether or not a contract contains such a clause, the Act itself imposes upon an employer the obligation to consult with the duly designated bargaining repre-

[5] 131 F. (2d) 485 (C C A 7), affirming *Matter of Aluminum Ore Company*, 39 N L R B 1286.

[6] 321 U. S 342

[7] For a fuller discussion of the obligation imposed upon employers to bargain collectively, and the scope of collective bargaining as interpreted by the Supreme Court and the Circuit Courts of Appeals, see Weyand, *Majority Rule in Collective Bargaining*, 45 Columbia Law Review, 556, especially the discussion at pp 571–4.

sentative prior to making changes in wage rates or working conditions.[8] But, here, the respondent refused to recognize this obligation. Its denial, throughout its entire negotiations with the Union that such an obligation existed and its continued insistence that this problem of merit increases as a matter solely within the discretion of the respondent, to be resolved solely by it and it alone, constituted a refusal to bargain, and the undersigned so finds.

For the above reasons, the undersigned finds that the respondent on May 2, 1945, and at all times thereafter, 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 undersigned finds 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.

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 has refused to bargain with the Union by its insistence, despite the Union's request to be consulted on this subject, that the subject of merit increases was not a matter for collective bargaining and one in which it could act completely unilaterally without consulting with the Union. It is accordingly necessary, in order to effectuate the policies of the Act to require the respondent to refrain in the future from granting any merit increases unilaterally 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, the undersigned 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, the undersigned 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.[9]

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

CONCLUSIONS OF LAW

1. Amalgamated Meat Cutters and Butcher Workmen of North America, Local No 402, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

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[8] *Singer Mfg Co.* v. *N. L. R. B*, 119 F. (2d) 131, 136 (C C. A 7), cert. den. 313 U S. 595

[9] See *N. L. R. B.* v. *Express Publishing Company*, 312 U. S. 426.

2. All production workers, including truck drivers and drivers' helpers of the respondent employed at its plant in Chattanooga, Tennessee, exclusive of clerical employees, salesmen, guards, and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with the American Federation of Labor, was on January 1, 1945, and at all times thereafter has been, and is now, 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 refusing on May 2, 1945, and at all times thereafter, to bargain collectively with Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with the American Federation of Labor, as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By said acts, the respondent 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 (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 above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, J. H. Allison & Company, Chattanooga, Tennessee, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with respect to merit increases with Amalgamated Meat Cutters and Butcher Workmen of North American, Local No. 402, affiliated with the American Federation of Labor, as the exclusive representative of all production workers, including truck drivers and drivers' helpers employed at the respondent's plant at Chattanooga, Tennessee, exclusive of clerical employees, salesmen, guards, and supervisory employees;

(b) Giving merit increases unilaterally without prior consultation with Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with the American Federation of Labor;

(c) In any manner interfering with the efforts of the Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with the American Federation of Labor, to bargain collectively with it;

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

(a) Upon request, bargain collectively with respect to merit increases with Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with the American Federation of Labor, as the exclusive representative of all its employees in the aforesaid appropriate unit;

(b) Furnish to Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with the American Federation of Labor, full information with regard to merit increases, including the number of such increases, the amount of such increases, and the standards employed in arriving at such increases;

(c) Consult with Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with the American Federation of Labor, prior to giving merit wage increases;

(d) Post at its plant at Chattanooga, Tennessee, 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 Tenth 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;

(e) File with the Regional Director for the Tenth Region on or before ten (10) 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 on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may, within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C, an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report 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 four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, 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 the order transferring the case to the Board.

DAVID REIN,
Trial Examiner.

Dated February 8, 1946

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 Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 402, affiliated with the American Federation of Labor, as the exclusive representative of all the employees in the bargaining unit described herein with respect to merit increases and

We will furnish to the above-named union, full information with regard to merit increases, including the number of such increases, the amounts of the increases, and the standards employed in arriving at such increases, and

We will not in the future grant merit increases 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 workers, including truck drivers and drivers' helpers, exclusive of clerical employees, salesmen, guards, and supervisory employees.

J. H. ALLISON AND 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.