engineer and the other as a fireman, spend a part of each week at firemen or boiler washers duties in the boiler room and another part as stationary engineers in the engine room. The latter work is performed at night and on Saturdays and Sundays when the machinery is not in operation but, as some pressure is maintained in the boilers, a licensed engineer is required to be present. Although there is no actual training program, the Employer encourages all powerhouse employees to qualify as licensed stationary engineers, and offers the inducement of higher paying work, whenever it is available, for those who qualify. By supplementing their working experience with outside study, 2 of the firemen and 1 of the boiler washers have obtained licenses. As of the date of the hearing, at least 5 of the 11 powerhouse employees possessed licenses.

As the separate bargaining history for stationary engineers has been conducted under "members-only" contracts, it is not necessarily determinative as to the appropriateness of such a unit. Under all the circumstances of this case, we do not believe that the skills and duties of the stationary engineers have been shown to be sufficiently separate or distinguishable from those of the other powerhouse employees to justify, on any other basis, their establishment as a separate unit.[5] Accordingly, we find that the appropriate unit should include all the Employer's powerhouse employees.[6]

We find that all employees in the powerhouse in the Employer's Folsom Avenue, St. Louis, Missouri, plant, including engineers, firemen, boiler washers, and oilers, but excluding all other employees and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

[5] *Packard Motor Car Company*, 94 NLRB 1550, *Buffalo Weaving and Belting Company*, 85 NLRB 1178

[6] See cases cited in footnote 5, *supra*

JONES FURNITURE MANUFACTURING CO., INC. *and* UNITED FURNITURE WORKERS OF AMERICA, CIO. *Case No. 32–CA–116. April 28, 1952*

Decision and Order

On November 7, 1951, Trial Examiner John H. Eadie issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in 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.

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

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 with the following addition.

The Trial Examiner's finding that the Respondent refused to bargain on and after about March 2, 1951, because of the pending unfair labor practice charges against it, is based upon uncontradicted evidence. As the Board has previously held, such a reason for discontinuing negotiations is not a defense to a charge of refusal to bargain.[1]

Order

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, the National Labor Relations Board hereby orders that Jones Furniture Manufacturing Co., Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Furniture Workers of America, CIO, as the exclusive representative of all employees in the appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment.

(b) In any other manner interfering with the efforts of the above-mentioned Union to bargain collectively with Respondent.

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

(a) Upon request, bargain collectively with United Furniture Workers of America, CIO, as the exclusive representative of all employees in the appropriate unit, and embody any understanding reached in a signed agreement.

(b) Post at its plant in Benton, Arkansas, copies of the notice attached hereto and marked "Appendix A."[2] Copies of such notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt

[1] *Dealer Engine Rebuilders, Inc.*, 95 NLRB 1009.

[2] 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 "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

thereof, 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 Fifteenth Region, in writing, within ten (10) days from the date of this Decision and 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 UNITED FURNITURE WORKERS OF AMERICA, CIO, as the exclusive representative of all employees in the bargaining unit described herein, with respect to grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:
>
> > All production and maintenance employees, including shipping department employees and truck drivers, excluding office-clerical employees, inspectors, timekeepers, salesmen, professional employees, and all supervisors as defined in the Act.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

JONES FURNITURE MANUFACTURING CO., INC.,
Employer.

Dated_____ By_____
(Representative) (Title)

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

Intermediate Report

STATEMENT OF THE CASE

Upon an amended charge duly filed by United Furniture Workers of America, CIO, herein called the Union, the General Counsel of the National Labor Relations Board, respectively called herein the General Counsel and the Board, by the Regional Director for the Fifteenth Region (New Orleans, Louisiana), issued a complaint dated July 27, 1951, against Jones Furniture Manufacturing

Co., Inc., 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 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

With respect to the unfair labor practices, the complaint alleges that on about April 18, 1950, and at all times thereafter, the Respondent failed and refused to recognize and to bargain collectively with the Union as the exclusive bargaining representative of its employees in an appropriate unit, that on or about September 15, 1950, the Respondent bargained directly and individually with the employees in said unit, and that by the foregoing conduct the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On or about August 9, 1951, the Respondent filed its answer in which it admitted the jurisdictional allegations of the complaint, but denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held on September 10 and 11, 1951, at Benton, Arkansas, before the undersigned Trial Examiner. The General Counsel and the Respondent were represented by counsel and the Union by its representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the conclusion of the hearing, the General Counsel moved to conform the pleadings to the proof, as to names, dates, and other minor variances. The motion was granted without objection. The Respondent moved to dismiss the complaint. Ruling on the motion was reserved. The motion to dismiss is disposed of as hereinafter indicated.

The parties waived oral argument at the conclusion of the hearing and agreed to file briefs. None of the parties has filed a brief with the Trial Examiner.

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

The Respondent, an Arkansas corporation, is engaged in the manufacture of upholstered furniture at Benton, Arkansas. In the course and conduct of its business, the Respondent annually purchases lumber, springs, felt, upholstering, and other raw materials in the approximate amount of $400,000, of which approximately 75 percent is shipped to its Benton plant from points located outside the State of Arkansas.

The Respondent annually manufactures, sells, and distributes finished products having a value in excess of $700,000, of which amount approximately 65 percent is shipped from its Benton plant to points outside the State of Arkansas.

II. THE ORGANIZATION INVOLVED

United Furniture Workers of America, CIO, is a labor organization which admits to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1. The appropriate unit and representation of a majority therein

Pursuant to an agreement for a consent election (Case No. 32-RC-213), the Board conducted a secret election among the Respondent's employees on March

28, 1950. There were approximately 88 eligible voters in the appropriate unit. Of this number, 51 cast their votes for and 32 cast their votes against the Union. On April 5, 1950, the Board certified the Union as the collective bargaining agent for the employees in said unit. In accordance with the Board's certification, the complaint alleges, the answer admits, and the Trial Examiner finds, that a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act consists of:

> All production and maintenance employees including shipping department employees and truck drivers, excluding office-clerical employees, inspectors, timekeepers, salesmen, professional employees, and all supervisors as defined in the Act, as amended.

The complaint alleges, the answer admits, and the Trial Examiner finds that at all times material herein the Union has been, and is now, the exclusive bargaining representative of all employees in said unit for the purposes of collective bargaining.

2. The negotiations

On April 12, 1950, the Union wrote to the Respondent and suggested that bargaining negotiations commence on April 18. The Union enclosed its proposed contract with this letter. Thereafter, and starting on the date suggested in the Union's letter, W. L. Carson, a representative of the Union, and a bargaining committee of the employees had a number of meetings with Lawrence Burrow, Respondent's attorney, and other representatives of the Respondent. These meetings each lasted about 2½ hours. The provisions of the Union's proposed contract were discussed,[1] and it appears that tentative agreement on a number of its clauses was reached after some modification.

Early during the negotiations, the Respondent indicated that it would not agree to a checkoff of union dues, and informed the Union that it was financially unable to give any wage increase or vacations. However, the Respondent advised the Union that it might want to grant some merit wage increases in order to correct inequities. In this connection, the Respondent proposed that merit increases should be granted solely at the discretion of management. At Carson's request, the Respondent furnished the Union with a list of the names of its employees, their classifications and hourly rates of pay.[2]

During June 1950, Carson was replaced by Doyle Dorsey as the Union's representative. At their first meeting Burrow told Dorsey that "practically all issues . . . with the exception of wages" had been settled during his negotiations with Carson. Dorsey disagreed, stating that Carson had told him that the three main issues upon which agreement had not been reached were vacations, checkoff, and wages. At this meeting the Respondent informed Dorsey that it was not able to grant a general wage increase, but that it might be willing to give some merit increases.

At a meeting held on about July 11, John Due, manager of Respondent, gave Dorsey the names of about seven employees who already had received merit

[1] The Respondent did not submit a counterproposal to the Union However, Burrow sent a letter dated April 25, 1950, to Carson, enclosing a proposed seniority clause. After about three meetings, Burrow also prepared and submitted to the Union two documents which purported to show the contract proposals upon which agreement had been reached.

[2] Hourly rates were furnished for employees who were paid on that basis. Many of Respondent's employees, however, were paid on the basis of piecework. Piecework rates were not furnished at the time mentioned above.

increases or who were about to receive them. Dorsey pointed out that the Union was the certified bargaining agent and that such increases were subject to collective bargaining.

W. W. Jones, president of Respondent, and his wife owned about 51 percent of Respondent's stock. Jones attended a bargaining conference on about September 6, and advised the Union's representatives that the plant's ownership was changing as he had given an option for the sale of his stock. At another meeting held shortly thereafter, the Respondent proposed that certain individual increases be given and that some piece rates be increased in order to correct inequities. Although still demanding a general wage increase, the Union requested the Respondent to furnish definite information concerning the proposed increases, and also requested that it be furnished with a list of Respondent's piece rates.[3]

On about or shortly after September 15, the Respondent posted in its plant a notice which listed increased hourly and piece rates. The increases were made effective as of September 15. At the same time certain employees who had been paid hourly rates were transferred to piecework. Thereafter a bargaining conference was held on about the night of September 20.[4] In addition to the Union's bargaining committee, some employees who were affected by the new piece rates also were present. The Respondent did not furnish the Union with a written list of its old piece rates, or those proposed; but it appears that information concerning the new rates was furnished orally during the meeting. The Union did not approve these increases at this meeting or at any prior meetings.[5]

On or about September 20, 1950, William Smith, representative of the Union, replaced Dorsey in the negotiations with the Respondent.[6] At a meeting held on about September 27, Burrow claimed that all questions except wages either had been agreed upon or waived by the Union during negotiations with Carson. Smith replied that he had checked with Carson, that it was the Union's position that it had not waived the checkoff and vacation provisions, and that the Union desired further negotiations on these and other issues. During a discussion of individual wage increases, Smith indicated that the Union might agree if the Respondent would furnish it with a list of the proposed rates. Due replied, "It takes time to work it out and we don't have it ready yet."

At the next meeting on October 4,[7] Smith attempted to negotiate for checkoff of union dues, vacations, and other provisions of the Union's proposed contract. The Respondent stated that it would not grant these benefits. Smith again asked for a list of the Respondent's piece rates and proposed increases. Due told him that the rates had not been "worked out." Smith then stated, "What does the overall total amount to? . . . Can you give us a concrete figure? Does it amount to 5 percent overall cost, or 10 percent, or 15 percent, or what does it amount to? It may be that if we knew, we could resolve that particular issue,

[3] As related above, the Respondent furnished Carson with a list of its hourly rates That list also showed which employees were paid on a piecework basis. Concerning the time when the Respondent first made its proposals for individual increases, the testimony of the witnesses is vague and uncertain From the testimony of Dorsey, it would appear that discussions in this connection took place during August. However, the undersigned believes that the Respondent's witnesses are more reliable in this respect and that such negotiations took place after September 6, as found above

[4] Dorsey testified that the night meeting was held during August. Due testified that it was held on about September 20, after a day meeting which was held on September 17 or 18 Employee Jesse Moore testified that the above notice was posted before the night meeting.

[5] Due testified to the effect that he believed that the Union had agreed to the increases during meetings on and before September 20, for the reason that it "had not objected."

[6] It appears that Smith was present with Dorsey at the meeting held on September 20.

[7] A conciliator of the United States Conciliation Service was present at this meeting.

because it might be satisfactory . . . if there is sufficient amount in the pot, we would like to sit down and work it out and divide up the amount to give an overall increase, and then perhaps hold back part of the percentage to use to correct inequities." The Union was informed that the proposed increases "amounted to about 10 percent." [8] When a "revocable checkoff" was suggested as a compromise by the conciliator, Due stated that it first would be necessary for him to consult with the holder of the option on Jones' stock, and that he would give Smith a definite answer in a few days.

Smith called Due during the morning of October 10. Due informed him that he was unable to give him a definite answer, and that another meeting would be necessary on October 12 to discuss the questions involved. Smith reported this conversation to the Union's bargaining committee. That same day the employees went on strike and established a picket line in front of the plant.

A bargaining conference was held on October 12. Jones was present at this meeting.[9] Smith asked the Respondent for its position on the various issues in dispute. Jones stated that he would not sign any kind of checkoff agreement, that the Respondent was unable to grant any wage increases, particularly after the strike, and that its position had not changed on vacations and other cost issues. Burrow referred to unfair labor practice charges that had been filed by the Union with the Board and stated that he did not see how the negotiations could be concluded successfully while the charges were pending. Smith replied that the charges could be withdrawn after a contract was signed but that the Union would not withdraw the charges first.

Other meetings were held on November 3 and 11. The Respondent stated at both meetings that its position had not changed on any of the issues involved. The strike ended on about November 13 and the employees returned to work.

On March 2, 1951, Dorsey wrote a letter to the Respondent in which he requested a bargaining conference. The Respondent did not reply to his letter. At a later date Dorsey met Burrow who told him that he saw "no need for further meetings as long as the pending charges were involved."

3. Conclusions

The complaint alleges that the Respondent failed and refused to bargain collectively with the Union on and after April 18, 1950; and that on or about September 15, 1950, the Respondent bargained directly and individually with its employees and granted them wage increases. The General Counsel apparently contends that the Respondent did not bargain in good faith on and after April 18, 1950.

While the Respondent's good faith during the negotiations, particularly on and after about September 15, 1950, is questionable, I find that it is not necessary to resolve this issue. The undisputed evidence discloses that by letter dated March 2, 1951, the Union requested a bargaining conference, and that the Respondent ignored this request. Accordingly, it is found that the Respondent failed and refused to bargain collectively with the Union on and after about March 2, 1951.

The evidence also discloses that the Respondent on or about September 15 and 22, 1950, granted individual wage increases to its employees. The Respondent apparently contends that the Union agreed to these increases since, as Due testified, it did not object when the increases were discussed. This contention is rejected.

The Union repeatedly requested the Respondent to furnish it with a list of the old piece rates and the proposed increases. Such information was never

[8] The Union's proposed contract called for a general wage increase of 15 cents per hour.
[9] It appears that at about the above time the option on Jones' stock had expired without having been exercised.

given to the Union in written form. The Respondent did give information concerning the new rates at the meetings on about September 18 and 20. However, it appears that it was given piecemeal during discussions between Respondent's representatives and employees who were present. With such fragmentary information and without a list of the old piece rates, the Union clearly was not in a position to give its approval. Further, both Dorsey and Smith testified credibly that the Union at no time approved the increases. The Union indicated that agreement on wages might be possible if the Respondent would furnish it with definite information concerning the proposed individual increases. Under the circumstances it could hardly be claimed that an impasse on the wage issue had been reached. Accordingly, it is found that Respondent's action in unilaterally granting wage increases to its employees on September 15 and 22, 1950, constitutes a separate violation of Section 8 (a) (5) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

Having found that the Respondent has engaged in unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action which will effectuate the policies of the Act.

It has been found that the Respondent has refused to bargain collectively with the Union. It will therefore be recommended that the Respondent cease and desist therefrom, and also that upon request it bargain collectively with the Union with respect to wages, hours, and other terms and conditions of employment, and if an understanding is reached embody such understanding in a signed contract.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. United Furniture Workers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.
2. All production and maintenance employees, including shipping department employees and truck drivers, excluding office-clerical employees, inspectors, timekeepers, salesmen, professional employees, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.
3. United Furniture Workers of America, CIO, was, on March 28, 1950, and at all times since then has been the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.
4. By refusing to bargain collectively with the aforesaid Union, as the 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. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication in this volume.]