

tion and maintenance unit, and the Regional Director will issue a certification of results of election to such effect.

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

HEKMAN FURNITURE COMPANY and UNITED FURNITURE WORKERS OF AMERICA, CIO. Case No. 7-CA-659. November 26, 1952

Decision and Order

On April 29, 1952, Trial Examiner George A. Downing 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 brief¹

The Board² has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications and additions.³

The Respondent contends that the Union's requests for individual wage rates, wage ranges, and individual job classifications should have been processed through the grievance procedure set forth in the collective-bargaining agreement. That contract provides for processing through the grievance procedure, *inter alia*, any "complaints or charges upon matters which have not been made the subject of this agreement and which have not been made the subject of collective bargaining." As the Union did not submit the question of furnishing of wage data to the grievance procedure, the Respondent contends that the Union has, in effect, waived its right to complain of the Respondent's failure to furnish such data. However, the Board has held that "the collective bargaining requirement of the Act" is not satis-

¹ The Respondent's request for oral argument is hereby denied, as the record, including the exceptions and brief, in our opinion, adequately presents the issues and the positions of the parties.

² 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 [Chairman Herzog and Members Styles and Peterson].

³ The Intermediate Report contains a typographical error, which is corrected as follows: the citation for *Leland-Gifford Company* should be 95 NLRB 1306.

fied by a substitution of "the grievance procedure of the contract for its [Respondent's] obligation to furnish the Union with information it needed to perform its statutory functions."⁴ Moreover, assuming, without deciding, that this statutory right may be waived by a union, the Board will not, in any event, give effect to any purported waiver of such right, unless it is expressed in clear and unmistakable terms.⁵ We find no such unequivocal waiver in the grievance provisions of the contract.

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, Hekman Furniture Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from refusing to bargain collectively with the Union as the exclusive representative of all its production and maintenance employees, excluding office and clerical employees, inspectors, professional employees, guards, and supervisors, by refusing to furnish to the Union wage data concerning individual wage rates, wage ranges, and individual job classifications.

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

(a) Upon request, furnish to the Union wage data concerning individual wage rates, wage ranges, and individual job classifications of the employees in the foregoing unit.

(b) Post at its plant at Grand Rapids, Michigan, copies of the notice attached hereto and marked "Appendix A."⁶ Copies of said notice, to be furnished by the Regional Director for the Seventh Region, shall, after being signed by Respondent's 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.

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

⁴ *Leland-Gifford Company*, 95 NLRB 1306, 1322.

⁵ See *Leland-Gifford Company*, *supra*, at p. 1310.

⁶ In the event that this Order is enforced by decree of a United States Court of Appeals there shall be substituted for the words, "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

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, upon request, furnish to the UNITED FURNITURE WORKERS OF AMERICA, CIO, wage data concerning individual wage rates, wage ranges, and individual job classifications of the employees in the appropriate unit. The bargaining unit is:

All of our production and maintenance employees, excluding office and clerical employees, inspectors, professional employees, guards, and supervisors as defined in the Act.

HEKMAN FURNITURE 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**STATEMENT OF THE CASE**

This proceeding, brought under Section 10 (b) of the National Labor Relations Act as amended (61 Stat. 136), was heard in Grand Rapids, Michigan, on March 17 and 18, 1952, pursuant to due notice to all parties. The complaint, issued on February 15, 1952, by the General Counsel of the National Labor Relations Board,¹ and based on charges duly filed and served on Respondent, alleged in substance that Respondent had engaged in unfair labor practices proscribed by Section 8 (a) (1) and (5) of the Act by refusing to bargain with the Union on and after April 2, 1951, by declining to furnish to the Union wage data concerning individual wage rates, wage ranges, and individual job classifications which were essential to the discharge of the Union's function as the statutory bargaining representative of Respondent's employees and to properly administer the collective-bargaining agreement between Respondent and the Union.

Respondent filed its answer denying the commission of unfair labor practices. It admitted the failure to furnish the information requested, but pleaded affirmatively that by contract dated October 31, 1949, and by supplemental agreement dated September 30, 1950, a complete settlement had been reached of all matters until November 1, 1953, that the subjects concerning which the Union requested information would have no relevancy until the latter date, and that it had offered to provide the information when relevant "to the formation of a

¹ The General Counsel and his representatives at the hearing are referred to herein as the General Counsel and the National Labor Relations Board as the Board. The above-named Company is referred to as the Respondent and the charging Union, above named, as the Union.

new contract." The answer also pleaded that the information was private and personal as to each employee, that the question of furnishing it was one for each to decide, and that certain employees did not wish Respondent to furnish the information to the Union. At the hearing Respondent filed an amendment which averred that a few days before the hearing Respondent had offered to furnish immediately the wage information in the form *originally requested* by the Union.

All parties were represented at the hearing by counsel or by representatives and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to argue orally, and to file briefs and proposed findings and conclusions. Oral argument was waived. A brief has been filed by the General Counsel.

Various motions were made and disposed of during the hearing. Rulings were reserved on other motions which are disposed of herein. The General Counsel moved to strike a portion of the answer by which Respondent sought to litigate the question whether the Union had complied with the filing requirements of Section 9 (f), (g), and (h) and by which it demanded that proof of compliance be made available during the hearing. Respondent moved in turn that the General Counsel be required to produce the records showing compliance. The General Counsel represented that the Board had administratively determined that the Union was in compliance. Respondent's counsel admitted that he had made no attempt to check with the Regional Director the question whether the Board's records established compliance, and in fact had directed no specific request to the Regional Director concerning the compliance status of said Union. Cf. *Sunbeam Corporation*, 93 NLRB 1205, footnote 4; *Sunbeam Corporation*, 94 NLRB 844; *Compliance Status of Local No. 1150, United Electrical Radio and Machine Workers of America*, 96 NLRB 1029; and *Sunbeam Corporation*, 98 NLRB 525. The Board has consistently held that the issue of compliance is not litigable in unfair labor practice proceedings. See *Rovanna of Texas, Inc.*, 98 NLRB 1151; *Sunbeam* case, *supra*, 94 NLRB 844, and cases there cited at footnote 3. Accordingly, the General Counsel's motion to strike the portion of Respondent's answer seeking to litigate the issue herein is granted.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is a Michigan corporation with its principal office and a plant in Grand Rapids, Michigan, where it is engaged in the manufacture and sale of furniture. During the calendar year 1951, Respondent purchased raw materials in excess of \$700,000, over 85 percent of which were from points outside the State. In the same year, Respondent's gross sales exceeded \$1,000,000, over 75 percent of which were to out-of-State points. Respondent admits and it is hereby found that it is engaged in interstate commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization admitting to membership employees of Respondent.

In endeavoring to litigate the question of the Union's compliance with Section 9 (f), (g), and (h), as referred to above, Respondent took the position that the question of the Union's compliance was related to the question whether the Union was a labor organization within the meaning of the Act. The Board has

previously rejected similar contentions. *Sunbeam Corporation*, 89 NLRB 469; *Sunbeam Corporation*, 94 NLRB 844, footnote 2.

III. THE UNFAIR LABOR PRACTICES

A. *The appropriate unit; majority representation*

All of Respondent's production and maintenance employees, excluding office and clerical workers, inspectors, professional employees, guards, and 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. At all times since a date prior to October 31, 1949, the Union has represented a majority of the employees in said unit.

B. *The refusal to bargain*

1. Bargaining history; the contracts

Following certification of the Union in 1943, Respondent and the Union entered into collective-bargaining relations, and they have negotiated several contracts. Relations between the parties have been very good and there have been no strikes or serious disputes and no prior unfair labor practice proceedings. There are approximately 140 employees in the unit (of whom approximately 40 are non-union members), divided among approximately 40 job classifications.

The general bargaining practice, insofar as wage rates were concerned, has been to negotiate minimum rates for each job classification (in which from 1 to 12 employees were employed) or to negotiate for general increases in existing rates. The contracts sometimes contained no reference to, or provision establishing, either minimum or existing rates, but some of them included, in the form of an appendix or otherwise, a schedule of agreed minimum rates. Neither rate ranges nor maximum rates have been fixed; the Union has been satisfied with the guarantee that Respondent would not pay less than the minimum rates and Respondent has been free to pay such maximum rates as it chose, without limitation, and it has not divulged to the Union either the amount of individual rates or the identities of the employees receiving them. However, Respondent customarily furnished to the Union, as a basis for proceeding with contract negotiations, a schedule of the minimum rates for the various job classifications; and the Union had accepted information of that type, and had not endeavored to bargain concerning the establishment of individual wage rates.

On October 31, 1949, the parties negotiated an agreement to be effective until November 1, 1951, and from year to year thereafter, with a 60-day termination clause. The contract contained no reference to existing wage rates or to minimum wage rates, but provided among other things that, "The Union shall have the right to submit to the Company from time to time, for negotiation and adjustment, the departmental rate and individual wage rates which the Union believes to be out of line or that have been omitted in the wage schedule." It was also provided that either party might "reopen the question of a general increase or a general decrease in the hourly rates of pay on one occasion prior to November 1, 1951." The contract also contained a formal and detailed grievance procedure, which provided at the third stage for filing of grievances in written form, and at the fourth stage for arbitration. It was also provided that the Union would be notified of all grievances and that Respondent would negotiate with the Union concerning their disposition, with certain exceptions. The contract also provided:

It is understood that this agreement constitutes a complete settlement of all matters, including those not specifically mentioned therein.

On September 23, 1950, a supplemental agreement was entered into which provided for general or across the board wage increases to take effect on September 15, 1950, and January 8, 1951. The supplement extended the 1949 contract for all purposes, except as thereby modified, until November 1, 1953, "as a complete settlement of all matters, including those subjects not specifically mentioned."

2. The requests for wage information; the refusals to furnish

Neil J. McCormick (district director of the Union) testified, and was substantially corroborated by Archie Trombley (president of the local in Respondent's plant), that during the negotiations for the supplemental agreement in August and September 1950, the Union's representatives were endeavoring to establish fixed rates in the contract itself; that Respondent conceded that the wage rate schedule it had produced did not contain the going rates being paid at the time; and that the Union requested that Respondent furnish individual wage rates so that the Union might intelligently negotiate on the wage questions which were being discussed at that time. Stephen F. Dunn, Respondent's counsel, who had represented Respondent throughout the course of its bargaining relations with the Union, testifying as a witness, admitted that he had "a general recollection" of a discussion about wage information, but took the position that the question of its production was settled and removed by the execution of the 1950 supplement. In any event, Respondent did not supply the information, and the negotiations were concluded with final agreement on the supplemental contract, which provided for general wage increases.

McCormick testified further that subsequent to the execution of the 1950 supplement, the Union continued periodically to request Respondent to furnish wage information; that such requests were made because certain complaints or grievances had arisen in the plant in relation to classification and rates, and because the information was necessary to enable the Union to represent the employees and to process the grievances. Trombley, who also acted as chief shop steward, testified with specific reference to a number of such complaints or grievances made to him by employees, to his efforts to handle the matters with Respondent's foremen and with Samuel W. Tamminga (Respondent's vice president in charge of production), and to his inability to process the grievances without the classifications and the rates of affected employees.²

McCormick testified that because of Respondent's refusal to furnish the requested information, the Union requested and Respondent granted a conference on August 15, 1951, for the purpose of straightening out the complaints which had arisen. The Union then repeated its request for wage information as being necessary to enable it intelligently to represent the employees in the bargaining unit.

McCormick and Trombley testified that what the Union then sought was information as to individual wage rates and individual job classifications. Dunn testified to the contrary (and received general corroboration from Tamminga), that what the Union requested was the minimum and maximum rates for each job classification (i. e., the rate ranges) and the number of employees in each classification. Dunn's testimony is accepted because it was based on his notes made during the conference and because of the Union's later failure to take

² The practice has been for the Union and the Respondent to handle all complaints or grievances on an oral and informal basis; and during the entire history of their relations, not a single grievance had been reduced to writing as required under the third step of the grievance procedure.

exception to the statement in Respondent's letter of August 29, hereinafter quoted, that the Union had requested job classifications and rate ranges. The point is largely immaterial, however, since Respondent did not by its letter agree to furnish even the lesser and more general information previously requested of it.

Respondent took the position that no contract negotiations were underway and that there were no matters relating to specific grievances then under discussion; and it requested further time to consider the Union's request. McCormick and Trombley testified that Respondent agreed to give the Union its answer in a few days, and that thereafter, on their separate inquiries, Tamminga informed them that Respondent would not supply the information.

McCormick thereupon wrote Respondent on August 24 as follows:

This letter is in regards to the subject matter we discussed at your Office on August 15, 1951, and which we had raised with you during our last contract negotiations and repeatedly following these negotiations. This request is; the Company furnish the Union with the present rates of all workers in the bargaining unit and their respective classifications.

It has been brought to my attention by the Chief Steward, Archie Trombly, that following our August 15th meeting, the Company notified Brother Trombly that they were not willing to submit this requested information. I also spoke with Mr. Sam Tamminga on August 23rd in respect to this matter, and he again stated that the Company was not willing to provide this information to the Union.

In this letter again we are asking the Company to submit as promptly as possible, the present wage rates of all employees of the bargaining unit and their respective job classifications. We feel that in order to intelligently represent our workers in your plant that this information is vital and necessary. We want you to know that there is no other reason that we seek this information for. We are the Bargaining Representative for your workers, and in order to fulfill our obligations to them, that we should and must have this wage and job classification information.

Respondent replied on August 29 as follows:

We have your letter of August 24, 1951, in which you state that your request is: "The Company furnish the union with the present rates of all workers in the bargaining unit and their respective classifications."

We note that this request is different from the one which you verbally made during our meeting, at which time the request was for the job classifications and the rate ranges.

As you know, wages are not subject to reopening at this time, and there are no other contractual issues which are now the subject of collective bargaining. We believe that your request is based on some other cases, where negotiations concerning wages were actually in progress and it was found that the requested wage information was absolutely necessary to the union in order for the union to engage in collective bargaining. It is clear that those circumstances do not exist here. Since we believe that each individual employee has some rights of privacy concerning his own earnings, we believe in all fairness, that we should not accede to your request. Since no wage negotiations are now in progress, we believe that the information you request is in no way necessary in order for you to represent the employees under the contract and under the law.

There were no further negotiations prior to the filing of the charge. Some 2 or 3 weeks later the Union decided, in a meeting of the executive board of the

local, to proceed with the filing of a charge, and on October 1 it filed a charge that Respondent had refused to bargain by refusing to furnish the Union with present wage rates and classifications of all employees in the unit.

Thereafter various conferences were held prior to the issuance of the complaint looking toward a settlement of the charge. Some of such conferences were held during the investigation of the charge by representatives of the General Counsel, one such conference being as late as February 14, 1952, the day preceding the issuance of the complaint. During those negotiations for settlement, Respondent offered to furnish information as to rate ranges and the number of employees in each job classification, but continued to refuse the more detailed information as to the wage rates and job classifications of individual employees on the ground that some of the employees objected and that Respondent felt that to disclose what the employees regarded as private information might create jealousies and misunderstandings. However, as to the more general information which Respondent represented its willingness to produce, Respondent, on February 14, requested a delay of some 60 days within which to complete a job evaluation study which it had started.³ The Union rejected that offer.⁴

The following facts are also relevant for consideration.

Tamminga testified that a number of employees, some union members and some not, had informed him that they objected to Respondent furnishing to the Union their individual wage rates. On cross-examination he refused, though ordered to answer, to divulge the names of any such employees on the ground that he was not authorized to do so, that he did not wish to embarrass the employees, and because of "possible recriminations." Tamminga also testified that one basis of Respondent's reluctance to furnish the information was its view that such information was the property of the employees, and that even though information as to individual wage rates might become necessary during negotiations which might arise after completion of the job evaluation study, Respondent still would not furnish such rates in the case of employees who objected unless expressly authorized to do so.

Tamminga admitted that the information as to individual wage rates and job classifications was readily available in Respondent's records and that it could easily be checked and furnished. Dunn contended, however, that since the unit was a small one and since there were at best only a few employees in each classification, the Union could, without difficulty, have obtained such information as it needed direct from the employees.

³ Tamminga testified that he had begun the study the first of February, that it was only half finished at the time of the hearing, and that it would not be completed until May. Tamminga admitted that the study might well reveal the necessity for adjustments in existing wage rates, and that where such adjustments were substantial, Respondent contemplated negotiating with the Union concerning the same.

Dunn also conceded the possibility that the labor cost savings sharing plan, referred to in the 1950 supplement, might, if it were pursued, necessitate negotiations with the Union concerning changes in the wage rate structure in the plant.

⁴ Respondent also made an offer of proof that during a recess of the hearing on March 17, it had reached a settlement with the Union on the basis that Respondent would furnish the job classifications and rate ranges and the names of individual employees in each classification; that it would furnish on request, 60 days prior to November 1, 1953, the names of the employees and their rates; and that if in the meantime specific grievances should be processed, Respondent would also furnish to the Union on request the individual rate of the employee. The General Counsel's representative stated that the settlement was not approved by the General Counsel because of his view that it would not effectuate the policies of the Act, being less than required under the law; and the hearing thereupon proceeded.

3. Concluding findings

It is now well settled that a union which has been duly designated and recognized as the statutory representative of employees is entitled to receive from the employer payroll information of the type the Union requested here in order to enable the Union to bargain intelligently and to determine whether the bargaining contract is being fairly and impartially administered. See, for example, *E. W. Scripps Company*, 94 NLRB 227, 243, and cases there cited. The Board considers such information necessary to the effective exercise of the bargaining representative's legitimate function of representing employees in contract negotiation and of protecting its proper interest in the manner in which an employer administers an existing contract. *Leland-Gifford Company*, 95 NLRB 184.

The reasons advanced by the Union were in full consonance with its proper functions. Thus, the Union supported its requests for individual wage rates and job classification on the grounds that the information was necessary in order to intelligently represent the workers in the bargaining unit for whom the Union was the recognized bargaining representative. The information was not sought, nor did the Union seek to justify its production, on the ground that it was needed for contract negotiations. Instead, the Union's requests were motivated by the Union's inability to perform its other important functions in administering the contract⁵ and in representing employees in the filing and processing of grievances.

The Union's concern over possible wage inequities and its need for wage information were in fact greater than in the ordinary case, because the contract established only minimum rates, and the Union had surrendered to Respondent the sole discretion and responsibility of making individual increases, without limitation and without reference even to prescribed rate ranges or maximum rates. Cf. *E. W. Scripps Company*, *supra*; *General Controls Company*, 88 NLRB 1341. As the Supreme Court has observed (*J. I. Case v. N. L. R. B.*, 321 U. S. 332, 338):

The practice and philosophy of collective bargaining looks with suspicion on such individual advantages . . . They are a fruitful way of interfering with organization and choice of representatives; increased compensation, if individually deserved, is often earned at the cost of breaking down some other standard thought to be for the welfare of the group, and always creates the suspicion of being paid at the long-range expense of the group as a whole.

Obviously, the higher the degree of the employer's discretion in such matters, the greater is the union's responsibility, as the bargaining representative of the employees, to obtain full information to administer the contract and to protect employees' rights thereunder. *The Electric Auto-Lite Company*, 89 NLRB 1192; *General Controls Company*, *supra*. *E. W. Scripps Company*, *supra*.

In attempted justification of its refusal, Respondent urged defenses identical with or similar to those which have been examined and rejected in prior decisions. They will, therefore, be referred to only briefly.

Respondent's chief objection to furnishing the information was based on its view that the information was private and personal as to each employee and that certain employees had objected to Respondent supplying it to the Union.

⁵ E. g., submitting for negotiation and adjustment, as provided in the contract, departmental and individual wage rates believed to be out of line.

In fact, at one point during the hearing Respondent's counsel represented that such was Respondent's *only reason*. Respondent therefore urged that it should not disclose the requested information, except on express authorization of the individual employees, and that it would in no case do so where individual employees objected.

The contention that such information is confidential has been rejected in numerous decisions. See particularly the discussion of the point in *The Electric Auto-Lite Company*, 89 NLRB 1192, 1198-9, and the quotation from *Aluminum Ore Company v. N. L. R. B.*, 131 F. 2d 485, 487 (C. A. 7), which need not be here repeated.

The contention that authorization by the employees is necessary overlooks the Union's *statutory authority* to act as "the exclusive representative of all the employees in (the appropriate) unit for the purposes of collective bargaining." Section 9 (a). It likewise ignores the fact that Respondent, by its contract, expressly recognized the Union "as exclusive representative for collective bargaining on behalf of employees in the unit covered by this agreement."

By statute then, the Union's authority was fixed as the bargaining agent of the employees, and by contract the Respondent had expressly recognized it. Such authority extended to the Union's right to request and to receive information essential to an intelligent representation of its principals, the employees. No additional or specific authorization in that regard is required from the individual employees, as contended by Respondent; the statute supplied all that was necessary. *The Electric Auto-Lite Company*, *supra*, at pp. 1199-1200.

Respondent also urged that in view of the size of the unit and the small number of employees in each job classification, the information which it had agreed to supply during negotiations for settlement of the charge (i. e., rate ranges, job classifications, and the number of employees in each classification) would have enabled the Union adequately to represent the employees for all purposes, since the Union was able to obtain such additional information as was necessary from among the employees. That contention ignored Respondent's argument elsewhere that many of the employees, including some union members, did not wish the Union to have the information as to their wage rates and Tamminga's testimony that Respondent would refuse to supply information even where necessary to the processing of a particular grievance if an employee objected.

Furthermore, it was Respondent's responsibility to furnish the information; it cannot urge that the Union seek, or supplement it, from other sources. Contention similar to Respondent's were made both in the *Aluminium Ore* case, *supra*, and in *J. H. Allison Co.*, 70 NLRB 377, *enfd.* 165 F. 2d 766 (C. A. 6), *cert. den.* 335 U. S. 905, but were upheld in neither. The holding in the Allison case is particularly applicable here:

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 size of the unit is, therefore, relevant only to the question whether the Union's request was reasonable and whether compliance therewith would be unduly burdensome or time consuming. Cf. *Cincinnati Steel Castings Company, Inc.*, 86 NLRB 592. But Respondent made no such contention here. To the con-

rary, Tamminga testified that the information was readily available in Respondent's records and could be easily furnished.

Respondent also urged that, under their terms, the contract and the supplement constituted "a complete settlement of all matters." To the extent that this embodies a contention that the Union had bargained away the right to request wage data, it must be rejected for the reasons stated in *Leland-Gifford Company*, 95 NLRB 184. That case in fact involved a situation which is *a fortiori* to the present, in that the contract there, contrary to the present one, required the disclosure of certain information. The Board nevertheless held that the "complete agreement" clause of that contract was not intended, and could not be construed, as a waiver by the Union of its right to obtain additional data necessary to the effective administration of the contract. See also *N. L. R. B. v J. H. Allison & Co.*, 165 F. 2d 766; *General Controls Co*, *supra*.

More explicitly, Respondent urged that the "complete settlement" clause of its contract removed all bargainable wage issues until November 1953; that since there was no obligation on Respondent to bargain thereon, there was no duty to furnish wage information. Were the information sought for the purpose of undertaking contract wage negotiations, there would be much force to Respondent's contentions;⁶ but what Respondent ignored is that the Union's request, and its need for the information, were related to an entirely different, but just as essential, facet of the Union's legitimate functions, i. e., the policing of the administration of the contract. *Leland-Gifford Company*, *supra*, and cases there cited.

As further precluding a finding that it has refused to bargain, Respondent relied upon its offers of settlement of the charge, prior to the issuance of the complaint, on the basis of the Union's oral requests for information on August 15. Such offers were not made as a part of bargaining negotiations but in an effort to procure the withdrawal of the charge, then under investigation, and the avoidance of the pending proceeding. Furthermore, such offers fell short of the information requested on August 24, and thereafter consistently refused. Respondent obviously was not thus entitled to force the Union's acceptance of less than requested and less than it was lawfully entitled to nor to preclude the General Counsel from seeking a proper and *complete* remedying of Respondent's unfair labor practices.

Respondent also strenuously urged that it reached a settlement with the Union during a recess of the hearing, and that the General Counsel deliberately stood in the way of effectuating, through that settlement, a free course of collective bargaining. Obviously, no "free course" of collective bargaining was reflected in Respondent's attempt to procure a withdrawal of the Union's charge and a dismissal of this proceeding. It also appeared, from the representations of counsel and from Respondent's offer of proof, that Respondent's offers again fell short of an agreement to supply the information specified in the charge and in the complaint and short of that to which the Union was lawfully entitled as the statutory bargaining representative of Respondent's employees. The General Counsel, representing the interests of the public in the administration of the Act, was therefore fully justified in refusing to approve the settlement and in proceeding with the hearing.

Indeed, were the settlement regarded as constituting a complete discontinuance by Respondent of its prior unfair labor practices, such fact did not render moot

⁶ The evidence shows, however, that wage negotiations might well be undertaken prior to the expiration of the contract, either upon completion of the job evaluation study or in the event Respondent should proceed with its labor cost savings sharing plan. See footnote 3, *supra*.

the charges based thereon. *Yawman and Erbe Manufacturing Company*, 89 NLRB 881, enfd. 187 F. 2d 947 (C. A. 2); *Southern Saddlery Company*, 90 NLRB 1205, and cases there cited at footnote 6. Furthermore, the record in this case reveals that Respondent has shown a disregard for its bargaining obligations with the representative of its employees; and the undersigned is convinced, and accordingly finds, that the policies of the Act can best be effectuated by an order requiring Respondent to take the remedial action hereinafter recommended. *Ibid.*

Upon a consideration of the entire record, it is therefore concluded and found that Respondent, by refusing to furnish the Union, upon request, wage data concerning individual wage rates, wage ranges, and individual job classifications, has refused to bargain with the Union as the exclusive representative of its employees in an appropriate unit, and has thereby engaged in unfair labor practices within the meaning of Section 8 (a) (5) and (1) of the Act. Said unfair labor practices are hereby found to have commenced on April 2, 1951. See Section 10 (b) 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 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

It having been 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 which the undersigned finds will effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2 (5) of the Act.
2. All of Respondent's production and maintenance employees, excluding office and clerical employees, inspectors, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (f) of the Act.
3. Since a date prior to October 31, 1949, the Union has been and now is 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 failing and refusing at all times since April 2, 1951, to furnish the Union wage data concerning individual wage rates, wage ranges, and individual job classifications, Respondent has failed and refused to bargain collectively with the Union as the exclusive representative of the employees in the aforesaid unit, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and (1) 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.]