CAPITAL TRANSIT COMPANY *and* LOCAL NO. 2, OFFICE EMPLOYEES INTERNATIONAL UNION, AFL. Case No. 5-CA-604. July 15, 1953

DECISION AND ORDER

On April 23, 1953, Trial Examiner Stephen S. Bean issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in nor was engaging in certain unfair labor practices and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and supporting briefs. The Respondent also requested oral argument. This request is hereby denied, as the record, including the briefs and exceptions, adequately presents the issues and positions of the parties.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this 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 that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

We agree with the Trial Examiner that the Respondent did not refuse to bargain in good faith with the Charging Union, Local No. 2, Office Employees International Union, AFL. It is clear from the record that the Respondent's bargaining representative, T. G. Butler, had sufficient authority from the Respondent to make, upon his own initiative, agreements with the Union, and to tentatively accept commitments, both of which would have a strong likelihood of being finally accepted by the Respondent. In view of the extensive authority to partake in give-and-take bargaining which the Respondent accorded its negotiator, and because we find no indication otherwise of a lack of good faith on the part of the Respondent, we will dismiss the complaint.

[The Board dismissed the complaint.]

Intermediate Report

STATEMENT OF THE CASE

Upon a charge duly filed on June 18, 1952, by Local No. 2, Office Employees International Union, AFL, herein called the Union, the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel and the Board, by the Regional Director for the Fifth Region (Baltimore, Maryland), issued his complaint dated December 22, 1952, alleging that Capital Transit Company, herein called 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.

Copies of the complaint and the charge, together with a notice of hearing, were duly served on Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that Respondent has at all times since January 2, 1952, refused to bargain collectively in good faith with the Union which has been, at all times since September 21, 1951, the exclusive representative of all employees in an appropriate unit for the purposes of collective bargaining, in respect to rates of pay, wages, hours of employment, or other conditions of employment.

Respondent duly filed an answer in which it admitted it was engaged in commerce within the meaning of the Act, that the Union is a labor organization within the meaning of the Act, and the appropriateness, for the purposes of collective bargaining within the meaning of the Act, of the unit described in the complaint. Respondent also admitted that the Union was designated and selected by a majority of the employees in the described unit as sole representative for the purposes of collective bargaining in an election duly conducted on September 21, 1951, by secret ballot pursuant to an agreement for consent election executed by Respondent and the Union and approved by the Board's Regional Director and by virtue of Section 9 (a) of the Act, but it denied that the Union has been at all times since September 21, 1951, the exclusive representative of the unit referred to, for the purposes of collective bargaining. Respondent further denied that it has at any time refused to bargain collectively with the Union. By way of affirmative defense, Respondent plead that: (1) It bargained collectively in good faith with the Union from and after December 13, 1951, to August 13, 1952, at which time an impasse was reached which has continued since then, relieving it of any further duty to bargain and that it has at no time denied any request upon the part of the Union to bargain collectively; (2) upon information and belief, in September 1952, without fault of Respondent, the Union ceased to represent and does not now represent the employees in the unit described in the complaint and that since that date it has not had any duty to bargain collectively with the Union; and (3) Respondent has offered to continue bargaining collectively with the Union, provided the Union would present evidence that it still represented a majority of the employees in the unit referred to in the complaint and the Union has made no response to Respondent's offer.

Pursuant to notice, a hearing was held before me at Washington, D. C., on January 26, 27, 28, 29, 30, February 5, 26, 27, and March 13, 1953. The General Counsel, the Respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, to argue orally upon the record, and to file briefs and proposed findings and conclusions was afforded all parties. The General Counsel and Respondent argued orally. Briefs were waived.

At the request of counsel for Respondent, there was issued a subpena calling for the appearance of one Robert W. Knadler, a field examiner for the Board attached to the Fifth Regional Office, who it was represented would testify to a conversation between representatives of the Union and of Respondent relative to the authority of one T. Godfrey Butler, Respondent's director of personnel and labor relations, to enter into a collective-bargaining agreement binding upon Respondent. Written consent of the General Counsel for Knadler to testify was sought and denied. On February 5, I denied the General Counsel's motion to quash this subpena. The General Counsel excepted. Knadler declined by reason of Section 102.87 of the Board's Rules and Regulations to testify in response to a question related to a matter in question in the proceedings. Counsel for Respondent thereupon moved that I direct the witness to answer. I denied this motion and ruled that no further questions relating to matters in question in the proceedings be directed to this witness. Respondent excepted.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Capital Transit Company, at all times material herein, is and has been a corporation duly organized and existing by virtue of the laws of the District of Columbia and has maintained its principal office and place of business in the city of Washington, District of Columbia, where it has engaged in the operation of a public passenger transportation system by streetcars and buses in the District of Columbia and the State of Maryland. In the normal course and conduct of its business, Respondent uses materials valued in excess of $1,000,000 annually of which it causes more than 95 percent annually to be purchased, transported, and delivered in interstate commerce, from and through States of the United States to and through the District of Columbia, and receives fares for the transportation of passengers in the

District of Columbia and the State of Maryland amounting to in excess of $20,000,000 annually. Respondent admits that it is engaged in commerce within the meaning of the Act and I so find.

II. THE ORGANIZATION INVOLVED

Respondent admits that Local No. 2, Office Employees International Union, AFL, is a labor organization admitting to membership employees of Respondent and I so find.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The appropriate unit and its representation by the Union

Respondent admits the appropriateness of the unit described in the complaint and that the Union represented the employees therein included from September 21, 1951, until September 1952 but, as has been pointed out, it averred affirmatively that upon information it believes the Union has not represented said employees since September 1952. A petition for decertification (Case No. 5-RD-78) which was filed by employee Henry R. Small on September 29, 1952, was dismissed on December 23, 1952. Respondent sought to introduce a list of names of employees, appended to this petition, for the purpose of showing that the Union had sustained a loss of majority by September 1952. I excluded this evidence. In cases where an employer has unlawfully refused to bargain with a union, which, at the time of such refusal, represented a majority of the employees, the Board deems it necessary in order to effectuate the purposes of the Act to require the employer to bargain with that union, despite its subsequent failure to retain its majority. Consequently, proof that there had been such loss of majority would be of no materiality in determining the necessity of the issuance of an order requiring an employer to bargain to the end that its violation of Section 8 (a) (5) should be remedied. Poultry Enterprises, Inc., 102 NLRB 211; Geigy Company, Inc., 99 NLRB 822, and cases therein cited. See also, N. L. R. B. v. Gittlin Bag Co., 196 F. 2d 158 (C. A. 4) and cases cited therein.

I find therefore that the Union, so far as these proceedings are concerned, has been at all material times since September 21, 1951, the exclusive representative, for the purposes of collective bargaining in respect to rates of pay, hours of employment, or other conditions of employment, of all employees in an appropriate unit comprising:

All nonsupervisory and nonconfidential permanent office workers in the general and departmental offices of the Respondent including clerks, typists, stenographers, P. B. X. operators, information clerks, receivers of revenue, schedule makers, schedule clerks, traffic clerks, traffic checkers, and running time observers; but excluding foremen, inspectors, instructors, dispatchers, fare box pullers, depot office employees in the transportation department, employees in the print shop, employees in the personnel department, investigators, adjusters, employees in the internal auditor's office, engineers, accountants, timekeepers, employees in the staff engineer's office, stock clerks, shop clerks, garage clerks, collectors of revenue, messengers, and supervisors, guards, and professional employees as defined in the Act.

B. The issue

After 25 days of discussion on various dates from early January 1952 to late April 1952, between John P. Cahill, secretary-treasurer of the Union, William Robert Probey, its business representative, and John A. Kohler and William Joseph Trickett, employee-members of a negotiating committee, all representing the Union, and T. Godrey Butler, Respondent's director of personnel and labor relations, representing Respondent, Respondent on May 2, 1952, produced and submitted to the Union, a proposed collective-bargaining agreement [1] which its president, J. A. B. Broadwater, was willing to sign.

The General Counsel contends in substance that on April 24 and 25, 1952, Butler acting on behalf of Respondent entered into a final firm oral agreement with the Union but that on May 2, Respondent refused to abide by such oral agreement [2] and thereafter refused to execute a contract in conformity with the oral agreement.

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[1] The Union had originally submitted its proposal on December 13, 1951.

[2] The five principal respects in which the written agreement submitted by Respondent on May differed from the alleged binding oral agreement of April 24 and 25 as set forth in full in the appendix attached hereto, were in clauses respecting (1) grievances and arbitration; (2) night differential pay; (3) posting of an organizational chart; (4) classification of pay and establishment of rate ranges; and (5) tenure of the contract.

Respondent contends that it made no binding agreement at any time, that whatever was acceded to by its representative during the course of negotiations was merely recommendatory in character, that its representative had no authority to enter into a final binding contract, a fact well known by the Union, and that any proposals or agreements suggested or entered into by him were made subject to ultimate approval or rejection by Respondent's president.

Thus is posed the question of whether or not Respondent bargained in good faith. The main if not the controlling issues in the case are: (1) Whether or not Respondent's negotiator had authority not merely to negotiate, but authority to finally bind the Respondent; (2) whether or not it may be found on the facts that the Union was reasonably led to believe Respondent's negotiator had such final authority; and (3) whether, if Respondent did not invest its representative with plenary power to bind it, such conduct constituted a failure to bargain in good faith.

C. Facts; testimony

On the credited testimony of Butler and of Broadwater, insofar as it corroborates that of Butler, I find that on December 13, 1952, Butler was visited by Cahill, Probey, Kohler, and Trickett and presented with a copy of a proposed contract. He asked his visitors for additional copies of the suggested contract and told them he would study the proposals, discuss them with various department heads, and meet with them later. Subsequently Butler notified Broadwater that a proposal had been received but did not go into details as to its content. Broadwater instructed Butler to consult whatever department heads he felt appropriate, and then to meet with the union negotiators and attempt to come to some sort of conclusions respecting a contract the negotiators would be willing to recommend to the union membership and which he, Butler, would be willing to take up with Broadwater for his approval. Broadwater stated he expected Butler to discuss the union proposals as well as any ideas that he and other officials of Respondent might have and that Butler should clearly understand that he had no authority to bind the Company finally to any commitment until he had submitted it to Broadwater for his approval. Broadwater further instructed Butler that once he had arrived at an understanding on a complete contract, he should bring him something which he could report as bearing his own recommendation with some assurance that it was acceptable to, and would be recommended by, the union negotiators to the union membership. On January 2, 1952, Butler asked the four representatives of the Union if they constituted the entire negotiating committee. They replied in the affirmative and stated that anything that might be said by them would not be binding on the Union until it was ratified by the membership. Butler informed the union representatives that while he was appointed and designated by Broadwater to enter into discussions with them, they should clearly understand that he had no final authority to bind the Company on any single provision or group of provisions unless and until it or they had been submitted to and finally approved by Broadwater. During meetings that ensued in the following 2 weeks, Butler informed the group of union representatives that some of their proposals seemed entirely reasonable to him and that he could tentatively agree on them or that he could agree on them in principle. Cahill asked Butler what he meant by "tentative" or "in principle." Butler reminded the group that he had already stated that he had no final authority to bind the Company and asserted that when, however, he felt a proposal or a modification of a proposal would be acceptable to the Company, he would give expression of his feeling by stating that it was tentatively agreed to, which meant that he would recommend it to Broadwater for his final approval. At a meeting coming on a bit later, Probey took Butler to task for not having concluded a final agreement, and doubts were expressed as to whether Butler had authority to enter into discussions. Butler told the group that since Broadwater was going to have to approve whatever understanding at which he and the Union might arrive, it would be an act of foolishness and deceptiveness on his part if he were to say he would make recommendations for the acceptance of specified provisions which he knew, on the basis of Broadwater's attitude evinced in connection with previous dealings with Division 689 of Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL (later referred to as 689), another labor organization which in large part represents Respondent's rank-and-file employees, exclusive of office employees, Broadwater would disregard. In order to satisfy the group that he had authority to enter into discussions with them, Butler then showed them a copy of a notice announcing his appointment to the position of director of personnel and labor relations. After the middle or latter part of January, very little progress was made, negotiations bogging down close to the mire of impasse on the Union's repeated insistence both before and after a meeting of its membership on March 26, 1952, for the inclusion of a union-shop provision and Respondent's unwillingness to grant such

demand. On April 24, 1952, however, the Union announced that it was prepared to drop its insistence on a union-shop or maintenance-of-membership clause and was ready to enter into a contract. Butler pointed out that after the March 26 meeting, the negotiators had told him the membership had sent them back to get a union-shop clause and in response to his inquiry as to how they were going to induce the membership to ratify any agreement not containing such a provision, the reply was in substance that this problem was the negotiator's, not his. Butler then reminded the group that while he was perfectly willing to recommend and would give them every assurance that he would recommend to Broadwater for his approval the points on which he and they had agreed, they should recall that he had informed them that Broadwater would have to give final approval before any contract could be signed. Butler agreed to attempt to have his staff type up the various articles and sections upon which he and the union representatives were in accord and stated that he would submit the outcome to Broadwater. The following day, April 25, he spent a considerable period with Kohler and a shorter time with Trickett comparing notes as to their understanding of agreements. On the same day he telephoned Cahill suggesting the desirability of his calling a meeting of the union membership for the purpose of ratifying a contract. After the typing of a complete contract embodying Butler's and the union negotiators, understandings was completed, Butler took a copy to Broadwater, told him he had gone over the various clauses with appropriate department heads, and that he was recommending approval of the contract as presented. A day or two later, Broadwater informed Butler that he could not agree with certain provisions [3] that Butler had recommended and instructed him to delete, modify, or change them according to Broadwater's desires and then after showing the revisions to appropriate department heads and the entire result to Respondent's general counsel to resubmit the revised contract to him for his final approval. This was done and on May 2, Butler gave Trickett five copies of the contract which Broadwater was willing to sign. In the meantime on April 30, Cahill had telephoned Butler asking him why the typed contract had not been received. Butler indicated to Cahill that there would be some revisions in the understandings of April 24, and that the agreement would have to be submitted to the general counsel and other officials of Respondent before Broadwater's approval could be obtained. Cahill expressed the hope that the revisions would not be too drastic. On May 3, after he had read the typed contract received from Trickett, Cahill vigorously protested to Butler that the document varied from what he thought would be sent him. Butler told Cahill that, just as he had explained to him on April 30, some revisions had had to be made as a result of his discussions with the general counsel and other officials before obtaining Broadwater's final approval, and that there was nothing further he could do, since, as Cahill knew, Broadwater had reserved the right to review and approve anything that Butler should submit to him. On May 8, Cahill and Probey handed Butler a statement setting forth the Union's position and contentions and thereafter visited him several times, renewing their arguments for union security and for working out the details of a new pay schedule and urging that Broadwater should accede in some degree to these requests.

After an agreement as to a wage increase had been reached with 689, in the summer of 1952, Respondent offered the Union a wage adjustment similar to that granted 689, provided the Union would agree for a 3-year period to the terms and provisions of the contract submitted to Trickett on May 2. This offer was neither accepted nor rejected. Later, on November 17, 1952, this wage increase was put into effect without a written contract.[4]

On September 4, 1952, at a joint discussion between officers of, and an attorney for, Respondent and Cahill representing the Union, in the presence of a Board field examiner, Cahill admitted that on January 2, 1952, Butler had told the union negotiators that any agreement he made was subject to Broadwater's approval, and that a few days after January 2, when the question of the significance of Butler's use of the words "tentatively" and "in principle" arose, Butler had explained that anything he arrived at with the Union was subject to Broadwater's approval.[5] Cahill stated at the September 4 discussion that he had assumed Butler was obtaining approval as the negotiating meetings proceeded, from the fact that before committing himself with respect to such matters as the night differential and the split shift bonus or spread, Butler had said he had had discussions with department heads.

[3] See footnote 2, supra.

[4] There is no claim that this constituted an unfair labor practice.

[5] Cahill testified in direct and cross-examination that he could not remember making these admissions on September 4, that he kept no notes of that meeting and that he must admit that he was not in a position to remember too much of the meeting. In rebuttal, Cahill reasoned he could not have made the admission in question because as a matter of fact Butler did not make such a statement on January 2.

Trickett, who, it will be remembered, was one of the two employee-members on the negotiating committee, testified that he did not remember any specific statement that Butler made on January 2, 1953, as to his authority to commit the Company to a final contract but that he knew that the question was brought up at that meeting by Probey who wanted someone in authority to deal with and to have Broadwater participate in the discussions. He did, however, remember that Butler stated he was negotiating subject to Broadwater's approval and that there were discussions respecting Butler's authority several times during the course of the negotiations between January 2 and April 24. He further testified that sometime later than the early stages of negotiations, he cannot remember the exact date, Butler made a definite statement that what he did was subject to Broadwater's approval, and that what Broadwater did was subject to the board of directors' approval and that at the same time the fact was brought out that what the Union did was subject to ratification by its entire membership.

Kohler, the other employee-member on the negotiating committee, testified to the effect that he did not recall that during the early negotiations Butler said that he agreed "tentatively," that it was his understanding that Butler agreed to some sections of the proposals and counterproposals but that his agreement was not final on certain sections; that at one time, Probey charged Butler with failing to have authority to negotiate; that the authority of the negotiators for the Union was confined to negotiating some kind of agreement with the Company subject to ratification by the membership of the Union; that the word "tentative" was used in referring to certain sections, and when differences became resolved by further negotiations and concessions, the use of the word ceased. He further testified that on April 25, Butler said he was going to show a copy of the contract he was preparing, as agreed the previous day, to Broadwater, that on May 8 Butler told him, Cahill, and Probey, he believes, that he had gone over with Broadwater what he, Butler, and the union representatives had agreed to and that Broadwater had eliminated things he could not go along with. Kohler also testified that on several occasions Butler said he could not agree to recommend a union-shop provision because he felt certain Broadwater would not approve it and that on other occasions, when points in negotiations were reached, Butler said he would have to go back to management to determine its feelings, and that most of these times Butler mentioned "management" although once he named Broadwater.

Cahill testified in direct examination that when the Union's proposal was first submitted to him, Butler made no commitments; that quite frequently during the early stages of the proceedings, upon arrival at a point where obviously there was no controversy, Butler would say, "I agree in principle on that" or "I tentatively agree to that," that on occasion during negotiations Butler would say with respect to specific provisions, "I've got to go and talk to management officials, I will have to talk with Mr. Broadwater about this" and that he would want to talk to other company officials; that in the earlier part of negotiations when Probey charged Butler with lacking in authority to conduct negotiations, the latter showed him a copy of the notice of his appointment as director of personnel and labor relations; that on April 25, Butler telephoned to him suggesting the early calling of a meeting of the union membership for the purpose of seeking ratification of the negotiating committee's conduct and that when he called Butler on April 30 inquiring about the state of preparation of the typed contract, the latter told him there were a few changes that had been suggested by Broadwater; that when he telephoned Butler on May 3, the latter referred to his statement concerning changes Broadwater was making; and that on May 8, Butler had said that finally agreeing to the May 2 contract was the best the Company could do. Cahill testified in cross-examination that on January 2, 1952, Probey announced to Butler that any agreements arrived at during negotiations were subject to the ratification of the employees in the appropriate unit and that the union negotiators did not have authority to conclude any agreement at any meeting; that at that time, i.e., January 2, 1952, he did not recall Butler saying anything with respect to his own authority;[6] that during negotiations from time to time Butler would say he had to check with company officials, with members of management and from time to time he would use Broadwater's name; that wherever there was encountered a snag where Butler was not ready to accept the Union's viewpoint or would not work out a compromise that would satisfy the parties, Butler would say "I will take your position, I will give it to the company officials and I will come back to you and give you the company's answer" and on occasion Butler would mention Broadwater; that at the meetings where the term "tentative agreement" was employed by Butler, he raised objections to its use and gained the general impression from what Butler said with respect to clauses being tentatively agreed to, that he meant that he agreed to a given clause only provisionally upon condition that the entire

[6] But see reference to Cahill's rebuttal testimony on this point referred to in footnote 5, supra.

contract would become agreeable; that in response to Butler's statement of April 30 that some changes had been suggested in the contract by Broadwater and that the contract was being put in form for signature by Broadwater, he replied, "Okay, I am glad that when this thing is all squared away we will be able to sit down and sign it"; and, that Butler told him if Respondent put into effect a shift differential for members of the Union it would have to be placed in effect for other persons represented by 689, involved in a pending representation case, and that he had been advised by counsel that such latter action would afford ground for the Company's being charged with an unfair labor practice by 689. Probey was not called to testify.

D. Conclusions

It is clear that the union negotiators, after so much effort, were greatly disappointed that Broadwater would not agree to all the terms of the contract which they had worked out with Butler. It is equally apparent that Butler himself was chagrined that Broadwater failed to accept some of his recommendations, all of which, as he testified, he felt confident Broadwater would accept. But these sentiments on the part of the negotiators furnish no basis for a finding of a violation of Section 8 (a) (5) of the Act. I am not unaware of the cases which hold that under some circumstances, the failure of an employer to endow his appointed negotiator with sufficient authority to arrive at a conclusive agreement is an indication of a failure to bargain in good faith. However, it has been held that there is no absolute duty on the part of the employer to be represented in the bargaining negotiations by a person or persons with competent authority to enter into a binding agreement with the employees, although the character and powers of the person designated by the employer as the negotiating agent may be one of the factors which should be taken into consideration in order to decide whether the employer's effort to negotiate was really made in good faith.[7] I am convinced under the facts of the instant case, where, as I have found, the union negotiators were fully apprized of the limitations of Butler's authority, which was no greater with respect to committing his principal than was the union negotiators' authority to commit theirs, that standing alone, the failure of Respondent to invest Butler with plenary powers to make a final and binding agreement was not in itself a violation of the Act. The evidence is insufficient to show that the reservation of the power to ratify on Broadwater's part was intended or was used to foreclose the achievement of any agreement. I am satisfied that under the particular circumstances here the parties understood that the results obtained by their agents were only recommendatory and a final binding contract could only be achieved after the respective principals approved and ratified their representatives' recommendations. Broadwater's refusal to acquiesce in or sign the agreement reached between the union negotiators and Butler, after he found upon review certain objectionable clauses, may not, I believe, be found to be violative of the Act, unless it be proven that the refusal was made in bad faith and that Broadwater never intended to accept Butler's recommendations, regardless of what they might be. This, in my opinion, the General Counsel was unsuccessful in proving. The General Counsel's insistence that I should rule otherwise is predicated upon wishful thinking rather than upon sound reasoning.

In view of all the above I find in final conclusion that Respondent did not refuse to bargain collectively with the Union in good faith. Elgin Standard Brick Manufacturing Company, 90 NLRB 1467, 1484; Amalgamated Meat Cutters and Butcher Workmen, etc., 81 NLRB 1052, 1062, footnote 26; Shell Oil Company, Incorporated, 77 NLRB 1306, 1307, footnote 4; The Fort Industry, 77 NLRB 1287, 1300; W. W. Cross and Company, Inc., 77 NLRB 1166, footnote 11. See also, L. G. Everist, Inc., 103 NLRB 308 footnotes 6 and 7.[8]

Therefore, I shall recommend dismissal of the complaint.

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[7] Great Southern Trucking Company v. N. L. R. B., 127 F. 2d 180, 185 (C. A. 4), certiorari denied 317 U. S. 652

[8] A number of cases holding that the failure to clothe a negotiator with sufficient authority, when coupled with other violations of the Act, is evidence of a failure to bargain collectively in good faith, are clearly distinguishable in their facts from the instant case. Thus, in Century Cement Manufacturing Company, Inc., 100 NLRB 1323, the company's negotiator who had no previous experience in labor relations was given practically no authority, made no counterproposals, denied the union's request to be furnished with a job classification and wage schedule, and refused to bargain with regard to bonuses. In the meantime the employer unilaterally granted a wage increase and instituted a merit system of bonuses; in Standard Generator Service Company of Missouri, Inc., 90 NLRB 790, the company sought to impose on its employees a bargaining representative other than the one selected

CONCLUSIONS OF LAW

1. The operations of Respondent, Capital Transit Company, Washington, D. C., constitute and affect trade, traffic, and commerce within the meaning of Section 2 (6) and (7) of the Act.
2. Local No. 2, Office Employees International Union, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.
3. Respondent has not engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (5) of the Act.

[Recommendations omitted from publication.]

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by them and the Board; insisted for 8 to 9 months upon including in a contract a provision which in part required pledges that no officer, executive board member, director, or any official, or anyone controlling the editorial policy of any of the union's publications should at any time have been a member of the Socialist Party and that the union should not advocate the socialization or nationalization of any industry or service within the United States; repudiated a stipulation regarding wage adjustments and conditioned a wage proposal upon the withdrawal of a charge; attempted to reserve to itself the right to revise wages unilaterally, and bargained individually with an employee instead of with his duly designated bargaining representative; in Brown and Root, Inc., 86 NLRB 520, the employer in addition to failing to invest real authority in its only negotiator, also demanded that the union post a drastic performance bond, granted unilateral wage increases during the course of negotiations, and insisted upon sole control over matters affecting wages, hours, and other conditions of employment; in Republican Publishing Company, 73 NLRB 1085, in addition to limiting the authority of its committee which met with the labor organization to listening and reporting, management also failed to respond to a request that a time and place be set for negotiations and as well discriminated with respect to the hire or tenure of five employees to discourage membership in the labor organization; and, in Heinz Co. v. N. L. R. B., 311 U. S. 514, the employer although it conceded it has reached an agreement with the union concerning wages, hours, and working conditions, nevertheless refused to sign a contract embodying the terms of the agreement.

APPENDIX

April 24 and 25
Oral Agreement with Butler

Article V

(1) Procedure for Adjusting Controversies--Section 1.
An employee having a grievance shall first present it to his Shop Steward. When the grievance is presented to him, the Shop Steward shall present it to the immediate Supervisor in the presence of the interested employee. This group shall make every reasonable effort to effect a settlement satisfactory to the employee. If no settlement is reached within five working days--Section 2. The grievance shall be presented to the department head by the Shop Steward in the presence of the employee in question. If this group cannot effect a satisfactory settlement within five working days--Section 3. The grievance shall then be presented in writing to the Director of Personnel, who with the head Shop Steward and the employee in question shall attempt to effect a settlement. In the event no settlement is reached within five working days, the grievance may be submitted to arbitration. Section 4. In the event of a failure to reach a mutual agreement of any difficulties relating to wages, hours and working condi-

May 2
Written Agreement from Broadwater

Article V

(1) Procedure for Adjusting Controversies--Section 1.
All employees shall continue to have the right to discuss their problems with their immediate Supervisors, their Department Head, or the Director of Personnel and Labor Relations.--Section 2. A grievance, within the meaning of this agreement, is a difference arising out of any specific clause of this agreement. An employee, after the probationary period of six (6) months, having a grievance shall first present it to the Shop Steward. If the grievance is to be formally processed, the Shop Steward shall present it in writing to the immediate supervisor, who shall make every reasonable effort to effect a mutually satisfactory agreement--Section 3. If no settlement is reached under Section 2 within five (5) working days, the grievance shall be presented to the Department Head by the Shop Steward.--Section 4. If no settlement is reached under Section 3 within five (5) working days, the grievance shall then be presented to the Director of Personnel and Labor Relations for considera-

Oral Agreement with Butler--Cont.

Article V

tions which arise respecting compliance with the terms and conditions of this contract, such difficulty shall be submitted to an arbitration Board, consisting of three persons: One to be chosen by the Union, and the two thus selected shall meet and select a third. Either side desiring to arbitrate any case must notify the other in writing and failure of either party to appoint its arbitrator within the regular working days after the receipt of such notice shall forfeit its case. If after ten days these two fail to agree on the third arbitrator, the union and management shall meet and select the third arbitrator within five days. A decision shall be handed down within fifteen days following the close of the proceedings. The decision shall be final and binding upon both parties. Section 5. Expenses incurred by the third arbitrator shall be borne equally by both parties.

(2) Night differential pay--Article IX Section 3. A differential of 5 cents per hour shall be granted for work performed between 7:00 p.m. and 6:00 a.m.

(3) Posting of an organizational chart--Article VIII. Supervisory Chart. The Company will post on each department bulletin board the supervisory chart applicable to that department. Such chart will show the names of the complete supervisory force.

(4) Classification of pay and establishment of rate ranges--Article VII. Classification of Pay. Section 1. The Company shall notify the secretary and the head shop steward of any change in classification of pay of any member of the union at the time such change is made. Section 2. The Company and the Union agree to meet for the purpose of working out satisfactory grades and rate schedules to cover positions within the bargaining unit.

(5) Tenure of the contract--Article XIII. This contract shall remain in full force and effect until June 30, 1953, except that upon written notification by either party at least thirty days previous to June 30, 1952 the question of a general wage adjustment shall be open for discussion. It is specifically (agreed) that the matter of a general wage adjustment shall not be open to arbitration.

Written Agreement from Broadwater--Cont.

Article V

tion, review and final decision.--Section 5. Nothing in this agreement shall be construed to give any individual employee any rights enforceable by Court proceedings, it being the intention of the parties hereto that enforcement of the terms and conditions of this agreement in behalf of any individual employee shall be confined to the means provided in this article and then only at the instance of the Union. Should any individual employee endeavor to enforce this agreement by resorting to court proceedings, any obligation of the Company to such individual arising by virtue of this agreement shall automatically cease and terminate upon the institution of such action.

(2) No provision

(3) No provision

(4) No provision

(5) Tenure of Agreement--Article XIII. This agreement shall remain in full force and effect until June 30, 1953, except that upon written notice by either party at least thirty (30) days prior to June 30, 1952, the question of a general wage adjustment shall be open for discussion. It is specifically understood and agreed that upon the execution of this agreement the Company shall be relieved of the duty to bargain collectively with the Union upon subjects not covered by this agreement until a reasonable time prior to June 30, 1953, nor shall anything in this article relating to discussing a wage adjustment prior to June 30, 1953 be construed to relieve either party to this agreement of its obligations assumed hereunder. It is specifically understood and agreed that the matter of a general wage adjustment shall not be subject to arbitration.