

BOISE IMPLEMENT COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL LODGE NO. 1491. Case No. 19-CA-779. August 11, 1953

DECISION AND ORDER

On June 25, 1953, Trial Examiner James R. Hemingway issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent filed exceptions to the Intermediate Report, and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, 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 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 brief and exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modification:

The Trial Examiner found that on and after March 18, 1952, the Respondent by refusing to bargain collectively in good faith with the Union as the exclusive representative of all its employees in an appropriate unit, violated Section 8 (a) (1) and 8 (a) (5) of the Act.

We agree that the Respondent's entire course of conduct on and after March 18, 1952, the date of the Union's certification, in its bargaining relationships with the Union displayed a fixed intention merely to preserve the appearance of bargaining while avoiding any actual negotiation in good faith or effort to reach a mutually acceptable agreement. However, as Section 10 (b) of the Act prevents any finding of an unfair labor practice occurring more than 6 months prior to the filing and service of the charge,¹ the Board finds only that on and after August 12, 1952, the beginning of the 6-month period, the Respondent failed and refused to bargain in good faith with the Union as the exclusive representative of its employees in violation of the Act. We dismiss the complaint insofar as it alleges a violation of the Act prior to that date.

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, Boise

¹Sanson Hosiery Mills, Inc., 92 NLRB 1102, Gagnon Plating and Manufacturing Co., 97 NLRB 104.

Implement Company, Boise, Idaho, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours of employment, and other conditions of employment with International Association of Machinists, Local Lodge No. 1491, as the exclusive representative of all maintenance, repair, and service employees employed as truck and tractor mechanics, employed by the Respondent at its Boise, Idaho, plant, excluding guards, partsmen, professional employees, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

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

(a) Upon request, bargain collectively with International Association of Machinists, Local Lodge No. 1491 as the exclusive representative of all its employees in the above-described appropriate unit concerning rates of pay, hours of employment, and other conditions of employment, furnishing the Union, upon request, with such data concerning the aforesaid subjects of bargaining as may be needed by it for the purpose of such bargaining, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its place of business in Boise, Idaho, copies of the notice attached to the Intermediate Report herein and marked "Appendix A."² Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after having been signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

²This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" in the caption thereof the words "A Decision and Order." In the event that this Order is enforced by 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."

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

International Association of Machinists, Local Lodge No. 1491, herein called the Union, on February 12, 1953, filed a charge against Boise Implement Company, herein called the Respondent. On this charge, the Regional Director for the Nineteenth Region of the National Labor Relations Board, herein called the Board, on behalf of the Board's General Counsel¹ issued a complaint against the Respondent on March 30, 1953, 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.

In substance the complaint alleged that on and after January 4, 1952, the Respondent had refused to bargain in good faith with the Union although requested so to do on various dates and that although on about October 7, 1952, the Union requested wage data for use in contract negotiations, the Respondent failed to furnish such information. The Respondent's answer, filed on April 15, 1953, denied the alleged unfair labor practices and affirmatively set forth evidentiary facts, presumably intended to explain the reason no agreement was reached. The answer also gave an excuse for failure to furnish the wage data requested.

Copies of the charge, complaint, and notice of hearing were served on the parties. Pursuant to such notice, a hearing was held in Boise, Idaho, on May 18, 1953, before me, the duly appointed Trial Examiner. Full opportunity was afforded the parties to examine and cross-examine witnesses and to introduce evidence bearing upon the issues. At the close of the evidence, the General Counsel argued orally. The Respondent declined the opportunity to give oral argument and the parties declined the privilege of filing briefs. At the close of the hearing, the General Counsel moved to amend the complaint to conform to the evidence with respect to matters not affecting the issues. The motion was granted.

From my observation of the witnesses and upon the entire record in the case, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is, and at all times material hereto was, an Idaho corporation, having its principal place of business in Boise, Idaho, where it is engaged in (a) the sale, as a franchised dealer, of International Harvester farm equipment, refrigerators, motortrucks and parts, accessories, and equipment therefor; (b) the sale, as an exclusive franchised dealer, of water pumps manufactured by the Jacuzzi Pump Company in the State of California; and (c) the repair and servicing of farm equipment, trucks, and pumps.

In the course and conduct of its business the Respondent at all times material hereto has (a) continuously purchased products including farm equipment, refrigerators, trucks, and parts, accessories, and equipment therefor, which were shipped directly to the Respondent from points outside the State of Idaho, of an amount in excess of \$500,000 annually; (b) continuously realized a gross income from the sale of such products in excess of \$800,000 annually, of which approximately 5 percent represents sales made to customers located outside the State of Idaho; and (c) continuously realized a gross income from repairs and other services rendered to trucks operating as interstate carriers or owned and operated by interstate trucking carriers in excess of \$25,000 annually.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, Local Lodge No. 1491 (the Union herein), affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Respondent.

¹Hereafter reference to the General Counsel will include counsel appearing on his behalf at the hearing.

III. THE UNFAIR LABOR PRACTICES

A. The appropriate unit

All maintenance, repair, and service employees employed as truck and tractor mechanics (excluding supervisors, guards, partsmen, and professional employees as defined in the Act, and all other employees) employed by the Respondent in Boise, Idaho, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act.

B. The Union's majority in the appropriate unit

Following a consent election, the Regional Director of the Nineteenth Region of the Board, on March 18, 1952, certified the Union as the exclusive bargaining representative of the employees in the aforesaid appropriate unit. Although the Respondent requested the election, it now admits in its answer that the Union was the exclusive representative of all employees in the appropriate unit since January 2, 1952, the date of the first request to bargain. Accordingly I find that on and at all times after January 2, 1952, the Union has been the exclusive representative of all employees in the appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment within the meaning of Section 9 (a) of the Act.

C. The refusal to bargain

The Union organized the Respondent's employees in the appropriate unit in December 1951 and by January 2, 1952, all the employees in the unit had authorized the Union to represent them. On January 4, 1952, the Union wrote to the Respondent, informing it of its claim to represent the employees and requesting a bargaining meeting. The Respondent replied on January 11, 1952, suggesting an election to remove its doubt. The petition for an election was filed on January 23. The record does not indicate the date of the consent-election agreement, but the election was held on March 10, 1952. Immediately following the election, Allan K. Walker, business representative of the Union, told A. E. Eckstrand, the Respondent's president, that he would like to submit a proposed agreement. Eckstrand told Walker to give it to Eli A. Weston, the Respondent's attorney, commenting that the Union had got the Respondent into this affair and that Weston could probably get it out of it. On the same day, the Union wrote to the Respondent, enclosing the proposed agreement, requesting meetings to negotiate an agreement, and requesting that employees in the unit be permitted to participate in negotiations with pay for time spent in meetings during the regular shift hours. A copy of this letter, but without a copy of the proposed agreement, was sent by the Union to Weston. The Union received no reply and the Respondent offered no explanation for its failure to reply.

About April 10, 1952, Walker telephoned Weston and arranged a meeting to be held on April 15, 1952, at 2 p. m. On April 12, Walker wrote a letter to Weston, confirming the telephone conversation and repeating its expressed wish that the Respondent permit an employee to participate in the negotiations without loss of pay. Weston did not reply to this request.

At the appointed time, Walker met with Eckstrand, Weston, and E. A. Johnsmeyer, the Respondent's vice president, at Weston's office. Among other proposals, the Union asked for a union-shop clause and a \$1.85 flat rate with a minimum guaranty. At that time the Respondent had a schedule of time allowed for each type of repair or service. The customer was charged \$3 per hour for the time called for in this schedule, whether the work took a longer or a shorter time. This was called the flat rate. The mechanics were paid 50 percent of the flat rate. Although the mechanic was sometimes able to beat the time schedule and thereby earn in excess of \$1.50 per hour, he received this rate only while actually supplied with work; so there was no assurance that he would receive \$1.50 per hour for all the time he was required to be present. It was to overcome the latter objection that the Union asked an hourly rate and a minimum guarantee. The Respondent said that the Union's wage demand was unreasonable, that the flat rate could not be changed because of OPS regulations and that wages could not be changed because of WSB regulations.* Most of the meeting was devoted to a discussion of the union-shop proposal, with the Union arguing in favor of it and the Respondent stating its objections thereto. The Respondent made no counterproposals and the

*I take official notice that WSB regulations permitted self-administering increases within certain limits and that increases were sometimes approved by WSB on joint petition

Union gave no indication of receding from its demands. The meeting lasted about an hour. Because the Union desired the presence of an employee representative, the Respondent suggested that the next meeting be held on the night of April 22, but Weston telephoned Walker on that date and said that the Respondent's representatives were unable to be present. The Respondent made no effort to arrange another date.

On May 21, 1952, Walker wrote to Eckstrand requesting resumption of negotiations, stating that the Union was filing notice of dispute with the Federal Mediation and Conciliation Service, and that, if an agreement could not be reached, the Union would consider "other sources of action within the means of collective bargaining," and recommending that the next meeting be held on Wednesday, May 28, at 10 a. m. On May 23 the Union filed the aforesaid notice of dispute. This meeting date was reset when, on May 28, Commissioner W. L. Robison of the Idaho Department of Labor notified Weston and Walker that he had been authorized by the Federal Mediation and Conciliation Service to assist them and suggested a meeting in the local office of the Department of Labor at 1:30 p. m. on June 11. Before the latter date Weston asked for a postponement because the Respondent "could not get together for a meeting." He suggested no other date.

Later in June, Walker telephoned Weston and Robison and arranged a meeting for June 30 in Weston's office. On that date Walker met with Robison, Weston, and Johnsmeyer. This was the first meeting since April 15. Walker suggested an analysis of the proposed agreement, setting aside those provisions on which they were in disagreement for consideration on a later date. The Respondent, however, said it did not see how it could do this because everything depended on the union shop and wages. The bulk of the time, therefore, about 45 minutes, was spent on a discussion of the subject of a union shop, with about 15 minutes being devoted to a discussion of wages. The entire meeting lasted about an hour and a quarter to an hour and a half.

The next meeting was set for July 2, but on that date Weston telephoned Walker to say that he had to go out of town on a labor matter and that he could not attend the meeting. He did not propose another date. In some manner, however, a meeting was arranged for July 10. This third meeting was attended by Weston, Robison, and Walker. Although there is no direct evidence of it, I infer that Johnsmeyer was also present. At the suggestion of Robison and Walker, Weston went through the first 10 articles of the Union's proposed agreement. On behalf of Respondent he either agreed to, or said there was no objection to, 8 articles. These included (1) a statement of purpose of agreement (to promote and improve harmonious relations); (2) the recognition clause; (3) a "status of agreement" clause, stating that the agreement superseded any agreement in conflict with the provisions thereof; (4) shop committee and stewards; (5) grievance procedure; (6) provision prohibiting solicitation of outside work by union members; (7) bulletin boards; and (8) saving clause. There was disagreement on the union-shop clause, and discussion of the article on daily and weekly schedule of hours was held in abeyance. The following clauses were not reached: job classifications and rates of pay, holidays, vacations, job classifications (covering correction of improper classification), overtime, seniority, reporting pay, road mechanic (compensation), and duration of agreement. So far as the record discloses these were never discussed. The Respondent brought with it a copy of a Salt Lake City contract under which there was an open shop. The Union at this time did not indicate that it would recede from its demand for a union shop. At the conclusion of the meeting it was agreed that the parties would meet again in the near future, but no date was set and no suggestion of a date was made.

During the first part of July, Johnsmeyer visited the local office of the OPS to see what could be done about raising the flat rate to customers. He was told that before the Respondent's application could be considered, it would have to show that it had suffered a 6 month's hardship; so he made no further attempt to get OPS approval for a change. As the Respondent was encountering difficulty in retaining employees, Johnsmeyer telephoned Weston and told him that the Respondent was going to have to increase the employees' share of the flat rate from 50 to 55 percent. Whether notice of such an increase was given to Walker before it was put into effect is in dispute. But it is undisputed that the Respondent did not offer the increase to the Union as a basis for reaching agreement. The increase was given on July 15.³

On August 11, Walker wrote to Eckstrand (sending copies of his letter to Weston and Robison) suggesting a meeting for 2 p. m. on August 14 and requesting a confirmation from the Respondent. No confirmation was sent, but on August 14 Weston telephoned Walker and requested a postponement to August 19 at 3 p. m. because he was engaged in another out-of-town

³ Although the testimony does not make it clear, I infer that on July 15 the increase was reflected in the employees' paychecks for the 2-week payroll period immediately preceding.

labor matter. Walker agreed to the postponement and confirmed the telephone conversation by letter. But a meeting was not held on the 19th because Weston telephoned Walker to say that he would be unable to participate because of the press of business in his office, and the meeting was rescheduled for August 21 at the same time. But no meeting was held on this date either, because Weston telephoned in the morning of August 21 to postpone the meeting, suggesting no other date. On August 29, Walker telephoned Weston to inform him that he was scheduled to leave town on September 5 for the Grand Lodge Convention of his International in Kansas City, that he would be gone for the major part of September, and that he would like to reach a settlement before he left. Weston agreed to a meeting on September 2, but on the latter date he telephoned Walker to give an excuse for not meeting that day.

Walker returned from Kansas City on September 25, and on October 3 he wrote to Eckstrand, requesting a meeting on October 8 at 2 p. m. and requesting that employee Ernie Fackler be permitted to sit in on the meeting without loss of pay. Copies of this letter were sent to Weston, Robison, and Fackler. On October 7 Weston telephoned Walker to say that the meeting could not be held because one of the Respondent's officials was out of town. Apparently Weston and Walker agreed to set the meeting for October 15 at 2 p. m., for on the same date as the telephone conversation, Walker wrote to Eckstrand, confirming the telephone conversation and the Union's consent to meet on October 15. Walker, in this letter, then requested the Respondent to furnish to the Union an authenticated copy of the payroll of the employees in the unit for the payroll period ending on or after January 15, 1950, and further requested information on what general increases, in cents per hour, had been granted since January 15, 1950, and what individual wage increases had been made. The purpose of this request was to get information concerning increases that might be permissible within the regulations of the Wage Stabilization Board. The letter continued, commenting on the fact that the Respondent was then engaged in a 2-shift operation on a 7-day per week schedule, requesting that, at some time between the date of the letter and October 14, at the Respondent's convenience, the employees on the second shift be given 2 hours off to attend a union meeting with the other employees, and asking the Respondent to notify the Union of the date when it would be most convenient to excuse the second-shift employees. The Respondent's first shift worked from 8 a. m. to 5 p. m. with 4 hours on Saturday before it went on a 7-day week. The Respondent added a shift running from 5 p. m. to 2 or 3 a. m., but later changed this to the hours between 12 noon and 8:30 p. m. with the swing shift working on Sunday. The Respondent did not notify the Union before making the changes in shifts.⁴ The Respondent did not reply to this letter and never furnished the information requested. The meeting scheduled for October 15 was not held because Weston telephoned and requested a postponement. Later Walker telephoned Weston and the date of October 22 was set for the meeting. But this meeting was not held either, Weston explaining that some of the Respondent's representatives were out of town. A new date of October 28 was set, and Walker confirmed this date by letter to Eckstrand with copies for Weston and Commissioner Robison. On October 28, however, Weston telephoned Walker and requested a further postponement. This time it was Weston who was to be out of town.

On November 4 Walker composed a letter to Eckstrand asking the Respondent to propose a date, time, and place for the next meeting. Before this letter was sent, Weston telephoned Walker and arranged a meeting for November 6 at 2:30 p. m. in Weston's office, for a footnote confirming such an agreement was appended to the letter. Copies were sent to Weston and Robison. The November 6 date was later changed to November 7 at the union office. On November 7, Weston failed to appear.⁵ Walker telephoned Weston on November 12 and Weston agreed to "come by" the office of the Union at 10:30 a. m. on November 13. Again Weston failed to appear. On the latter date, Walker wrote to Eckstrand, reviewing the failure of the Respondent to meet on the dates of November 6, 7, and 13, pointing out that the Respondent had agreed to meetings on 17 different occasions and had failed to meet on 13 of the times,⁶

⁴ The Union's proposed contract contained a clause with respect to shift hours. Obviously a change in shift hours was a matter on which the Union was entitled to be consulted. Such unilateral change is, therefore, in the same category as the unilateral wage increases given by the Respondent.

⁵ In most instances when Weston was unable to be present, he notified Walker in advance. Walker was not too certain about the times when Weston failed to give him notice but thought there were two occasions. The record is not clear as to when this occurred. Weston did not testify. On one occasion in November, the date of which was not fixed, Walker telephoned Weston's office to confirm a meeting set for that day. Weston was out of town, but his secretary found a note on his desk suggesting a later date for the meeting.

⁶ According to the evidence, meetings had been held only on April 15, June 30, and July 10.

and urged the Respondent to set a date, time, and place for the next meeting. Again copies were sent to Weston and Robison. Walker received no reply.

About mid-morning on November 18, Walker telephoned Weston and invited him out for coffee. Weston accepted and they went to the Boise Hotel where they discussed the case. According to Walker, Weston conceded that there were "avenues of agreement." Walker requested Weston to get the Respondent to submit counterproposals, and Weston said he would see what could be done. In response to Weston's inquiry, Walker answered that he could not sign an open-shop contract. He did not tell Weston that he could submit an open-shop contract to the membership for approval. Nothing resulted from this meeting toward further negotiations.

On November 29, Walker by chance met Johnsmeyer in a bowling alley. Walker invited Johnsmeyer to have a cup of coffee and Johnsmeyer accepted. Walker suggested to Johnsmeyer that the Respondent submit counterproposals offering an open-shop and such wages as the Respondent felt able to pay. Johnsmeyer said he would talk with Eckstrand and see what could be done about it.

Having heard nothing further from the Respondent, Walker on December 18 telephoned Weston and asked what the status of negotiations was. Weston asked Walker if he had signed a contract yet. Walker said he had not and Weston asked why not. Walker answered that he had not signed one because no counterproposals had been submitted and asked if he was going to make one. Weston said that the Respondent had "beaten his ears down" over the counterproposal issue and he did not think it would submit one.

As a result of arrangements made by Commissioner Robison, a fourth meeting was held on January 6, 1953, which was attended by Weston and Eckstrand for the Respondent and by Walker for the Union. Weston said he had an appointment with the Governor and that he would have to make the meeting a short one. Thumbing through the Union's proposed contract, Weston said he did not see much reason for discussing the agreement because the Union had failed to consider anything except a union shop. Walker said the Union would consider a provision for open shop or maintenance-of-membership and said that the Union had asked the Respondent to make a counterproposal and the Respondent had failed to do so. He also pointed out that the Respondent had told the Union that it could not afford to give wage increases, yet it had given one. The Respondent acknowledged that it expected to give another increase and Walker asked that they use that as a basis for the counterproposal.⁷ Weston asked why the Union needed a counterproposal. Walker said, first, to show good faith, and second, to have something to submit to the union membership. Weston said, "Well, we'll make you a proposal--we'll offer you just exactly what we have at the shop now--no improvements in any line." Walker requested that the proposal be put in writing. Weston said the Union knew what the existing conditions were and there was no need to put them in writing. At this meeting, Walker said that area wage rates had gone up and he proposed a \$2 wage rate but made no other new proposals.

About January 12, Walker telephoned Weston and arranged a meeting for Wednesday evening, January 14, but discovering he had a previously set engagement for that night he later arranged to have the meeting set for January 15. Walker telephoned Weston's office that day to verify the date but Weston was not in and apparently no meeting was held. On Saturday, January 17, Weston telephoned suggesting a meeting for sometime on Sunday, January 18, before Johnsmeyer left town. Walker agreed and was under the impression that Weston was to call him back to let him know the time and place of the meeting. Walker remained at home all day Sunday, but received no call.

As previously stated, the charge was filed on February 12, 1953. On March 3, Orville Turnbaugh, a field examiner for the Board, addressed the following letter to Weston:

Re: Boise Implement Company
Case No. 19-CA-779

Dear Mr. Weston:

This letter is for the purpose of confirming my conference with you and A. E. Eckstrand and Arthur Johnsmeyer, representing the Company, in the above-captioned case in your office on Friday, February 27.

⁷ Walker quoted Eckstrand as saying that the Respondent could not afford to do that, but his answer was interrupted. No finding is made on the basis of this answer, as I consider it likely that Eckstrand may have qualified his answer.

During the conference you agreed to meet with Allin K. Walker, Business Representative of International Association of Machinists, Local Lodge No. 1491, on Friday, March 6, 1953, for the purpose of continuing collective bargaining negotiations. At that time you called Mr. Walker on the telephone regarding the proposed meeting and told him that you would confirm the meeting by letter, and would also, prior to this meeting, submit to him in writing such counterproposals as the Company had to offer.

It would be appreciated if you will advise me as to the results of the meeting, and specifically as to whether any agreement has been reached between the Company and the Union. Your cooperation in this matter will be greatly appreciated.

Any further action on the Union's unfair labor practice charge in this case will be withheld pending results of the meeting.

According to Walker, Weston said on March 4 that the Respondent would offer counterproposals at the meeting set for March 6. The meeting of March 6, 1953, in Weston's office, was attended by Eckstrand, Johnsmeyer, and Weston for the Respondent and by Walker for the Union. No written counterproposals were submitted by the Respondent at this meeting, but Weston repeated the offer to give the Union an agreement containing the same terms as then existed in the shop. The union shop and wages were discussed. Walker explained that the Union was not adverse to settling the agreement with an open-shop clause but that it was the Union's policy to bargain for a union shop. Walker proposed that the Respondent sign a contract with an open shop and with the wages then prevailing under the Union's contract in the trucking industry. The Respondent refused to do so but said that they knew they were going to have to raise the customer rate to \$3.25 or \$3.50, and that they were making a preliminary investigation. Walker asked the Respondent to make a definite proposal of \$1.74⁸ or \$1.92½ (computed on the basis of 55 percent to employees, which was the percentage they were then getting of the \$3 flat rate). The Respondent would not make any definite proposal. It took the position that it could not agree to a rate that would put them higher than their competitors. The release of OPS controls made it possible for the Respondent to raise its flat rate, and it told Walker that it was going to change its rate to conform to the area rate. This was stated as a matter of intent and not as a counterproposal. However, it was agreed that in the near future the Respondent would send the Union a written counterproposal. But the Union never received one.

On March 21, 1953, Weston wrote the following letter to Walker:

Dear Mr. Walker:

I apologize for not writing to you sooner with reference the negotiations on the Boise Implement Company case, but since our last meeting I have been out of the City and otherwise engaged.

Since we started negotiations, according to my records, we have had seven official meetings and, of course, numerous telephone calls and informal contracts.⁹

The Company, from the very beginning, has insisted [sic] that it cannot enter into a union shop agreement requiring its employees to maintain membership in the Union. Up until the time of the expiration of wage controls and OPS regulations there was no possibility of changing the flat rate charge or the corresponding flat rate income to the employees. As a consequence we were deadlocked on the question of wage increases, the Union insisting in all instances that we change our system from flat rate to a wage rate with a guaranteed wage.

We discussed this question at great length and we tried to convince you that we must keep in line with competition and maintain the prevailing practice in this area, which is to pay on a flat rate basis.

With reference to other features of the contract presented by you, we agreed to a great many of them, but in all meetings the negotiations broke down and we reached an impasse over the two questions - union security and wages.

Under the circumstances it seems futile to continue negotiations as we believe we have made an honest and sincere effort to compromise our differences. However, if you wish

⁸ Walker must have miscalculated. He probably intended to say \$1.79.

⁹ At the hearing the Respondent took the position that it had no records of meetings. Only 5 official meetings were held according to the evidence. Only 2 informal contacts are shown. With one possible exception, the telephone calls all appear to have related to meeting dates or postponements

to have meetings [sic], if you will kindly let me know I will be glad to arrange them at suitable times and places.

As we discussed the matter the other day with you, the Company is now going to increase its flat rate to the public, consistent with the requests made to the OPS during it [sic] existence.

Walker was not informed of the exact amount of increase that was to be made in the flat rate nor of what share of the new flat rate the employees would receive. Of the new flat rate, which was raised to \$3.50, the Respondent gave the employees 50 percent. This increase was given to cover the pay period of March 1 to 15, 1953.

Soon after the date of Weston's last letter, in the afternoon, Walker and Floyd Smith, an international representative for the Union, went to the Respondent's office and spoke with Eckstrand, asking him to discuss the proposed contract. Eckstrand said that he could not do so without his attorney. Walker asked if Eckstrand and Johnsmeyer would meet with him and the shop committee to see if they could resolve their differences while Weston was out of town. Eckstrand said he would have to talk to Johnsmeyer about it.¹⁰ On the following day Eckstrand telephoned Walker and said that he and Johnsmeyer had agreed that there would be no meeting without their attorney. Nothing further was done before the complaint issued on March 30, 1953.

D. Concluding findings

The Respondent takes the position that it bargained in good faith and that the Union's demand for a union shop and excessively high wages precluded reaching agreement. The Respondent called the failure to reach agreement an impasse. Before an impasse may be raised as a defense to a charge of refusal to bargain, it must appear that bargaining was conducted in good faith. From the outset the Respondent appeared to be opposed to the process of collective bargaining. The first request to bargain after the election was met with a comment by Eckstrand that the Union had got the Respondent into "this affair" and that Weston could probably get the Respondent out of it. The Respondent apparently considered its obligation to bargain to be fulfilled when it rejected the Union's demands for a union shop and for a wage increase. The record is replete with evidence indicating that the Respondent desired not to reach agreement and was merely going through the appearance of bargaining. This may be found in the Respondent's failure or refusal to make counterproposals,¹¹ even when it intended to change wage rates; its failure to reply to the Union's request for attendance of an employee representative; its failure to furnish the wage data requested by the Union; its failure to reply to the Union's request that employees on the swing shift be given time off to attend a meeting with first-shift employees before October 14;¹² its unilaterally granting wage increases for the payroll periods ending on July 15, 1952, and March 15, 1953; and its disposition over a period of 11 months to postpone meetings repeatedly and to put the burden on the Union to attempt to arrange new meetings. Although there is no evidence that false excuses were in fact given for postponement, it appears abundantly clear that the Respondent felt no sense of paramount obligation to attend any meeting which had been scheduled when something else conveniently came up that could be given precedence. The Respondent made no showing that the out-of-town trips of its officers could not have been arranged to allow their attendance at the scheduled meetings with the Union. In fact, Eckstrand admitted that the trips could have been postponed when a meeting was scheduled. Along with the unilateral wage increases, the unilateral changes in shift hours are significant.

By all such evidence and from the entire record in the case, I conclude and find that the Respondent failed and refused to bargain in good faith with the Union at any time after the certification of the Union. In view of all the other evidence, a conclusion might be warranted that the Respondent had no good-faith doubt of majority when on January 11, 1952, it suggested

¹⁰ Eckstrand testified that Walker or Smith threatened him with a fine. As this appears illogical, I find that Eckstrand was mistaken.

¹¹ The Respondent's contention that it could not change its rates because of Wage Stabilization Board regulations is, of course, without merit. When it was confronted with a loss of employees, it raised the employees' rate in July 1952 without need for a petition to the WSB.

¹² As a meeting between the Union and the Respondent had been scheduled for October 15, it would be a fair inference that the members wished to discuss, in advance, contract proposals to be presented at that meeting.

that the Union prove its majority by an election and that its refusal to bargain might date from that time. However, I make no finding that the refusal to bargain occurred on that particular date. I do find that from March 18, 1952, the date of the Union's certification, the Respondent's conduct amounted to a refusal to bargain. By such refusal to bargain the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations 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

As it has been found that the Respondent has failed and refused to bargain collectively with the Union, it will be recommended that it cease and desist therefrom and that upon request it bargain collectively with the Union. Although the Respondent's failure to furnish the Union with wage data and its granting of unilateral increases are part of its refusal to bargain, I believe that the purposes of the Act may better be served if the Remedy be specifically directed to such conduct. It will therefore be recommended that upon request the Respondent furnish to the Union information on wages, hours, or other working conditions as may be needed by the Union in its effort to negotiate an agreement with the Respondent.

Upon the foregoing findings of fact and upon the entire record in the case I make the following:

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2 (5) of the Act.
3. All maintenance, repair, and service employees employed as truck and tractor mechanics (excluding supervisors, guards, partsmen, and professional employees as defined in the Act, and all other employees) employed by the Respondent in Boise, Idaho, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act.
4. On and at all times material hereto after March 18, 1952, the Union was and has been the exclusive representative of all the Respondent's employees in the aforesaid appropriate unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment within the meaning of Section 9 (a) of the Act.
5. By failing and refusing to bargain with the Union on and after March 18, 1952, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.
6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
7. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL bargain collectively upon request with International Association of Machinists, Local Lodge No. 1491, as the exclusive representative of all employees in the bargaining unit described herein with respect to 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 maintenance, repair, and service employees employed as truck and tractor mechanics (excluding supervisors, guards, partsmen, and professional employees as defined in the National Labor Relations Act, as amended, and all other employees).

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists, Local Lodge No. 1491, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such conduct, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

BOISE IMPLEMENT COMPANY,
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.

L. B. SPEAR AND COMPANY *and* RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 1115 E, AFL, Petitioner.
Case No. 2-RC-5817. August 11, 1953

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before I. L. Broadwin, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

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, Styles, and Peterson].

Upon the entire record in this case, the Board finds:

1. The Petitioner seeks a single unit of certain employees of Ludwig Bauman & Company, hereinafter called Bauman, and Spear & Company, hereinafter called Spear. Bauman, a New York corporation, and Spear, a New Jersey corporation, are both engaged in the retailing of furniture, house furnishings, clothing, and jewelry in New York City.

¹The petition and other formal papers are hereby amended to show the correct name of the Employer.