

calculated to convey the impression that the employees may receive a benefit in the form of more favorable terms of employment if they vote for one union rather than another. Assuming that the Employer's letter was provoked, as stated therein, by a rumor that the Employer would not sign a contract with the Petitioner, even though it won the election, the Employer needed only to deny this rumor. It was not justified in indicating that the Petitioner might receive better treatment than the Intervenor.

On the basis of the foregoing, we conclude, as did the Acting Regional Director, that the Employer's statement interfered with the employees' exercise of a free choice in the election. We shall therefore set the election aside and shall direct the Acting Regional Director to conduct a new election at such time as he deems appropriate.

### ORDER

IT IS HEREBY ORDERED that the election held on June 26, 1953, be, and it hereby is, set aside.

IT IS FURTHER ORDERED that this proceeding be remanded to the Acting Regional Director for the Region in which this case was heard for the purpose of conducting a new election at such time as he deems the circumstances permit a free choice of a bargaining representative.

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QUAKER STATE OIL REFINING CORPORATION *and* OIL WORKERS INTERNATIONAL UNION, LOCAL 481, C.I.O.  
Case No. 6-CA-626. November 12, 1953

### DECISION AND ORDER

On August 14, 1953, Trial Examiner Thomas N. Kessel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in the unfair labor practices alleged in the complaint, but recommending that no remedial order issue. A copy of the Intermediate Report is attached hereto. Thereafter exceptions to the Intermediate Report were filed by the Respondent and exceptions with a supporting brief were filed by the General Counsel. The Respondent was granted leave to, and did, file a brief in reply to the General Counsel's brief.

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 of the Respondent and the General Counsel, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations except as follows:

The Trial Examiner found that there had been a violation of the statute, but, in view of the circumstances of this case, recommended that no remedial order be issued by the Board. As found by the Trial Examiner and as shown by the record, the Respondent bargained in good faith to an impasse, certain increases were made during the interim before bargaining was resumed, the Respondent displayed no antiunion animus, the parties overcame the impasse and reached agreement, and, finally, the conduct of the Respondent did not disrupt harmonious relations between the parties. Even assuming, without deciding, that there was a technical violation, in these circumstances we would not find that the Respondent violated Section 8 (a) (5) of the Act. Accordingly, we shall dismiss the complaint.

[The Board dismissed the complaint.]

### Intermediate Report

Upon a charge filed by Oil Workers International Union, Local 481, C.I.O., herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Sixth Region (Pittsburgh, Pennsylvania), issued his complaint dated March 31, 1953, against Quaker State Oil Refining Corporation, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the complaint, the charge, and a notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged that the Respondent, on or about May 24, 1952, at a time when it was engaged in negotiating a collective-bargaining contract covering the employees at its Emlenton, Pennsylvania, plant with the Union as the representative of these employees, unilaterally granted, without notifying or consulting the Union, wage increases to certain employees in the bargaining unit, and has since failed and refused to bargain with the Union concerning these wage increases although requested by the Union to do so. By this conduct, the Respondent allegedly breached its statutory duty to bargain with the Union in violation of Section 8 (a) (5) and 8 (a) (1) of the Act.

In its answer duly filed, the Respondent admitted that it had granted the aforesaid wage increases, but denied having thereby violated the Act. In justification of its conduct the Respondent averred that the increases were granted during a period of "impasse" in contract negotiations with the Union, that no bargaining contract was then in existence to preclude such action, and that the wage increases in question were incorporated in the contract later reached by the Respondent and the Union. Subsequent to the filing of the answer, the Respondent filed a motion for a bill of particulars as to allegations in the complaint. This motion was denied by Dent B. Dalby, Trial Examiner, to whom the motion was referred for ruling.

Pursuant to notice, a hearing was held at Franklin, Pennsylvania, on May 25 and 26, 1953, before Thomas N. Kessel, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel, and the Union by an official thereof. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded all parties. At the close of the hearing counsel for the General Counsel and the Respondent made oral statements, and thereafter filed briefs with the undersigned which have been carefully considered.

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

The complaint alleges and the answer admits that the Respondent, a Delaware corporation having its principal office in Oil City, Pennsylvania, produces, refines, and distributes petroleum and its byproducts in West Virginia, Ohio, New York, and Pennsylvania. The parties stipulated at the hearing that in 1952 the Respondent purchased materials, supplies, and equipment for use at its Emlenton, Pennsylvania, plant valued in excess of \$1,000,000 of which 25 percent was shipped to this plant from points outside the State. During the same period the Respondent sold products produced at the Emlenton plant valued in excess of \$1,000,000 of which approximately 50 percent was shipped to points outside the State.

From the foregoing, it is found that the Respondent is engaged in interstate commerce within the meaning of Section 2 (6) of the Act.

### II. THE LABOR ORGANIZATION INVOLVED

Oil Workers International Union, Local 481, C.I.O., is a labor organization admitting to membership employees of the Respondent

### III. THE UNFAIR LABOR PRACTICES

#### A. The alleged refusal to bargain

It is established that at all times material the Union represented a majority of the Respondent's employees in an appropriate unit consisting of all production and maintenance employees with certain exclusions at the Respondent's Emlenton, Pennsylvania, plant.

On December 21, 1951, representatives of the Union and the Respondent met at the Respondent's Emlenton plant to negotiate a new contract to supersede their subsisting contract which was due to expire on February 7, 1952. At this first meeting the Union presented its proposals which included a 25-cent per hour across-the-board wage increase for employees in all classifications. In addition, the Union demanded that the 9-cent per hour cost-of-living increases which had been granted employees under the subsisting contract be added to and made part of the base pay rates. In effect, the Union by these proposals was seeking an across-the-board increase in base pay rates of 34 cents per hour. Proposals were also made by the Union for adjustments in the wages and classifications of filter and boilerhouse operators and BAF helpers. After some discussion, the meeting adjourned to give the Respondent time to consider the Union's proposals.

The parties next convened on January 15, 1952, when the Respondent submitted its counter-proposals to the Union. In the ensuing deliberations the Union rejected proposals not consistent with their own. Wages, however, were not discussed, nor was any final conclusion reached as to other matters. The meeting was adjourned until January 22. At the meeting held on that date the Respondent offered to add 3 cents of the 9 cents per hour cost-of-living increases previously granted to the base rate, with the remaining 6 cents to be retained on a cost-of-living basis. An adjustment was also offered on the rate for the BAF helper classification. These offers were contingent upon the signing of a 3-year contract. The union negotiators rejected the Respondent's wage offers and held fast to their original wage demands.

Following the January 22 meeting, the union negotiators submitted the Respondent's offers to the membership which instructed the negotiators to continue their demands for the 25 cents across-the-board increase. This was reported to the Respondent at the next meeting held on January 30. The Respondent announced on this occasion that it would not continue to negotiate unless the Union were to recede from its 25-cent demand. At this point the negotiators on both sides agreed that they were "deadlocked" on the wage issue, and mutually decided to call in a Federal conciliator. On February 4 the negotiators convened with the conciliator. Despite the conciliator's efforts, neither side would abandon its previously declared position. The Union continued to press for its 25-cent demand, and the Respondent firmly refused to negotiate until the Union receded from this demand. E. E. Ebner, the Respondent's superintendent, cautioned the union negotiators that the subsisting contract was to expire on February 7, 3 days hence, and that the cost-of-living increases granted under the contract would be withdrawn. This evoked the retort that if this were done he

"may as well withdraw the entire contract." Ebner then requested signature of a document guaranteeing 72 hours advance notice from the Union in the event it were to strike.<sup>1</sup> This request was turned down upon Ebner's unwillingness to stipulate that the 9-cent cost-of-living increase would not be withdrawn. At about this point the union negotiators remarked that in view of the Respondent's position it was of little use to negotiate further until there was a determination by the Wage Stabilization Board involving applications for approval of wage increases covering various companies in the oil industry.<sup>2</sup> The meeting thereupon ended with no date set for further meetings.

In about mid-April 1952, Ebner discussed with G. B. Hunter, Respondent's vice president, the advisability of granting increases to employees Arthur Sheffer, H. A. Eckel, and Thomas Anderson. These employees were classified, respectively as machinist, BAF mechanic A, and instrument man, and were the only employees employed by the Respondent with these classifications. These employees had previously requested increases from their foreman and one had spoken directly to Ebner about this matter. Hunter agreed with Ebner that prudent management required the granting of increases to them as they were key men whose services the Respondent wished to retain, and authorized Ebner to grant the increases. Hunter left for California and returned to the plant on May 12. Learning from Ebner that he had not yet granted the increases, he instructed him to do so forthwith. On May 13, the employees were notified of their increases which were made effective on May 26, in the next new pay period. The parties stipulated that these increases amounted to 4½ cents per hour in the base rate for these employees, and did not involve any change in their job titles, classifications, duties, work assignments, or hours of employment. They further stipulated that the increases were granted and made effective without prior notice to or consultation with the Union or any of its representatives.

On May 20, 1952, the Union and the Respondent resumed contract negotiations at the Respondent's instigation. At the meeting held on this date, the Respondent made a wage proposal which was unacceptable to the Union. This meeting ended without agreement.

The parties met again on June 2, and the Respondent offered to include the 9-cent cost-of-living increase under the old contract in the new base rate, and to further increase the base rate of 15 cents per hour. The Respondent agreed also to certain adjustments in the BAF and Laboratory helper classifications. The union negotiators agreed to these terms subject to ratification by the union membership. Ebner accordingly agreed to prepare typed copies of the contract and to deliver them to the union negotiators in time for presentation to the membership at a meeting to be held on Friday night, June 6. Sharon McHenry, the chairman of the union negotiating committee, received the typewritten contracts just before he finished work at 4 p. m. on that date. He then convened the negotiating committee which at 6:15 p. m. started to go over the contract. Before the meeting began at 7 p. m. the committee had scanned most of the contract, comparing it with the expired contract to see whether the agreed changes had been incorporated. There was insufficient time, however, to examine the addendum to the contract which contained the wage scales for the various classifications.

At a meeting held on June 9, the union negotiators informed the Respondent that the membership had been apprised of the Respondent's proposals, and requested in addition to these proposals, adjustment in the wages for filter and boilerhouse operators as well as retroactivity of the contract to February 7, 1952, including checkoff of union dues. The Respondent turned down the request for the adjustments, but acceded to the request for retroactivity. Agreement having been reached as to all matters, Ebner then requested the union negotiators to sign the formal contracts, assuring them that the contract contained only what had been negotiated. The contracts were thereupon duly executed by the representatives of all parties.

About a week after the contract was signed, the Union received complaints from several employees that the contract accorded greater increases to certain job classifications than to others. A check of the contract and inquiries from the Respondent revealed that the foregoing 4½ cents per hour merit increases to Sheffer, Eckel, and Anderson had been incorporated into the contract as part of the new wage scales. A formal protest from the Union as to this action elicited the Respondent's response that the increases had been granted in good faith and that the Respondent had acted within its rights in granting them. The Respondent accordingly refused to comply with the Union's request that it post a notice to its employees that it would henceforth recognize the Union as the representative of its

<sup>1</sup> The Union had taken a strike vote before this meeting.

<sup>2</sup> No proceedings were pending before the Wage Stabilization Board initiated by the Respondent or in which it was a participant.

employees and that it would "cease and desist from interfering with and/or in any manner attempting to avoid bargaining in good faith" with the Union.

The General Counsel contends in his brief that the failure of the parties to reach agreement on February 4 reflected only the "temporary futility" of further discussion resulting directly from the Respondent's refusal to bargain in good faith. This contention is rejected. Not only does the record fail to support a conclusion that the Respondent had not bargained in good faith, but it is amply clear that when the parties broke off negotiations on February 4, that a genuine impasse existed over the issue of a general wage increase.<sup>3</sup> The existence of such impasse, however, did not automatically entitle the Respondent to take the unilateral action here involved.

The merit increases accorded Sheffer, Eckel, and Anderson had never been part of the negotiations between the Union and the Respondent. At none of the negotiating meetings before, or even after February 4, 1952, was there any mention of "merit increases" to these or any other employees. While there were discussions concerning "equity" adjustments for certain job classifications, this matter was totally unrelated to the subject of merit increases. Accordingly, I conclude that the merit increases granted the foregoing employees on May 13, 1952, were beyond the scope of any matters negotiated between the Union and the Respondent.

The Board has declared that ordinarily a good-faith bargaining impasse connotes the futility of further negotiations and, in the case of the employer-party to the collective relations, leaves that employer free to take certain economic steps not dependent upon the mutual consent of the Union.<sup>4</sup> The Board, however, has limited his doctrine of permissible unilateral conduct by an employer to matters which, before the good-faith impasse, had at least been presented by the employer to the Union as a subject for bargaining or had been discussed at a bargaining conference.<sup>5</sup> As shown, the Respondent's unilateral action did not meet this test. By dealing directly with its employees concerning a bargainable subject<sup>6</sup> as to which there had been no negotiations, the Respondent bypassed their statutory representative. Such conduct could reasonably have been interpreted by the Respondent's employees as a withdrawal of recognition of the Union's representative status and was, in effect, a disparagement of the collective-bargaining process. It constituted, per se, a violation of Section 8 (a) (5) and (1) of the Act.

The Respondent's conduct is not exonerated by the fact that the bargaining contract subsequently reached by the parties incorporated the merit increases. Even had the Union been aware when it signed the contract that these increases were included therein, the Respondent's prior statutory violation would not thereby have been automatically extinguished.<sup>7</sup> In any event, I am convinced that the union representatives signed the contract ignorant of the fact that the merit increases were included in it. Because of the time pressures involved between June 6, 1952, and June 9, 1952, when the contract was formally executed, I am satisfied that the Union's failure to detect the merit increases in the contract was an innocent mistake and not the result of its carelessness. Moreover, the Respondent had itself prepared the formal contract, and its representative, Ebner, had assured the union negotiators at the moment of signing that the contract contained only what had been negotiated. Discovery of the inaccuracy of this representation could have been made only by a time-consuming comparison of the wage addenda of the new and old contracts plus the February 7, 1950, addendum to the old contract which provided for sliding scale increases in base rates as well as cost-of-living increases. Time was lacking under the circumstances attending the signing of the contract for such comparison. It therefore cannot be said, as the Respondent argues in its brief, that the Union, having signed the contract, must be regarded as having bargained on all matters contained therein, including the merit increases as to which it then had no actual knowledge. Such reasoning is premised on a rigid construction of the rule that one who signs a contract is presumed to know its contents. This rule, however, is not inflexible or invariably applied. It is generally held that where as the results of one's

<sup>3</sup>In view of the ultimate conclusions herein, it has been unnecessary to detail in the above account of the negotiations before February 4, 1952, all the evidence showing that by that date the attitudes of the parties on the wage issue had sufficiently hardened to warrant a conclusion that they had reached an impasse.

<sup>4</sup>Central Metallic Casket Co., 91 NLRB 572.

<sup>5</sup>I.B.S. Manufacturing Company, 96 NLRB 1263.

<sup>6</sup>N. L. R. B. v. J. H. Allison & Company, 165 F. 2d 766 (C. A. 6).

<sup>7</sup>Ibid.

failure to read a contract a party signs in the mistaken belief as to its contents, the contract is not binding upon him if the mistake was induced by a misrepresentation, albeit innocent, of the other party to the contract, and was not due to want of care or diligence.<sup>8</sup> Accordingly, I conclude that the Union did not in fact, bargain with the Respondent concerning the merit increases contained in the contract, and that the signing of the contract by the Union does not warrant a legal conclusion that it bargained as to these increases.

Although the Respondent's unilateral action was a clear technical violation of the Act, in the opinion of the undersigned no remedial order is required in the circumstances of this case. As noted, the parties eventually overcame the impasse which stalled negotiations on February 4, 1952, and reached agreements which were embodied in a collective-bargaining contract signed on June 9, 1952. So far as this record shows, there are no indications of bad-faith bargaining during any phase of the negotiations leading to the ultimate agreement between the parties. There is, moreover, no contention in this case that the Respondent's conduct was motivated by union animus, or was in any way intended to undermine the Union or otherwise damage its status as representative of the Respondent's employees. On the other hand, I accept at face value the Respondent's assertion that the merit increases were granted in the interests of prudent management in the honest belief that it could do so without first notifying or consulting the Union. Apart from the issue herein involved, the Union and the Respondent appear to enjoy stable and harmonious labor relations, and no danger appears that these relations will be disrupted by the Respondent's isolated technical violation.<sup>9</sup> Accordingly, it is found that it would not effectuate the policies of the Act to issue a remedial order based upon such conduct alone.<sup>10</sup> The undersigned therefore recommends that the complaint herein be dismissed in its entirety.

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

### CONCLUSIONS OF LAW

1. Quaker State Oil Refining Corporation, Emlenton, Pennsylvania, is engaged in and at times material herein has been engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Oil Workers International Union, Local 481, C.I.O., is a labor organization within the meaning of Section 2 (5) of the Act.

3. The allegations of the complaint that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (5) of the Act, have not been sustained.

[Recommendations omitted from publication.]

<sup>8</sup> American Jurisprudence, Vol. 12, Sec. 133, 137; Williston on Contracts, Rev. Ed. Vol. Five, Sec. 1577.

<sup>9</sup> Thus, on June 28, 1952, Sam Beers, representative for the Oil Workers International Union and a member of the union committee which had negotiated the contract, wrote a letter to Respondent protesting the grant of the merit increases. This letter said in part,

We are pleased to learn from Mr. Newton that the Quaker State Oil Refining Corporation has accepted the fact that Labor Unions are an important part of the industrial institutions of this nation, and that it is the intention of the Corporation to bargain with legally recognized unions in good faith.

<sup>10</sup> See Bob Morgan Motor Company, Inc., 106 NLRB 334; cf. Crown Zellerbach Corporation, 95 NLRB 753.

TIDE WATER ASSOCIATED OIL COMPANY *and* EMPLOYEES  
ASSOCIATION OF BAYONNE, Petitioner. Case No. 2-RC-  
5888. November 12, 1953

### DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before I. L. Broadwin,