I doubt that the reduction of the monetary requirement on goods and services furnished to $100,000 in cases which would have required $200,000 under the "indirect" utilization test will result in the assertion of jurisdiction in any significant number of cases which would otherwise have been dismissed. Nevertheless, it is a step in the right direction and, if it accomplishes no more than eliminating one of the areas of confusion and complexity under the 1954 standards, it helps to meet an important need.

In my dissent in the *Jonesboro* case I likewise took issue with the basic changes in the monetary requirements which doubled the outflow minima of the 1950 plan as well as introducing new highly restrictive standards for multistate enterprises and other restrictions calculated to reduce the Board's jurisdiction and caseload. Further liberalization of other restrictions in the *Jonesboro* and other standards is clearly indicated and I hope additional changes in the standards will follow today's step in order that we may effectuate congressional intent by according the benefits of the Act in as wide an area as possible.

MEMBER BEAN took no part in the consideration of the above Decision and Direction of Election.

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**American Smelting and Refining Company, Tacoma Plant *and* Office Employes International Union, Local 23, AFL–CIO.**[1]

*Case No. 19–CA–1258. January 13, 1956*

## DECISION AND ORDER

On October 27, 1955, Trial Examiner Herman Marx 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.

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 brief in support thereof, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

## ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations

[1] The AFL and CIO having merged, we amend the identification of the Petitioner's affiliation.

Board hereby orders that the Respondent, American Smelting and Refining Company, Tacoma Plant, Tacoma, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from refusing to bargain collectively with Office Employes International Union, Local 23, AFL–CIO, as the exclusive representative of the employees constituting the bargaining unit described below, by refusing and failing to furnish to said labor organization, upon request, information, in writing, setting forth the name, classification, and current individual wage rate or salary of each employee in the unit. The said unit is defined as follows:

> All office and laboratory employees employed by American Smelting and Refining Company at its Tacoma, Washington, plant, but excluding Accounting Manager, Accounting Manager's Secretary, Chief Accountant, Assistant Chief Accountant, Chief Settlement Clerk, Metallurgical Accountant, Power Plant Engineer, Chief Engineer, Engineering Department, Storekeeper, Chief Chemist, Chief Draftsman, Superintendent's Secretary, Nurse, Manager's Secretary, Purchasing Agent, Chief Timekeeper, Safety and Welfare Supervisor, Assistant Safety and Welfare Supervisor, Employment Clerk, Secretary to Safety and Welfare Supervisor, and all supervisors as defined in the Labor Management Relations Act of 1947 as amended, and all other employees of the American Smelting and Refining Company.

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

(a) Upon request, furnish to Office Employes International Union, Local 23, AFL–CIO, information, in writing, setting forth the name, classification, and current individual wage rate or salary of each employee in the appropriate unit described above.

(b) Post at its plant in Tacoma, Washington, copies of the notice attached hereto marked "Appendix A."[2] Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region of the Board, shall, after being signed by the Respondent's representative, be posted by the Respondent and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

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

## APPENDIX A

### NOTICE TO ALL EMPLOYEES

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

WE WILL NOT refuse to bargain collectively with Office Employes International Union, Local 23, AFL–CIO, as the exclusive representative of all our employees in the appropriate unit described below, by failing and refusing to furnish to the said labor organization, upon its request, information, in writing, setting forth the name, classification, and current individual wage rate or salary of each employee in the said unit.

WE WILL furnish to Office Employes International Union, Local 23, AFL–CIO, upon request, information, in writing, setting forth the name, classification, and wage rate or salary of each employee in the said unit. The bargaining unit referred to herein is described as follows:

All office and laboratory employees employed by American Smelting and Refining Company at its Tacoma, Washington, plant, but excluding Accounting Manager, Accounting Manager's Secretary, Chief Accountant, Assistant Chief Accountant, Chief Settlement Clerk, Metallurgical Accountant, Power Plant Engineer, Chief Engineer, Engineering Department, Storekeeper, Chief Chemist, Chief Draftsman, Superintendent's Secretary, Nurse, Manager's Secretary, Purchasing Agent, Chief Timekeeper, Safety and Welfare Supervisor, Assistant Safety and Welfare Supervisor, Employment Clerk, Secretary to Safety and Welfare Supervisor, and all supervisors as defined in the Labor Management Relations Act of 1947 as amended, and all other employees of the American Smelting and Refining Company.

AMERICAN SMELTING AND REFINING COMPANY,
TACOMA PLANT,

*Employer.*

Dated_____ By_____
(Representative) (Title)

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

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

### STATEMENT OF THE CASE

On July 7, 1955, Office Employes International Union, Local 23, AFL (also designated herein as the Union), filed a charge with the National Labor Relations Board (also referred to below as the Board) against the Respondent, American

Smelting and Refining Company, Tacoma Plant. Based upon the charge, the General Counsel of the Board issued a complaint on September 12, 1955, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended (61 Stat. 136–163), also described herein as the Act. Copies of the charge and complaint have been duly served upon the Respondent.

With respect to the claimed unfair labor practices, the complaint, in substance, alleges that the Union was at all material times the collective-bargaining representative of an appropriate unit of the Respondent's employees; that on various dates in June 1955, during the course of collective-bargaining negotiations between the Union and the Respondent with respect to a contract applicable to the said employees, the Union requested the Respondent to furnish it with "a list of the names, classifications and present salaries of the employees in the aforesaid unit"; that on or about June 17, 1955, the Respondent refused to comply with the request and has since continued to do so; and that by such refusals, the Respondent has refused to bargain collectively with the Union and has thereby violated Section 8 (a) (1) and (5) of the Act.

The Respondent filed an answer which, in material substance, admits that on or about June 7, 1955, the Union requested the information described in the complaint, but denies the commission of any unfair labor practices. The answer also alleges affirmatively that the Respondent refused to furnish the information because it believed that the requested data would be circulated among employees in the unit and thereby cause dissension among them; that the request was denied because the Respondent believed that the Union did not intend to use the information "in either policing or negotiating the said contract" but was to be used "to harass the employer"; that the Union and the Respondent entered into a collective-bargaining agreement on July 21, 1955; and that the Union no longer requires the requested data for the purpose of negotiating.

Pursuant to notice duly served upon all parties, a hearing was held before me, as duly designated Trial Examiner, on September 27, 1955, at Tacoma, Washington. The General Counsel and the Respondent were represented by counsel and participated in the hearing. All parties were afforded a full opportunity to be heard, examine and cross-examine witnesses, adduce evidence, file briefs and proposed findings of fact and conclusions of law, and submit oral argument. The Respondent has filed a brief which has been read and considered. The General Counsel waived his right to file a brief.

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

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent is a New Jersey corporation with its principal office in New York, New York, and is engaged in the business of mining, refining, and smelting nonferrous metals. It operates plants in several States, including one in Tacoma, Washington. The Tacoma establishment is the only one involved in this proceeding.

In the course and conduct of its business at the Tacoma plant, the Respondent annually produces goods valued in excess of $1,000,000, and sells and ships more than 50 percent of such products to customers located outside of the State of Washington. The Respondent is, and at all times material to the issues in this proceeding has been, engaged in interstate commerce within the meaning of the Act. The Board has jurisdiction of this proceeding.

### II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *Prefatory findings*

Since sometime in 1948, as the result of a representation election, the Union has been the exclusive bargaining representative of a unit of individuals employed at the Respondent's Tacoma plant. The unit, which consists of approximately 35 persons and is appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, is defined as follows:

> All office and laboratory employees employed by American Smelting and Refining Company at its Tacoma, Washington, plant, but excluding Accounting

Manager, Accounting Manager's Secretary, Chief Accountant, Assistant Chief Accountant, Chief Settlement Clerk, Metallurgical Accountant, Power Plant Engineer, Chief Engineer, Engineering Department, Storekeeper, Chief Chemist, Chief Draftsman, Superintendent's Secretary, Nurse, Manager's Secretary, Purchasing Agent, Chief Timekeeper, Safety and Welfare Supervisor, Assistant Safety and Welfare Supervisor, Employment Clerk, Secretary to Safety and Welfare Supervisor, and all supervisors as defined in the Labor Management Relations Act of 1947 as amended, and all other employees of the American Smelting and Refining Company.

The Union and the Respondent have been parties to a number of successive collective-bargaining agreements applicable to the employees in the unit. One such contract was scheduled to expire on June 30, 1955. The agreement is not in evidence, but the general form that its wage provisions took may be spelled out from the record. These provisions were couched in terms of what the record refers to as "salary brackets," respectively applicable to the various classifications of employees in the unit. The evidence indicates that the "brackets" specified the beginning and top salaries, with intermediate rates, applicable to employees holding the given classification. Although the contract is not in evidence, it is clear from the record as a whole that one could not determine from the wage provisions alone the precise salary paid any given employee, even if one knew his classification.

On April 29, 1955, the Union wrote a letter to the Respondent proposing various modifications in the agreement then in effect, and its extension, as modified. The suggestions for modification included proposals for an increase of $36.25 (apparently per month) in "all salary brackets," the upgrading of some classifications, and merit wage increases for two specified employees.

Following the letter of April 29, the Union and the Respondent held a series of 4 or 5 negotiating meetings pertaining to the proposals. The Respondent was represented in the negotiations by W. G. Rouillard, the manager of the Tacoma plant; and the Union by a committee which included Gastav W. Fischer, the Union's president, and Calvin Winslow, its secretary-treasurer.

On June 7, 1955, during the course of the negotiations, the Union wrote a letter to the Respondent requesting "a list of the names, classifications and present salaries" of all the employees in the bargaining unit, and stating that "in order for us to be able to bargain intelligently and to police our contract it is imperative that we have this information."

Some days later, the Respondent prepared a list of the names of the employees in the bargaining unit, specifying the classification of each. The requested wage information was not included, but the following statement was set forth at the bottom of the sheet containing the list: "The salaries of all the above employees are within the brackets provided in the contract."

Rouillard gave the document to Fischer at a bargaining meeting held on June 17, 1955. Fischer looked at the list and then returned it to Rouillard with the statement that the document did not contain the desired information. Rouillard asked Fischer why the Union needed the information and Fischer replied that the Union required it in order to determine "what percentage salary increase" should be requested of the Respondent. Rouillard remarked that the Union had made a specific wage proposal in its letter of April 29. At a meeting held shortly thereafter (the record does not clearly establish the date), Rouillard offered to give Fischer a figure representing the average of the wages paid the employees. As Rouillard explained it in his testimony, his proposal visualized the addition of the wage rates of all employees in the unit, and the division of the total by 35, the number of employees in the unit, in order to arrive at the average rate. Fischer rejected the offer.

The Union reiterated its request for the salary data in a letter to the Respondent, dated June 21, 1955, and, thereafter, orally at a bargaining meeting held on June 24. At that meeting, Rouillard declined to furnish the information, telling the Union's committee that he had heard that another Tacoma employer (Credit Bureau of Tacoma) had furnished the Union with the same type of information sought of the Respondent; that the Union had then circulated the information among the employees of the other employer; and that the distribution of the data to these employees had been the cause of dissension among them. Rouillard asserted that he did not "want our employees all upset the way I had heard these others had been."

Thereafter, in a letter dated July 5, 1955, addressed to the Union, the Respondent in effect repeated its refusal to furnish the requested salary data. The Respondent has not furnished the relevant salary information to the Union.

The negotiations culminated in a provisional agreement on July 21, 1955, and the terms agreed upon were subsequently embodied in a written contract dated August 17, 1955, and made effective as of July 1, 1955. By its terms, the contract is to remain in effect until June 30, 1957, but makes provision for the reopening of certain of its features. On that score, the contract provides that not less than 60 days nor more than 75 days prior to July 1, 1956, either party may give the other "written notice of its desire to modify this agreement with respect only to the matter of rates of pay, vacations, holidays and health and welfare." Among its other provisions, the agreement specifies "salary brackets" for each classification and provides for a grievance and arbitration procedure to be followed with respect to "any grievance or misunderstanding concerning any ruling, practice, or working condition, or any other grievance between an employee and his superior."

The contract does not, in terms, deal with the subject of merit increases. The Union's request for these had been discussed during the bargaining meetings, and the Respondent had taken the position that it had not raised any employee's wages on a merit basis during the year and that "no merit increases were in order this year." The upshot of this phase of the negotiations, according to the sense of Winslow's testimony, was that the request for the merit increases was not granted.

### B. *Concluding findings*

This proceeding presents two basic issues: (1) Whether the Respondent was justified in its refusals to furnish the wage data; and (2) if not justified, whether the new contract had the effect of constituting a waiver by the Union of its requests for the information.

As the Court of Appeals for the Fourth Circuit has pointed out, "It is well settled that it is an unfair labor practice within the meaning of Section 8 (a) (5) of the Act for an employer to refuse a bargaining union a list of the employees represented by it together with the wages paid them, as such information is necessary to the proper discharge of the duties of the bargaining agent" (*N. L. R. B.* v. *Whitin Machine Works,* 217 F. 2d 593, cert. denied 349 U. S. 905). Such information is presumptively relevant to collective bargaining involving wage issues. *Boston Herald-Traveler Corp.* v. *N. L. R. B.,* 223 F. 2d 58 (C. A. 1); *N. L. R. B.* v. *Yawman & Erbe Manufacturing Co.,* 187 F. 2d 947 (C. A. 2). The relevancy of the wage data involved here need not hinge on a presumption. The Union had not only proposed a general wage increase, but was also seeking merit increases for some employees. It is thus obvious that precise and current information concerning the names, classifications, and wages of the employees was relevant to the wage proposals; and that possessed of such data, the Union would be in a better position to bargain intelligently concerning its proposals than if it were left in the dark with respect to the precise salaries which it was seeking to increase. The Respondent, however, asserts in its brief that the information was sought "for the sole purpose of harassment of the employer." This claim is unsupported by the evidence. On the contrary, the record establishes the propriety of the Union's request.

The Respondent also argues that it has substantially complied with the request for wage data, pointing to the document handed to the Union on June 17, which states that the salaries of the "employees [listed] are within the brackets provided in the contract"; and to Rouillard's offer to furnish the Union with an average wage figure. However, the document leaves one in the dark as to the specific salary paid any given employee. Obviously, this is also true of the average figure Rouillard proposed to furnish. Rouillard appears to have concluded that the offer was sufficient in view of Fischer's statement that the Union required the wage information to enable it to bargain for a "percentage salary increase." What this assumption overlooks is that the information sought was also pertinent to the Union's proposals for merit increases for two specific employees, and that the Union had also informed the Respondent that the organization required the data not only to assist it at the bargaining table but to enable it "to police the contract." It is well settled that a bargaining agent is "entitled to information which would enable it to properly and understandingly perform its duties as such in the general course of bargaining and . . . such information should not necessarily be limited to that which would be pertinent to a particular existing controversy" (*N. L. R. B.* v. *Whitin Machine Works, supra;* see, also, the *Boston Herald-Traveler* and *Yawman & Erbe* cases, cited earlier); and that wage data appropriate for disclosure "includes all information . . . which appears reasonably necessary for the 'policing of the administration of any contract'" (*N. L. R. B.* v. *The Item Company,* 220 F. 2d 956 (C. A. 5)). The Respondent's position suggests a rigid conception of the bargaining process to which the Union was not obliged to conform. Some language the Board has used in a comparable situation illustrates the point. "Even where individual wage rates do not bear di-

rectly on the contract issues," the Board stated, "the information may well serve as a guide or suggest some field of compromise or other adjustment; for example, the Union might decide to withdraw its request for an increase in the minimum wage scale and propose instead the raising of wages for specific groups of employees" (*Boston Herald-Traveler Corporation,* 110 NLRB 2097, enfd. 223 F. 2d 58 (C. A. 1)). The nub of the matter is that the salary information offered or furnished fell far short of compliance with the Union's request for the "present salaries" of the individual employees.

The Respondent also advances the claim that it was justified in rejecting the request for salary data because it owed a duty to employees who are not members of the Union not to publicize their salaries; and because it believed that the Union would circulate the information among the employees in the unit, and that such dissemination would cause dissension among them. The contention reminds one of Mr. Justice Frankfurter's recent observation: "The underlying purpose of this statute is industrial peace. To allow employers to rely on employees' rights in refusing to bargain with the formally designated union is not conducive to that end, it is inimical to it" (*Ray Brooks* v. *N. L. R. B.,* 348 U. S. 96, 103). The Board has had occasion to examine and reject a claim similar to the one offered by the Respondent. *Boston Herald-Traveler Corporation,* 110 NLRB 2097, 2099, enfd. 223 F. 2d 58 (C. A. 1).[1] Although the Board's conclusion is applicable here, some further examination of the claim of justification is not inappropriate. What the Respondent's contention implies is that one may disregard his obligations under the Act because of fear of inconvenience or discomfort that might result from compliance. This is obviously untenable doctrine. One can think of a number of situations where an employer is required to comply with the Act, notwithstanding any assumption that his observance of the law may cause discord among his employees. Perhaps the most familiar one is that involving the duty of an employer to bargain with a duly constituted representative of his employees, irrespective of any contrary wishes of a minority in the bargaining unit. Another example which comes to mind is the duty of an employer to refrain from discriminatorily discharging an employee upon an unlawful demand by a union, notwithstanding the employer's fear of a strike or other economic consequences which may follow his failure to heed the demand.[2] From what has been said, it is evident there is no merit in the claim that the refusal to furnish the salary data was justified.[3]

One remaining question is presented, and that is the Respondent's claim that the execution of the new collective-bargaining agreement had the effect of constituting a waiver of the request for the wage data. The Respondent stresses the Board's recent decision in *Hearst Corporation,* 113 NLRB 1067, as support for its contention. But that case is clearly distinguishable. There, the material facts were that the union proposed, as a term of agreement, during contract negotiations, that the employer furnish certain information; that the union then expressly abandoned the proposal; that the parties subsequently agreed on a provision, incorporated into their contract, defining the scope of the information to be furnished; that the employer thereafter complied with agreement; that the union nevertheless subsequently sought information beyond that to which it was entitled under the terms of the contract; and that the information requested was "almost precisely" the same as that visualized by that portion of the previous proposal to which the employer had refused to agree and which the union had expressly abandoned. A majority of the Board

[1] See also *N. L. R. B.* v. *The Item Company, supra.*

[2] For example, see *N. L. R. B.* v. *Lloyd A. Fry Roofing Company, et al.,* 193 F. 2d 324 (C. A. 9), and cases cited, holding that "economic duress" affords an employer no legal justification for a discriminatory discharge.

[3] The Respondent presented testimony to the effect that the Union had received similar salary data from Credit Bureau of Tacoma, an employer with whom it has had bargaining relations; that the Union had then circulated the information among the employees in the unit it represented at the Credit Bureau; that one of the employees (described by a witness as "a hot-tempered lad") was "enraged" over the disclosure of his salary rate to others; that several other employees of the Credit Bureau had implied some criticism of their employer by intimating to the manager of the Credit Bureau that he had been "a party to the idea" of distributing the information; and that Roullard had heard about the dissension from the Respondent's attorney. This evidence was, in the main, adduced without objection from the General Counsel. Apart from the fact that the Respondent's assumption that the disclosure of the salary data to its employees would cause dissension among them is speculative, the evidence pertaining to events at the Credit Bureau is immaterial, for it in no way diminishes the duty of the Respondent to furnish the requested information.

concluded that the union had waived its right to the information embodied in its request, holding that the organization had " 'clearly and unmistakably' bargained away any right it had to receive the information."

As the Board pointed out in the *Hearst* case, it will not infer a waiver of statutory bargaining rights unless there be a "clear and unmistakable showing that the waiver occurred." Here such a showing is plainly lacking, for there is no evidence that the Union bargained away or abandoned its request.[4] The agreement contains no reference to the information nor to any waiver of the right of the Union to receive it. The fact that the negotiations culminated in a contract is obviously not enough. In a number of the cases in which the right of a union to salary data has been upheld, the bargaining parties had reached agreement on the terms of a contract, notwithstanding the refusal by the employer to furnish the requested data. On that score, one need only refer to the *Item* and the *Boston Herald-Traveler* decisions, cited earlier. As a matter of fact the court in the *Item* case examined and rejected a claim of waiver in all material respects similar to the one advanced here.

Moreover, the Union requested the information not only in connection with the negotiations, but to enable it "to police the contract." Thus the very terms of the request tend to negate a conclusion that the Union abandoned the request by the mere act of entering into the contract. As the Board has pointed out in a similar factual context, "when administering a collective bargaining agreement, the union's need for current and authoritative information is no less real than it was before the contract was executed" (*F. W. Woolworth Company*, 109 NLRB 196). The presumptive relevance of the wage data to the administration of the contract is beyond cavil,[5] if for no other reason than that the agreement expressly gives the Union the right to reopen its wage provisions during its term and provides for grievance and arbitration procedures.[6] In that connection, see *N. L. R. B.* v. *The Item Company, supra.* In sum, I find no merit in the claim that the Union waived its right to the salary data.

Viewing the whole record, I find that the Respondent failed and refused, on June 17, 1955, and has since failed and refused, to furnish to the Union the information pertaining to wages requested in the Union's letter of June 7, 1955; and that the Respondent has thereby violated Section 8 (a) (1) and (5) of the Act.

### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices violative of Section 8 (a) (1) and (5) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, and of the entire record in this proceeding, I make the following:

### CONCLUSIONS OF LAW

1. Office Employes International Union, Local 23, AFL, was, on June 17, 1955, is now, and has been at all material times, a labor organization within the meaning of Section 2 (5) of the Act.

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[4] The facts in *Douglas Silk Products Company, Inc*, 107 NLRB 450, are also clearly distinguishable from those presented here. Without reference to the difference in the type of information sought there and that involved here, it is enough to point out that the Board made an express finding in the *Douglas* case that the union had abandoned its request, and that the information requested was not relevant to the issue upon which the bargaining parties ultimately reached an impasse

[5] It seems plain that had the information concerning "present salaries" been furnished, the Union would have been able, during the term of the new contract, to determine the salaries paid at least to a substantial number of the employees by the simple process of adding the amount of the general increase to the "present salaries" reflected in the information furnished

[6] I do not intend to imply that the absence of the reopening and grievance and arbitration provisions would defeat the right of the Union to the information.

2. The following was, on June 17, 1955, is now, and has been at all material times, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All office and laboratory employees employed by American Smelting and Refining Company at its Tacoma, Washington, plant, but excluding Accountant Manager, Accounting Manager's Secretary, Chief Accountant, Assistant Chief Accountant, Chief Settlement Clerk, Metallurgical Accountant, Power Plant Engineer, Chief Engineer, Engineering Department, Storekeeper, Chief Chemist, Chief Draftsman, Superintendent's Secretary, Nurse, Manager's Secretary, Purchasing Agent, Chief Timekeeper, Safety and Welfare Supervisor, Assistant Safety and Welfare Supervisor, Employment Clerk, Secretary to Safety and Welfare Supervisor, and all supervisors as defined in the Labor Management Relations Act of 1947 as amended, and all other employees of the American Smelting and Refining Company.

3. Office Employes International Union, Local 23, AFL, was, on June 17, 1955, is now, and has been at all material times, the exclusive representative of the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By failing and refusing on June 17, 1955, and since that date, as found in section III, above, to bargain collectively with Office Employes International Union, Local 23, AFL, as the exclusive representative of the Respondent's employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By interfering with, restraining, and coercing its said employees in the exercise of the rights guaranteed to them in Section 7 of the Act, as found in section III, above, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

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## R. L. Faubian Company, Petitioner *and* International Association of Machinists, District Lodge No. 71, A. F. L. and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Lodge No. 83, AFL.[1] *Case No. 17–RM–90. January 13, 1956*

### 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 Charles A. Fleming, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

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[1] The Unions are referred to hereinafter as IAM and Boilermakers, respectively.

As the AFL and CIO merged after the instant hearing we are taking notice thereof and are amending the designations of the Unions