Shoreline Enterprises of America, Inc. *and* International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL–CIO. *Case No. 12–CA–9 (formerly 10–CA–2532). May 16, 1957*

DECISION AND ORDER

On June 5, 1956, Trial Examiner Arthur Leff 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 they cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent and the Intervenors filed exceptions to the Intermediate Report and supporting briefs.

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 and Intervenors' exceptions and briefs, and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations with the following addition and modification.

1. Respondent excepts to the Trial Examiner's refusal to permit litigation of the Charging Union's compliance with Section 9 (h) of the Act and his revocation of various subpenas by which Respondent sought to secure evidence relating to this issue.[1] In a recent decision, *Crenshaw's, Inc.*, 115 NLRB 1374, the Board found the Union to be in compliance with the filing requirements of the Act. Respondent makes no contentions in the instant case which were not considered and rejected by the Board in the *Crenshaw's* case; we find no merit in Respondent's contentions relating to the Union's compliance status for the reasons stated in that case. The Board is administratively satisfied that the Union is, and at all times material to this proceeding has been, in compliance with the filing requirements of Section 9 (f), (g), and (h) of the Act. Accordingly, Respondent's request that the complaint herein be dismissed or that the case be remanded for further hearing on grounds relating to the Union's compliance status is hereby denied, and the Trial Examiner's rulings on this issue are hereby affirmed. As the Board finds, for the reasons stated in the *Crenshaw's* case, that Respondent's allegations are insufficient to warrant the insti-

[1] Respondent's request that the motions to revoke its subpenas, the Respondent's answer thereto, and the Trial Examiner's rulings thereon, be made a part of the official record in this case is hereby granted. See NLRB Rules and Regulations, Series 6, as amended, Section 102.31.

tution of collateral proceedings for the purpose of determining the Union's compliance with Section 9 (h), Respondent's motion requesting the institution of such a proceeding is also denied.

2. We agree that, as the Trial Examiner found, the Respondent on and after November 18, 1955, failed and refused to meet with the Union for the purpose of bargaining concerning wages, hours, and other conditions of employment of the employees in the appropriate unit, in contravention of its statutory duty to bargain in good faith with the Union as the exclusive bargaining representative of such employees, and in violation of Section 8 (a) (5) and (1) of the Act.

The Trial Examiner further found and we agree, that the Respondent failed to comply with its bargaining obligation by granting, unilaterally and without prior notice to or consultation with the Union, a wage increase to its employees in the unit on November 7, 1955, and by failing and refusing to furnish the Union with information requested by the Union by letter on November 7, 1955, concerning wage scales, job classifications, seniority of employees, vacation policies, and health and welfare insurance covering employees in the unit. The Board has consistently held that an employer's action in changing the wage rates of its employees without notice to, or consultation with, the labor organization which they have chosen to represent them is in derogation of its duty to bargain and is violative of Section 8 (a) (5).[2] It also is clear that the matters set forth in the Union's letter of November 7, 1955, concerning which the Union has requested the Respondent to furnish information, are of the sort concerning which the Board has held in various particular cases that an employer is required to furnish information to its employees' representative upon request.[3] We find therefore that by its failure to furnish the requested information the Respondent has further violated its bargaining obligation contrary to Section 8 (a) (5). In view of the Respondent's failure to furnish such information, although such refusal here appears only in the context of the Respondent's general refusal to recognize the validity of the Union's certification, we shall direct the Respondent to furnish the Union with such information upon request.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Shoreline Enter-

[2] See, for example, *Armstrong Cork Company*, 103 NLRB 133, enfd. 211 F. 2d 843 (C. A. 5)

[3] See, for example, *Oregon Coast Operators Association, et al.*, 113 NLRB 1338, 1345, and cases cited in footnotes 15 through 27, *Morganton Full Fashioned Hosiery Company*, 115 NLRB 1267

prises of America, Inc., Tampa, Florida, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL–CIO, as the duly certified exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees, including refrigeration engineers, but excluding truckdrivers, all office employees, all clerical employees, professional employees, guards, watchmen, and all supervisors as defined in the Act.

(b) Refusing to furnish the said Union, upon request, information concerning wage scales, job classifications, employee seniority, vacation policies, and health and welfare insurance.

(c) Granting any wage increase or otherwise altering the terms and conditions of employment of any employees in the above unit without prior notification to, consultation, and, if requested, bargaining with the Union concerning same.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join or assist, and bargain collectively through said Union, or any other labor organization of their own choosing.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Upon request bargain with the said certified Union as the exclusive representative of the employees in the appropriate unit described above with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Furnish the said Union, on request, information concerning wage scales, job classifications, employee seniority, vacation policies, and health and welfare insurance, if any.

(c) Post at its plant in Tampa, Florida, copies of the notice [4] attached hereto marked "Appendix." Copies of said notice, to be furnished by the Regional Director for the Twelfth Region, after having been duly signed by an authorized representative of the Respondent, shall be posted by it immediately upon receipt thereof, and maintained by it for 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 other material.

[4] 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."

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

MEMBER JENKINS took no part in the consideration of the above Decision and Order.

APPENDIX

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 Labor Management Relations Act, we hereby notify our employees that:

WE WILL bargain collectively, upon request, with International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL–CIO, as the exclusive representative of all employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees, including refrigeration engineers, but excluding truckdrivers, all office employees, all clerical employees, professional employees, guards, watchmen, and all supervisors as defined in the Act.

WE WILL furnish said Union, upon request, information concerning wage scales, job classifications, employee seniority, vacation policies, and health and welfare insurance, if any.

WE WILL NOT grant wage increases or otherwise change or alter the conditions of work or employment of any of the employees in the above-described unit, without first notifying, consulting, and, if requested, bargaining with the Union in respect thereto.

WE WILL NOT engage in any acts in any manner interfering with the efforts of said Union to negotiate for or represent the employees in the bargaining unit described above.

SHORELINE ENTERPRISES OF AMERICA, INC.,
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

STATEMENT OF THE CASE

A charge having been filed by the Union above named, herein referred to as the Union, against the Company above named, herein referred to as the Respondent, the General Counsel issued a complaint, dated February 14, 1956, alleging that the Respondent had engaged 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. More specifically, the complaint alleged that since on or about November 7, 1955, the Respondent refused to bargain collectively in good faith with the Union as the duly certified exclusive collective-bargaining representative of its employees in an appropriate unit, by (a) unilaterally granting a general wage increase without prior notice to the Union, (b) failing and refusing to furnish the Union information requested by it for the purpose of bargaining, and (c) failing and refusing to meet with the Union for the purpose of bargaining concerning wages, hours, and working conditions of the Respondent's employees.

In its duly filed answer, the Respondent admitted that it is engaged in commerce within the meaning of the Act; admitted that the Union was certified by the Board as the exclusive bargaining representative of employees in the appropriate unit alleged in the complaint; admitted that it had unilaterally put into effect the alleged general wage increase, that it had failed to furnish the information requested by the Union, and that it had not met with the Union since November 18, 1955, but denied that it refused to bargain with the Union in good faith or that it engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (5) of the Act. In addition, the Respondent alleged in its answer numerous affirmative defenses. The affirmative allegations may be classified generally as follows. (1) Allegations in amplification of the Respondent's denials that the specific conduct alleged in the complaint constituted a refusal to bargain within the meaning of the Act; (2) an allegation to the effect that the employees in the appropriate unit rejected the Union as their exclusive bargaining agent following the Union's certification, and that the Respondent was therefore no longer required to bargain with it; (3) allegations relating to conduct affecting the results of the election and attacking the validity of the Union's certification; (4) allegations to the effect that the Union was not at the time of the issuance of the complaint, nor at the time of the filing of the petition in the representation proceeding, in compliance with the filing requirements of the Act as provided for in Section 9 (h);[1] (5) allegations that the Union was "fronting" in this proceeding for the "Shoreline Negotiating Committee," the "Shoreline Organizing Committee," and the "Florida Brewery Workers Council," all claimed to be labor organizations, the officers of which have not filed non-Communist affidavits.

Pursuant to notice, a hearing was held on May 15, 1956, at Tampa, Florida, before Arthur Leff, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, the Respondent, and the Union were represented at the hearing by counsel. Full opportunity was afforded all parties to examine and cross-examine witnesses, to introduce evidence bearing on the issues, to argue orally upon the record, and to file briefs and proposed findings and conclusions.

At the opening of the hearing, a motion was filed on behalf of employees Ruth De Pratter, Vera Mobley, Billie Traina, Audrey Miller, Joe Diaz, Eva Reagan, and Pearl Harrison for leave to intervene in this proceeding for the purpose of participating fully therein as parties. In the representation proceeding in which the Union was certified (Case No. 10–RC–2995) employees De Pratter, Traina, Mobley, and

[1] In its original answer, filed on February 24, 1956, the Respondent identified the "officers" who it claimed had failed to file non-Communist affidavits, as the Union's regional directors and members of its general executive board. The answer alleged that those referred to were officers of the Union in that they exercised administrative and executive powers of the Union and working control in the Union. On April 11, 1956, the Respondent filed an amended answer in which it enlarged upon its original answer, by alleging, additionally, that "persons occupying certain positions identified as 'offices' in the constitution of the Union have not been required by the Board to file non-Communist affidavits," and, also, that "the Union has omitted from its constitution the designation of certain positions as offices for the purpose of evading or circumventing the filing requirements of Section 9 (h) of the Act." The amended answer does not specify the offices to which it alludes, but at the hearing Respondent's counsel stated by way of offer of proof that the reference was not only to the various offices referred to in the original answer, but also to officers identified in the Union's constitution as such.

Diaz were allowed by the Board to intervene "for the limited purpose of entering exceptions to that part of the Regional Director's report on objections which relates to their nonparticipation in the election." The same employees were allowed to intervene in this proceeding, but solely for the purpose of protecting their opportunity to have reconsidered by the Board or reviewed by a court of appeals in an enforcement or review proceeding, the validity of the Board's rulings on the exceptions filed by them to the Regional Director's report. In all other respects the motion for intervention was denied. See *John J. Oughton et al.* v. *N. L. R. B.*, 118 F. 2d 486, 495 (C. A. 3), cert. denied 315 U. S. 797.

Also at the opening of the hearing, the General Counsel and the Union moved to strike the affirmative allegations of the answer and of the amended answer relating to the claimed noncompliance by the Union with the filing requirements of Section 9 (h) of the Act. The motions to strike such allegations were granted on the ground that the allegations related to matters that were nonlitigable in an unfair labor practice proceeding. This ruling was grounded on the authority of the Board's recent decision in *Desaulniers and Company,* 115 NLRB 1025, reaffirming the "established Board practice providing that issues which do not involve interpretation of the statutory language may not be litigated in representation or unfair labor practice proceedings but are to be determined administratively only in collateral proceedings." [2]

The Union, but not the General Counsel, also moved at the opening of the hearing to strike, as not properly litigable, the "fronting" allegations of the Respondent's answer as amended. The motion was denied, and the Respondent was allowed to adduce evidence in support of such allegations. At the close of the case, the Respondent conceded that the evidence it adduced was insufficient to prove the "fronting" allegations. A motion was then made by the Union to strike such allegation for lack of proof. The motion was granted without objection.

Upon the entire record in the case, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Florida corporation engaged in processing and packing shrimp, maintains its office and plant at Tampa, Florida. During 1955 the Respondent

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[2] In making this ruling, I pointed out that the Board, while adhering to this practice, has nevertheless permitted, and even encouraged, parties to Board proceedings to bring to the Board's attention matters affecting the compliance status of unions, that to assist the parties in that regard, the Board has adopted the policy of having its agents release to interested parties names of designated union officers and of persons who have filed the required affidavits, that the Board will entertain motions regarding the compliance status of unions, will consider such information as may be submitted in determining whether a situation warrants further investigation, and that if the need therefor is shown, the Board will conduct a hearing in which the issue can be heard and determined

The Respondent declined to state at the hearing whether it intended to move the Board to initiate an administrative investigation of the compliance matter alleged in its affirmative defenses

Concerning the compliance status of the Union, the Trial Examiner has been administratively advised by the Board's affidavit compliance chief, based upon an examination of the compliance records on file, as follows

> This union has been in full compliance with 9 (f), (g), and (h) of the Act since January 1, 1955, with no lapses, based on our requirements as regards officers ("constitutional test") which entails the filing of affidavits by the President, the Director of Organization, the Secretary-Treasurer and the Coordinator of State Councils
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> By Form NLRB 1080, dated February 13, 1956, this union of its own volition supplied us with non-Communist affidavits for regional directors—five in number, and general executive board members—ten in number. Each of these latter affidavits contained an accompanying statement to the effect that the signing of the affidavit was not to be taken as an admission by the signer that he is an officer of the international union, but that the affidavit was being presented solely for the purpose of preventing repercussions if some court should later hold that the union was not in compliance because it had not filed
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> Although we accepted the additional affidavits referred to above, our interpretation of the constitution under the Board's "constitutional test" remains as it had been, and we still require only the four persons named as officers in the constitution to file affidavits

shipped finished products of a value in excess of $60,000 from its plants at Tampa, Florida, directly to points outside the State. The Respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL–CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The relevant facts*

On March 21, 1955, in Case No. 10–RC–2995, the Respondent and the Union entered into a stipulation for certification upon consent election, approved by the Board's Regional Director for the Tenth Region on March 25, 1955. The parties stipulated, and it is here found, that all production and maintenance employees at the Respondent's Tampa, Florida, plant, including refrigeration engineers, but excluding truckdrivers, all office employees, all clerical employees, guards, watchmen, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. Pursuant to the stipulation an election by secret ballot was conducted on April 4 and 5, 1955, under the supervision of the Regional Director. Following the election, the parties were furnished a tally of ballots which showed that of the 114 ballots cast, 58 were cast for the Union, 55 were cast against the Union, and 1 was challenged.

On April 11, 1955, the Respondent filed timely objections to conduct affecting the results of the election. In substance, the objections alleged that a number of claimed coercive statements were made to employees before the election; that the Union's election observers were paid organizers for the Union; that certain employees were improperly denied the right to participate in the election; and that for such reasons the election was null and void and should be set aside. In accordance with the Rules and Regulations of the Board, the Regional Director conducted an investigation and, on May 16, 1955, issued, and served upon the parties, his report on election, objections to election, and recommendations to the Board. The Regional Director reported that the objections did not raise substantial or material issues and recommended that the objections be overruled and that the Union be certified. Thereafter, the Respondent filed exceptions to the Regional Director's report, requesting that the election be set aside or that a hearing be directed on the issues raised by its objections. Employees De Pratter, Traina, Mobley, and Diaz filed a motion to intervene and exceptions to the Regional Director's report. The Board allowed the employees to intervene for the limited purpose of entering exceptions to that part of the Regional Director's report on objections which related to their nonparticipation in the election, and considered such exceptions along with the similar exceptions presented by the Respondent.

On October 26, 1955, the Board issued its Decision and Certification of Representatives (114 NLRB 716). As more fully appears therefrom, the Board, after reviewing the Respondent's and the Intervenors' objections to the election, found that such objections did not raise substantial or material issues with respect to the conduct of the election, and accordingly overruled the exceptions taken to the Regional Director's report. At the same time, the Board certified the Union as the exclusive bargaining representative of the Respondent's employees at its Tampa, Florida, plant in the appropriate bargaining unit found above.

Approximately 10 days after the certification—on November 5, 1955, to be exact—the Respondent received a petition signed by 102 employees, including 98 of the total number of 129 employees who were within the appropriate bargaining unit. The petition read as follows:

> We believe that the Union election which was held on April 4 and 5, 1955, was not a fair election. Ruth De Pratter, Billie Traina, Vera Mobley, and Joe Diaz wanted to vote, but were not allowed to, and Audrey Miller voted and they didn't count her vote. All of these votes would have been counted against the union and the union would have lost the election.
>
> Although Ruth De Pratter, Vera Mobley, Billie Traina, Audrey Miller and Joe Diaz have tried to prevent the N. L. R. B. from holding that the union won this election, they have not yet been able to do so, but they are still trying.
>
> We believe that if the union wanted to be fair, they would be willing to have another election. We do not believe the union is the proper agent to represent

the employees with you, and we, your employees, ask you not to enter into any agreement with this union for the employees. We hereby reject the Union as our agent.

On November 7, 1955, the Respondent announced and put into effect a general wage increase for all employees, including those in the bargaining unit This the Respondent did unilaterally, without giving prior notice to, or bargaining with, the Union about the wage increase.

On the same day, the Union sent, and the Respondent received, the following letter:

November 7, 1955.

Mr. BILLIE D. HICE,
Shoreline Enterprises of America,
Hookers Point,
Tampa, Florida.

DEAR MR. HICE: I presume that you have received as I did, notification that this Union is the certified bargaining agent for your employees. In preparation for negotiations with your Company will you please furnish me with a seniority roster of your employees, present wage scales and what classifications they cover, your vacation policy and health and welfare insurance which covers your employees. I note in my files a letter from you, sent to your employees some months ago, expressing the Company's inability to pay any wage increases. If that is so, please let me know when you can make available to me the financial data to substantiate your statement

Yours truly,

(Signed) EDWARD S. GERCHEK,
Int'l. Representative

On November 11, 1955, the secretary to the Respondent's vice president, Billie Hice, advised the Union that Hice was absent from the city and that the Union's request for data would be referred to him on his return A week later, on November 18, Gerchek for the Union wrote the Respondent, acknowledging receipt of the Respondent's letter, and also adding:

This letter is also a formal request for a meeting with you for the purpose of entering into a collective bargaining agreement in the matter of hours, wages and other conditions of employment for your employees for which this union is the certified bargaining agent.

I am ready to meet with you at your earliest convenience.

On November 22, Hice's secretary wrote the Union advising it of Hice's continued absence from the city. The Respondent has not since communicated with the Union in response to its bargaining requests. Nor has it furnished or offered to furnish the Union with any of the information requested in the Union's letter. The situation remained unchanged even after Hice's return to the plant about the middle of December 1955. On January 6, 1956, the Union filed its charge in this proceeding.

B. *Analysis and conclusions*

The complaint alleges that the Respondent refused to bargain with the Union as the certified representative of its employees in an appropriate unit, by (a) unilaterally granting its employees a general wage increase on November 7, 1955, (b) failing and refusing to furnish the Union with the information the Union requested in its letter of November 7, 1955, and (c) failing and refusing to meet with the Union for bargaining purposes in compliance with the Union's request of November 18, 1955. The Respondent defends mainly on the asserted ground that it was under no legal obligation to bargain with the Union. It claims that the Board's certification of the Union was improper, illegal, and void, and argues alternatively that even if valid the certification must be viewed as having lost its force when a majority of the employees rejected the Union in their petition of November 3. Not content with contesting its legal obligation to bargain, the Respondent in its answer goes further, and disputes that the specific conduct complained of constituted in the circumstances of this case a refusal to bargain in point of fact.

The Respondent's attack on the validity of the certification is predicated upon contentions urged by it and by the Intervenors in the objections to conduct affecting the results of the election and in the exceptions to the Regional Director's report on such objections, as filed in the representation proceeding which culminated in the certification. As such contentions have already been fully considered, and rejected, by the Board in the representation proceeding, the Board's decision in that proceed-

ing must be viewed as the law of this case, binding upon me.[3] The Respondent's attack on the validity of the certification is consequently rejected. The Respondent's additional argument, that it was in any event freed of any legal obligation to bargain with the Union as a result of the employee petition dated November 3, 1955, is clearly without merit, for reasons stated in *Ray Brooks* v. *N. L. R. B.*, 348 U. S. 96.

There is no substance to the Respondent's added contentions that, even if under a legal obligation to bargain, its conduct did not constitute a violation of Section 8 (a) (5). The Respondent's unilateral action on November 7, 1955, in putting into effect a wage increase without notice to the Union, was clearly inconsistent with the duty the Act imposed upon it to meet and confer with the statutory bargaining agent concerning wage rates affecting employees in the unit.[4] Except for the requested financial data to substantiate the Respondent's alleged statement to employees expressing an inability to pay wage increases, the information requested by the Union in its letter of November 7, 1955, was clearly relevant to the intelligent negotiation of a contract. In all the circumstances of this case, and on the basis of established authority, it is found that the Respondent's failure to supply such relevant information was in derogation of the Respondent's bargaining obligations under the Act and violative of Section 8 (a) (5). See, *Glen Raven Knitting Mills, Inc.*, 115 NLRB 422; *American Smelting and Refining Company*, 115 NLRB 55, and cases cited.[5] No violation is found, however, on the basis of the Respondent's failure to supply financial data relating to its ability or inability to grant wage increases. Such data would have become relevant only if the Respondent in the course of negotiations had resisted a demand for a wage increase by urging inability to pay. Cf. *N. L. R. B.* v. *Truitt Mfg. Co.*, 351 U. S. 149. But that is not the situation here. With regard to the alleged refusal of the Respondent to meet and confer with the Union for bargaining purposes, the Respondent's defense, that it did not violate Section 8 (a) (5) because it never *expressly* advised the Union that it would refuse to meet with it, appears frivolous in view of the overall position the Respondent has taken here on its obligation to bargain. The Respondent's letter of November 18, 1955, constituted a specific request for such a meeting, and the Union, having made its position clear, was not required to follow up its initial request with another one simply because the Respondent advised it that one of its principal officers was out of town. In view of the continued failure of the Respondent to communicate with the Union about the requested meeting even after that officer returned to town, as well as all the surrounding circumstances, the inference is fully warranted that the Respondent did not intend to honor the Union's request for a bargaining meeting.

Upon the record as a whole, it is concluded that at the times material herein, the Respondent was under a statutory duty to bargain in good faith with the Union as the exclusive bargaining representative of its employees in the appropriate unit found above. It is further concluded and found that the Respondent has refused to bargain in good faith with the Union as such exclusive bargaining representative, by unilaterally granting a wage increase to its employees in said unit on November 7, 1955, without giving any prior notice to, or bargaining with, the Union concerning such wage increase; by failing and refusing since November 7, 1955, to furnish the Union with information requested by the Union concerning wage scales, job classifications, seniority of employees, vacation policies, and health and welfare insurance

[3] At the hearing, the Respondent, joined by the Intervenors, made a detailed offer of proof in support of the allegations of the answer relating to the claimed invalidity of the certification. It was conceded that the offer of proof, thus made, presented no new matter that was not before the Board in the representation proceeding. The issues having already been litigated, I declined to allow introduction of testimony as to matters contained in the offer of proof. *Pittsburgh Plate Glass Co.* v. *N. L. R. B.*, 313 U. S. 146, 157–8, 161–162. *Harris Langenberg Hat Co.* v. *N. L. R. B.*, 216 F. 2d 146 (C. A. 8), enfg. 107 NLRB 961, 963. *Phillips Petroleum Co.*, 100 NLRB 684, 686–687, enfd. 206 F. 2d 26, 30 (C. A. 5); *S. H. Kress and Company*, 88 NLRB 292, 297, enfd. 194 F. 2d 444, 446 (C. A. 6). *N. L. R. B.* v. *Worcester Woolen Mills Corp.*, 170 F. 2d 13, 16 (C. A. 1), cert. denied 336 U. S. 903. *Wilson Athletic Goods Mfg. Co., Inc.* v. *N. L. R. B.*, 164 F. 2d 637, 639 (C. A. 7). *Allis Chalmers Mfg. Co.* v. *N. L. R. B.*, 162 F. 2d 435, 440–441 (C. A. 7).

[4] The Respondent's answer alleged that the wage increase was granted pursuant to a general wage plan decided upon by the Respondent in 1954, prior to the advent of the Union. At the hearing, however, the Respondent offered no evidence to substantiate that allegation.

[5] Since the test is relevancy and not necessity, it is of course no defense to the Respondent that it might have been possible for the Union to ferret out some or all of this information from other sources.

covering employees in the unit; and by failing and refusing since November 18, 1955, to meet with the Union for the purpose of bargaining concerning the wages, hours, and other working conditions of the employees in the appropriate unit. By such conduct, the Respondent also 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

Having found that the Respondent has engaged in unfair labor practices violative of Sections 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 on the entire record in this proceeding, I make the following:

CONCLUSIONS OF LAW

1. International Union of United Brewery, Flour, Cereal, Soft Drink, and Distillery Workers of America, AFL–CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of the Respondent's Tampa, Florida, plant, including refrigeration engineers, but excluding truckdrivers, all office employees, all clerical employees, professional employees, guards, watchmen, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. The Union was on November 7, 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 November 7, 1955, and since that date, as found in section III, above, to bargain with the Union, 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]

Sealtest, Ohio Division of the National Dairy Products Corporation [1] *and* International Union of Operating Engineers, Local No. 821, AFL–CIO, Petitioner. *Case No. 8–RC–2855. May 16, 1957*

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 Carroll L. Martin, hearing

[1] The name of the Employer appears as amended at the hearing