

**General Aniline and Film Corporation and General Industrial Workers' Union, Local 146.** *Case No. 22-CA-158. October 15, 1959*

DECISION AND ORDER

On May 20, 1959, Trial Examiner George A. Downing 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 and the Union filed exceptions to the Intermediate Report and supporting briefs.

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, the briefs, and the entire record in the case, and finds merit in the Respondent's exceptions. Accordingly, the Board adopts the Trial Examiner's findings of fact, with the modifications noted below, but not his conclusions or recommendations.

The sole issue to be resolved is whether under all the circumstances of this particular case, the Respondent violated its statutory obligation to bargain in good faith when it refused to comply with the Union's request for copies of the applicator and Proudfoot reports.<sup>1</sup> The Trial Examiner found that it violated such obligation. We disagree with him.

In December 1957, the Union and the Respondent opened negotiations for a new collective-bargaining contract. As one of its proposals, the Union asked for copies of "all time study data, reports, and analyses in the possession or control of the Company." The Respondent denied that it had any time-study reports. However, it did understand that the Union was asking for reports made by applicators and by Alexander Proudfoot Company, an outside organization specializing in scheduling. The Respondent stated in denying the Union's request that the applicator reports dealt with costs and had nothing to do with working conditions of employees. The Respondent also asked the Union for its specific reasons in requesting time-study data. The Union replied that it felt that the reports had resulted in speedups and job eliminations and that it could not be more specific until it had seen the reports. It also said that the reports might affect the current contract negotiations and complaints and

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<sup>1</sup>"Each case must turn upon its particular facts. The inquiry must always be whether or not under the circumstances of the particular case the statutory obligation to bargain in good faith has been met." *N.L.R.B. v. Truitt Mfg. Co.*, 351 U.S. 149, 153-154.

grievances being received from employees. The complaint's allegation of refusal to bargain is based exclusively on the Respondent's refusal to furnish copies of the applicator and Proudfoot reports to the Union.

According to the testimony of officials of the Respondent, including the head of the engineering department, the applicator reports were used exclusively to enable the Respondent to compare the cost of work done in the construction, repair, and maintenance section of the engineering department with national norms as reported in standard reference works on building construction and repair costs.<sup>2</sup> Further, according to these witnesses, the reports were not used for determining wage rates, working conditions, individual standards of performance, or discipline.<sup>3</sup> In late 1958, after the introduction of the new Proudfoot prescheduling system, the work of the applicators was discontinued and the former applicators became schedulers assisting foremen in preparing advance work schedules. According to the head of the department, they are sort of expediter-coordinators; they have nothing to do with estimating or timing jobs or directing employees;<sup>4</sup> and they do not make use of the reports they prepared as applicators.

In July 1957 the Respondent hired the Proudfoot Company to survey operations in certain sections of the control department with a view to devising a prescheduling system of performing work. The underlying idea of such a system is that by properly scheduling and coordinating work, waste and waiting time can be eliminated with a consequent saving in manpower and money. The Proudfoot representatives observed the employees performing work under study, but made no time or motion studies, and then prepared a report recommending methods and procedures for work prescheduling. As the re-

<sup>2</sup> The Trial Examiner found that the last actual "timing" on a job in the construction, repair, and maintenance section was done in the summer of 1957 in connection with the installation of a new spraying machine; and following that there was a drastic reduction in the number of painters from 40-odd to 17, though there has been no corresponding diminution in the amount of work. There is testimony of an employee witness for the General Counsel to that effect. However, there is also testimony by the head of the department in which the spraying machine was installed that the painters were laid off for economic reasons *before* the spraying machine was acquired, and further testimony by the assistant to the personnel director that the Respondent is doing less painting now than formerly. Also the department head testified that a brief time study was made of the operation of the spraying machine only to verify certain statistical data. The Trial Examiner has not mentioned the testimony of the Respondent's officials in making his finding above. We can perceive no reason for discrediting these witnesses. We can only assume that the Trial Examiner inadvertently overlooked their testimony. In these circumstances, we do not adopt and do not make any finding as to the effect of the introduction of the spraying machine on employment of painters.

<sup>3</sup> An employee witness for the General Counsel, not an applicator, testified that he had been told by an unnamed applicator as well as by company representatives that "the job of the applicator was to measure all the work in order to eliminate waste and thereby it would be more economical for the Company." We do not consider this evidence as challenging the testimony of company officials that the applicator reports were used for cost purposes and not to determine wages or working conditions.

<sup>4</sup> The Trial Examiner incorrectly found that the schedulers estimate the amount of time which will be required to complete given jobs. The responsible evidence is that the estimating is done by the foreman on the basis of his practical experience.

sult of instituting the Proudfoot recommendations management was able to eliminate a number of jobs over a period of time. Company officials credibly testified that the reduction in jobs resulted not from a change in duties of employees, but from a decrease in nonproductive time. They further testified that the Proudfoot report did not discuss rearrangement of jobs, elimination of jobs, relation of labor costs to output, analysis of jobs performed by various classifications, or downgrading of personnel.<sup>5</sup>

The collective-bargaining contract between the Union and the Respondent provides only for hourly wage rates; it has no piece rates or incentive wage system. It contains no job performance standards or even job descriptions. Both before and during the Proudfoot investigation, the Respondent discussed with the Union its purpose and progress. The Respondent also negotiated with the Union concerning job eliminations in accordance with contract procedure. In August 1957, at the inception of the Proudfoot investigation, the Union filed a grievance claiming that it was a speedup plan and requesting negotiation. The Respondent rejected the grievance and the Union dropped it at the fourth step in the grievance procedure without taking it to arbitration.

An employer is not required to furnish a union with all information which the union conceives might be helpful in collective bargaining or in the processing of grievances. As recently stated by the Court of Appeals for the District of Columbia in rejecting a union's contention that an employer must furnish on request production and sales information.<sup>6</sup>

Wages and hours are the heart and core of the employer-employee relationship, and information concerning existing and past wage rates and patterns is essential to the union to enable it to bargain intelligently. *This is not necessarily so without respect to what the employer's records show about how much, or at what cost, or in what time he produces his goods, and how or at what cost or in what volume he sells those products.* [Emphasis supplied.]

The applicator and Proudfoot reports have no bearing on wage rates. In this respect they differ from the time-study reports which the Board has required employers to furnish a union.<sup>7</sup> The weight of the

<sup>5</sup> Most of the testimony to this effect was elicited from the Respondent's personnel relations manager on questioning by counsel for the Union. Although counsel for the General Counsel was in possession of a copy of the Proudfoot report which had been furnished him by the Respondent, he made no attempt to challenge the accuracy of this testimony.

<sup>6</sup> *International Woodworkers of America, Local Unions 6-7 and 6-122, AFL-CIO v. N.L.R.B.*, 263 F. 2d 483, 485 (C.A., D.C.), enfg. 118 NLRB 1055.

<sup>7</sup> *J. I. Case Company v. N.L.R.B.*, 253 F. 2d 149 (C.A. 7), enfg. 118 NLRB 520 (piece rates to be established by time study or other appropriate methods); *N.L.R.B. v. Otis Elevator Co.*, 208 F. 2d 176 (C.A. 2), enfg. as modified 102 NLRB 770 (incentive system whereby employer agreed to set work standards by the use of certain time-study data

testimony is that the applicator reports were used exclusively for cost purposes and that the Proudfoot report recommended a system for the more effective managerial scheduling of work. It is true that the Proudfoot report contains rough standard times for the performance of certain tasks, but the evidence is uncontradicted that these standards were solely for the convenience of supervisors in scheduling work. They were never communicated to employees and no employee was ever told that he had to accomplish work in accordance with this or any other standard. No employee was ever rewarded for exceeding or punished for not meeting the standards in the Proudfoot report. These standards cannot therefore properly be considered terms or conditions of employment.<sup>8</sup> Moreover, the Proudfoot report contains neither manning tables nor proposals for the elimination of jobs. Finally, there is absolutely no evidence that at any time during contract negotiations or during the processing of grievances, the Respondent sought to justify a position by appealing to the applicator or Proudfoot reports.<sup>9</sup> In view of the above, we are not convinced that the applicator and Proudfoot reports were relevant and necessary to enable the Union intelligently and efficaciously to bargain collectively<sup>10</sup> with "respect to wages, hours, and other terms and conditions of employment." We find that the General Counsel has not established by a preponderance of evidence that under all the circumstances of this case the Respondent failed to fulfill its obligation to bargain in good faith with the Union by refusing to furnish to the latter copies of the applicator and Proudfoot reports. Accordingly, we shall dismiss the complaint.

[The Board dismissed the complaint.]

CHAIRMAN LEEDOM, concurring:  
I concur in the result.

which would permit guaranteed and other earning levels). See also *Taylor Forge & Pipe Works, Inc. v. N.L.R.B.*, 234 F. 2d 227 (C.A. 7), enf. 113 NLRB-693 (point system used by employer in determining wage rates).

<sup>8</sup> Cf. *Beacon Piece Dyeing and Finishing Co., Inc.*, 121 NLRB 953 (Member Bean dissenting); *Stein-way Clothes Company*, 103 NLRB 1314, 1318.

<sup>9</sup> Cf. *N.L.R.B. v. Truitt Mfg. Co.*, 351 U.S. 149.

<sup>10</sup> See *Oregon Coast Operators Association, et al.*, 113 NLRB 1338, 1345-1346.

## INTERMEDIATE REPORT

### STATEMENT OF THE CASE

This proceeding, brought under Section 10(b) of the National Labor Relations Act as amended (61 Stat. 136), was heard in Newark, New Jersey, on March 16-18, 1959, with all parties represented. The single issue herein is whether Respondent's refusal to furnish to the Union on request certain applicators' and industrial engineers' reports constituted a refusal to bargain within the meaning of Section 8(a)(5) of the Act.

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

## FINDINGS OF FACT

## I. RESPONDENT'S BUSINESS; THE LABOR ORGANIZATION

I find on facts alleged in the complaint and admitted in the answer that Respondent is engaged in commerce within the meaning of the Act (i.e., annual extrastate shipments exceeding \$1,000,000), and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. THE UNFAIR LABOR PRACTICES

This case travels a familiar and well-trodden path, presenting the single, simple issue of the Union's right to obtain information in Respondent's possession. It is one of an increasing multiplicity of such cases<sup>1</sup> brought to the Board only because of dispute between union and employer over the scope of the employer's obligation to furnish on request, information which is relevant to the bargaining process, to the handling and processing of employee grievances, or to the administration of the collective bargaining agreement.

So well settled is the law that the issue might be summarily disposed of here but for Respondent's dispute of the inherent nature of the data and of the Union's need, and its defense that the Union had in any case waived its demand by bargaining to a contract on March 7, 1958. Though, as will be seen, much of the Union's uncertainty both in describing the data and in relating it to specific issues stemmed from its ignorance of the exact nature of the data and of the uses which Respondent was itself making of it, the evidence as developed herein plainly established its general materiality in the overall collective-bargaining process.

There is no dispute of the Union's representative status since January 31, 1955, in two appropriate units (see conclusions of law, Nos. 2 and 3, *infra*), and none of the fact that since on or about December 24, 1957, and at various times thereafter the Union requested the information and that Respondent refused to furnish it. It is necessary, however, to go into some detail concerning the nature of the data and the alleged waiver.

Negotiations began in December 1957, looking toward a new contract to follow one which was to expire on January 31, 1958. The Union's proposal, tendered on or about December 24, 1957, contained some 136 items and included the following prefatory note:

For the purposes of this or these negotiations the Union herewith demands true copies of all time study data, reports, and analyses in the possession or control of the Company.

That demand was mentioned and discussed in some of the six or eight meetings held prior to January 30, and Respondent understood that what the Union was seeking included certain studies made both by the applicators (Respondent's employees) and by the Alexander Proudfoot Company, an outside industrial engineering firm.

The Union assigned the following reasons in support of its request: It felt that the studies made both by the applicators and by Proudfoot were the cause (or the basis) of certain job consolidations and eliminations which had taken place and of a general overall speedup in the plant, and that if given access to the studies it would have an opportunity of making proposals and of otherwise counteracting any innovations made by management. Wendell Redding, Respondent's assistant personnel manager, admitted that in supporting its request for the studies, the Union said it felt that they had resulted in speedups and job eliminations and that it could not be more specific until it saw the reports. He testified further that the Union stated that it had been concerned about the studies for some time prior to the negotiations and that they might have some effect on complaints and grievances being received from the employees, as well as on the negotiations.

Respondent's position was that it had made no "time studies," that it had no data pertaining to job performance, rates of pay, or other conditions of employment, and that the applicators' studies were for costing purposes. It refused to furnish the data in the absence of a more specific showing why the Union needed it.

On January 30 it was agreed that because of the imminent expiration of the contract and because no real progress had been made on any single issue, the parties would exchange "package" proposals eliminating or dropping as many demands as possible. It is undisputed that the Union's subsequent "packages" did not include a request for the data and that the contract, which was ultimately signed on March 7, did not provide for its production. Though there is some dispute concerning state-

<sup>1</sup> See Chairman Farmer, concurring in *Whitin Machine Works*, 108 NLRB 1537, 1540.

ments made by union representative on January 30 and/or 31 concerning its demand for the data, a clear preponderance of the evidence was that the Union's attorney, Victor Feingold, stated more than once that the demand was being dropped *without prejudice*. Curtis L. Collison, Respondent's personnel relations manager and its chief spokesman, and his assistant, Redding, both corroborated the General Counsel's witnesses to that effect, though they testified that the Company did not agree that the demand could be dropped without prejudice.

On March 20 Feingold wrote Respondent referring to the Company's studies of employee duties and job performance and to the Union's prior requests during the negotiations for time-study data, reports, and analyses for the purpose of enabling the Union to present proposals and to bargain concerning the studies and evaluations. Feingold renewed the request for the data, referring to indications that as a result of the studies supervisors had brought about the assignment of additional duties and a general speedup, and stated that the Union wished to negotiate on provisions which would insure fairness in time-study projects and in the assignment of reasonable workloads.

Respondent replied on March 31, rejecting the request on the ground that the Union had dropped the demand on January 30 and that the Company's studies were "in no way related to the hourly or weekly earnings of the employees within the bargaining unit." Feingold answered on April 4, referring to the understanding that the demand for information was dropped "without prejudice," and stating in part that:

The demand for time study data was not a proposal; it was a demand for information from which the Union could formulate proposals relating to time study in order to assure protection of employees against possible arbitrary decisions. The failure of the Company to furnish this information prevented the Union from presenting a suitable proposal.

The nature of the studies should also be briefly explored.

#### A. *The applicators; construction, repair, and maintenance*

Construction, repair, and maintenance (called C.R. & M.) is a section of the engineering department employing approximately 375 employees. Beginning in 1953 applicators were recruited from the labor force and assigned to the study of certain craft jobs through observation of individual employees at work, through timing with stop watches (in some instances), and occasionally through questioning the individual as to the job procedures. Though Respondent's witnesses testified that the applicators' activities were concerned only with weekly cost control reports, Walter M. May, an employee witness for the General Counsel, testified that when he was solicited to become an applicator he was told that the purpose was to measure the work in order to eliminate waste motion and to help Respondent to economize.

The last actual "timing" was done in the summer of 1957 in connection with a new paint spraying machine; and following that there was a drastic reduction in the number of painters from 40-odd to 17, though there has been no corresponding diminution in the amount of work. Following the completion of their studies the applicators became schedulers, but still have full access to the reports they formerly made. They now work with the foremen in planning or scheduling the work which is to be performed. In doing so they estimate the amount of time which will be required to complete given jobs, and that time is entered in advance on a daily job ticket for comparison with the actual time of job performance as later entered. Although the percentage of performance of each craft is plotted, the reports are not concerned with individual performance, and there are no merit ratings.

Respondent discontinued its cost analysis program in September 1958, and adopted the Proudfoot procedures for prescheduling work, which Respondent concedes in its brief are essentially the same as those adopted in the control department in August 1957 (see *infra*). Though the evidence concerning the extension of the Proudfoot survey to C.R. & M. is not strictly relevant under the issues tendered in the complaint, it threw further light on the nature of that survey. See *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 705. Furthermore since the bargaining order will operate prospectively, the subsequent evidence highlights the Union's continuing need for the data involved.

#### B. *The Proudfoot survey; control department*

Though there were no studies made by applicators in the control department, a time study was made late in 1955 in warehouse and shipping of certain packaging operations. Michael T. Carroll testified that both he and other employees were timed and that the survey lasted about a week.

In July 1957 the Proudfoot study began of 4 operations in the warehouse and transportation sections, affecting some 80 employees. The results of that survey were contained in a formal report to the Company made prior to the negotiations. Though there was no evidence of actual timing, Carroll testified that he and his leader were observed on the job for a day and that other jobs were observed over a period of some 3 or 4 months. Though Respondent's witnesses generally described the Proudfoot system as a method of prescheduling work through a more efficient control of work assignments and flow of materials, Alfred Knutsen, its supervisor of warehouse and transportation, testified that the report contained a list and a description of each of the activities under observation, that it contained as well a standard time for the performance of each activity, and that the foreman must expect assured job completion based on those standards. Knutsen also admitted that some 20 jobs out of 80 were eliminated in the sections affected by the Proudfoot survey, that the displacements resulted from the method of prescheduling work as suggested in the Proudfoot report, plus the load of work, and that some 60 employees are still doing the work which was formally done by 80.

Respondent offered evidence that it negotiated with the Union on the changes in job content, the displacements, and all other job issues, including job inequities. Redding admitted, however, that the Union was not informed that standards had been set for the jobs which were being discussed, or what those standards were, and, indeed, that the Union was at no time informed that the report contained standards for each of the sections in which the survey was made.

There was also evidence that in August and September the Union processed a single grievance concerning the Proudfoot survey but stopped at the fourth step, without carrying the matter to arbitration. Respondent's negotiators also testified that they did not rely on the Proudfoot report or the other studies during the negotiations.

#### Concluding Findings

It is now well settled that a union acting as a statutory bargaining representative is entitled to receive on request from the employer all information in the latter's possession which is essential to an intelligent representation of the employees in bargaining with respect to wages, hours, and *other terms and conditions of employment* (see Section 8(d)); and it is the employer's duty, on the union's request, to furnish such information where it is reasonably available only from the employer's records. *J. I. Case Co.*, 118 NLRB 520, enfd. 253 F. 2d 149, 153 (C.A. 7); *Taylor Forge and Pipe Works*, 113 NLRB 693, enfd. 234 2d 227, 230-231 (C.A. 7), cert. denied 352 U.S. 942; *Whitin Machine Works*, 108 NLRB 1537, and see the concurring opinion of Chairman Farmer at pp. 1540-1541, and the opinion of the court of appeals ordering enforcement, 217 F. 2d 593, 594 (C.A. 4). See also Twenty-third Annual Report of the National Labor Relations Board (1958) 76-77.

This is not, of course, to require an employer to furnish all information at the exact time or in the exact manner requested, for it is sufficient if it be "made available in a manner not so burdensome or time-consuming as to impede the process of bargaining," *N.L.R.B. v. Truitt Mfg. Co.*, 351 U.S. 149, 151; and as always the surrounding facts and circumstances must be considered, for each case must turn on its particular facts. *Id.* at p. 153.

Respondent's contentions present no novel issues; all have been answered and rejected in other cases. Two of its points, for example, are that the data was not related to the fixing of wage rates and that it did not itself rely upon the studies in any way during the negotiations. Those are the equivalent of the contentions which the court rejected in *J. I. Case Co.*, *supra*, 253 F. 2d at 155. Some of its other contentions were rejected in *N.L.R.B. v. Otis Elevator Co.*, 208 F. 2d 176 (C.A. 7); as more fully shown by the concurring and dissenting opinion of Judge Clark, at pages 178-179.

Whether or not the studies were time studies (cf. *Otis Elevator Co.*, *supra*), the evidence here patently established that they affected the *terms and conditions of employment*<sup>2</sup> since they resulted in the setting of standards (which the foremen were expected to achieve) and in job evaluations, consolidations, and reductions in force. It is no defense that Respondent discussed with the Union each instance of job elimination and consolidation as well as other claims of job inequities, because the Union was without the benefit of the data in Respondent's possession which bore directly on the jobs under discussion and which formed as well the basis for Respondent's position and its subsequent action. Being thus without knowledge of the

<sup>2</sup> Respondent's counsel conceded in oral argument that the Proudfoot report was related in part to "conditions of employment," but argued that Respondent met its obligation in that regard by discussing with the Union the matter of job placement and job content.

standards which the studies had established, the Union could not negotiate intelligently because it could not know whether to press or to modify particular demands or whether inequities actually existed which merited discussion or correction. *Taylor Forge and Pipe Works, supra*, 234 F. 2d at page 230.

The Union was similarly precluded from intelligently representing the employees in their complaints and grievances arising not only from the making of the studies but from the job changes and eliminations which resulted therefrom. Nor did the existence of a grievance procedure and the Union's failure to follow it beyond a certain point constitute a defense, both because the studies were not available to the Union during the processing of grievances and because it is well settled that "the collective bargaining requirement of the Act is not satisfied by a substitution of the grievance procedure of the contract for [the] obligation to furnish the Union with information it needed to perform its statutory functions." *Hekman Furniture Company*, 101 NLRB 631, enfd. 207 F. 2d 561 (C.A. 6); *Leland-Gifford Company*, 95 NLRB 1306, enfd. 200 F. 2d 620 (C.A. 1); *New Britain Machine Company*, 105 NLRB 646, 651, enfd. 210 F. 2d 61 (C.A. 2).

The evidence as to the nature of the studies and of the uses which Respondent put them to plainly substantiated the reasons which the Union assigned in supporting its requests. It was impossible (and unnecessary) for the Union to go further and to specify in advance the precise relevancy of the data to particular issues. Cf. *N.L.R.B. v. Yawman & Erbe Manufacturing Co.*, 187 F. 2d 947, 949 (C.A. 2). As the data was plainly a necessary ingredient in the overall process of collective bargaining, "the proper rule [is] that wage and related information pertaining to employees in the bargaining unit should, upon request, be made available to the bargaining agent without regard to its immediate relationship to the negotiation or administration of the collective bargaining agreement." *Boston-Herald-Traveler Corporation v. N.L.R.B.*, 223 F. 2d 58, 63 (C.A. 1), and *N.L.R.B. v. The Item Company*, 220 F. 2d 956, 958 (C.A. 5), both quoting with approval from Chairman Farmer's concurring opinion in *Whitin Machine Works, supra*.

Respondent failed to bring its case within *International Woodworkers of America, etc. (Pine Industrial Relations Committee, Inc.) v. N.L.R.B.*, 263 F. 2d 483 (C.A., D.C.), where the court upheld a distinction which the Board had drawn between wage information on the one hand, and *production and sales* information on the other. Both the nature of the studies here and the uses which Respondent made of it in establishing job standards and in effecting job changes and reductions in force distinguish this case from that, whatever uses Respondent may otherwise have made of the data.

Respondent's contention that the Union waived or bargained away its request for the data is answered in a number of "information" cases<sup>3</sup> as well as in recent cases concerning bargaining on contract issues as such.<sup>4</sup>

Respondent relies mainly on *International News Service Division of The Hearst Corporation*, 113 NLRB 1067, and *Speidel Corporation*, 120 NLRB 733, both of which are inapposite. In *Speidel*, the employer made its position clear that the management prerogative clause covered the bonus issue under negotiation, and the Union failed to dispute or to contradict the employer's interpretation. The Board concluded that the parties had reached "a clear understanding" on the issue. In *Hearst*, the Board found that the Union, after proposing an "information" clause for inclusion in the contract being negotiated, "consciously yielded" in the face of the Company's objections and accepted something less than it originally proposed. Here the request was not advanced as a *negotiable* item, but as preliminary to negotiations on substantive provisions of an agreement, and here the Union reserved its right to pursue the matter further by making clear that it was dropping the demand without prejudice. Thus, there exists here no showing of a "clear and unmistakable" waiver as has been consistently required by the many cases which have followed *Tide Water Associated Oil Company*, 85 NLRB 1096, 1098.

It is therefore concluded and found that since on or about December 24, 1957, Respondent, by refusing to furnish to the Union the studies and reports made by the applicators and by the outside industrial engineers, refused to bargain with the

<sup>3</sup> See, in addition to *Leland-Gifford Company*, *Hekman Furniture Company*, *New Britain Machine Company*, *Yawman & Erbe Manufacturing Co.*, *Otis Elevator Co.*, *J. I. Case Co.*, and *The Item Company*, cited above, *E. W. Scripps Company*, 94 NLRB 227, 228-229; *California Portland Cement Company*, 101 NLRB 1436, 1438-1439; and *Westinghouse Air Brake Company*, 119 NLRB 1118, 1128.

<sup>4</sup> *Beacon Piece Dyeing and Finishing Co., Inc.*, 121 NLRB 953; *The Press Company, Incorporated*, 121 NLRB 976.

Union and thereby engaged in unfair labor practices proscribed by Section 8(a)(5) and (1) of the Act.

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

#### CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.

2. All production and maintenance employees of the Linden plant, but excluding leadburners, masons, watchmen and guards, confidential employees as defined in the Act, all employees of the personnel relations department, all employees of the industrial engineering department, all employees of the purchasing department and all professional employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

3. All clerical employees, all laboratory technicians, all laboratory apprentices, all laboratory helpers, laboratory samplers, dye finishers and print finishers of the Linden plant, but excluding watchmen and guards, confidential employees, all supervisory employees within the meaning of the Act, professional employees, all employees of the personnel relations department, all employees of the industrial engineering department, all employees of the purchasing department and all employees of the powerhouse, leadburners, and masons, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since January 31, 1955, the Union has been and now is the exclusive representative of all the employees in each of said units within the meaning of Section 9(a) of the Act.

5. By refusing at all times since December 24, 1957, to furnish to the Union the studies and reports made by the applicators and by outside industrial engineers, Respondent refused to bargain with the Union as the exclusive representative of all employees in the appropriate units described above, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices having occurred in connection with the operation of Respondent's business as set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and substantially affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action of the type conventionally ordered in such cases, as provided under recommendations below, which I find necessary to remedy and to remove the effects of the unfair labor practices and to effectuate the policies of the Act. Because of the limited nature of the unfair labor practices as found herein, I shall recommend an order of the same type as adopted in *The Item Company*, 108 NLRB 1634, and *Hekman Furniture Company*, 101 NLRB 631.

[Recommendations omitted for publication.]

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**J. N. Ellison and H. R. Ellison d/b/a Ellison Brothers Oyster Company<sup>1</sup> and Allen O. Osborn, Jr., Petitioner and Oyster Workers' Union, Local No. 20310, AFL-CIO.** *Case No. 19-RD-148. October 15, 1959*

#### DECISION AND ORDER

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

<sup>1</sup> The Employer's name appears as amended at the hearing.