

effect transferring to another group of employees work to which the ILA had an exclusive contract right.²²

²² Cf. *Local No. 48, Sheet Metal Workers International Association, AFL-CIO, et al., supra*, where the Board held that a corporation could not evade a contract work assignment by transferring the work to a partnership which had the same ownership.

While the ILA also may have had an exclusive contract right to the "tailgate" work under the contract, and may have waived such right by agreeing with the Teamsters to "concurrent jurisdiction" over such work and by actually permitting Teamster employees of the truckers to do 25 percent of such work, such a waiver could not affect its exclusive contract right to the disputed "forklift" work, any encroachment upon which it always resisted, and which therefore was not waived. See *National Association of Broadcast Engineers, etc (National Broadcasting Company, Inc)*, 105 NLRB 355, 363-365, where the Board held that, although the striking union waived whatever contractual rights it may have had to part of a contract work assignment, it retained its unwaived contract right to the remainder of the contract work assignment which was in dispute.

**Allen-Bradley Company and Tool and Die Makers, Lodge No. 78,
International Association of Machinists, AFL-CIO. Case No.
13-CA-3308. April 6, 1960**

DECISION AND ORDER

Upon charges duly filed by Tool and Die Makers, Lodge No. 78, International Association of Machinists, AFL-CIO (herein called the Union), the General Counsel of the National Labor Relations Board, by the Regional Director for the Thirteenth Region, issued a complaint dated August 27, 1959, against Allen-Bradley Company (herein called the Respondent), alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served upon the Respondent and the Charging Party.

With respect to the unfair labor practices, the complaint alleges, in substance, that the Union was and is the exclusive representative of all toolroom employees of the Employer in an appropriate unit, and that on May 21 and June 18, 1959, and at all times thereafter, Respondent unlawfully refused to bargain collectively with the Union.

Respondent's answer, filed September 23, 1959, admits certain jurisdictional and factual allegations of the complaint, but denies the commission of unfair labor practices.

On December 14, 1959, all parties to this proceeding entered into a stipulation of facts, and on the same date jointly moved to transfer this proceeding directly to the Board for findings of fact, conclusions of law, and decision and order. The motion states that the parties have waived their rights to a hearing before a Trial Examiner, and to the issuance of an Intermediate Report. The motion provides further

that the charge, complaint, answer, and stipulation of facts constitute the entire record in the case.

On December 31, 1959, the Board granted the parties' motion to transfer the case to the Board. Briefs were thereafter filed by the General Counsel and the Respondent. Upon the basis of the parties' stipulation of facts, the briefs, and the entire record in the case, the Board makes the following:¹

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Wisconsin corporation, is engaged in the manufacture and sale of electrical equipment at its Milwaukee, Wisconsin, plant. During the calendar year 1958, a representative period, Respondent sold and shipped electrical equipment valued in excess of \$1,000,000 directly to points outside the State of Wisconsin.

Respondent admits, and we find, that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Tool and Die Makers, Lodge No. 78, International Association of Machinists, AFL-CIO, is a labor organization as defined in Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The facts as stipulated show that the Union was certified as bargaining agent for toolroom employees of the Respondent in June 1954.² Thereafter, a collective-bargaining agreement was negotiated between the parties, expiring September 1, 1956. No new contract has been negotiated since that time, but the Respondent has continued to recognize the Union as bargaining representative in the appropriate unit.

On May 21, 1959, the parties held a collective-bargaining session at which time Respondent submitted to the Union the following proposed clauses:

Neither the Company nor the Union or its members will interfere with, restrain or coerce by discipline, discharge, fine or otherwise any employee in the exercise of his rights guaranteed by Section 7 of the Labor-Management Relations Act, including the right to refrain from any or all of the specified activities.

or

Neither the Company nor the Union or its members will interfere with, restrain or coerce by discipline, discharge, fine or other-

¹ The parties' request for oral argument is denied, as the record, including the stipulation of facts and the briefs, adequately presents the issues and the positions of the parties.

² The complaint alleges, and Respondent admits, that the appropriate unit consists of all employees in the toolroom department WT of the Respondent's Milwaukee, Wisconsin, plant, excluding all other employees, guards, and supervisors as defined in the Act.

wise any employee in the exercise of his right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of his own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or his right to refrain from any or all such activities.³

Respondent stated it was open to discussion regarding the "language" of the proposed clauses, but insisted that the Union agree to the "principle" set forth therein. The Union took the position that the matter contained in the clauses related to the internal affairs of the Union, and was not a proper subject for collective bargaining.

Further bargaining sessions were held on June 18 and August 18, 1959. At both sessions, Respondent reiterated its position that "a collective bargaining agreement could not be consummated without the Union agreeing to the principle set forth in these clauses." No bargaining has taken place since August 18.

In *N.L.R.B. v. Wooster Division of Borg Warner Corporation, et al.*,⁴ the Supreme Court held that a party committed an unlawful refusal to bargain by insisting, as a condition precedent to signing an agreement, that the other party incorporate in the agreement proposals which are not "mandatory" subjects for bargaining under Section 8(d) of the Act. One of the proposals advanced by the respondent in *Borg-Warner* was a "ballot" clause, by which employees would be polled before their representative could call a strike or refuse a last offer of the company. The Supreme Court noted that the company's proposal would weaken the independence of the employees' chosen representative, thereby "substantially modifying the collective bargaining system provided for in the statute." The Court found that the "ballot" clause dealt only with "relations between the employees and their unions," and was not, therefore, a mandatory subject for collective bargaining.⁵

In the present case, the General Counsel alleges that Respondent's proposals likewise fall outside the area of mandatory bargaining, as they include matters solely of concern to the Union in the management of its internal affairs. We agree. For example, by insisting that the Union agree not to restrain or coerce employees in their Section 7 rights "by discipline, discharge, fine or otherwise," (emphasis supplied), Respondent has, by the breadth of this clause, encompassed in its proposals, and sought to bargain about, virtually every

³ The stipulation of facts indicates that, following a 3-week strike by the Union against the Respondent in September 1956, over the terms of a new contract, the Union had imposed \$100 fines on 15 members who had crossed the picket line.

⁴ 356 U.S. 342.

⁵ *Id.* at p. 350.

form of internal union discipline, including disciplinary powers expressly reserved to unions by the proviso to Section 8(b)(1)(A) of the Act.⁶ As stated by the Board in another case, "by including this proviso Congress unmistakably intended to, and did, remove the application of a union's membership rules to its members from the proscriptions of Section 8(b)(1)(A), irrespective of any ulterior reasons motivating the union's application of such rules or the direct effect thereof on particular employees."⁷ By thus intruding on rights guaranteed to unions by the Act, Respondent's proposed clauses clearly fell outside the scope of mandatory bargaining. Accordingly, we find that Respondent violated Section 8(a)(5) by insisting at negotiations that the Union agree to such proposals.⁸

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 as 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 certain unfair labor practices, we shall order that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent refused to bargain collectively with the Union as the exclusive representative of employees in the appropriate unit, we shall order that the Respondent bargain collectively with the Union, upon request, as the statutory representative of the employees in that unit, and, if an understanding is reached, embody such understanding in a signed agreement.

CONCLUSIONS OF LAW

1. Tool and Die Makers, Lodge No. 78, International Association of Machinists, AFL-CIO, is a labor organization as defined in Section 2(5) of the Act.

⁶ The *proviso* states: "That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein."

⁷ *American Newspaper Publishers Assn.*, 86 NLRB 951, 957.

⁸ *N.L.R.B. v. Wooster Division of Borg Warner Corporation, et al, supra*. See also *Bethlehem Steel Company, Shipbuilding Division, et al*, 89 NLRB 341, set aside on other grounds 191 F. 2d 340 (C.A., D C). We do not think it material that, in *Borg Warner, supra*, the respondent insisted that its proposals actually be incorporated into the contract, whereas in the present case Respondent merely insisted that "a collective bargaining agreement could not be consummated without the Union agreeing to the principle set forth in these clauses."

2. All employees in the toolroom department WT of the Respondent's Milwaukee, Wisconsin, plant, excluding all other employees, guards, and 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 above-named labor organization was on May 21, 1959, and has been at all times thereafter the exclusive representative of all the employees in the above-described unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. By refusing to bargain collectively with the above-named labor organization, as the exclusive representative of all the employees in the unit described above, 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 the aforesaid conduct, Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act, and has thereby 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.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Allen-Bradley Company, Milwaukee, Wisconsin, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Tool and Die Makers; Lodge No. 78, International Association of Machinists, AFL-CIO, as the exclusive bargaining representative of employees in the appropriate unit.

The appropriate bargaining unit is:

All employees in the toolroom department WT, of the Respondent's Milwaukee, Wisconsin, plant, excluding all other employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

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

(a) Upon request, bargain collectively with Tool and Die Makers, Lodge No. 78, International Association of Machinists, AFL-CIO, as the exclusive representative of the employees in the appropriate unit, as found above, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Milwaukee, Wisconsin, plant, copies of the notice attached hereto marked "Appendix."⁹ Copies of such notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, in conspicuous places including all places where notices to employees are customarily posted, and maintained by it for at least 60 consecutive days thereafter. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

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

⁹In 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

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 Tool and Die Makers, Lodge No. 78, International Association of Machinists, AFL-CIO, as the exclusive bargaining representative of the employees in the appropriate unit.

The appropriate bargaining unit is:

All employees in the toolroom department WT of the Respondent's Milwaukee, Wisconsin, plant, excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL, upon request, bargain collectively with the afore-said labor organization as the exclusive representative of the employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Section 7 of the Act.

ALLEN-BRADLEY COMPANY,
Employer.

Dated _____ By _____
(Representative) (Title)

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

Chauffeurs, Teamsters & Helpers Local Union No. 795, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and its Agents, S. E. Smith and Clarence W. (Bud) Smith and Grant-Billingsley Fruit Company, Inc.

Chauffeurs, Teamsters & Helpers Local Union No. 795, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and its Agents, S. E. Smith and Clarence W. (Bud) Smith and Grant-Billingsley Fruit Company, Inc. *Cases Nos. 17-CB-222 and 17-CC-86. April 6, 1960*

DECISION AND ORDER

On October 23, 1959, Trial Examiner Alba B. Martin issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were 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 Respondents and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Rodgers and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in these cases, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner, except as modified herein.²

¹ The complaint alleged and the answer admitted that Grant-Billingsley, in the operation of its wholesale fruit and vegetable business, purchased annually from points and places outside the State of Kansas merchandise valued at in excess of \$50,000. In agreement with the Trial Examiner, we find that Grant-Billingsley is an employer engaged in