party to that unlawful course of action. Very plainly, an order so limited that it disturbed neither the contract with the Independent nor the certification in the representation proceedings would only insure to the Respondent the fruits of its unfair labor practice. Consequently, it is my conclusion, on the basis of the unfair labor practice here involved, and the above cited cases, that any remedy short of an order which set aside the unlawful agreement and invalidated the certification in Case No. 8–RC–3468 would not only be inadequate but would fail to effectuate the purposes and policies of the Act. On the other hand, an order that was comprehensive enough to remedy the unlawful conduct in question would permit the Steelworkers, after having lost the election, to accomplish an objective that is forbidden by the *Aiello* case.[8] Accordingly, I shall recommend that the complaint in this case be dismissed. *Aiello Dairy Farms,* 110 NLRB 1365, 1367–1369; *Rupp Equipment Company,* 112 NLRB 1315, 1318; *Southwester Co.,* 111 NLRB 805, 807; *Armstrong Tire and Rubber Company, Tire Test Fleet Branch,* 111 NLRB 708, 709–710, enfd. 228 F. 2d 159 (C.A. 5).

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce and the Independent and the Steelworkers are labor organizations, all within the meaning of the Act.
2. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
3. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) of the Act.
4. For the reasons set forth above, more particularly in section IV, the complaint herein should be dismissed.

[Recommendations omitted from publication.]

[8] See *Aiello Dairy Farms,* 110 NLRB at 1368: "[B]y delaying the filing of its 8(a)(5) charge, [the Charging Party] circumvented the Board's sound practice of not conducting a representation election when an 8(a)(5) charge is pending and caused the Board to conduct a futile election."

American Cyanamid Company (Marietta Plant) *and* International Chemical Workers Union, Local 120, AFL–CIO.[1] *Case No. 9–CA–1445. November 16, 1960*

DECISION AND ORDER

On August 26, 1959, Trial Examiner John F. Funke issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in and was not engaging in the unfair labor practices alleged in the complaint and recommending that said complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and the Union filed exceptions to the Intermediate Report, together with 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 exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the limited extent indicated below.[2]

[1] Hereinafter referred to as the Union.

[2] We do not approve or adopt the gratuitous and injudicious comments of the Trial Examiner in footnote 3 of the Intermediate Report.

It is undisputed that during the course of bargaining negotiations the Respondent refused the Union's demand for an unrestricted right to have and to use exact copies of Respondent's job evaluation and job description records for study and analysis outside the confines of the plant. The Respondent conceded that the wage information contained in such records was relevant and necessary to the Union's intelligent performance of its bargaining functions. However, it refused the Union's demand, as made, because these records also contained information regarding certain unique manufacturing techniques and processes utilized by the Respondent in its production operations and its refusal was predicated upon its wish to protect its property rights in the aforementioned techniques and processes. The Respondent openly and honestly made known this position to the Union during the course of the negotiations involved. Nevertheless the Union maintained that it had a right to have the information in the form and manner requested by it.

We agree with the Trial Examiner that the issue presented to us is a narrow one, i.e., whether the Respondent's refusal in the context of the Union's request for copies of its records for study and analysis outside the plant supported the alleged violation of Section 8(a)(5) and (1) of the Act. We find that it did not. This is so because the adamant insistence of the Union on its right to have the Respondent's records in the terms set forth in its demand precluded, in effect, a test of the Respondent's willingness to give the Union access to the wage information involved on mutually satisfactory terms.[3] In these circumstances, and in light of the legitimate economic interest on which the Respondent's refusal of the Union's demand was premised and explained to the Union, we do not find that the Respondent's conduct constituted a refusal to bargain within the meaning of the Act.

In reaching the above conclusion, we neither adopt nor pass upon the Trial Examiner's consideration and interpretation of the terms of (1) the various proposals as made by the Respondent to the Union during the course of the negotiations or (2) the "proposal" as made by the Respondent during the course of the hearing through the testimony of its officers. Suffice it to note that the problem of establishing the conditions under which access to the job evaluation sheets may be afforded the Union in a manner satisfying both its legitimate interest in the wage information contained in those sheets and those of the Respondent in protecting certain other aspects of these records against the risk of publicity, is a matter more properly to be resolved at the bargaining table rather than through Board processes.

[3] Cf *Times Publishing Company*, 72 NLRB 676, 683, where the Board noted that, in certain situations, a union's attitude during bargaining may be such as to "remove the possibility of negotiation and thus preclude the existence of a situation in which the employer's good faith can be tested. If it cannot be tested, its absence can hardly be found."

In light of the foregoing, we shall dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

MEMBERS FANNING and KIMBALL took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before the duly designated Trial Examiner on July 7 and 8, 1959, in Marietta, Ohio, on the amended complaint of the General Counsel and the answer of American Cyanamid Company, herein called Cyanamid or the Company. The issue litigated was whether or not the Company violated Section 8(a)(5) and (1) of the Act by refusing to give International Chemical Workers Union, Local 120, AFL–CIO, herein called Local 120 or the Union, copies of its job description sheets. The parties (except for Local 120) presented brief oral argument and briefs were received from the Company and Local 120 by August 12.

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE COMPANY

American Cyanamid Company is a Maine corporation engaged in the business of manufacturing pharmaceutical and industrial chemicals. During the fiscal year which ended December 31, 1958, the Company sold and shipped from its Marietta plant directly to points outside the State of Ohio products valued in excess of $50,000. During the same period the Company purchased and received materials for its Marietta plant directly from points outside the State of Ohio valued in excess of $50,000. The Company concedes and I find that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Chemical Workers Union, Local 120, AFL–CIO, is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The facts*

It was stipulated and agreed and I find that Cyanamid had recognized and bargained with Local 120 as the designated representative of its employees in its Marietta plant in a unit described as follows:

> All hourly paid production and maintenance employees, excluding all office and clerical employees, and all guards, watchmen, professional employees, cafeteria workers, chemists, laboratory technicians and all supervisors as defined in Section 2, Subsection 11 of the National Labor Relations Act as amended.

I find the unit so stipulated to be appropriate and also find that at all times material hereto Local 120 was the bargaining representative of an uncoerced majority of the employees in the designated unit.

It was further stipulated that a collective-bargaining contract between Local 120 and Cyanamid terminated on May 18, 1958, and that the parties met in negotiations leading to a new contract on April 8 and 22, May 5, 12, 15, 16, 17, and 20, 1958. A new contract for a period of 2 years effective from May 18, 1958, to May 18, 1960, was signed by the parties as a result of these negotiations. The solitary and specific issue in this case results from those negotiations.

That issue is whether or not the Company's refusal, during negotiations, to comply with the Union's request for permission to remove from the company plant copies of job descriptions and job-evaluation sheets, constituted a refusal to bargain in good faith. Since the Company stipulated that its job evaluation program was a proper

subject for collective bargaining the issue is as neat and narrow as any ever presented to the Board.[1]

The job-evaluation program was established at Marietta by the Company in 1947 and relates only to production jobs. (All maintenance jobs were "non-evaluated" and rates were negotiated on an ordinary basis.) Some 25 job classifications embracing about 80 employees were under the job-evaluation program.[2] The job-evaluation program was not a simple one and this Trial Examiner considers himself among those least qualified to analyze and understand it. Respondent's Exhibit No. 1 was the job sheet which is the subject of dispute. The face side of the sheet is entitled "Job Description" and the reverse side is entitled "Evaluation." The job-description side lists (1) the equipment used on a particular job by the operator and details the vital factors of the equipment; (2) the materials used on the particular job by the operator including such qualities as toxic, fumes, dust, dermatitic, soluble color and corrosive; (3) the processes used by the operator; and (4) a general description listing of such factors as education, experience, direction given, supervision, accident probability, and others. The reverse side, job evaluation, awards a certain number of degrees for the various job factors involved, i.e., skill, responsibility, effort, and working conditions. These general factors are broken down into subheadings, i.e., skill is broken down into complexity, training, accuracy, judgment, and education. Some of these in turn are broken further. Complexity is broken down into process, equipment, and materials, and each of them is awarded certain degrees and corresponding points. The total points awarded to a job for its skill factors and subfactors will be reached by the normal process of totaling all the points awarded under skill. This same process is followed with respect to responsibility, effort, and working conditions and a grand total of points is finally assigned the job. The total number of points will then establish the point range of the job (General Counsel's Exhibit No. 8). The point range will determine what job classification number will be assigned the job, and the job classification number will determine the rate of pay for the job. A third document (General Counsel's Exhibit No. 7), entitled "Production Job Evaluation Plan" is the Company's guide or basis for alloting points on the job-evaluation side, i.e., it determines what number of points should be alloted for each of the factors listed on the job-evaluation sheet.

During negotiations the union representatives requested that these job description and evaluation sheets be made available to them either by having the Company make exact copies of the sheets and delivering them to the Union or by permitting the Union to make its own copies and take them from the plant. In addition to the oral requests the Union, on May 9, sent the Company the following letter (General Counsel's Exhibit No. 9):

MAY 9, 1958.

Mr. R. E. LEACH, *Plant Manager,*
American Cyanamid Company—Marietta Plant,
East Norwood,
Marietta, Ohio.

DEAR MR. LEACH: On approximately four different occasions during the current negotiations, the Union has requested that the Company supply us with copies of the job descriptions and related material which are currently in effect at the Marietta Plant of American Cyanamid Company.

Each time the Company has refused to supply the information requested and has refused the Union permission to copy the material.

This information is vitally important to the Union in these negotiations if we are to be in any position to intelligently discuss and negotate on the issue of Job Evaluation.

I am, therefore, herewith making written demand upon you and your Company to produce this information and make available copies of job descriptions

[1] A great deal of testimony was received in the beginning of the hearing, and before the Trial Examiner understood that the issue was precise, relating to the form in which the Company made job evaluation information available to the Union's rate committee or to its grievance committee in arbitration proceedings All of this testimony relating to disagreements *after* the contract was signed and which stemmed from different interpretations of article VI of the contract, was beyond the scope of the complaint and totally unrelated to the only issue before the Trial Examiner It is unfortunate that so much of the record is clouded with irrelevant testimony

[2] I accept the estimate of Plant Manager R. E. Leach as that of the person best qualified to testify on this not too relevant fact.

and other related material or in the alternative permit the Union to make copies of the stated material.

I would appreciate a written reply of the Company's position with respect to this matter.

Respectfully yours,

S. DELANEY, *Organizer.*

Each of the oral requests was refused on the grounds that it was not company policy to permit copies of these sheets to be taken from its plant on the ground (at least so stated at the hearing if not in negotiations) that information of confidential nature would be made public to the damage of its competitive position in the industry. The Company answered the Union's letter of May 9 by a letter dated June 10, (General Counsel's Exhibit No. 10) as follows:

JUNE 10, 1958.

Mr. S. M. DELANEY, *Representative,*
International Chemical Workers Union,
AFL–CIO,
I.C.W.U. Building,
1659 West Market Street,
Akron 13, Ohio.

DEAR MR. DELANEY: Referring to your letter of May 9 which we promised to answer during negotiations, inasmuch as the subject matter has been referred, by way of an unfair labor practice charge, to N.L.R.B. process, the matter in question will be resolved in that manner.

Very truly yours,

AMERICAN CYANAMID COMPANY,
R. E. LEACH,
Assistant Plant Manager.

The charge in the instant case was filed May 14, 1958. The oral requests and their refusal by the Company, the written demand and the Company's reply, and the filing of the charge fixed the position of the parties and crystallize the issue.

B. *Contentions of the parties*

It is the position of the Union that it could not bargain intelligently on wage rates for evaluated jobs unless it had in its possession, for study by its research expert, complete copies of the job description sheets prepared by the Company. It could, of course, bargain on the wage rate for the ultimate job classification assigned, by points, to a particular job but it could not determine whether or not the Company was properly assigning point values to any particular job. Inevitably the assignment of points, by whomever made, was a subjective and introspective process but, deprived of the right to examine the sheets, the Union would be helpless to argue discrepancies and inequities.

The Company, conceding the right of the Union to the information contained on the sheets, contended that it was not required to provide the Union with exact copies for examination and study outside the plant. Plant Manager Leach testified at some length on this point. It was his testimony that the job descriptions (the face side of the sheet) could reveal vital and confidential operating techniques and that these techniques were not disclosed by the patents covering the manufacturing processes. As an example, he cited the fact that the Company had been able to solve a highly technical missile problem by reference to a chemical factor set forth on a job description. Leach also pointed out that the listing of raw materials used, the type of equipment used, and the time requirements of a process might reveal operational economies to competitors to the damage of the Company. Justifiably or not, the Company feared that the possession by the Union of this information in its exact form created the danger that it might ultimately find its way into the hands of its competitors Of significance in examining the Company's position is the fact that although it refused to make this information available in the form of copies it had not been requested by the Union for permission to make a study of the job descriptions within the plant. H. J. Wells, manager of labor relations for the Organic Chemicals Division of the Company, was the chief witness as to Company policy in bargaining. Wells was asked by counsel for the Company what the response of the Company would have been to such a request and he testified that the descriptions would have been made available "provided they were reviewed within the confines of the plant and in accordance with article VI. 1. which reads as follows:

> The Company's existing program of job evaluation shall be continued. The Union through a duly appointed rate committee shall have access at all reasonable times to the job descriptions upon the basis of which such evaluations are made.

Wells was then asked by the Trial Examiner if the Union would have been permitted to bring in one of its research experts to assist in making such a study and Wells stated that such permission would have been granted.

In the alternative the Company offered to abolish the job classification program in its entirety and to bargain with the Union on a job classification basis as it did for maintenance jobs. With respect to this offer it agreed to abolish the program at once or to agree to a 2-year contract with a 1-year reopener, giving the Union a year in which to reach a decision. Although this offer was not accepted by the Union it is urged by the Company as evidence of its good faith in objecting to surrendering copies of information it considered confidential to third parties and as evidence of its willingness to bargain on grounds which eliminated the handicaps placed on the Union by confidential aspects of the evaluation program.

The last contention of the Company is that the Union, by signing the proposed contract containing article VI, agreed to continue the previously existing bargaining conditions and waived its right to receive information in the form requested.

Conclusions

The contention of the Respondent most easily disposed of is that which asserts that the Union, by signing the May 20 agreement continuing without change article VI, agreed not to request copies of the job descriptions and to accept such access to the descriptions as was provided in that article. But the article itself clearly restricts the right of access to the rate committee when disputes arise *during the* contract term. The article makes no provision for access to the information by the Union or its negotiating committee during bargaining negotiations and it does not, therefore, control or determine the question raised here. Nothing could be clearer than that the Union's requests for job descriptions during the negotiating period was for bargaining purposes and not for grievance adjustments and the Union unequivocally reserved the right to have a determination made by the Labor Board on this demand and the Company's refusal. The Company's letter of June 10 explicitly acknowledges that the Company understood that the Union was reserving its position when it signed the current contract. We have here a situation in which a labor organization left a determination of its right and the employer's obligation to the agency created for the purpose rather than to seek enforcement through economic coercion and self-help. To interpret such conduct as a surrender of its rights would only establish that unions may seek Board determinations only at their peril. Far from waiving its claim to possession of copies of the job descriptions I find that the Union held this dispute in abeyance pending the tedious process [3] of arriving at a judicial resolution of the conflict. Such conduct did not constitute any waiver of its right to have the pending charges processed.[4]

Having disposed of the claim of waiver, we reach the crux of the case—the collision between the Union's right to information in the form requested and the Company's right to keep its techniques and processes reasonably confidential. A credible witness for the Company, R. E. Leach, testified at some length as to the reasons why the Company felt its competitive position would be endangered if the Union were given the information in the form requested. While much of his testimony was unintelligible to this Trial Examiner it is nevertheless axiomatic that Macy's *does not* tell Gimbel's, and there undoubtedly is validity to the claim of a need for secrecy in certain phases of the drug and chemical industry. While aspirin is aspirin, I accept the testimony of Leach and agree that the Company had a right to take reasonable precautions to keep its job descriptions confidential. I also agree that the Board has in innumerable decisions affirmed the right of a Union to job classifications and descriptions.[5] The function to be performed here, however,

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[3] Although the charge herein was filed May 14, 1958, the case was not brought to hearing until July 7, 1959. It would appear that there is something wrong with the digestive machinery of an agency when a case so simple from the investigatory standpoint is allowed to repose so long in the agency's bowels

[4] See *American Smelting and Refining Company, Tacoma Plant*, 115 NLRB 55

[5] The latest affirmation of that right is *John S Swift Company, Inc.*, 124 NLRB 394.

is not to determine which right is dominant but to find accommodation. The issue in the precise form presented here has not, to my knowledge, previously been before the Board. The Board has, however, held that information need not be given in the exact form requested. We are not confronted here, as in *J. I. Case Company* [6] and *Oregon Coast Operators Association; et al.*,[7] with an arbitrary and unexplained refusal. The situation here is closer to that in the *Cincinnati Steel Castings Company* (86 NLRB 592) where the employer refused a request for a written list of employees with their classifications and rates but offered to furnish the information orally and did so where requested. (The Respondent took the position that it was unwilling to have such a list "scattered around or kicked around.") The Board, in finding there was sufficient compliance with the union's request, stated:

> As we have frequently held, an employer's refusal, during bargaining negotiations, to furnish necessary information to the representative of his employees shows a lack of good faith in bargaining and constitutes, in itself, a violation of Section 8(a)(5) of the Act. However, we have not held nor do we now hold that the employer is obligated to furnish such information in the exact form requested by the representative. It is sufficient if the information is made available in a manner not so burdensome and time-consuming as to impede the process of bargaining.
>
> . . . As there were only 98 employees in the unit, we do not regard Respondent's insistence on furnishing the information orally, rather than by a written list, as evidence of bad faith.

In the *Otis Elevator* [8] case the court, Judge Clark dissenting in part, recognized that a balance between rights must be struck and modified the Board's order by eliminating the provision which directed Respondent to permit the Union to make its own time studies within the Respondent's plant. It found no necessity for so impairing an employer's right to maintain his plant and operations free from invasion.

From the position of a stranger to the drug and chemical industry it is difficult to determine whether or not the Union could have engaged in intelligent and informed bargaining under the limitations imposed by the Company. But there is certainly no preponderance of evidence in the record before me to show that it could not and, quite apart from consideration of the Company's offer to discontinue the evaluation program, I cannot find its offer of limited access an act of bad faith. Lest there be misunderstanding, I conceive that offer to give to the Union the right to make complete study of all job descriptions in the plant and to utilize its research experts in making its studies. I further conceive that offer to pertain to studies made for the purposes of collective bargaining and as not limited to disputes during the contract term. The issue is close, it falls within an area not yet well charted, but on the basis of all the facts and circumstances peculiar to the situation between the parties, I do not find the Union entitled to copies of the job descriptions for use outside the plant.

One more contention must be met. In the instant case the Company felt so strong a concern respecting the essentially confidential nature of the descriptions that it offered to abandon the program rather than make the information available in the form requested. Whether or not the employees or their representative would have been prejudiced in any way by such action is not disclosed I cannot find, however, that the offer was not made in good faith nor that the Company did not have the right to put the union to this election. When an employer who has established a job program at obvious cost in time and effort offers to discontinue the program and relinquish its presumed benefits to him and to resume bargaining on an across-the-board basis rather than give publication to the program I am unwilling to hold him in violation of the Act. I therefore find that the last two defenses asserted by the Company, commingled as they are to some extent, valid against the charge that the Company violated Section 8(a)(5).

[Recommendations omitted from publication.]

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[6] 118 NLRB 520

[7] 113 NLRB 1338.

[8] *N L R B* v. *Otis Elevator Co.*, 208 F. 2d 176 (C.A. 2), enfg as modified 102 NLRB 770