

CONCLUSIONS OF LAW

1. UAW, AFL-CIO and its Local 622 are labor organizations within the meaning of the Act.
2. By discriminating in regard to the hire and tenure of employment of the employees named above in the section entitled "The Remedy," thereby discouraging membership in the Union, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
3. By refusing to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit set forth in section B, beginning May 2, 1960, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
5. The Respondent did not engage in interrogation as alleged in the complaint.

[Recommendations omitted from publication.]

The Crestline Company and Midwestern Millmen District Council, affiliated Local Union 1594. *Case No. 18-CA-1153. September 21, 1961*

DECISION AND ORDER

On October 18, 1960, Trial Examiner C. W. Whittemore 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 Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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 brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as noted hereafter.

We agree with the Trial Examiner that the Respondent violated Section 8(a)(5) by unilaterally terminating its share of the employee group insurance program and by the unilateral withholding of holiday pay for May 30 and July 4.

The parties began negotiations for a new agreement in March 1960 to replace an agreement due to expire on April 30, 1960. The expiring contract provided for certain paid holidays, including Memorial Day and July 4, and also required the employer to pay 60 percent of the cost of the employees' group insurance. The parties met and negotiated both before and after the expiration of the old agreement and, despite some areas of disagreement, the union negotiators agreed to submit the Employer's proposals to the employees at a meeting

scheduled for May 14. In their negotiations, the Union had urged that the Employer provide two additional paid holidays and liberalize the insurance provisions. The Employer took the position that the holiday and insurance clauses of the old contract should be incorporated into the new agreement, and its proposal, on which the employees were to vote, made such provision. The day before the employees were to vote on the Employer's proposal, the Company distributed a notice to all employees that it was discontinuing the payment of its portion of the insurance premium because operations without a bargaining agreement had increased its costs and it was necessary to effect some compensating savings. At the scheduled meeting the next day, the employees rejected the Company's proposals for a new agreement.

The parties met thereafter and negotiated but could reach no agreement. The company unilaterally refused to make the holiday payment for May 30, neither notifying nor consulting with the Union in advance of its action.¹ At another meeting between the parties on June 21, an official of the Employer remarked that it did not intend to pay for July 4, and a union representative replied that the action was expected, an apparent reference to the Company's unilateral withholding of the May 30 holiday pay.

It is clear that the Employer's precipitous announcement of the termination of payment of its share of the insurance premiums the day before the employees were to vote on the Employer's contract proposals disparaged the Union's position as bargaining representative of the employees, and was, therefore, a violation of Section 8(a)(5). The Employer's subsequent conduct in failing to notify or consult with the Union about holiday pay for Memorial Day, and its failure to pay for that holiday and for July 4, manifested the Employer's intention to subvert the authority and representative status of the Union. It was the Employer's position that it need not pay for the two holidays because its contractual commitment to do so had expired. However, the obligation imposed on an employer by the Act to consult with its employees' representative is unaffected by the expiration of a prior agreement, and an employer who unilaterally changes prevailing wages, hours, or working conditions while purporting to bargain, reveals thereby its unwillingness to meet that obligation.

We find no merit in the Employer's contention that its unilateral actions are not a violation of its obligation to bargain in good faith, because they were taken to put the Union under some economic

¹ Although the Company contends that it notified the union negotiators of its proposed action at a meeting on May 26, the Trial Examiner credited two union representatives who denied that such a proposal had been made. In any event, it is clear, from the Company's argument that its refusal to pay for the holidays was to exert pressure in bargaining, that it did not seriously intend its proposed action to be open for discussion or negotiation.

pressure in order to obtain more favorable terms for itself in a new agreement. The Employer relies on the recent Supreme Court decision, *N.L.R.B. v. Insurance Agents' International Union, etc. (Prudential Insurance Company)*, 361 U.S. 477, reversing 119 NLRB 768. The Board had held there that a union refused to bargain in good faith by engaging in certain harassing tactics during negotiations for a new agreement. The Supreme Court held, on the contrary, that the use of economic pressure is part and parcel of the collective-bargaining process and is not in itself inconsistent with the duty to bargain in good faith. The Court pointed out that the Board is not authorized to regulate the choice of economic weapons which parties may utilize, or to brand certain tactics as incompatible with good-faith bargaining. The Court concluded that Section 8(b) (3) (and, inferentially, Section 8(a) (5)) does not confer on the Board the power to presume the absence of good faith by a party exerting economic pressure, if at the same time it is engaging in good-faith negotiations for an agreement.

We note, however, that the Court perceived no lack of harmony between the principles enunciated in the *Insurance Agents* case and those underlying its decision in *N.L.R.B. v. Crompton-Highland Mills, Inc.*, 337 U.S. 217.² In the latter decision the Court had held that the Board could reasonably infer that a unilateral change in wages granted by an employer during negotiations signified its rejection of the statutory requirement that bargaining on such matters must be without derogation of the right of a bargaining representative to be consulted. We think it clear, in this proceeding, that the Respondent's manipulation of the existing terms and conditions of employment, without affording the Union an opportunity to be consulted, was also a deliberate rejection of its obligation to discuss these matters with the representative of its employees, and that it necessarily had the effect of impeding the progress of further negotiations. That the Respondent may also have intended, through these unilateral changes, to impose economic pressure on the Union in order to force concessions, does not excuse its failure to accord the Union an opportunity to consider and to bargain with respect thereto. We do not read the Supreme Court's *Prudential* decision as sanctioning the commission of unfair labor practices by either an employer or a union as a means of extracting contract concessions during bargaining negotiations.

Under these circumstances, we conclude that Respondent violated Section 8(a) (5) and that a proper remedy must include reimbursement to the employees for the holiday pay they lost, as well as an affirmative order to bargain with the Union on all matters affecting the legitimate interests of the employees. However, no affirmative

² Both the majority and the concurring opinions of the Court refer favorably to the *Crompton-Highlands* opinion, with no indication that its scope was adversely affected by the *Insurance Agents* decision.

order is necessary with respect to reinstating the insurance program as Respondent had done so voluntarily before the hearing in this case.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that The Crestline Company, Wausau, Wisconsin, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with Midwestern Millmen District Council, affiliated Local Union 1594, as the representative of all production and maintenance employees at its Wausau, Wisconsin, plant, by effectuating unilateral changes in wages and other terms and conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing employees in their exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Upon request, bargain collectively with the above-named labor organization as the exclusive representative of its production and maintenance employees with respect to wages, hours, and other conditions of employment.

(b) Make whole the employees in the appropriate unit for their loss of holiday pay on May 30 and July 4, 1960.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, timecards, social security payment records, personnel records and reports, and all other records necessary to determine the amount of backpay due employees under this Order.

(d) Post at its Wausau, Wisconsin, plant, copies of the notice attached to the Intermediate Report marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for the

³ This notice shall be amended by substituting the words "Pursuant to a Decision and Order" for the words "Pursuant to the Recommendations of a Trial Examiner" 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."

Eighteenth Region, shall, after being duly signed by a representative of the Respondent, be posted by it immediately upon receipt thereof, and be maintained by it for at least 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Eighteenth Region, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

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

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Charges having been filed and duly served, a complaint, amended complaint, and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and answers having been filed by the above-named Respondent, a hearing involving allegations of unfair labor practices in violation of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, was held in Wausau, Wisconsin, on September 12, 1960, before the duly designated Trial Examiner.

At the hearing all parties were represented and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. Argument was waived. Briefs have been received from General Counsel and the Respondent.

Upon the record thus made, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Crestline Company is a Wisconsin corporation with its principal place of business in Wausau, Wisconsin, where it is engaged in the manufacture, sale, and distribution of millwork, particularly wood window units and related products.

During the year preceding issuance of the complaint the Respondent shipped such products valued at more than \$4,000,000 from its Wausau plant to States of the United States other than the State of Wisconsin.

The Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Midwestern Millmen District Council, affiliated Local Union 1594, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and issues*

Conduct of the Respondent claimed by General Counsel to have constituted bad-faith bargaining occurred during the course of contract negotiations which began in March 1960, and were still being held in mid-September at the time of the hearing. The two specific acts cited by General Counsel are: (1) Notifying all employees in May that the employer was ceasing and in fact temporarily ceasing to contribute to insurance costs as had been its practice, without consulting with the Union; and (2) refusing to pay employees accustomed holiday pay for May 30 and July 4, 1960, without consulting with the Union.

General Counsel contends that both acts were performed unilaterally, without notice during bargaining negotiations, and effectively altered existing wage rates at a time when such rates were under discussion.

B. *Relevant facts*

In the first place, no issue is involved here concerning the Respondent's obligation under the law to recognize and deal with the Union as the exclusive bargaining agent

of employees in an appropriate unit. These essential points are conceded by the Respondent in its answer.

Current negotiations followed appropriate notification by the parties that each desired to make various changes in a contract due to expire April 30, 1960, which with amendments had been in existence since 1958.

Insurance plan issue: Four negotiating meetings were held before May 13, the date when the Respondent notified all employees by means of a letter accompanying each paycheck that it was "discontinuing" its "policy of paying the Company's portion of the insurance premiums." Because General Counsel makes no claim the Respondent declined to confer when requested or to negotiate when conferring it seems needless to review in detail all subjects discussed or to note all points of agreement or disagreement at each these four meetings.

Relevant to the Respondent's action of May 13, however, are the following factors:

(1) The contract expiring on April 30 contained the following provision in article IV:

The Company shall continue to pay sixty (60) percent of the premiums of the group insurance plan consisting of lost time off the job, hospital and surgical insurance.

(2) In its letter to the Union of February 29, requesting that certain provisions of the then existing agreement be "revised, deleted or clarified," the Respondent cited specific articles and sections it desired to change, but *with no reference to article IV.*

(3) On April 21 the Respondent submitted to the Union a proposed new contract. *Its article IV contains precisely the same language as quoted above.*

(4) On May 10 the Respondent sent to the Union a document which on its face "proposes the following changes to the 1958-1960" agreement. *It contains no reference to article IV, or to the insurance plan in any other fashion.*

(5) At no negotiating meeting before May 13 did any representative of the Respondent consult with the union bargaining committee concerning the substance of the letter given to employees that day, nor did the Respondent in any other manner notify the Union of its intent or reason for an action *directly contrary to its own continuing proposal* of May 10, 3 days earlier.

(6) In its letter of May 13, addressed to employees and *not* the Union, the Respondent stated, in part:

The operation of our Company without a contract has had an adverse effect on our order intake and has also made it impossible for us to bring in raw materials with the assurance that they could be unloaded upon arrival.

These factors are greatly increasing our costs and as a result of this, it is necessary for us to affect some compensating cost savings. *We are discontinuing our policy of paying the Company's portion of the insurance premiums.*

(7) At a negotiating meeting on May 18, after employees had received their paychecks and the letter, the Union vigorously protested the Respondent's unilateral action, and threatened the filing of unfair labor practice charges.

(8) Despite the Union's protest of May 18, on May 20—2 days later—the Respondent notified all employees by a letter again accompanying each paycheck that the insurance plan was being cancelled so far as the employees in the bargaining unit were concerned. The letter said, in part:

1. We are advising Blue Cross to change the contract to show that only salaried employees are eligible, effective June 1st.

2. We are advising Hardware Mutual to terminate our accident and sickness plan with them as of June 1st.

(9) On May 31 the Union filed its original charge against the Respondent.

(10) On June 24 the Respondent informed the employees by letter that it was reinstating both insurance plans—Blue Cross and Hardware Mutual. The letter stated, in part:

It has come to our attention that some of you have interpreted this action (of discontinuing the insurance plan) on our part as an attempt to coerce your Union into signing a new contract with the Company. We had no such intent and took this action only in an attempt to effect some compensating cost savings for the increased operating expenses we were incurring because of existing conditions.

Your Union has accused us of failing to bargain in good faith. In an effort to demonstrate the fact that this is not so and in deference to our employees whom we do not want to deprive of the benefits of insurance, we are going to reinstate both plans.

Holiday pay issue: The following factors bear upon this question:

(1) Since 1958 and in accordance with contract provisions the employees had received "a full day's holiday pay" for certain holidays, including Memorial Day and July Fourth.

(2) In their first proposals after negotiations began in 1960 neither party suggested or sought the eliminations of either of these 2 days as paid holidays.

(3) In its later proposal of May 10 the Respondent made no suggestion that either of the 2 days be eliminated.

(4) At no negotiating meeting before Memorial Day, May 30, did any management official either propose or inform the union bargaining committee of its intent to abandon its practice of paying for that day.¹

(5) Each employee's paycheck following Memorial Day bore the following notation: "This check would have been approximately \$_____ more if our last proposal to the bargaining committee had been accepted." The amounts inserted varied.

(6) On June 30, at a meeting of union and company officials in the Respondent's office, and in the presence of a Board agent, Reardon informed the union officials that "the Company did not propose to pay holiday pay for July 4."²

(7) This advance announcement was *not* made at a negotiating meeting.

(8) The Respondent carried out its threat, and did not pay holiday pay for July 4.

C. Conclusions

The Respondent apparently does not seriously contest the fact, here found, that both by withholding its contribution to the insurance plan and by not paying holiday pay it effectively altered the existing wages received by employees.

The essence of the Respondent's contention, urged in its brief, appears to be that because the "company bargained in good faith at the bargaining table," its actions in issue cannot be found to be bargaining in bad faith—"per se." Competent evidence fails to support the premise, and it is unnecessary here to reach the "per se" issue.

As noted in the section above, the employer not only failed either to propose or announce its action in both issues to the bargaining committee, thus permitting possible counterproposals and negotiation, but it also took action which was *precisely opposite* to that which the Respondent itself had proposed and urged up to the moment of acting. It requires blind reasoning, indeed, to reach the conclusion that this type of somersault bargaining is in "good faith." And the Trial Examiner declines here to undertake this exercise, as he did "mental pole-vaulting"—with full approval of the Supreme Court—in *N.L.R.B. v. Insurance Agents' International Union, etc.*, 361 U.S. 477, a case which the Respondent cites on its own behalf. And in any event, the Trial Examiner believes that *Cascade Employers Association, Inc.*, 126 NLRB 1014, is governing in the determination of the issues here presented. Furthermore, in *Crompton-Highland Mills, Inc.*, 337 U.S. 217, the Supreme Court concluded that a unilateral change contrary to an employer's bargaining position undermines the collective-bargaining relationship.

In summary, and in conformity with the above-cited authorities, the Trial Examiner concludes and finds that the Respondent's unilateral action in withdrawing its insurance contributions and in depriving the employees of their holiday pay on May 30 and July 4, both actions being unilateral and affecting the wages of employees, and under the circumstances herein described, constituted bad-faith bargaining, tended to undermine the collective-bargaining relationship, and in effect was refusing to bargain in good faith as required by the Act.³

¹ As the one witness for the Respondent, Production Manager Gallagher said that "at or near" the end of the May 26 meeting President Reardon "told the Union committee we would not pay for Memorial Day holiday pay," and that Union Representative Zimick "stated they expected that." The Trial Examiner cannot accept Gallagher's unsupported testimony on this point. There is no showing in the record as to why Reardon himself was not called. Zimick, on the other hand, flatly denied Gallagher's claim, and his denial is supported by the testimony of Elsmore Wilde, head of the District Council. Furthermore, the circumstances set out in (5), above, militate against belief that Reardon made any announcement on May 26.

² The quotations are from a stipulation entered into at the hearing.

³ The Trial Examiner notes that Respondent's arguments in his brief come from opposite ends of the avenue. He states that the *Insurance Agents* case permits such "harassing tactics" as "economic sanctions." The facts in that case do not in any way coincide with the facts here. There the union's action in withholding work was announced in

It is further concluded and found, as the answer admits, that the Charging Union at all material times has been and is the exclusive collective-bargaining representative of all the Respondent's employees in the following appropriate unit:

All production and maintenance employees at its Wausau, Wisconsin, plant exclusive of office clerical employees, watchmen, watchmen-firemen, engineering personnel, professional employees, and all supervisors as defined in the Act.

Finally, it is concluded and found that by thus refusing to bargain in good faith the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

In accordance with Board policy set out in *Cascade Employers Association, Inc.*, above cited, the Trial Examiner will not only recommend that the Respondent cease and desist from refusing to bargain by making unilateral changes in the wage structure, but also that it make all employees affected whole for loss of their holiday pay for May 30 and July 4, 1960.

Upon the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Midwestern Millmen District Council, affiliated Local Union 1594, is a labor organization within the meaning of Section 2(5) of the Act.

2. All production and maintenance employees of the Respondent at its Wausau, Wisconsin, plant, exclusive of office clerical employees, watchmen, watchmen-firemen, engineering personnel, professional employees, 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. At all times since March 1, 1960, the above-named labor organization has been and now is the exclusive representative of all employees in the above-described appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. By the conduct described herein, effectively altering the wage structure, the Respondent has refused and is refusing to bargain within the meaning of Section 8(a)(5) of the Act, and has interfered with, restrained, and coerced employees in the exercise of their lawful rights within the meaning of Section 8(a)(1) of the Act.

5. 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.]

advance, the employer was informed as to what the proposed action was designed to gain, and in no way violated its own consistent demands and proposals.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL bargain collectively, upon request, with Midwestern Millmen District Council, Affiliated Local Union 1594, as the exclusive representative of all employees in the appropriate bargaining unit described below, with respect to labor disputes, grievances, rates of pay, hours of employment, and if any

understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees exclusive of office clerical employees, watchmen, watchmen-firemen, engineering personnel, professional employees, and all supervisors as defined by the Act.

WE WILL NOT effectuate unilateral changes in working conditions or in any other manner refuse to bargain collectively with the above-named labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

WE WILL make whole all employees in the appropriate unit for any loss of pay they may have suffered by reason of our withholding their holiday pay for May 30 and July 4, 1960.

THE CRESTLINE 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.

Daniel Construction Company, Inc. and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Petitioner. *Case No. 11-RC-1453. September 21, 1961*

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 Jerry B. Stone, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

1. The Employer¹ is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. The Employer contends that no election should be held because: (1) its employees are scattered throughout the entire southeastern United States, their work is highly seasonal in nature, and they are hired on a temporary basis at the jobsite; and (2) the unit sought by the Petitioner is inappropriate.

Daniel Construction Company, Inc., is engaged in the construction of industrial and commercial plants in the southeastern United States.

¹ Reference to "Employer" means the Greenville division of Daniel Construction Company.
133 NLRB No. 46.