

Accordingly, as I find nothing in the Employer's conduct which could reasonably have impaired the employees' ability to evaluate, on the merits, the election issues, or their ability to vote objectively, without fear or favor, and as, in any event, I agree with the Regional Director that the conduct involved is minimal and too isolated to constitute a "technique," I would overrule the objection and certify the results of the election.

Union Electric Steel Corporation and United Steelworkers of America, AFL-CIO, and its Local 1552. Case No. 6-CA-2348.
December 14, 1962

DECISION AND ORDER

On July 23, 1962, Trial Examiner Leo F. Lightner 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 attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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 [Members Rodgers, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.¹

¹ The Respondent excepts to the Trial Examiner's ruling whereby he rejected Respondent's offer of proof to the effect that the Union's sole purpose or motive in requesting the subject information and data relating to the Respondent's hourly employees' incentive pay plan was to enable it to harass, pressure, or otherwise dissuade employees from participating in the plan. The implementation of this purpose, according to the Respondent, would, in turn, harass the Respondent through the resultant decrease in production.

We are cognizant of the following circumstances in connection with the Respondent's offer of proof. It was couched in general and conclusionary terms and failed to recite the identity or description of the witnesses, or other evidence, to be introduced by the Respondent. Further, the offer did not delineate the nature, content, or scope of any such prospective evidence with any degree of exactitude. Indeed, the form of the offer more nearly approximated a bare contention by the Respondent rather than an offer of proof. For these reasons, we find that the Respondent's offer failed to satisfy the standards of specificity required by Rule 43(c), Rules of Civil Procedure for the District Courts of the United States. The Act, in Section 10(b), requires that any proceedings under Section 8 shall be conducted, so far as practicable, in accordance with the rules of evidence contained in these Rules of Civil Procedure.

Moreover, when Respondent's counsel made the offer of proof, he admitted that all but a "very small part" of the evidence he expected to develop in order to prove his contention concerning the Union's harassment objective would have to be adduced through the testimony of union officials called by him as witnesses pursuant to Rule 43(b), Rules of Civil Procedure, cited *supra*. Consequently, it appears that the Respondent only proposed to prove its contention by means of the highly speculative and unpredictable method of *cross-examining adverse, if not hostile, witnesses*. Parenthetically, we note that at the hearing the Respondent began its defense by calling the vice president of Local 1552

The rulings are hereby affirmed. The Board has considered the Intermediate Report and the entire record in the case, including the exceptions and brief, and hereby adopts the findings, conclusions,² and recommendations of the Trial Examiner, except as noted below.

ORDER

The Board adopts as its Order the Recommendations of the Trial Examiner.³

to testify pursuant to Rule 43(b) and that this witness, in effect, denied that the Union was seeking the incentive plan data for purposes of harassment.

Accordingly, we sustain the Trial Examiner's ruling rejecting the Respondent's offer of proof.

² Paragraph 3 of the Conclusions of Law set forth in the Intermediate Report is hereby amended to read as follows:

3 By refusing, upon request, to supply the Union with a list of employees, in said unit, who have received and are receiving incentive earnings beginning June 12, 1960, including full information as to the hours worked, incentive hours, and incentive percentage for hours worked in arriving at the total incentive earnings for each of said employees, 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.

³ The notice appended to the Intermediate Report is hereby amended by deleting the phrase "This notice must remain posted for 60 days from the date hereof," and substituting therefor the phrase "This notice must remain posted for 60 consecutive days from the date of posting."

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding was heard before Trial Examiner Leo F. Lightner in Pittsburgh, Pennsylvania, on December 4 and 5, 1961, on the complaint of the General Counsel, and the answer, as amended, of the Union Electric Steel Corporation, herein referred to as the Respondent.¹ The issue litigated is whether the Respondent engaged in unfair labor practices and thereby violated Section 8(a)(5) and (1) of the Labor Management Relations Act, 1947, as amended, 61 Stat. 136, herein called the Act. The parties waived oral argument. Briefs filed by the General Counsel and Respondent have been carefully considered.

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

Respondent is a Pennsylvania corporation with its principal office in Pittsburgh, Pennsylvania. Respondent's plant is located in Carnegie, Pennsylvania, where it is engaged in the manufacture, sale, and distribution of forged hardened steel rolls and related products. During the 12-month period immediately preceding the issuance of the complaint, a representative period, Respondent manufactured, sold, and shipped from its Carnegie, Pennsylvania, plant finished products valued in excess of \$50,000 to points outside the Commonwealth of Pennsylvania. Respondent admits, and I find, that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

United Steelworkers of America, AFL-CIO, and its Local 1552, herein jointly called the Union, are labor organizations within the meaning of Section 2(5) of the Act

¹ The charge was filed on September 19, 1961, and the complaint was issued on November 2, 1961.

III. ALLEGED UNFAIR LABOR PRACTICES

A. Issue

The principal issue raised by the pleadings and litigated at the hearing is whether Respondent, as more fully set forth in the complaint, engaged in activity in contravention of the provisions of Section 8(a)(5) and (1) of the Act, by refusing to furnish to the Union, upon its request, information and data with respect to hourly employees' incentive plans, a part of the method by which wages are computed, on or about July 14, 1961, and at all times thereafter.

B. The appropriate unit; Union's exclusive representative status in said unit; existing collective-bargaining agreement

The complaint alleges, the answer admits, and I find, that at all times material herein "all production and maintenance employees employed at employer's Carnegie, Pennsylvania, plant, excluding salaried employees, foremen, supervisors (including assistant foremen) in charge of any class of labor, watchmen, guards and clerical employees," constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

The complaint alleges, the answer admits, and I find, that at all times material herein the Union, having been duly designated by a majority of the employees in the aforesaid unit, and having been designated as exclusive representative of said unit since April 17, 1937, has been and is the exclusive representative of the employees in said appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

The complaint alleges, the answer admits, and I find that the Union and Respondent have been parties to collective-bargaining agreements from 1937 to the date of the complaint, with the current agreement expiring by its terms on July 31, 1962.

C. Respondent's refusal to furnish the requested information and data with respect to hourly employees' incentive plans

1. Background

There is no dispute of consequence as to the evidentiary facts. On an obscure, and unimportant, date in 1959 the Respondent, inferentially pursuant to engineering studies, introduced incentive earnings plans covering only a portion of the jobs in its machine shop. While reference is made in the record to similar plans having been introduced in the forge shop, we are here concerned with the machine shop. These incentive plans were introduced under agreements for trial periods which apparently continued until approximately October 15, 1960. Within this period the Union's basic labor agreement of September 1, 1956, and other agreements between it and Respondent were replaced by a new agreement. The new agreement was made on January 23, 1960, effective as of January 1, 1960, with an expiration date of July 31, 1962. No reference to incentive plans was made in the new agreement. Inferentially, sometime between October 15 and November 10, 1960, the membership of the Local voted (189 to 39) not to work incentives. Paul R. Normile, international representative of the Union, advised Respondent, on November 10, 1960, that the membership of the Local had voted against working under incentive plans. The Respondent requested that the status quo be maintained until the matter could be further studied.

On December 30, 1960, Respondent met with the Union. Among those present representing Respondent were Donald B. Buerger and Elmer E. Myers, Respondent's counsel, and Wald, Respondent's general superintendent. Among those present and representing the Union were Paul R. Normile, international representative, and John F. Mathias, president of the Local. This meeting was primarily concerned with grievances. At the conclusion of the discussion on grievances, Buerger raised the issue of the status of incentive plans. Normile stated that the Union recognized the right of the Respondent to install incentive plans unilaterally but that Respondent could not compel the men to work under incentive plans at an incentive pace. Buerger agreed with the observations of Normile and a discussion of various problems relating to incentive plans followed. Buerger then advised that Respondent did not want to spend additional money for engineering studies unless the Union was willing to cooperate in the matter. Buerger summarized his views of the consensus of the parties as: (1) Respondent would keep the incentive plans in force; (2) Respondent would initiate other plans when, as, and if "we like"; (3) employees were not required to work at an incentive pace; (4) employees will be advised by the Union

to cooperate in studies—act normally; (5) when plans were completed for all men to be covered, the Union “will consider plans in good faith and will agree or disagree or negotiate or arbitrate.”

On January 9, 1961, the Union posted a notice on the plant bulletin board, over the signature of the president of the Local, which read:

The Corporation has informed us of their position concerning their attempts to establish incentives in the plant.

The Corporation intends to continue the incentives they have installed in the past. They, also, intend to install more incentives and continue with their time-study methods.

The position of the Corporation is a unilateral position. That is to say that in doing this they are within their legal rights, but it is definitely without the agreement of the Local Union.

Your committee has again explained the Local Union's position to the Corporation. Our position is:

We do not recognize Engineered Incentives in our plant.

Myers acknowledged that the Union had “from time to time” objected to incentive plans based on engineering studies, and incentive plans “as such.”

Respondent regularly provided the Union with a form which reflected the amounts paid under existing incentive plans, to whom it was paid, and the method of computation, for various pay periods, until June 12, 1960.²

Prior to March 1, 1961, the incentive plans provided for incentive payments where work was performed beyond the criteria, the time allotted being computed at a 100-percent performance level in terms of time. After March 1, a 70-percent performance level was substituted, with provision for incentive payments where such level was exceeded.

2. The Union's request and Respondent's refusal

On July 20, 1961, John F. Mathias, president of Local 1552, advised Respondent, by letter to R. S. Wald, superintendent, that on July 14, 1961, a conversation was held between Buerger, counsel for Respondent, Picard, international staff representative, and Mathias, at which time Buerger asked that the Union clarify, in writing, what information the Union was requesting from the Company “concerning payments made to individuals of the Union under the Company's unilateral Incentive Plan.” The Union attached, as an enclosure, a copy of the form previously submitted to the Union by the Company showing the computation of incentive hours worked, payments made, and to whom they were made, during a pay period, under incentives then existing, and a continuation of this past practice was requested. The Union further advised that since the last form provided was for the pay period ending June 12, 1960, it was requested that the Union be presented with forms relative to such payments for the pay periods after said date and for future pay periods.

Respondent responded on August 2, 1961, by letter. Superintendent Wald advised Mathias that in the latter's conversation with Buerger he agreed to state in writing “the purpose for which you desired the information in order that he (Buerger) could determine what the Company was obligated to do.” The letter advised that since the purpose was not set forth, clarification was requested.

On August 17, 1961, Mathias advised Respondent, by letter to R. S. Gorman, vice president of production and plant works manager, that the Union requested “a list of employees who have received and are receiving incentive earnings for the period from June 12, 1960, to the present, and, in the future, if incentive earnings are received beyond this date, including full information as to the hours worked, incentive hours, and incentive percentage for hours worked in arriving at the total incentive earnings for each of said employees.” Mathias stated that the Union “desires this information to properly and understandingly perform its duties in the general course of bargaining, to properly evaluate the various rates of pay in the plant, and to police the administration of the current agreement.” Mathias also advised “that the Union, in requesting the above information, does not agree that the Company had authority, under the agreement, to institute such an incentive plan or that it acquiesces in the continuance of such an incentive plan.”

² Elmer E. Myers, Respondent's counsel, testified that he did not know if this type of information was furnished to the Union after January 1, 1960. The unchallenged recitation in the letter of John F. Mathias, of July 20, 1961, to Wald, is that the indicated information was supplied until June 12, 1960. I find accordingly

Elmer E. Myers, Respondent's counsel, related that a copy of the August 17 letter was sent to his office while he was on vacation and came to his attention when he returned "after August 29." Myers at the latter time ascertained that Buerger was on vacation and would not be back until September 5. Myers and Buerger, inferentially on September 5, attempted to reach Wald and learned that he was out of the country and would return September 19.

On September 20, 1961, Myers, Buerger, and Wald met at Respondent's plant to discuss the Union's request of August 17. During the course of this meeting a copy of the Union's charge in the instant case, filed September 19, 1961, was delivered to the conferees.

Myers acknowledged that the information requested was the same as the information previously furnished by Respondent to the Union relative to incentive payments, that no hardship resulted from the Company furnishing this particular information, nor would compliance with the request constitute a hardship, neither is the information sought considered confidential by Respondent so far as the Union is concerned. Myers acknowledged that Respondent had not complied with the request of the Union when he testified herein.

Myers asserted that the engineering studies relative to the introduction of incentive plans had not been completed when he testified in December 1961.

D. Respondent's defenses and concluding findings

The Respondent admits, as alleged in the complaint, that at all times since on or about July 14, 1961, it has failed to furnish the Union, upon request, with information and data with respect to hourly employees' incentive plans, which were then, and continue to be, a part of the method by which wages are computed. The Respondent, however, asserts that its conduct did not constitute a refusal to bargain in violation of the Act, for reasons next considered.

I have found that the Union requested "a list of employees who have received and are receiving incentive earnings for the period from June 12, 1960, to the present, and, in the future, if incentive earnings are received beyond this date, including full information as to the hours worked, incentive hours, and incentive percentage for hours worked in arriving at the total incentive earnings for each of said employees." The Union stated its reason for desiring the information to be "to properly and understandingly perform its duties in the general course of bargaining, to properly evaluate the various rates of pay in the plant, and to police the administration of the current agreement."

It is undisputed that no reference to the incentive plans, or payments pursuant thereto, is incorporated in the current collective-bargaining agreement between the Union and Respondent.

The Board and the courts have repeatedly held that the term "wages" mentioned in Section 9(a) of the Act, as to which an employer is required by Section 8(a)(5) to bargain with the exclusive representative of his employees, comprehends all emoluments of value which may accrue to employees by reason of their employment relationship *Dikten and Masch Mfg. Company*, 129 NLRB 112, 125.

There appears herein no dispute that the "incentive pay," relative to which the Union requested information, is within the meaning of the terms "wages . . . and conditions of employment" of Section 8(d) of the Act. An employer is under a statutory duty to bargain collectively with representatives of its employees with respect to incentive plans. *East Texas Steel Castings Company, Inc.*, 99 NLRB 1339 (enfd. 211 F. 2d 813 (C.A. 5)).

An employer's refusal to furnish a union with wage information has been repeatedly held, by the Board and courts, to be a violation of Section 8(a)(5) of the Act.³

Respondent asserts that the request of the Union was not made for any purpose related to collective bargaining. In essence, Respondent asserts that since the union membership voted to oppose working under incentive plans the Union sought the requested information solely for the purpose of discouraging any of its members who might be earning incentives from engaging in such activity. Respondent con-

³ See *Aluminum Ore Company*, 39 NLRB 1286, modified and enfd. 131 F. 2d 485 (C.A. 7); *J. H. Allison & Company*, 70 NLRB 377, enfd. 165 F. 2d 766 (C.A. 6), cert. denied, 335 U.S. 814; *Yawman & Erbe Manufacturing Company*, 89 NLRB 881, enfd. 187 F. 2d 947 (C.A. 2); *Whitin Machine Works*, 108 NLRB 1537, enfd. 217 F. 2d 593 (C.A. 4), cert. denied, 349 U.S. 905; *The Item Company*, 108 NLRB 1634, enfd. 220 F. 2d 956 (C.A. 5); *Boston Herald-Traveler Corporation*, 110 NLRB 2097, enfd. 223 F. 2d 58 (C.A. 1); *F. W. Woolworth Company*, 109 NLRB 196, 197, enfd. 352 U.S. 938.

cedes that the Union is entitled to the requested information if there were mixed motives for the request, including the purpose stated in the Union's letter. The Union's right to wage information, during the term of a contract, to permit it to properly police the administration of the agreement is established by numerous Board and court decisions.

In *Boston Herald-Traveler Corporation, supra*, the Board set forth the doctrine of presumptive relevance of wage data. It held:

The Board's rule, affirmed by the courts, is that an employer is required to furnish the union representing its employees with the name and earnings of each employee in the appropriate unit in order to make collective bargaining effective. In making its request for such information, the union need not show the precise relevancy of the requested information to particular bargaining issues under consideration. "It is enough . . . that the information relate to the wages or fringe benefits of the employees. Such information is obviously related to the bargaining process, and the union is therefore entitled to ask and receive it." The Board's rule recognizes that "it is virtually impossible to tell in advance whether the requested data will be relevant except in those infrequent instances in which the inquiry is patently outside the bargaining issues."

The Board further noted, by way of explanation of the practical considerations supporting the doctrine, the following:

Even if the Union had failed "initially to show the relevance of the information" this does not negate the possibility that full disclosure of payroll information might reveal inequities and other factors in the wage structure upon which the statutory bargaining representative has a right and a duty to negotiate. . . . The Union cannot bargain with maximum effectiveness if it remains ignorant of the salaries of other employees possessing comparable skills and experience. Moreover, knowledge of full payroll information would enable the Union to decide whether to press a demand respecting changes in classifications or minimum wage scales. Even where individual wage rates do not bear directly on the contract issues, the information may well serve as a guide or suggest some field of compromise or other adjustment; for example, the Union might decide to withdraw its request for an increase in the minimum wage scale and propose instead the raising of wages for the specific groups of employees.

The First Circuit in enforcing the Board Order in *Boston Herald-Traveler, supra*, at page 62, said:

However, we think it would be unwise not to consider the statutory validity of the concept of the presumptive relevance of individualized wage data to collective agreement negotiations. Perhaps it is true that the Board first specifically enunciated this doctrine in the *Whitin Machine Works* case, *supra*, yet it seems to have been adopted as an implied premise in the earlier Board decisions and court decisions enforcing Board orders. Although the employers almost uniformly have contested the relevance of the requested data, the Board and the courts have found relevance in generalized avowals by the charging union that the information was necessary for the purpose of policing existing contractual provisions which made merit increases a matter for bargaining between the employer and individual employees or for the purpose of negotiating with respect to minimum wage rates or merit increase mechanisms. It has apparently been considered enough to determine that the union might have found it necessary or desirable to make demands for changes in existing systems, should evidence of inequities have been developed upon review of the data which management refused to furnish.

In *Taylor Forge & Pipe Works*, 234 F. 2d 227 (C.A. 7) (enfg. 113 NLRB 693). The court observed *inter alia*:

We agree with the Trial Examiner's statement that "Only full disclosure of [petitioner's] wage structure based on the point values assigned to each factor for all jobs would enable the Union to know whether to press or modify a particular wage demand, whether inequities exist which merit discussion or correction, and whether other elements are present in the wage structure which, though impossible to visualize beforehand, appear to merit discussion once the full picture is available."

The court further observed:

It perhaps is true, as asserted by petitioner, that the particular information sought by the Union in the instant case has not been involved in any of the court decisions. It is equally true, however, that the courts have announced and applied the general principle that an employer is obligated to furnish the union with data and information relevant to issues about which the parties are obligated to bargain. Typical of such cases is the decision of this court in the *Aluminum Ore Co.* case, 131 F. 2d 485, 487, wherein we stated: "This [referring to the Act] contemplates exchange of information, ideas and theories in open discussion and an honest attempt to arrive at an agreement. . . . In determining what employees should receive increases and in what amounts, it could have been only helpful to have before the bargainers the wage history of the various employees, including full information as to the work done by respective employees and as to their respective wages in the past, their respective increases from time to time and all other facts bearing upon what constituted fair wages and fair increases."

Respondent would seek to avoid its obligation to furnish the requested essential and requisite information on a "good faith" test of the Union's motives. I find no merit in this contention. "In these cases it is sufficient that the information sought by the Union is related to the issues involved in collective bargaining, and that no specific need as to a particular issue must be shown." *Whitin Machine Works, supra*. In the *International Powder* case⁴ the Board held: "If the information sought directly relates to setting up of wage rates, the Union is not obliged to show specific need for such data, nor can any inference of harassment be drawn from the failure to show such need."

The Board's rule, applicable to negotiations during the contract term with respect to a subject which has been discussed in precontract negotiations but which has not been specifically covered in the resulting contract, is that the employer violates Section 8(a)(5) if, during the contract term, he refuses to bargain or take unilateral action with respect to the particular subject, unless it can be said from an evaluation of the prior negotiations that the matter was "fully discussed" or "consciously explored" and that the Union "consciously yielded" or clearly and unmistakably waived its interest in the matter. *Proctor Manufacturing Corporation*, 131 NLRB 1166, 1169.

Respondent contends that the Union waived its right to bargain on the incentive plans and that Respondent is not required to furnish information on a subject on which it is not required to bargain. Respondent contends that the oral agreement of December 30, 1960, and the notice posted by the Union on January 9, 1961, constitute such a waiver. In addition, Respondent cites the waiver clause in section 21 of the current agreement which provides in part: "The Union hereby expressly waives and releases until July 31, 1962, any right it might have either to open this Agreement or to bargain on any subject." General Counsel urges that even if the Union waived its right to bargain with regard to the introduction of the incentive plans this did not constitute a waiver by the Union of its right to the requested incentive wage data. I concur with the latter view.

However, it is unnecessary to reach the question of waiver of the right to bargain on the incentive plans. Rather the question here is whether there was a waiver of the Union's right to insist upon a disclosure of information for the purpose of policing the administration of the contract. In *N.L.R.B. v. Item Company*, 220 F. 2d 956, 959 (C.A. 5), enfg. 108 NLRB 1634, cert. denied 350 U.S. 36, the Court held:

We agree with the Fourth Circuit in the *Whitin* case, *supra*, that wage data appropriate for disclosure to a statutory bargaining representative in such instances "should not necessarily be limited to that which would be pertinent to a particular existing controversy," 217 F. 2d 594, but includes all information, such as that here sought, which appears reasonably necessary for "the 'policing of the administration of any contract.'"

Respondent next insists that the Union has heretofore waived its right to bargain or insist upon disclosure of information as to the only possible relevant issue of merit increases, through having committed, contractually and otherwise, the prerogative of granting such merit increases solely to respondent's managerial discretion. We think sound reasons exist for rejecting this contention. First, there exists no substantial evidence of the requisite "clear and unmistakable" waiver of the statutory right to such information by the bargaining

⁴ *International Powder Metallurgy Company, Inc.*, 134 NLRB 1605.

agent here, it appearing without substantial dispute that in the bargaining conferences which led to the signing of the new contract the Union clearly evidenced its intention not to abandon or waive its right to the information sought, but to seek redress from the Board for respondent's refusal to divulge it. Second, assuming *arguendo* that the new contract authorized respondent to bypass the Union in granting individual employee merit increases, such a construction of its terms would not *ipso facto* establish a waiver of the Union's right to obtain information as to the merit increases thus unilaterally granted. The right to grant merit increases without the consent of a statutory bargaining agent obviously should not imply the right to withhold information thereon, since such a rule might foster discrimination against union adherents in the granting of merit increases, and thereby promote that industrial strife and unrest which the Act seeks to avoid.

There is not a scintilla of evidence in this record that the Union waived its right to the requested information. I find accordingly. I find unnecessary a determination of whether the purported oral agreement of December 30 and the Union's notice of January 9 constitute a "clear and unmistakable" waiver by the Union of its right to bargain on the matter of incentive payments. The same observation has equal application with respect to the provisions of section 21 of the current agreement.

Respondent asserts that it did not refuse to furnish the information and data requested, but that the Union took precipitate action in filing the charge herein.⁵ The initial request was made on July 14, 1961, admittedly the failure to supply the requested information continued at the time of the hearing in December 1961. The Board has found a 3-month delay in honoring a union's request for wage data unreasonable. *Peyton Packing Company, Inc.*, 129 NLRB 1358, 1362.

Upon the basis of the entire record, I find that by failing, upon request, to supply the Union with the requested information relative to "incentive earnings," including a list of employees in said unit, who have received and are receiving incentive earnings for the period from June 12, 1960, to the present, and, in the future, if incentive earnings were received beyond the date of the request, including full information as to the hours worked, incentive hours, and incentive percentage for hours worked in arriving at the total incentive earnings for each of said employees, the Respondent refused and continues to refuse to bargain with the Union and that said conduct is an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with 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 thereof.

V. THE REMEDY

Having found that the Respondent refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act by failing and refusing, on request, to furnish the Union with the incentive earnings of each of the employees in said unit, including full information as to hours worked, incentive hours, and incentive percentage for hours worked, I shall recommend that the Respondent be ordered to cease and desist from engaging in such conduct and, upon request, to supply such data to the Union.

Because of the limited scope of the Respondent's refusal to bargain, the absence of any claim that Respondent's failure was in bad faith, and because of the absence of any indication that danger of the commission of other unfair labor practices is to be anticipated from the Respondent's conduct in the past, I shall recommend that the Respondent not be ordered to cease and desist from the commission of any other unfair labor practices.

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

⁵ In this connection Respondent asserts, in its answer, that the Union undertook to furnish the Respondent with legal authority to support its request and failed to do so. This asserted defense is predicated upon an assertion by union counsel, on September 25, 1961, after the charge was filed, that he had legal authority to support the Union's request and would supply it to Respondent's counsel. I find this alleged defense without merit.

CONCLUSIONS OF LAW

1. All production and maintenance employees employed at the employer's Carnegie, Pennsylvania, plant, excluding salaried employees, foremen, supervisors (including assistant foremen) in charge of any class of labor, watchmen, guards and clerical employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

2. United Steelworkers of America, AFL-CIO, and its Local 1552, has been, at all material times herein, the exclusive representative of all the employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

3. By refusing, upon request, to supply the Union with a list of employees, in said unit, who have received and are receiving incentive earnings for the period from June 12, 1960, to the present, and, in the future, if incentive earnings were received beyond the date of the request, including full information as to the hours worked, incentive hours, and incentive percentage for hours worked in arriving at the total incentive earnings for each of said employees, 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.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondent, Union Electric Steel Corporation, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from refusing to bargain collectively with United Steelworkers of America, AFL-CIO, and its Local 1552 as the exclusive representative of the employees in the appropriate unit described below, by refusing and failing to furnish to said labor organization, upon request, a list of employees in said unit, who have received and are receiving incentive earnings for the period from June 12, 1960, to the present, and, in the future, if incentive earnings are received beyond this date, including full information as to the hours worked, incentive hours, and incentive percentage for hours worked in arriving at the total incentive earnings for each of the said employees. The said unit is defined as follows:

All production and maintenance employees employed at the employer's Carnegie, Pennsylvania, plant, excluding salaried employees, foremen, supervisors (including assistant foremen) in charge of any class of labor, watchmen, guards, and clerical employees.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Upon request, furnish to United Steelworkers of America, AFL-CIO, and its Local 1552 a list of the employees in the appropriate unit who have received and are receiving incentive earnings for the period from June 12, 1960, to the present, and, in the future, if incentive earnings are received beyond this date, including full information as to the hours worked, incentive hours, and incentive percentage for hours worked in arriving at the total incentive earnings for each of said employees.

(b) Post at its plant in Carnegie, Pennsylvania, copies of the notice attached hereto marked "Appendix."⁶ Copies of said notice, to be furnished by the Regional Director for the Sixth Region, shall, after being duly signed by the Respondent, be posted by it immediately upon receipt thereof and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Sixth Region, in writing, within 20 days from the date of the receipt of this report, what steps the Respondent has taken to comply with the foregoing recommendations.

It is further recommended that, unless within 20 days from the date of the receipt of this Intermediate Report the Respondent shall notify the aforesaid Regional

⁶ In the event that these Recommendations be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order"

Director in writing that it will comply with the foregoing recommendations,⁷ the National Labor Relations Board shall issue an order requiring the Respondent to take the aforesaid action.

⁷ In the event that these Recommendations be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

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

WE WILL NOT refuse to bargain collectively with the United Steelworkers of America, AFL-CIO, and its Local 1552 as the exclusive representative of all our employees in the appropriate unit described below, by refusing or failing to furnish to said Union, upon request, a list of employees in said unit who have received and are receiving incentive earnings for the period from June 12, 1960, to the present, and in the future, if incentive earnings are received beyond this date, including full information as to the hours worked, incentive hours, and incentive percentage for hours worked in arriving at the total incentive earnings for each of said employees.

The bargaining unit referred to herein is described as follows:

All production and maintenance employees employed at the employer's Carnegie, Pennsylvania, plant, excluding salaried employees, foremen, supervisors (including assistant foremen) in charge of any class of labor, watchmen, guards, and clerical employees.

UNION ELECTRIC STEEL CORPORATION,
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.

Employees may communicate directly with the Board's Regional Office, 2107 Clark Building, 701-17 Liberty Avenue, Pittsburgh 22, Pennsylvania, Telephone No. Grant 1-2977, if they have any question concerning this notice or compliance with its provisions.

Byrds Manufacturing Corp. and International Ladies Garment Workers Union, AFL-CIO. Cases Nos. 26-CA-1160 and 26-CA-1220. December 18, 1962

DECISION AND ORDER

On July 11, 1962, Trial Examiner Harold X. Summers 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 attached Intermediate Report. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices. Thereafter, the Respondent, the Charging Party, and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.