

**Wean Manufacturing Company and United Steelworkers of America, AFL-CIO, Charging Party and Shop Committee, Party to the Contract. Case No. 8-CA-3223. May 25, 1964**

**DECISION AND ORDER**

On February 25, 1964, Trial Examiner Harold X. Summers issued his Decision in the above-entitled proceeding, finding that 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 Decision. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Decision, the exceptions and the brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order, the Recommended Order of the Trial Examiner and orders that the Respondent, Wean Manufacturing Company, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, with the following amendment:

The "Notice to All Employees" is amended by adding to the third indented paragraph, after the word "employees," the following words; "Provided, That nothing herein shall be construed as requiring us to vary wages, hours, seniority, or other substantive features of employees' working conditions which may have been established pursuant to the above-working agreement."

**TRIAL EXAMINER'S DECISION**

This case was heard upon the complaint<sup>1</sup> of the General Counsel of the National Labor Relations Board, herein called the Board, alleging that Wean Manufacturing Company, herein called Respondent, had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(1) and (2) of the National Labor Relations Act, herein called the Act. Respondent's answer to the complaint admitted some of its allegations and denied others; in effect, it denied the commission of any

<sup>1</sup> The complaint was issued August 29, 1963. The charge initiating the proceeding was filed July 19, 1963.

unfair labor practices. Pursuant to notice, a hearing was held before Trial Examiner Harold X. Summers at Warren, Ohio, on October 14 and 15, 1963. All parties were afforded full opportunity to examine and cross-examine witnesses, to argue orally, and to submit briefs. Briefs filed by the General Counsel and Respondent have been fully considered.

Upon the entire record of the case, including my evaluation of the witnesses based upon the evidence and my observation of their demeanor, I make the following:

## FINDINGS OF FACT

### I. COMMERCE

Respondent, an Ohio corporation maintaining its principal office and place of business in Warren, Ohio, is, and at all times material herein has been, engaged in the manufacture and sale of steel mill equipment. In the course and conduct of its operations, it annually ships and transports products valued at excess of \$50,000 from its place of business in Warren, Ohio, directly to States of the United States other than the State of Ohio.

I find that Respondent is an employer engaged in commerce within the meaning of the Act.

### II. THE UNIONS

The Charging Party, United Steelworkers of America, AFL-CIO, hereinafter called the Steelworkers, and the Shop Committee, hereinafter sometimes referred to as the Committee, are labor organizations within the meaning of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *The issues*

The complaint alleges, and Respondent denies, that Respondent has been and is rendering unlawful aid, assistance, and support to the Shop Committee by paying committee members for time spent at committee meetings, furnishing secretarial and related services to the Shop Committee without charge, and paying committee members for time spent on committee elections.<sup>2</sup> Respondent, in addition to denying the allegations, urges that whatever the benefits bestowed upon the committee by Respondent, the costs thereof were minimal, and at any rate, Respondent's actions amounted to no more than the according of cooperation between employer and bargaining agent which the Act permits and/or encourages.

#### B. *Background; activities of the committee; Respondent's involvement*

Respondent's operations began in 1948. (Since then, organizing attempts among Respondent's employees have been made by International Association of Machinists, by United Automobile, Aerospace and Agricultural Implement Workers of America, and, on two occasions, by the Steelworkers.) During Respondent's existence, there have been no strikes or lockouts. Its present work force consists of approximately 325 employees.

The Shop Committee, over the 11 or 12 years of its existence, has been recognized by Respondent as the bargaining agent for the nonsupervisory production and maintenance employees.<sup>3</sup> During this period, there have been a series of "working agreements," the latest of which, by its terms, is effective from February 4, 1963, until September 1, 1964. This latest agreement, which appears to be representative of its predecessors, covers, *inter alia*, such areas as wages, hours, seniority, and grievance procedures; it makes no reference to the internal structure of the Shop Committee.

Although they are represented by it in collective bargaining, employees of Respondent are not members, as such, of the committee. Rather, divided into constituencies according to department and work shift, each year they vote for members of the committee and, from among the committeemen chosen, for its chairman.

<sup>2</sup>The complaint was amended at the hearing in this latter respect. The added allegation was fully litigated.

<sup>3</sup>More precisely, the bargaining unit represented by the Shop Committee consists of "all hourly rated production and maintenance employees of [Respondent], excluding clerical, group leader, or supervisory employees, watchmen, and part-time employees" and further excluding "employees who perform production or maintenance work as a part of a specific training program determined by the Company."

During the period relevant herein, there were eight committeemen, including the chairman.

The committee collects no dues, and has no treasury or bank account. Although there are no meetings of the employees whom it represents, there are—as detailed below—periodic meetings of committeemen, both separately and together with management, and, at one step of the grievance procedure, individual committeemen meet with supervisory personnel. In the deliberations of the committee (alone or with management) one or another committeeman may, on occasion, take notes, but the committee neither takes any official minutes of its actions nor maintains any records. Until the first half of 1963, it had no bylaws; in July of that year, bylaws incorporating past practices, prepared by one of the committeemen, were adopted by the committee.

The involvement of Respondent in the Shop Committee's affairs, as revealed by the record, will be divided, for purposes of this decision, into three periods: events predating January 23, 1963, all prior to the 6-month period preceding the filing of the instant charge;<sup>4</sup> events occurring between January 23 and July 23, 1963, the latter being the date of the filing of the charge; and events occurring subsequent to July 23, 1963.<sup>5</sup>

For a number of years prior to January 23, 1963, the Shop Committee engaged in various activities, the costs of which were borne by Respondent.

Twice each year the committee received from Respondent a seniority list of the plant's employees.

Each year, early in September, elections for committee members have been held on company time and property. Ballots in the first step, the *nominating* elections, blank except for a date-stamp, were furnished by Betty Lapolla, secretary to Respondent's vice president and general manager.<sup>6</sup> These were distributed to each voting group by the incumbent committee member representing that group, accompanied by an employee selected by lot from the group. Each employee inserted the name of someone from his group as his nominee; and the ballots were collected and counted by the two who had distributed them. Now, Lapolla prepared ballots for the *general* elections: for each voting group, she mimeographed ballots containing the names of those candidates appearing most frequently on the nominating ballots. Again, the incumbent committeemen and their helpers distributed, collected, and counted the ballots, those receiving the highest number of votes in each group being declared elected committee members. Finally, the election for committee *chairman*, a plantwide election, was held. Lapolla prepared and furnished a list of eligible voters and a third ballot, this one containing the names of the newly elected committee members. Ballots were distributed, marked, collected, and counted. All notices in connection with the three-part election—announcement of the winners, for example—were prepared by Miss Lapolla.

The committee did not compensate, and was not expected to compensate, Respondent for the preparation and furnishing of the ballots or notices; nor was anyone involved in the elections docked for time spent either in officiating or voting.

During the same period—prior to January 23—members of the committee, as such, engaged in a number of activities on company time without loss of pay and on company property without cost to the committee. As one example, committeemen met with foremen on grievances after an aggrieved employee had failed to achieve satisfaction himself; and, if the matter were carried further, the employee's committeeman and the committee chairman met with representatives of management as specified in the working agreement.

<sup>4</sup> I here reaffirm a ruling made at the hearing over Respondent's objection—that evidence of events occurring prior to January 23, 1963, the "10(b) date" herein, was properly admissible. I shall consider such evidence for whatever light it may throw on occurrences subsequent to that date. Cf. *Southern Electronics Company, Inc.*, 131 NLRB 1411; *Local Lodge No. 1424, International Association of Machinists, AFL-CIO*; and *International Association of Machinists, AFL-CIO (Bryan Manufacturing Co.) v. N.L.R.B.*, 362 U.S. 411.

<sup>5</sup> I reject Respondent's contentions that its conduct subsequent to the filing of the charge is not litigable herein (*Chambers Manufacturing Corporation*, 124 NLRB 721, 726) and that evidence of acts occurring subsequent to the issuance of the instant complaint is not admissible herein (*N.L.R.B. v. Fant Milling Company*, 360 U.S. 301, 306-307).

<sup>6</sup> Miss Lapolla, who was and is authorized to perform the services for the Shop Committee described in this decision, is not a member of the bargaining unit represented by the committee. I find her to be an agent of Respondent with respect to her furnishing services and materials to the Shop Committee.

As an example of greater substance, the entire committee periodically met. Originally, it met, at spaced intervals, directly with management (meetings which will be here referred to as joint meetings), for a discussion of current problems, including, when appropriate, matters of collective bargaining. (There were eight joint meetings during 1962.) Also, when the occasion arose, it would meet as a committee alone, with Respondent's approval, on any internal committee matter; but it appears that there have been no such meetings since at least 1960. Since 1959—at the request of the Shop Committee—the committee has been permitted, immediately before a scheduled joint meeting, to meet on company time and premises (in what will herein be called premeetings), to decide what, if any, matters should be raised at the joint meeting. A premeeting would normally start at about 1 p.m. and last approximately 1 hour; the length of the following joint meeting, if held, depended on the issues raised.

As indicated, both premeetings and joint meetings were held on company time and property. For purposes of computing pay, committeemen were treated, during meeting times, as if they were working. The site of the premeetings was the engineering and special office, sometimes called the drawing room, a room otherwise occupied by Respondent's engineer-inspectors.

Notes of actions taken at joint meetings were kept by Plant Superintendent Leach, from which notes summary "minutes" were prepared by company representatives. The minutes were placed by Lapolla on a reproducing stencil, which was then signed by Joseph Bailey, Respondent's vice president and general manager, and the incumbent committee chairman.<sup>7</sup> The stencil was then processed by Lapolla, and a copy of the minutes was sent to each employee in the bargaining unit, at company expense.

On September 11, 1962, Felix Tesner,<sup>8</sup> an all-round machinist on the day turn of the machine shop, was elected committee member representing his voting group as well as committee chairman.

Shortly after his election, on two occasions, he was called into the office of Vice President Bailey. Plant Superintendent Leach was also present. Generally speaking, the conversation concerned itself with the filing of grievances; specifically, Tesner said that employees were complaining about Respondent's supposed abuse of its right to transfer persons from their regular jobs for periods up to 30 days. The sole aspect of the conversation relevant herein was Bailey's admonition to Tesner "not to go out and try to make grievances. . . . There [is] a grievance procedure set up to handle grievances and [there is] no grievance . . . until an employee [files] a grievance."<sup>9</sup> Despite the admonition, the evidence establishes, and I find, Tesner vigorously conducted the affairs of his office thereafter.

Late in December (1962), because of the sale of some machinery, Tesner was transferred to the afternoon shift and demoted to the position of machine operator.<sup>10</sup> Over his protest, this action was accepted as depriving him of his position on the committee.<sup>11</sup> In January 1963 (prior to January 23), elections were held for his successor as representative of his group. The nominating election and the general election were held on January 21 and 22, respectively. As usual, the notices and ballots, and the time of the election officials and voters were furnished by Respondent, without cost to the committee.

During the period from January 23 through July 23, 1963, Respondent's involvement in the committee's affairs was limited to a number of instances.

<sup>7</sup> Although no minutes of the meetings were kept by the committee, I assume and find, in the absence of evidence to the contrary, that the committee chairman, before signing the stencil, could have it corrected to accord with the facts, where appropriate.

<sup>8</sup> Spelled T-i-s-n-e-r throughout the transcript, which is hereby corrected accordingly.

<sup>9</sup> In so finding, I credit Bailey. (Leach did not testify.) In essence, Tesner's testimony is not at variance, except with respect to his characterization of the extent to which Bailey told "me what my duties were as chairman of the Committee." (There was irrelevant differences as to the dates and lengths of the conversations.)

<sup>10</sup> There is some indication in this record, that at least one fellow committee member had advance knowledge of the move; allegedly, he learned of it "through the grapevine" or, perhaps, the contemplated sale was discussed at a meeting between management and the committee. At any rate, a grievance concerning Tesner's transfer-demotion (based on a contract clause, not on discrimination) was thereafter unsuccessfully processed, and there is no allegation of unfair labor practice in this respect.

<sup>11</sup> Among the requirements for eligibility to serve as committeeman was that one be currently employed in the voting group he represented.

The election of a committee chairman to succeed Tesner was held on February 7, 1963, on company time. The notice announcing the election, the list of eligible voters, the ballots (containing the names of incumbent committeemen), and the notice announcing the winner were furnished by Respondent; and no one was docked for time lost either in officiating or voting.

Meanwhile, early in February, the then existing working agreement between Respondent and the Shop Committee was the subject of renegotiation.<sup>12</sup> On February 4, the committee held a 1½ hour premeeting to discuss its position on wages. Thereafter a joint meeting was held, at which new terms were agreed upon.<sup>13</sup> The new terms were thereupon submitted to Respondent's employees for ratification.

These are the circumstances of the ratification. At the committee's request, Lapolla prepared the voting list, a notice of the vote, and the ballots. The choices on the ballot: whether (1) to accept the newly negotiated improvements, or (2) to continue working under existing conditions until September 1, 1963. Before the vote was actually taken, the committeemen, or some of them, realized that perhaps a third choice was necessary—for those who might be dissatisfied with both the new improvements and waiting for September 1. Two of the committeemen—there was no chairman at this time—spoke to Respondent Vice President Bailey, and it was agreed that employees might demonstrate their dissatisfaction with either choice on the ballot by casting a blank ballot. This "third alternative" was explained to employees as ballots were distributed. A tally of the ballots revealed that those voting to accept the new terms exceeded, by three or four, the total of those who favored one or the other of the remaining two choices.<sup>14</sup> The voting list, notices, ballots, and time of the voting officials and voters was furnished by Respondent at no cost to the Shop Committee.

During the remainder of the period (January 23 to July 23, 1963), three joint meetings were held,<sup>15</sup> each preceded by a premeeting of the committee lasting from 1 to 1½ hours each. As in the past, the committee members were treated as working during the periods of the meetings.

In May or June 1963, by agreement between Respondent and the committee, the time of the premeeting was regularized—it was set for the first Monday of each month.<sup>16</sup>

During the same period, bylaws were formulated by the committee. Spurred, apparently, by the lack of formal rules governing the situation existing when Committee Chairman Tesner was transferred out of his constituency, the committee, at or about April, decided to formalize its practices. Committeeman Paul Nims volunteered to do the research and drafting. In the course of his efforts, he spoke to many employees of Respondent.<sup>17</sup> He prepared a number of successive drafts, and the matter was discussed by the committee in at least one, perhaps two, of its premeetings held during this period.

Finally, during this 6-month period, a seniority list was prepared by Lapolla and given to the committee.

There remains the periods from July 23 to October 14, 1963, the date of the opening of this hearing.

Late in July, the committee formally adopted the bylaws prepared by Nims. (It is unnecessary to determine whether this took place at a premeeting or other meet-

<sup>12</sup> That contract, executed as of December 1, 1960, was to be effective by its terms until September 1, 1963, with provisions for reopening economic issues on September 1, 1961, and September 1, 1962. On or about September 1, 1962, it had been agreed between Respondent and the outgoing committee to postpone the discussion of new wages until February 1963; and it was pursuant to this agreement that the question was now being rediscussed.

<sup>13</sup> In addition to a 3-percent general wage increase, certain other improvements were agreed upon: e.g., jury pay, time off with pay in case of a death in family, and some special wage increases for certain jobs. It was also agreed that the term of the working agreement be extended to September 1, 1964.

<sup>14</sup> Respondent put the terms of the new contract into effect immediately.

<sup>15</sup> On March 5, May 13, and June 17.

<sup>16</sup> This does not necessarily mean that the committee thereafter met every month. In point of fact, they did not.

<sup>17</sup> Among others, he spoke to Vice President Bailey, of whom he asked what past committee chairman, if any, had changed jobs while in office.

ings; it has been established, and I find, that all committee meetings were held on company time or property.) Thereafter, finished copies were run off by Nims' wife, who worked for a sister-enterprise of Respondent.<sup>18</sup>

Two or three premeetings, followed by joint meetings, were held during this "third" period. As usual, committeemen were paid as if they were working.

Early in September 1963, the committee held its yearly elections for committeemen and committee chairman. Respondent furnished supplies, services, and work-time as earlier described.

### C. Discussion and final conclusions

I have gone into detail with respect to the relationship between Respondent and the Shop Committee because, in agreement with Respondent, I do not believe that a *per se* approach can be utilized in this area. The ultimate question, it seems to me, is whether the extent of the "cooperation" accorded by an employer to the representative of his employees is so great as (1) to constitute interference with the employees' right to be represented by this or any other bargaining representative, or (2) unduly to affect the ability of the representative to deal, on behalf of the employees, with an employer to which it is beholden. The answer to this question can be found only by allusion to the entire picture.

Before going further, however, I deem it appropriate to set forth a number of factors which are *not* to be considered a part of the entire picture. First and foremost, it is clear that no distinction should be made between an "affiliated" union and a "nonaffiliated" union; each is entitled to the same cooperation from the employer with whom it deals. Secondly, I recognize that, in the nature of things, a lawfully recognized bargaining agent may be expected to enjoy certain benefits not available to "outsiders": for example, the use of bulletin boards or, as here, the semiannual furnishing of seniority lists. Thirdly, I am aware that, by operation of law,<sup>19</sup> an employer is not prohibited from paying employees for time spent in conferring with him; thus, I shall not rely, in formulating my conclusions herein, upon Respondent's payment of committee members for time spent in *joint* meetings either on grievances or in collective bargaining. Finally, in the absence of proof of unlawful motivation, I do not adopt, nor do I rely on, the General Counsel's contention that where, as here, an employer is in a position to affect the composition of the committee with which he bargains by virtue of his power to terminate employment, effect transfers, or institute training programs, he thereby engages in unlawful interference.<sup>20</sup> On the other hand, equally irrelevant, in my opinion, would be the fact of a harmonious relationship between employer and bargaining representative, as exemplified by the absence of strikes or lockouts or by the existence of favorable working conditions;<sup>21</sup> nor should weight be given to the practices which may prevail in the geographical area.

I find, on this record, that the Shop Committee, bargaining representative of Respondent's production and maintenance employees, having no financial resources of its own, has been accorded certain facilities by Respondent. Those facilities, over the years (as typified by the pattern of conduct preceding the 10(b) period herein and continuing into said period), have included and do include assistance in connection with the holding of internal committee elections—voting time for employees, officiating time for election officials, voting eligibility lists, and secretarial help and supplies; a meeting place for internal committee meetings, with pay at regular employment rates for participants; and, in connection with meetings between the committee and management, the preparation and distribution to employees represented by the committee of the minutes of action taken at such meetings.

<sup>18</sup> Although it is stipulated that Respondent would be chargeable with acts of the sister-enterprise, I find no Respondent responsibility for Mrs. Nims' action. She duplicated the bylaws without the knowledge or consent of her employer.

<sup>19</sup> See proviso to Section 8(a)(2).

<sup>20</sup> *Holland Manufacturing Company*, 129 NLRB 776, footnote 1; *Federal Tool Corporation*, 130 NLRB 210, footnote 2.

<sup>21</sup> I here reaffirm a ruling, made at the hearing, rejecting an offer with respect to wages being paid by Respondent. See *Seafarers International Union of North America, Great Lakes District, AFL-CIO*, 138 NLRB 1142, affirming Trial Examiner's conclusion found at page 1151.

Clearly, this contribution of support violates the proscription contained in Section 8(a)(2).<sup>22</sup> The natural tendency of such support, I find, would be to inhibit employees in their choice of bargaining representative and to restrict the committee, to the extent that its continued existence depends on the continuation of such support, in arm's-length dealings with Respondent. Lending weight to this finding are the facts that Vice President Bailey had no compunctions about giving advice to a committee chairman concerning the extent of the latter's activities in policing the contract, and the committee's readiness to consult with Bailey about the manner of the action to be taken by the employees in passing on decisions made in collective bargaining.

In effect, Respondent, in an effort to minimize the extent of its "cooperation," urges that permitting the holding of premeetings (at company expense) served to shorten joint meetings, for the former served to fix the agenda for and, perhaps, eliminate the need for the latter. But the fact remains that the content of the premeeting was essentially internal in nature: Committee members were polled as to questions that concerned them, topics were screened, and committee positions were taken. Moreover, matters such as the bylaws of the committee were considered at these meetings. I must reject this contention of Respondent.

As earlier indicated, Respondent, in addition to denying the factual allegations of the complaint, defends further on the ground that the benefits Respondent bestowed on the Shop Committee were minimal in value and, in fact, constituted no more than that cooperation between employer and bargaining representative which is permitted and encouraged by the Act. He has submitted evidence, testimonial and documentary, tending to show that the cost to Respondent of favors rendered the Shop Committee between January 23 and July 23, 1963, was \$134.29; and (taking into consideration that part of the activities in question during that 6-month period do not occur every 6 months) he computes that the *yearly* cost per employee does not exceed 95 cents.

Assuming, without finding,<sup>23</sup> that Respondent's figures are valid and his computations correct, the short answer to this defense is that the term "minimal" is a relative one. To apply it to a figure which, as here, constitutes 100 percent of the fiscal needs of the bargaining representative makes a nullity of the term.<sup>24</sup> I find that the amount being spent was the sole financial breath of the Shop Committee's life; as such, its natural and reasonable tendency would be to render it dependent upon Respondent in its operations.

In sum, viewing the record as a whole and in the basis of what I am convinced is a fair preponderance of credible evidence, I conclude and find that Respondent has contributed such financial and other support to the Shop Committee as to constitute interference with its employees' right of self-organization and as to affect unduly the ability of the Shop Committee to act as the employees' bargaining agent; and that, by contributing such financial aid and support, Respondent has not only interfered with, restrained, or coerced employees in the exercise of rights guaranteed them in Section 7 of the Act, but also has interfered with the administration of the Shop Committee in violation of Section 8(a)(1) and (2) of the Act.

#### IV. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action in order to effectuate the policies of the Act.

<sup>22</sup> *Jamestown Machine and Manufacturing Company*, 127 NLRB 172; *Holland Manufacturing Company*, *supra*, *enfd.* 292 F. 2d 840 (C.A. 9); *Steel Industries, Incorporated*, 138 NLRB 1235; *Edmont, Inc.*, 139 NLRB 1528.

<sup>23</sup> In view of my ultimate finding, I deem it unnecessary to enter into an extended discussion of the accuracy and the completeness of the figures. But I do note that Respondent's figures are based on a period ending July 23, whereas, as above found, the period under scrutiny does not end on that date; that, although they purport to cover the costs of the "ratification" election held on February 4, they do not cover the costs of lost time of voting officials or voters; that they do not include any of the costs of the election for committee chairman held on February 7; that, in covering premeetings, they consider the wages of the afternoon shift committee members at *straight time* rather than *overtime*; and that they do not include the cost of preparing and distributing minutes of joint meetings.

<sup>24</sup> *Cf. Fender Electric Instrument Company, Inc.*, 133 NLRB 676, in which the assistance consisted of paying seven committee members for two meetings consuming a total of 2 hours; but *cf. Signal Oil and Gas Company*, 131 NLRB 1427.

Having found that Respondent has violated Section 8(a)(1) and (2) by contributing financial and other support to the Shop Committee, I shall recommend that it cease and desist from so contributing, that it withdraw and withhold recognition from the Shop Committee as representative of its employees unless and until that organization shall have been certified by the Board as the exclusive representative of Respondent's employees,<sup>25</sup> and that it cease giving effect to the working agreement with the Shop Committee executed during the 6 months immediately preceding the filing of the instant charge.<sup>26</sup>

As the unfair labor practices committed by Respondent are of a character striking at the roots of employees' rights safeguarded by the Act, it will also be recommended that Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the foregoing factual findings and conclusions, I come to the following:

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Steelworkers and the Shop Committee are labor organizations within the meaning of Section 2(5) of the Act.

3. By contributing financial and other support to the Shop Committee, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

#### RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, upon the entire record in the case, and pursuant to Section 10(c) of the Act, I hereby recommend that the Respondent, Wean Manufacturing Company, of Warren, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Contributing financial or other support to the Shop Committee or any other labor organization of its employees.

(b) Recognizing the Shop Committee, or any successor thereto, as the representative of its employees for the purpose of bargaining collectively concerning conditions of employment, unless and until said labor organization shall have been certified by the Board as the exclusive representative of such employees.

(c) Enforcing or maintaining its working agreement with the above labor organization entered into on or about February 4, 1962, or any modifications, extensions, supplements, or renewals thereof, unless and until said labor organization shall have been certified by the Board as the exclusive representative of such employees; *Provided*, That nothing herein shall be construed as requiring Respondent to vary wages, hours, seniority, or other substantive features of its employees' working conditions which may have been established pursuant to the above working agreement.

(d) In any like or related manner interfering with, restraining, or coercing their employees in the exercise of their right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and 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.

<sup>25</sup> Thus, I reject the Steelworkers' contention—not shared by the General Counsel—that the Shop Committee be *disestablished*. The formation of the committee long antedated the institution of this proceeding, and the credible evidence does not support a finding of domination. See *Seafarers International Union, Great Lakes District, AFL-CIO, supra*; cf. *Lee-Rowan Manufacturing Company*, 129 NLRB 980, and *Prince Macaroni Manufacturing Co.*, 138 NLRB 979.

<sup>26</sup> Nothing in this recommendation shall be construed to require Respondent to vary wages, hours, seniority, or other substantive features of its employees' working conditions which may have been established pursuant to said working agreement.

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

(a) Withdraw and withhold recognition from the Shop Committee, or any successor thereto, as the exclusive bargaining representative of its employees, unless and until said labor organization shall have been certified by the Board as the exclusive representative of such employees.

(b) Post at its plant at Warren, Ohio, copies of the attached notice marked "Appendix."<sup>27</sup> Copies of such notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by an authorized representative of Respondent, be posted immediately upon receipt thereof, and be maintained by it for a period of 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 Eighth Region, in writing, within 20 days from the receipt of this Decision, what steps the Respondent has taken to comply herewith.<sup>28</sup>

<sup>27</sup> If this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for "the Recommended Order of a Trial Examiner" in the notice. If the Board's Order is enforced by the United States Court of Appeals, the notice will be further amended by the substitution of the words "a Decree of the United States Court of Appeals, Enforcing an Order" for the words "a Decision and Order"

<sup>28</sup> If this Recommended Order is adopted by the Board this provision shall be modified to read: "Notify the Regional Director for the Eighth Region, 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 Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT contribute financial or other support to the Shop Committee or any other labor organization of our employees.

WE WILL NOT recognize the Shop Committee, or any successor, as representative of our employees unless and until that labor organization has been certified by the Board as the exclusive representative of our employees.

WE WILL NOT enforce or maintain the working agreement entered into with the Shop Committee on or about February 4, 1963 (or any modification, extension, supplement, or renewal thereof), unless and until the Shop Committee has been certified by the Board as the exclusive representative of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to organize; to form, join, or assist a labor organization; to bargain collectively through a bargaining agent chosen by themselves; to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; or to refrain from any such activities (except to the extent that the right to refrain is limited by the lawful enforcement of a lawful union-security requirement).

WE WILL withdraw and withhold recognition from the Shop Committee, or any successor, as the representative of our employees unless and until that labor organization has been certified by the Board as the exclusive representative of our employees.

WEAN MANUFACTURING COMPANY,  
Employer.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio, Telephone No. Main 1-4465, if they have any question concerning this notice or compliance with its provisions.