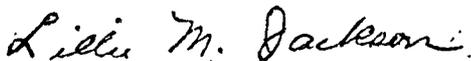


CIO Laundry Workers Union which is trying very hard to bring better pay and better working conditions to Baltimore laundry workers.

God helps those who help themselves! You can help yourself and improve your lot by voting for the AFL-CIO Laundry Workers Union in the coming election.

Yours in the fellowship of service,



Dr. Lillie M. Jackson
President

Acme Industrial Company and Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO. Case No. 13-CA-6396. February 1, 1965

DECISION AND ORDER

On October 7, 1964, Trial Examiner John F. Funke issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in unfair labor practices as alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel, the Charging Party, and the Respondent filed exceptions to the Trial Examiner's Decision and supporting briefs.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, 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 Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and finds merit in the exceptions of the General Counsel and the Charging Party. Accordingly, the Board adopts the findings of the Trial Examiner only to the extent consistent herewith.

On April 23, 1963,¹ the Union and Respondent settled a strike which had lasted 8 months. Since the settlement, there have been between 30 and 75 employees on layoff status. On the day of the settlement, the Union and Respondent executed a collective-bargaining agreement containing the following pertinent provisions which are alleged by one or the other of the parties thereto to be relevant and controlling:

¹ The Trial Examiner inadvertently found that the agreement was dated April 23, 1964, instead of April 23, 1963.

ARTICLE I

Section 3. It is the Company's general policy not to subcontract work which is normally performed by employees in the bargaining unit where this will cause the layoff of employees or prevent the recall of employees who would normally perform this work for the Company

* * * * *

ARTICLE VI

Section 10. In the event the equipment of the plant or of any department, entirely or partially, is hereafter moved to another location of the Company, employees working in the plant or in such department who are subject to reduction in classification or layoff as a result thereof may transfer to the new location with full rights and seniority, unless there is then in existence at the new location a collective bargaining agreement covering production and maintenance employees at such location.

On or about January 8, 1964, the Union, upon discovering that machinery was being removed from Respondent's Chicago plant, began to seek information concerning this through its stewards. The steward would in each case ask why the machinery was being removed and where it was being moved. In each case the Respondent's foreman would state that he felt there had been no violation of the contract and that the Respondent did not feel compelled to give such information. The Union submitted 11 grievances related to the removal of machinery and to the subcontracting of work at the plant.

On April 3, 1964, William Antalek, president of the Union, wrote a letter to Respondent requesting information concerning the approximate date when each piece of equipment was moved out of the plant; place to which the equipment was moved and whether such place is a facility which is operated or controlled by the Company; the number of machines or equipment moved out of the plant; the reason or purpose for moving the equipment; and whether the equipment is used for production elsewhere. On April 16, 1964, the Respondent wrote a letter in answer and therein refused to give the requested information.

In dismissing the complaint, the Trial Examiner found that the parties clearly provided in their contract that contractual disputes should be sent to arbitration, and for that reason would leave them to the arbitration process. In so finding, the Trial Examiner viewed the scope of the complaint as being limited to the failure of

Respondent to provide information respecting the removal of machinery and not the failure to provide information respecting subcontracting.

The General Counsel and the Charging Party contend that the requested information is necessary to the processing of pending grievances and the administration of the existing collective-bargaining agreement.

We find, contrary to the Trial Examiner, that the complaint is sufficiently broad to include the subcontracting provision of the contract. The language of the complaint does not specifically mention nor limit the scope of the complaint to any provision of the contract. The information requested by the Union can be related to either article I, section 3, or article VI, section 10 of the agreement.

As to the information requested by the Union, Respondent contends a statutory duty to furnish information does not exist where the information sought is irrelevant to the Union's function of representing employees concerning their wages, hours, or conditions of employment. Here the Respondent attempts to show that no employees were affected by the removal of machinery, thus making the requested information immaterial.

It is clear that Section 8(a)(5) of the Act imposes an obligation upon an employer to furnish upon request all information relevant to the bargaining representative's intelligent performance of its function.² Applying this principle to the instant case, it is clear, and we find contrary to the Trial Examiner, that the information sought by the Union was necessary in order to enable the Union to evaluate intelligently the grievances filed and to determine whether such grievances were meritorious, and whether to press for arbitration. The denial of such information deprives the Union of an opportunity to know whether jobs and machinery have been moved out of the plant under circumstances entitling employees, especially those in layoff status, to follow the jobs or entitling the Union to grieve over improper subcontracting. We note that the contract does not contain a clause dealing specifically with the furnishing of information necessary and relevant to the processing of grievances or any other clause by which the Union waives its statutory right to such information. The mere existence of a grievance machinery terminating in arbitration is not to be construed as a waiver of the Union's statutory right to such information.³ Respondent was remiss in performing its statutory duty in refusing to furnish this information. We find that, by such conduct, the Respondent since on or about January 13, 1964, has failed to bargain with the Union, in violation of Section 8(a)(5) and (1) of the Act.

² *Timken Roller Bearing Co. v. N.L.R.B.*, 138 NLRB 15, enfd. 325 F. 2d 746 (C.A. 6).

³ *The Fafnir Bearing Company*, 146 NLRB 1582.

THE REMEDY

Having found that the Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce, we shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the purposes of the Act.

It has been found that by refusing to furnish information concerning the removal of machinery from the plant, Respondent refused to bargain collectively with Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, and thereby interfered with, restrained, and coerced its employees. We shall order Respondent to furnish full information concerning the removal of machinery and equipment from its plant.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Acme Industrial Company, Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, as the exclusive bargaining representative of its employees by refusing to furnish to it or its agents information concerning the removal of equipment and machinery from its plant.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, and its Local No. 310, or any other 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 as guaranteed in Section 7 of the Act, or to refrain from any or all of such activities, except to the extent that such rights 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 it is found will effectuate the policies of the Act:

(a) Furnish, upon request, to the Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agri-

cultural Implement Workers of America, AFL-CIO, or its agents, information concerning the removal of equipment and machinery from its plant.

(b) Post at its plant in Chicago, Illinois, copies of the attached notice marked "Appendix."⁴ Copies of the said notice, to be furnished by the Regional Director for Region 13, after being signed by a representative of the Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

⁴In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an 'Order.'"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, as the exclusive bargaining representative of our employees by refusing to furnish to it or its agents information concerning the removal of equipment and machinery from our plant.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, and its Local No. 310, or any other 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 as guaranteed in Section 7 of the Act, or to refrain from any or all of such activities, except to the extent that such rights 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.

WE WILL, upon request, furnish to Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, or its agents, information concerning the removal of equipment and machinery from our plant.

ACME INDUSTRIAL COMPANY,
Employer.

Dated----- By-----
(Representative) (Title)

This notice must remain posted for 60 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, 219 South Dearborn Street, Chicago, Illinois, Telephone No. 828-7572, if they have any question concerning this notice or compliance with its provisions.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed on May 7, 1964, by Amalgamated Local Union No. 310, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, herein called Local 310 or the UAW, against Acme Industrial Company, herein called Acme or the Respondent, the General Counsel issued a complaint alleging Respondent violated Section 8(a) (5) by failing to provide Local 310 with information respecting the removal of certain machinery from its Chicago plant.

The answer of the Respondent set forth the contract as a defense and denied the commission of any unfair labor practices.

This proceeding, with all parties represented, was heard before Trial Examiner John F. Funke at Chicago, Illinois, on August 24, 1964. At the conclusion of the hearing the parties were given leave to submit briefs and briefs were received from the parties on September 28.

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

Respondent is an Illinois corporation maintaining an office and principal place of business at 200 North Laffin Street, Chicago, Illinois. It is engaged in the manufacture of tools and metal products, and in the course of calendar year 1963 shipped products valued in excess of \$50,000 to places outside the State of Illinois.

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

II. LABOR ORGANIZATION INVOLVED

Local 310 is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The facts

The complaint is specific, alleging, paragraph VIII:

Commencing on or about April 1, 1964, and at all times thereafter, the Respondent did refuse, and continues to refuse to bargain collectively with the Union as the exclusive collective bargaining representative of all employees in the

unit described above in paragraph V, in that on or about April 1, 1964, and at all times since, Respondent has refused, and continues to refuse, to furnish to the Union data relating to the removal of equipment and machines from Respondent's plant, such information being necessary to the processing of pending grievances and the administration of the existing collective bargaining agreement.

The contract between the parties dated April 23, 1964,¹ contains the following clauses which are alleged by one or the other of the parties thereto to be relevant and controlling:

ARTICLE I

Section 3. It is the Company's general policy not to subcontract work which is normally performed by employees in the bargaining unit where this will cause the layoff of employees or prevent the recall of employees who would normally perform this work for the Company. The Company will continue to purchase components and sub-assemblies and to have other outside work done, including the making of tools and dies, where it is not economic to perform this work in the plant, or where production schedules, equipment, employee skills or other factors make it impractical to perform the work in the plant. Violation of the above will be subject to the grievance procedure.

It is understood that this Section shall have no application to subcontracts in existence at the time of the execution of this Agreement.

* * * * *

ARTICLE IV

Section 1. A grievance is a difference of opinion with respect to the meaning and application of the terms of this Agreement.²

* * * * *

ARTICLE VI

Section 10. In the event the equipment of the plant or of any department, entirely or partially, is hereafter moved to another location of the Company, employees working in the plant or in such department who are subject to reduction in classification or layoff as a result thereof may transfer to the new location with full rights and seniority, unless there is then in existence at the new location a collective bargaining agreement covering production and maintenance employees at such location.

During a period beginning January 3, 1964, and running through March 3, 1964, Local 310 submitted 11 grievances (General Counsel's Exhibits Nos. 4-A through 4-K) related to the removal of machinery from Respondent's Chicago plant and to the subcontracting of work at that plant.³ These grievances were pending at the time of the hearing. On April 3 Local 310 wrote Respondent (General Counsel's Exhibit

¹ General Counsel's Exhibit No. 3.

² The grievance procedure provides for three steps with final and binding arbitration if agreement cannot be reached.

³ The Trial Examiner ruled, in view of the specificity of paragraph VIII of the complaint, that he would limit his decision to the failure of the Respondent to provide information respecting the removal of machinery and would not consider the failure to provide information respecting subcontracting. The following colloquy took place when the General Counsel sought to expand the issue:

MR. LAZAR: I have no further questions of this witness.

However, I'd like to reaffirm at this time my basic objection to the Trial Examiner's ruling and take exception to the ruling. I realize I have an automatic exception. However, I want it understood that the reason for my exception to the ruling with respect to testimony on subcontracting goes basically to the issue as to whether or not this information would have elicited, if granted, would have elicited such information. In other words, if the company had told the union why it was removing the machinery and where it was removing it to, then it would necessarily follow that if the company was subcontracting, the union would have had certain rights under the contract and also under the law if not expressly by virtue of the contract to demand bargaining over that subject.

Not having knowledge of that fact, the union was in no position to make any demand or to process its grievances.

TRIAL EXAMINER. I am making the same statement. Your complaint very specifically refers to information related to the removal of equipment and machines. Now, you have had an investigation in this case. Had you found a violation of the sub-

[Footnote continued on following page]

No. 5) requesting information with respect to the moving of machinery from the Chicago plant. This letter read:

DEAR MR. BELLUSH: The Union requests that the Company furnish the following information at the earliest possible date:

1. The approximate dates when each piece of equipment was moved out of the plant.
2. The place to which each piece of equipment was moved and whether such place is a facility which is operated or controlled by the Company.
3. The number of machines or equipment that was moved out of the plant.
4. What was the reason or purpose of moving the equipment out of the plant.
5. Is this equipment used for production elsewhere.

The information we are asking for is essential to the Union for the servicing and administration of the current contract.

Sincerely,

William Antalek, President
Local 310 UAW

Respondent replied by letter dated April 16 (General Counsel's Exhibit No. 6), reading:

DEAR MR. ANTALEK: We were unaware that our relationship with your union had reached the stage when correspondence such as your letter of April 3, 1964 has become necessary. However, while we are of the opinion that it is not the scope and complexities of our relationship that dictates your use of this medium but, rather, that you are now attempting to build an unfair labor practice charge case, we shall, nevertheless, hereby respond.

We presume that your questions relate to Article VI, Section 10 of our labor agreement, although you do not specify the relevance and/or utility of the questions. We note that this section establishes a right of transfer, with certain limitations, to employees ". . . who are subject to reduction in classification or layoff as a result of . . ." the movement of any equipment to another location of the Company. We also note that under Section 4 of Article IV of our labor agreement, grievances relating to layoffs must be filed within five (5) working days thereafter, and grievances relating to transfers must be filed within three (3) working days thereof.

We are aware of no layoffs nor of any reductions in any classification within five (5) working days prior to your letter, and we, therefore, conclude that there is no proper basis upon which your request for information may lie. You have available all the information you need to determine whether or not any employees' rights are being violated. Furthermore, the broad scope of your questions is indicative of a fishing and harassment expedition rather than a true desire for necessary information.

Please be assured that we shall continue to cooperate with your union in providing whatever proper information you request for your aid in servicing and administering our labor agreement.

This request and refusal was the only issue considered by me.

contracting clause in the investigation of this charge, you could have had—you could have asked the union to amend the charge and brought all of that in.

Mr LAZAR: I might ask the witness—Mr. Bellush, were you ever permitted to talk to me during the course of investigation in this case?

Mr KOVAR: Objection.

TRIAL EXAMINER: Sustained.

Q. (Mr. LAZAR.) Did you at any time talk to any Board agent?

Mr KOVAR: I object to the question again.

TRIAL EXAMINER: Sustained.

Mr. LAZAR: I should like to point out, Mr. Trial Examiner, that it is very clear that at no time during the course of this investigation was the Board permitted to receive any information from the company other than that which it voluntarily submitted.

Mr KOVAR: I will object to that comment.

TRIAL EXAMINER: Well, there is the power of subpoena if you thought they were withholding. I certainly agree with Respondent that that is an objectionable statement. Of course you are only going to get the information which Respondent volunteers to you if you don't issue a subpoena. Why should he give it to you minus a subpoena? It is an amazing thing to me that the respondents cooperate with the Board as much as they do, and this goes to respondent unions and respondent employers.

B. Conclusions

I regard the issue presented as administrative rather than juridical and, as was indicated at the hearing, it is an issue which should have properly been submitted to the Board in the first instance by way of stipulation. No question of either fact or law is in dispute. The question is solely whether the Board should, when a contract providing for binding arbitration has been executed by the parties and the dispute relates to a matter covered by the contract, intervene to police and administer the arbitration provisions under the guise of preventing an unfair labor practice. I am aware that the Board and the courts, including the U.S. Supreme Court, have held that an employer is obligated to provide information relevant and necessary to enable a labor organization to bargain intelligently and that it constitutes an unfair labor practice under Section 8(a)(5) to refuse such information. My concern here is with the forum which should take cognizance of this dispute. The parties have clearly stated that it should be submitted to arbitration and the Charging Party has, in effect, attempted to use the Board as a means to discovery and inspection in furtherance of its arbitration proceeding.⁴ This is not, at least as I see it, a proper function of an agency already overburdened by its caseload. Overburdened, one might add, to a point where it may fail to serve as a functional apparatus for the prevention of unfair labor practices. If the Board, as it indicated in its recent *Cloverleaf* decision,⁵ intends to leave the parties to arbitration where the arbitration settlement would also put at rest the unfair labor practice controversy in a manner sufficient to effectuate the policies of the Act then this appears to be such a case. This is a matter of policy for the Board and not a Trial Examiner to decide.⁶ The recommendation of this Trial Examiner is in favor of self-restraint. I would not hold that the Respondent has committed an unfair labor practice by withholding information where the dispute has been contemplated by the parties in making their contract and binding arbitration has been established to resolve that dispute. We are approaching a point where an employer may well wonder if he has anything to gain by engaging in collective bargaining if any disaffection with the operation of the contract on the part of the contracting union may be taken to review by the Board under Section 8(a)(5).

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

CONCLUSIONS OF LAW

1. Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

RECOMMENDED ORDER

It is recommended that the complaint be dismissed in its entirety.

⁴It would appear anomalous for the Board, which does not provide for discovery and inspection in its own proceedings, to serve as an instrument for such procedure in arbitration proceedings.

⁵*Cloverleaf Division of Adams Dairy Co.*, 147 NLRB 1410.

⁶For a statement of national policy respecting the priority which should be accorded the grievance machinery provided for in a contract see *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581.

Local 1332, International Longshoremen's Association, AFL-CIO and Elwood F. Gunther and Philadelphia Marine Trade Association, Party to the Contract. Case No. 4-CB-975. February 1, 1965

DECISION AND ORDER

On October 5, 1964, Trial Examiner Abraham H. Maller issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations

150 NLRB No. 146.