

Crown Tar and Chemical Works, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13. Case No. 27-CA-1637. August 18, 1965

DECISION AND ORDER

On June 2, 1962, Trial Examiner James T. Barker 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 Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a memorandum in opposition to Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations 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 the memorandum, and the entire record in the case, and hereby adopts the findings,¹ 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 Respondent, Crown Tar and Chemical Works, Inc., Denver, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

¹The Trial Examiner's inadvertent, erroneous references to "June" and "July" are hereby corrected as follows: In the Findings of Fact, the final paragraph of section III, 1, is corrected so that it commences, "The parties stipulated that on June 23, . . ."; the second sentence of the last paragraph of section III, 2, is amended to read, "The meeting was to be held at the office of the Union on the evening of July 9, . . ."; the caption to section III, 3, is corrected to read, "The July 10 pay increases"; the first sentence of section A., 3, of the Conclusions is corrected so as to commence, "As a consequence of the foregoing, and as the Union's letter of June 29 . . ."; and paragraph 5 of the Conclusions of Law is corrected so as to commence, "By failing and refusing at all times since June 29,"

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed on July 17, 1964, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, herein-
154 NLRB No. 41.

after called the Union, the Regional Director of the National Labor Relations Board for Region 27, on November 12, 1964, issued a complaint designating Crown Tar and Chemical Works, Inc., as Respondent and alleging violations of Section 8(a)(1) and Section 8(a)(5) of the National Labor Relations Act, as amended, hereinafter called the Act. In its duly filed answer, Respondent admitted certain allegations of the complaint but denied the commission of any unfair labor practices.

Pursuant to notice a hearing was held before Trial Examiner James T. Barker at Denver, Colorado, on December 18, 1964. All parties were represented at the hearing and were afforded full opportunity to be heard, to introduce relevant evidence, to present oral argument, and to file briefs with me. The parties waived oral argument and on January 20, 1965, filed briefs with me. Upon consideration of the entire record¹ and the briefs of the parties, and upon my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Respondent is, and has been at all times material herein, a Colorado corporation maintaining its principal office and place of business in Denver, Colorado, where it is, and has been at all times material, engaged in the manufacture and distribution of asphalt roofing materials.

During the 12-month period immediately preceding the issuance of the complaint herein the Respondent in the course and conduct of its business operations purchased, transferred, and caused to be delivered to its Denver, Colorado, plant goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported to said plant directly from the States of the United States other than the State of Colorado.

Upon these admitted facts I find that at all times material herein Respondent has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, is admitted by Respondent to be a labor organization within the meaning of Section 2(5) of the Act, and I so find.

III. THE UNFAIR LABOR PRACTICES

The complaint alleges that on or about June 29, 1964,² a majority of Respondent's employees in a unit appropriate for collective bargaining designated and selected the Union as their collective-bargaining representative and that commencing on or about June 29, and thereafter, the Union has requested Respondent to bargain collectively with it, which request the Respondent has refused.

The complaint further alleges that, in violation of Section 8(a)(5) and Section 8(a)(1) of the Act, the Respondent on July 10 unilaterally and without bargaining or consulting with the Union granted its employees a wage increase of approximately 15 cents per hour.

Admitting the appropriateness of the unit and the grant of a 15-cent-per-hour wage increase, the Respondent denies the commission of any unfair labor practices. By way of answer, it asserts that it has no knowledge of the majority status of the Union and further contends that Respondent has been at all times material willing to bargain collectively with the Union providing the Union is first certified as the bargaining representative after a Board-conducted election, to which it is and has been willing to consent. It further asserts that the decision to grant the July 10 wage increase was made at a time prior to the Union's organizational efforts, insofar as those organizational efforts were directed at its operation, and denies that the decision was given effect for the purpose of interfering with the employees' organizational rights.

¹ The General Counsel filed with the Trial Examiner a motion to correct the transcript, dated January 20, 1965. No opposition thereto was filed. As the motion has merit, in accordance with the motion of the General Counsel, the transcript is corrected.

² All dates refer to 1964 unless otherwise specified.

1. The Union's organizational effort

In June, Fred Jones, organizer for the Union, obtained information of possible interest among the employees of Respondent in affiliating with the Union. Accordingly, he contacted Respondent's employee, Jose Velasquez, and met with Velasquez and two other employees, Lupe Rodriguez and Calvin Jackson, on the evening of June 19. Through them a formal meeting was arranged to be held at the Union's offices on the evening of Tuesday, June 23. Eight employees attended that meeting and Jones discussed with them the "feasibility and desirability of organizing." He explained to the employees that in order to have the Union represent them it would be necessary for a majority of the employees to sign authorization cards, and he further asserted that a substantial majority of the employees should want "union organization." He distributed authorization cards to each of the eight employees present. In connection with the distribution of the authorization cards, Jones emphasized the advantages of organizing and bargaining collectively. He informed the employees that he had obtained "substantial improvements" in wages and working conditions among employees of employers he had successfully organized, and asserted further that the employees "enjoyed certain protections under a union contract that they didn't otherwise enjoy." Moreover, he informed the employees that by executing the authorization card they were authorizing the Union to represent them in collective bargaining. In the course of the discussion he told the employees that it was "possible" that it would be necessary to have an election to resolve the matter of the Union's status. Employees Jose Velasquez, David Lucero, Lyle Jones, Gregorio Uballe, Ray Olivas, Jr., Lawrence Long, Guadalupe Rodriguez, and John Velasquez each executed a card at the meeting.

In addition, during the course of the June 23 meeting, Fred Jones gave a supply of authorization cards to the employees and requested that they obtain additional signatures. Subsequently, the cards of Edward Shepard, Ernest Cordova, and Calvin Jackson, each of which were duly executed by the signator on June 23, 1964, were received in due course in the mails by Fred Jones. Each of the three cards was postmarked on June 25, 1964.³

The parties stipulated that on July 23, and thereafter, including June 29 and July 10, the employee complement was comprised of 15 employees.⁴

2. The Union's bargaining demand

On June 29, Francis H. Salter, president of the Union, wrote the following letter to Respondent:

This is to advise your Company that the undersigned Local Union No. 13 has been authorized by a substantial majority of "all employees employed by Crown Tar & Chemical Works, Inc. at 900 Wewatta, Denver, Colorado; but excluding all office clerical employees, salesmen, guards, professional employees and supervisors as defined in the Act," to represent them on all matters pertaining to their wages, hours of work, and other terms and conditions of employment with your Company.

This is also to inform your Company that we are in a position to prove that we represent the above described unit of employees as their collective bargaining agent.

As the above described employees' bargaining agent, we request that your Company meet with us on Thursday, July 2, 1964, at 10:00 A.M., in our offices at 3245 Eliot Street, Denver, Colorado, for the purpose of negotiating terms of a labor agreement covering the wages, hours of work and other terms and conditions of employment for said employees.

³ The foregoing is predicated upon the testimony of Fred Jones, as supplemented by the testimony of Edward Shepard and Ernest Cordova, as well as the stipulation of the parties with respect to the card of Calvin Jackson. Additionally, I have considered and credit the testimony of Guadalupe Rodriguez, Ray Olivas, Jr., David Lucero, and John Velasquez. I specifically credit the testimony of Fred Jones with respect to his discussion of the possible need for an election, and reject that of Guadalupe Rodriguez and David Lucero to the extent that it is inconsistent therewith.

⁴ These employees were Garland Boyes, Ernest Cordova, Calvin Jackson, Lyle Jones, Lawrence Long, David Lucero, Ray Olivas, Jr., W. C. Peterson, Guadalupe Rodriguez, Edward Shepard, Gregorio Uballe, J. D. Velasquez, John Velasquez, Jose Velasquez, and Paul Velasquez.

Additionally on June 29, the Union filed a representation petition with the Board's Regional Office. The Union received no direct response from the Company to its June 29 letter,⁵ but upon the filing of the representation petition, the Board's Regional Office served notice of its pendency upon the Respondent, and in due course, on July 7, representatives of the Union and Respondent's attorney, Myron Miller, met at the Board's Regional Office in consent conference. There an agreement for consent election was entered into providing for the conduct of an election on July 20.

Thereafter, Fred Jones contacted Jose Velasquez and requested that he arrange a meeting of the employees so that Jones might inform them of the pendency of the election and explain the election processes. The meeting was to be held at the office of the Union on the evening of June 9, but at the appointed time no employee appeared. As a consequence, Fred Jones sent letters to the employees who had executed union cards informing them of a meeting scheduled for July 16. Only three employees attended this meeting. Fred Jones there learned that on July 10 the Respondent had granted its employees a 15-cent-per-hour wage increase. He made arrangements to again contact the three employees on the following Friday and did meet with them and one additional employee on the afternoon of July 17. From impressions gained through his two last-mentioned contacts with employees, he concluded the Union could not prevail at an election, and, through his associate, Union Organizer Toliver, caused unfair labor practice charges to be filed against the Respondent. As a consequence, the pending election was postponed.⁶

3. The June 10 pay increases

The credited evidence of record reveals that the Respondent granted wage increases to its hourly paid employees on the following dates, and in the amounts indicated:

	Cents per hour
June 5, 1961-----	15
March 5, 1962-----	10
September 30, 1963-----	10
July 6, 1964-----	15

With respect to the July 6, 1964, pay increase—the one alleged unlawful in the complaint and which was reflected in the paycheck which the employees received on July 10, 1964—E. A. Wilson, vice president and general manager of Respondent, testified credibly that the Respondent's fiscal year ends on the last day of February, and that after receiving the auditor's annual report with respect thereto he conversed with M. M. Katz, president of Respondent, relative to granting wage increases to employees. No final decision was reached beyond the general determination that if Respondent enjoyed "a good year" increases would be granted. Subsequently, on May 22, Wilson received a telephone call from President Katz, in which Katz informed Wilson that he had received a letter from the Union relative to its representation of employees of Chemical Sales Company, a company in which Katz holds an ownership interest. Katz further informed Wilson that a representation election was scheduled to be held among the Chemical Sales employees as a result of the Union's claim. With respect to that conversation Wilson testified further credibly as follows:

He said in view of the fact that the Union was trying to come into Chemical Sales he thought it best that we go ahead and give our employees a raise of 15 cents an hour regardless of whether we had a good year or not.

Wilson further credibly testified that thereafter he informed Superintendent Dave Hahl of the decision and similarly, "about the middle of June," instructed the bookkeeper that there would be a wage increase, effective the first week in July.

Wilson further testified credibly that as wholesale distributors of roofing materials to lumberyards and roofing applicators, Respondent's business is, in a sense, seasonal, and is generally at its peak during the summer months of June, July, and August. However, Wilson testified the caprices of the weather are similarly a contributing factor to Respondent's volume of business and its volume

⁵ The parties so stipulated.

⁶ The foregoing is based on the credited testimony of Fred Jones. I do not credit his testimony on cross-examination to the effect that he first learned of the wage increase during an earlier telephone conversation with Jose Velasquez. Jones' testimony on this point impressed me as lacking certitude and appeared to be based partly on conjecture.

of sales is directly related to the severity of the weather experienced in its operating area. Wilson further testified that Respondent's sales volume was the guide to determining whether the year had been "good."⁷

4. Hahl and Velasquez converse

Superintendent Hahl confirms through his credited testimony that in a conversation with Wilson he learned of the decision to grant pay increases to the employees. He further testified credibly that he conveyed this information to an employee, Paul Velasquez. The time and subject matter of this conversation was the subject of conflict in testimony of Paul Velasquez, on the one hand and, in the ultimate, of Superintendent Hahl on the other. Upon a careful analysis of Hahl's testimony on cross-examination and in consideration of statements contained in his July 28 affidavit, I find that in the last week of June, Paul Velasquez informed Hahl during the course of a conversation that the Union was endeavoring to organize the employees of Respondent. I further find that, in context of this statement, Hahl informed Velasquez that "the boss is planning a raise for everyone around the first of July."⁸

Paul Velasquez credibly testified, however, that, after his conversation with Hahl, he apprised most of his fellow employees concerning the pendency of the pay increases and cited it to them as a reason for not affiliating with the Union.

⁷In view of Wilson's testimony that Respondent was not guided by the level of sales or other economic factors in its ultimate decision to raise wages, sales volume data introduced by the General Counsel assumes little significance. The credible evidence, however, reveals the following with respect to sales volume:

Fiscal Year ending:	
February 28, 1959.....	\$882, 715. 17
February 29, 1960.....	850, 553. 71
February 28, 1961.....	1, 237, 298. 05
February 28, 1962.....	1, 671, 357. 03
February 28, 1963.....	1, 838, 299. 33
February 29, 1964.....	1, 554, 043. 91
March 1 to November 30, 1964, inc.....	843, 587. 32
	8, 877, 854. 52

Additionally, the record establishes the following monthly sales volume:

January 1963.....	\$60, 366. 32
February 1963.....	92, 990. 99
March 1963.....	98, 525. 56
April 1963.....	124, 823. 40
May 1963.....	131, 031. 54
June 1963.....	200, 484. 95
July 1963.....	275, 008. 95
August 1963.....	187, 271. 19
September 1963.....	144, 929. 39
October 1963.....	138, 487. 34
November 1963.....	82, 566. 72
December 1963.....	57, 217. 63
January 1964.....	60, 496. 56
February 1964.....	53, 200. 68
March 1964.....	64, 347. 36
April 1964.....	87, 929. 70
May 1964.....	113, 730. 69

⁸I am unable to credit the testimony of Paul Velasquez and the supporting testimony given by David Hahl on direct examination as a witness called by the Respondent to the effect that the conversation occurred in mid- or early June, and that it occurred in conjunction with a discussion of Velasquez' impending vacation. While Velasquez remained adamant throughout his testimony with respect to the subject matter of the conversation, his testimony with respect to the timing of the occurrence was both evasive and implausible. Not only was Velasquez' testimony rendered suspect by his insistence that in using the descriptive phrase "a few days" he meant to encompass a period of some 2 weeks, but, in the absence of any showing that Velasquez intended to terminate his employment after availing himself of his vacation, it is most unlikely that Hahl would seek to convince him to defer his vacation merely to avail himself of the increase wage rate because the net remuneration to Velasquez would not have been increased by such a deferral.

Velasquez credibly testified that he had not executed a union authorization card at this juncture, and he further credibly testified that he had not been instructed by any representative of the Respondent to inform his fellow employees of the raise.

Conclusions

A. *The alleged refusal to bargain*

1. The appropriate unit

It is conceded, and I find, that all employees employed by Respondent at its plant located at 900 Wewatta Street, Denver, Colorado, excluding office clerical employees, salesmen, guards, professional employees, and supervisors, as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

2. The majority status of the Union

As found above, on June 29 when the Union made its written demand upon Respondent for recognition and bargaining, it had in its possession authorization cards executed by 11 of the 15 employees comprising the bargaining unit. The evidence establishes the authenticity of these cards, and, in context of all other statements made by Jones to the eight employees, who on June 23 executed cards, including those relating to the advantages of unionization, the role of the Union as a collective-bargaining representative and the specific representation made to the employees concerning the authorizing effect of the executed cards, I find that in mentioning the possibility of the need for a Board election, Jones did not engage in representations which had the effect of invalidating the cards.⁹ Rather, I find that each of the 11 cards may be considered in computing the Union's majority status as of June 29, and, I further find upon the computation the Union represented a majority of Respondent's employees in an appropriate union unit on that date.

3. Respondent's defense

As a consequence of the foregoing, and as the Union's letter of July 29 contained a valid bargaining demand and specified a date certain for the commencement of collective-bargaining negotiations, absent a legally valid reason for not doing so, an obligation arose under Section 8(d) of the Act for the Respondent to meet and bargain in good faith with the Union. Respondent contends it was excused from doing so because it was willing at all times to submit to the election processes of the Board, which processes had been invoked by the Union when, simultaneous to serving its bargaining demand upon Respondent, it filed a representation petition with the Board. In this regard, the Respondent asserts, correctly, that it subsequently entered into a consent agreement to facilitate an early resolution of the question concerning representation. Additionally, the Respondent contends that the Union did not actually possess the allegiance of a majority of the employees as revealed by its inability to command a favorable response on and after July 9 to its summons for meetings and other communications.

I find these contentions to be without merit. It is well established that a union's filing of a representation petition does not itself suspend an employer's bargaining obligation, absent evidence of a good-faith doubt.¹⁰

Moreover, I find Respondent adduced no evidence of circumstances existing during the critical period from which it may be concluded that it entertained a good-faith doubt of the Union's majority. Further, with respect to the Union's purported loss of its following, the evidence fails to establish any awareness by Respondent of the reluctance of the employees on and after July 9 to conjoin with the Union, and, even if such were revealed, there is a pervading suggestion that such employee reticence was entirely attributable to the persuasive inducements of the Respondent's wage increase, which, by then, had achieved common notoriety among the employees, and which, I find below, was given effect for the purpose of undermining the Union's majority status.

⁹ *Gorbea, Perez & Morell, S. en C.*, 133 NLRB 362, enfd. in pertinent part 300 F. 2d 886 (C.A. 1); *N.L.R.B. v. Geigy Company, Inc.*, 211 F. 2d 553 (C.A. 9); *Dan River Mills, Inc.*, 121 NLRB 645, 648; *Joy Silk Mills v. N.L.R.B.*, 185 F. 2d 732, 743 (C.A.D.C.); cf. *Englewood Lumber Company*, 130 NLRB 894.

¹⁰ *Galloway Manufacturing Corporation, et al.*, 136 NLRB 405, 409, and cases cited therein.

B. The July 10 wage increase

I am convinced, upon the record before me, including the testimonial admission of General Manager Wilson, that the wage increase was decided upon in May prior to the advent of the Union's organizational efforts among Respondent's employees solely as a device to induce the employees to forgo unionization. The Union's efforts at a sister firm had signalled the pendency of an organizational effort, and, as a direct consequence, Respondent decided upon prophylactic action in the form of a wage increase. The Respondent's decision to raise wages in anticipation of an impending organizational drive not yet commenced is not alleged as a violation of the Act. However, the issue is raised whether the Act is violated when the decision is implemented unilaterally at a time when the obligation to recognize and bargain with the Union has matured. I find that Section 8(a)(1) and (5) of the Act was violated. In so finding I take cognizance of the record which reveals that the raise was not one that had been both decided upon and announced to the beneficiaries prior to the Union's advent, nor was it one so near full fruition when the Union entered the picture that only its formal announcement and the issuance of paychecks remained. Neither was it one previously promised or periodically granted pursuant to a predetermined schedule or policy. If this were so, the determination here might well be different.¹¹ Rather, the evidence establishes that, although annually given, prior wage increases related not to date or season, and appeared to have been based upon other factors. Further, the record establishes that the decision to grant the wage increase was first revealed to a rank-and-file employee at a time when unionization was the subject of discussion, and the suggestion is strong that the same tactical considerations that caused Respondent in the first instance to proceed with the increases survived the Union's advent and motivated Respondent to implement its decision even though time permitted consultation with the Union, and although the unilateral grant would have, at this critical period, foreseeable adverse impact upon the Union's standing with the employees. In light of this, and as Respondent had earlier refrained from responding to the Union's specific bargaining demand, I am persuaded that the Respondent, without cause for doubting the validity of the Union's claim of majority, deferred honoring the obligation that had devolved upon it to meet and bargain with the Union about matters affecting its employees, including, specifically, wages, in order to gain time in which to undermine the Union through implementing and giving effect to its earlier wage decision. By agreeing to a consent election, it sought both to benefit therein from the impact of the newly decided-upon wage increase and to provide, as well, the framework for a defense to its failure to carry out its bargaining obligation under the Act. In the circumstances, I find that both by failing to respond to the Union's bargaining demand, and, for the specific purpose of undermining the Union's organizational effort, giving effect to the wage increase without consulting the Union at a time when it was under the legal obligation to bargain collectively with the Union, the Respondent violated Section 8(a)(1) and (5) of the Act.¹²

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 States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices it will be recommended that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act.

¹¹ See *Briggs IGA Foodliner*, 146 NLRB 443; *T. L. Lay Packing Co.*, 152 NLRB 342; *Derby Coal & Oil Co., Inc., et al.*, 139 NLRB 1485, 1486; *Bishop, McCormack & Bishop, etc.*, 102 NLRB 1101, 1102; *Gary Steel Products Corporation*, 144 NLRB 1160, 1165.

¹² See *Permacold Industries, Inc.*, 147 NLRB 885; *Fleming Manufacturing Company, Inc.*, 119 NLRB 452, 464, and cases cited therein at footnote 12; *Medo Photo Supply Corp.*, 321 U.S. 678, 683-685; see also *Han-Dee Spring & Mfg. Co., Inc.*, 132 NLRB 1542, 1544; *Tampa Crown Distributors, Inc.*, 121 NLRB 1622, 1623; *N.L.R.B. v. Exchange Parts Company*, 375 U.S. 405. Cf. *T. L. Lay Packing Co.*, 152 NLRB 342.

It will be recommended that Respondent, upon request, bargain collectively with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, as the exclusive bargaining representative of the employees in the appropriate unit hereinafter described, and, in the event an understanding is reached, embody such understanding in a signed agreement.

In the circumstances here pertaining, it will not be recommended that Respondent rescind the wage increase effective July 10, nor shall any recommendation herein be interpreted as having the effect of diminishing wages received by Respondent's employees. Cf. *The Press Company, Incorporated*, 121 NLRB 976, 981.

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

CONCLUSIONS OF LAW

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

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees employed by Respondent at its plant located at 900 Wewatta Street, Denver, Colorado, excluding office clerical employees, salesmen, guards, professional employees, and supervisors, as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. On June 29, 1964, and at all times thereafter, the Union was and has been the exclusive bargaining representative of all employees in the aforesaid unit for the purposes of collective bargaining.

5. By failing and refusing at all times since July 29, 1964, to bargain with the Union as the exclusive bargaining representative of the employees in the above-described appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and Section 8(a)(1) of the Act.

6. By unilaterally and for the purpose of undermining the Union granting a wage increase to employees in the aforesaid appropriate collective-bargaining unit at a time when the Union, as the representative of a majority of the employees therein, had requested the Respondent to bargain collectively with it; the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and Section 8(a)(1) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record of this proceeding, I recommend that Crown Tar and Chemical Works, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, as the exclusive bargaining representative of the employees of the appropriate unit.

(b) Granting wage increases to its employees in the collective-bargaining unit herein found appropriate unilaterally and without consultation with the Union for the purpose of undermining the Union.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations of their own choosing, to join or assist the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, or any other labor organization, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by the provisions of Section 8(a)(3) of the National Labor Relations Act, as amended.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, as the exclusive bargaining representative of the employees in the aforesaid appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant at 900 Wewatta Street, Denver, Colorado, copies of the attached notice marked "Appendix A."¹³ Copies of said notice, to be furnished by the Regional Director for Region 27, shall, after being duly signed by a representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its 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 Regional Director for Region 27, in writing, within 20 days from the receipt of this Trial Examiner's Decision, what steps have been taken to comply herewith.¹⁴

It is further recommended that unless on or before 20 days from the date of its receipt of this Trial Examiner's Decision Respondent notifies the Regional Director that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the action aforesaid.

¹³In the event this Recommended Order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order 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 "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order".

¹⁴In the event that this Recommended Order is adopted by the Board, paragraph 2(c) thereof shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply therewith."

APPENDIX A

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, as amended, we hereby notify our employees that:

WE WILL, upon request, bargain collectively and in good faith with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No 13, as the exclusive bargaining representative of all employees in the bargaining unit described below, with respect to rates of pay, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees employed by Crown Tar and Chemical Works, Inc., at its plant located at 900 Wewatta Street, Denver, Colorado, excluding office clerical employees, salesmen, guards, professional employees, and supervisors, as defined in the National Labor Relations Act, as amended.

WE WILL NOT unilaterally and without consultation with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, as the exclusive bargaining representative of the employees in the aforesaid bargaining unit, grant wage increases to our employees for the purpose of discouraging membership in the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the National Labor Relations Act, as amended.

CROWN TAR AND CHEMICAL WORKS, INC.,
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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Seventeenth and Champa Streets, Denver, Colorado, Telephone No. 297-3551.

Tucson Ramada Caterers, Inc. and Catering Industry Employees Local #413 and Bartenders Union Local #476 through the Local Joint Executive Board, affiliated with Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO.
Case No. 28-CA-1149. August 18, 1965

DECISION AND ORDER

On May 25, 1965, Trial Examiner Martin S. Bennett issued his Decision in the above-entitled proceeding, finding that the Respondent has engaged in and is 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 Trial Examiner's Decision and memorandum of law in support thereof.

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

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 Respondent's exceptions and memorandum of law, and the entire record in the case, and hereby adopts the findings,¹ 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 Respondent, Tucson Ramada Caterers, Inc., Tucson, Arizona, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

¹The Trial Examiner found that, although an employee overheard Lillian Berne, secretary-treasurer of the Respondent, tell Issie Berne, president of the Respondent, that she wished she knew who had signed union cards as they should all be discharged; he found this not to be violative of Section 8(a)(1) of the Act because there was no evidence that this statement "was intended for hearing by employees." In the absence of exceptions thereto, we adopt this finding *pro forma*.