

the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as is authorized in Section 8(a)(3) of the Act

All our employees are free to become or remain, or refrain from becoming or remaining, members of the above-named or any other labor organization

METAL ASSEMBLIES, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

NOTE.—We will notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan, Telephone No 226-3200.

Latin Watch Case Co., Inc. and Local 485, International Union of Electrical, Radio and Machine Workers, AFL-CIO. *Case No. 29-CA-113 (formerly 2-CA-10418). December 31, 1965*

DECISION AND ORDER

On September 10, 1965, Trial Examiner Harry R. Hinkes 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 Trial Examiner's Decision. Thereafter, Respondent filed exceptions to the Decision with a supporting brief. The General Counsel filed an answering brief.

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 Jenkins and Zagoria].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Decision, the exceptions and briefs,¹ and the entire record in this case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, as modified herein.²

¹ The General Counsel contends that the Respondent's exceptions and brief do not conform with Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, and should therefore be disregarded. In view of our disposition of the case, we find it unnecessary to pass on this contention.

² We limit the findings of a violation to the conduct occurring within 6 months of the service of the charge as proscribed in Section 10(b) of the Act, and earlier findings are considered only for background.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Latin Watch Case Co., Inc., Long Island City, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning job classifications with Local 485, International Union of Electrical, Radio and Machine Workers, AFL-CIO, as the exclusive representative of the employees in the unit found appropriate.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to bargain collectively through representatives of their own choosing.

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

(a) Upon request, bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit concerning job classifications, and, if an understanding is reached, embody such understanding in a signed memorandum of agreement.

(b) Post at its plant in Long Island City, New York, copies of the attached notice marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for Region 29, shall, after being duly signed by the Respondent's representative, 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 Regional Director for Region 29, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

³In 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 concerning job classification with Local 485, International Union of Electrical, Radio and Machine Workers, AFL-CIO, as the exclusive representative of the employees in the appropriate unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to bargain collectively through representatives of their own choosing.

WE WILL, upon request, bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit concerning job classifications, and, if an understanding is reached, embody such understanding in a signed memorandum of agreement.

LATIN WATCH CASE CO., 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.

Employees may communicate directly with the Board's Regional Office, 16 Court Street, Fourth Floor, Brooklyn, New York, Telephone No. 596-5386, if they have any questions concerning this notice or compliance with its provisions.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed on December 4, 1964, by Local 485, International Union of Electrical, Radio and Machine Workers, AFL-CIO, herein referred to as the Union, the General Counsel of the National Labor Relations Board by the Regional Director for Region 29 (Brooklyn, New York) issued a complaint dated February 4, 1965, against Latin Watch Case Co., Inc., herein referred to as the Respondent or Employer. The complaint alleges that the Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1) and (5) of the National Labor Relations Act in that it refused and continues to refuse to bargain collectively with the Union as the exclusive collective-bargaining representative of all production, maintenance, inspection, and assembly employees of Respondent employed at its Long Island City place of business, exclusive of guards, watchmen, clerical employees, draftsmen, engineers, and supervisors. By answer duly filed, the Respondent denied the alleged refusal to bargain collectively and requested a dismissal of the complaint.

Pursuant to notice, a hearing was held before Trial Examiner Harry R. Hinkes in Brooklyn, New York, on June 3 and 4, 1965. All parties were represented and afforded full opportunity to participate, examine witnesses, and adduce relevant evidence. Briefs have been filed by the General Counsel and the Respondent. In addition oral argument was permitted and received at the conclusion of the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is and has been at all times material herein a corporation duly organized under and existing by the laws of the State of New York, with its principal office and place of business in Long Island City, New York. The Respondent is engaged in the manufacture, sale, and distribution of watch cases and related products. In the course and conduct of its business operations during the past year, Respondent purchased and received at its New York plant directly from points located outside the State of New York, goods and materials valued in excess of \$50,000. During the same period

of time the Respondent manufactured, sold, and shipped from its New York plant directly to points outside the State of New York finished products valued in excess of \$50,000.

The complaint alleges, Respondent's answer does not deny, and I find that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 485, International Union of Electrical, Radio and Machine Workers, AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The sole issue in this proceeding is whether the Respondent has refused to bargain collectively with the Union in the establishment of job classifications for the Respondent's employees in the appropriate bargaining unit.

The complaint alleges, Respondent does not deny, and I find that all production, maintenance, inspection, and assembly employees of the Respondent employed at its Long Island City, New York, place of business, exclusive of guards, watchmen, clerical employees, draftsmen, engineers, and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The complaint further alleges with no denial by the Respondent and I find that at all times since January 1, 1963, and continuing to date the Union has been the representative for the purposes of collective bargaining of the employees of Respondent in the unit described above and by virtue of Section 9(a) of the Act has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On March 28, 1963, Respondent and the Union executed an agreement effective as of January 1, 1963, and continuing through February 1, 1966. This agreement recognized the Union as the exclusive bargaining agent for the employees described previously, specified certain employment practices, fixed work hours, overtime rates, wages, increases, and other terms and conditions of employment as well as provided for arbitration procedures in the event of unsuccessful grievance procedures. Paragraph 23(F) of this agreement states:

Effective January 1, 1964, the company and the union agree to sit down and attempt to establish job classifications where it is found to be appropriate.

Accordingly, early in January 1964, Wallace Eisenberg, business representative of the Union and a negotiator of the March 28, 1963, agreement referred to above, telephoned Norman Latin, secretary of the Respondent, requesting a meeting concerning the establishment of job classifications. Norman Latin asked Eisenberg to wait until Norman's father, who was out of the city, returned. Later in January, Eisenberg called again and spoke to Philip Petrucci, Respondent's plant manager, who told Eisenberg to write a letter requesting a meeting. Such a letter was written to the Respondent on February 10, 1964, requesting that the company and the Union "sit down to negotiate a job classification program." A meeting was then arranged for February 17 or 18, 1964, on which date Eisenberg visited the plant, saw both Petrucci and Norman Latin and gave them, orally, a list of the Union's proposed job classifications. They told Eisenberg that they could not discuss anything with him while their attorney, who was in Europe, was absent. Eisenberg kept calling Norman Latin until around the beginning of March 1964. A meeting was then arranged at which Eisenberg, union members, company officials, and the Respondent's lawyer were present. Again Eisenberg stated his proposed job classifications. The response from the Company representatives was that the proposals were inappropriate and the classifications did not fit the particular situation at the plant. Eisenberg offered to bring in an industrial engineer to evaluate the jobs and their classifications and pay half of his fee but the company representatives did not want to have anyone make decisions for them. A few days later Eisenberg followed up the meeting by speaking to Norman Latin but Latin said there was nothing further to discuss.

On March 16, 1964, Eisenberg sent Respondent a letter expressing the feeling that the matter of job classifications should be submitted to arbitration. At the same time he wrote to the New York State Board of Mediation informing it of the dispute between the Respondent and the Union regarding the establishment of a job classification system at the plant. In response thereto, Norman Latin wrote to Eisenberg on April 9, 1964, suggesting seven specified categories of employees for whom "classifications might be set up" and inviting the Union to "substantiate . . . any other categories

... appropriate" for classification before seeking arbitration. The seven categories were (1) diesetters in the press department, (2) toolmakers, (3) apprentice toolmakers, (4) machinists, (5) apprentice machinists, (6) apprentice platers, and (7) apprentice florentining. Eisenberg testified without contradiction and I find that there are no employees of the bargaining unit in categories (1), (5), (6) or (7) above.

In response to the Company's letter of April 9, 1964, Eisenberg wrote to the Respondent on April 14 specifying 16 job titles which the Union had proposed and continues to propose. Opposite each job classification title was a specified hourly rate of pay. Within a few days Petrucci called Eisenberg and told him that he was working on new proposals for the classification system and would be in touch with Eisenberg in a day or two. Not hearing from Petrucci, Eisenberg wrote to the Company again on April 21, 1964, asking for a "series of dates" for meetings on a classification program. In answer thereto Petrucci wrote Eisenberg on April 28, 1964 designating three "departments," toolroom, florentining room, and plating room, as appropriate for classification, asking for any other departments that the Union thinks appropriate for classification and adding:

We will be glad to set a date for a prompt meeting, but we think that first your notice of arbitration should be rescinded. It will not be useful to discuss this matter under pressure.

Of the 140 or so employees constituting the bargaining unit involved here, only about 15 work in the three departments listed by Petrucci for classification.

On May 1, 1964, Eisenberg sent the Respondent another letter containing the same information regarding classifications and pay rates as in his letter of April 14. To this Petrucci replied on May 6 objecting to Eisenberg's inclusion of wage rates in classification proposals.

At this time Respondent filed a motion in the Supreme Court of the State of New York to stay the arbitration sought by the Union. This motion was denied on July 8, 1964, the court ordering the parties to proceed to arbitrate on "whether the employer is or is not required under the terms of the contract made between the parties to fix and determine classifications for various types of production employment in the plant of the employer." On September 29, 1964, the arbitrator made his award as follows:

The Company is not required under the terms of the contract to fix and determine classifications for various types of production employment in its plant. However, Section 23(F) of the contract does require the Company to sit down with the Union and attempt, in good faith, to establish job classifications for its production employees where appropriate. I find that the Company has not executed its obligation under Section 23(F) in good faith. Therefore, the parties are directed to continue their negotiations to see whether, in good faith, agreement can be reached on the establishment of job classifications for the Company's production employees.

On November 11, 1964, Eisenberg wrote to the Respondent referring to the arbitrator's award and requesting a meeting to negotiate a job classification program. In response thereto, Norman Latin wrote Eisenberg on November 12, reiterating the Respondent's opinion of the departments subject to classification and asking the Union to furnish, in writing, a statement of the departments which the Union believes should be classified and the reason therefor. Latin also telephoned Eisenberg telling him that the Company did not have the Union's proposed job classifications and asking for one. In response thereto Eisenberg wrote the Respondent on November 23, 1964, which contained proposed job classifications and pay rates. In his November 23, 1964, letter, however, Eisenberg stated:

The arbitration award does not provide us with the right to negotiate appropriate rates for such jobs so you may ignore the rates requested for such jobs.

Norman Latin answered on December 1, 1964, stating that the Union should specify which departments "require classification based upon differentiations . . . which justify such classification" and if the Union's letter did not "furnish this specific information, . . . the meeting you suggest would be premature When we have the requested information we agree to set up a prompt date for a meeting."

The charge in this proceeding was filed December 4, 1964.

On January 28, 1965, in response to Eisenberg's request, the Company mailed to the Union a list of 10 "departments" designated by the name of an individual (e. g., "Richard Mezger's department") together with the names of employees in such department and the date each employee was hired. This list was supplemented by the Respondent shortly thereafter by another list containing the wage rates of the employees named. No job titles or department titles were mentioned on these lists.

The complaint in this proceeding was issued and served upon Respondent in February 1965.

In May 1965 Respondent asked Eisenberg to set up a meeting between the Respondent and Cameron, a union official. Such a meeting was held on May 22, 1965, when it was agreed to hold a larger meeting on May 25, 1965. At this later meeting the subject of job classifications was discussed in very general terms. The Union representatives insisted that there were job classifications appropriate to the Respondent. Company representatives maintained that job classifications were inappropriate for them. No specific job classifications were discussed. The Company representatives also indicated some concern that a job classification program might lead to higher costs. The Union then offered to negotiate a new contract incorporating a job classification program as well as other features of a new collective-bargaining agreement so as to remove the uncertainty of future costs to be incurred by the Respondent. The parties met again on June 1, 1965, at which time the Union made known its proposals on the job classifications, wage increases and other features of a new collective-bargaining agreement. Company representatives rejected the proposals as too costly but made no alternative suggestions particularly with respect to job classification.

Concluding Findings

A job classification system has been defined as a series of job levels or grades determined arbitrarily with each job classified into its proper relative grade. This is not inconsistent with the understanding reached between the parties at the hearing.

TRIAL EXAMINER: I understand this is a hearing on the duty of an employer to sit down and talk job classification and nothing else.

Mr. GREENBERG [Counsel for Respondent]: Right.

TRIAL EXAMINER: If there is something else involved such as the pay of a job classification, I have not been made aware of.

Mr. GREENBERG: Right. If that is all, if it is merely calling them names, we will call them names.

Mrs. ROTH [Counsel for Union]: We don't want names, we want classifications which are titles of jobs, not a name to each employee.

TRIAL EXAMINER: That is correct and that is my understanding of a job classification.

Mr. GREENBERG: That is correct.

TRIAL EXAMINER: I don't think a job classification involves names of individuals. It involves job duties and functions. I may be wrong, but that is my understanding of a job classification system . . . All I am concerned with now is whether the Company is required to sit down and establish job descriptions which will carry job classification titles into which an unnamed and unknown person may or may not fit . . . It seems to me we have here an obligation on both parties to negotiate the subject of job classifications and not individual raises of pay or individuals holding any particular jobs. Am I incorrect on that statement?

Mr. GREENBERG: No, sir.

There can be no doubt that job classifications are a mandatory subject for bargaining under the Act. Other mandatory subjects of bargaining such as seniority and pay rates depend in part at least upon a resolution of the proper job classifications and in fact it has been held that the employer is required to furnish the bargaining agent, on request, with sufficient data on job classifications to permit the Union to bargain understandingly and prepare for coming negotiations. *J. I. Case Company v. N.L.R.B.*, 253 F.2d 149 (C.A. 7); *Aluminum Ore Company*, 39 NLRB 1286; *Curtiss-Wright Corporation, Wright Aeronautical Division*, 145 NLRB 152.

Here the employer's duty was even more clearly expressed by the agreement. In March 1963 the parties specifically contracted to sit down and attempt to establish job classifications. Even were job classifications not a mandatory subject of bargaining under the Act but only voluntary, the 1963 agreement made it mandatory for the parties to this proceeding. In further delineation of the employer's duty with respect to this subject of bargaining, the arbitrator in September 1964 specified that the 1963 contract required the Respondent to attempt in good faith to establish job classifications and that it had not done so. My review of the facts adduced in this proceeding corroborates that conclusion.

Although the 1963 contract called for the commencement of the efforts to establish job classifications on January 1, 1964, and although the business representative of the Union sought a meeting for that purpose in January 1964, the Respondent did not meet with him until the middle of February. Even then the Respondent's officials refused to talk about it without their lawyer. In March 1964, with their lawyer present, the Respondent merely rejected the Union's proposed job classifications.

When, pursuant to the 1963 contract, the Union submitted the matter of job classifications to arbitration, the Company, on April 9, 1964, suggested seven categories of employees. Four of the Company's proposed categories, however, had no bargaining unit employees in them. I conclude and find that this proposal of the Respondent was not tendered in good faith. On April 14, 1964, when the Union in writing specified 16 proposed job titles and asked for meetings on the classification program, the Respondent, on April 28, 1964, rejected the request for meetings unless the Union's notice of arbitration was rescinded. It counterproposed three departments for classification but those three departments employ only about 10 percent of the employees in the bargaining unit. Here again I conclude and find that the proposals of the Respondent on April 28, 1964, were not made in good faith.

The Company, however, takes the position that all proceedings prior to September 1964 cannot properly be involved here because the Union had coupled its job classification proposals with wage proposals, contrary to the 1963 agreement. Even were I to assume the Respondent correct in this respect, the behavior of the Respondent after the award of the arbitrator in September 1964 cannot be deemed good-faith bargaining with respect to job classifications. When the Union requested a meeting to negotiate job classifications in November 1964, the Company merely restated its former position and asked for the Union's proposals and reasons therefor in writing. In effect, the Respondent refused to meet with the Union. The Union, nevertheless, did repeat its proposals in writing and made it quite clear that it was not negotiating pay rates. Again the Company refused to set a meeting date asking instead that the Union write the Company specifying which departments require classification. After the Union filed its charge before the National Labor Relations Board, the Company mailed the Union a list of employees' names and the name of the person in whose department they worked. This was neither a proposed job classification system nor was it a meeting for the purpose of negotiating job classifications as required under the Act, the 1963 contract and the arbitrator's award.

After the complaint was issued in this proceeding, the Respondent for the first time took the initiative in setting up a meeting between it and the Union. At the meeting, however, the Company refused to discuss job classifications insisting that they were inappropriate for the Respondent. The Respondent proposed no alternatives but initiated discussion of costs, asking "how much money is [job classifications] going to cost us?" Counsel for the Respondent in oral argument admitted that the talk of money was initiated by the employer. I am led to the inescapable conclusion that when the Union raised the subject of job classifications the employer either refused to discuss the subject or diverted the discussion to one of costs which it then refused to consider.

Further evidence of the employer's bad faith is found in its April 28, 1964, letter designating only three departments for job classification, a substantial departure from its April 9, 1964, proposal of seven categories. *Tomlinson of High Point, Inc.*, 74 NLRB 681. The record in this case fails to reveal at any time a proposal by the Respondent in good faith in response to the proposals of the Union. Instead the Company either refused to discuss the subject or made patently unrealistic suggestions such as the proposed classification for only 15 of the 140 employees in the bargaining unit. Indeed, we have not only an absence of good-faith bargaining on the part of the Respondent but an absence of even the motions of collective bargaining to give the appearance of bargaining. *Rex Manufacturing Company, Inc. (J. H. Rutter)*, 86 NLRB 470, citing *Tower Hosiery Mills, Inc.*, 81 NLRB 658.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that the Respondent has refused to bargain collectively with respect to job classifications, I shall recommend that it cease and desist therefrom and proceed to bargain collectively with the Union upon request. Inasmuch as the Respondent has not been asked by Union to bargain collectively concerning any subjects of negotiation other than job classifications, and has not, of course, refused to bargain collectively about such other subjects, my Recommended Order will be limited to negotiations on job classifications.

CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of the Act.

3. By the acts described above Respondent did refuse to bargain collectively and is refusing to bargain collectively with the representatives of its employees concerning the establishment of job classifications and, in so doing, did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act thereby engaging in unfair labor practices within the meaning of Sections 8(a)(1) and (5) of the Act.

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

[Recommended Order omitted from publication.]

Hearst Consolidated Publications, Inc. and New York Typographical Union No. 6, AFL-CIO, affiliated with International Typographical Union, AFL-CIO

Newspaper Enterprises, Inc. and New York Typographical Union No. 6, AFL-CIO, affiliated with International Typographical Union, AFL-CIO

Long Island Daily Press Publishing Co., Inc. and New York Typographical Union No. 6, AFL-CIO, affiliated with International Typographical Union, AFL-CIO

New York World Telegram Corp. and New York Typographical Union No. 6, AFL-CIO, affiliated with International Typographical Union, AFL-CIO

News Syndicate Co., Inc. and New York Typographical Union No. 6, AFL-CIO, affiliated with International Typographical Union, AFL-CIO

New York Herald Tribune, Inc. and New York Typographical Union No. 6, AFL-CIO, affiliated with International Typographical Union, AFL-CIO

The New York Times Company and New York Typographical Union No. 6, AFL-CIO, affiliated with International Typographical Union, AFL-CIO and Publishers' Association of New York City, Party in Interest. Cases Nos. 2-CA-10154, 29-CA-63 (formerly 2-CA-10155), 29-CA-64 (formerly 2-CA-10156), 2-CA-10157, 2-CA-10158, 2-CA-10159, and 2-CA-10160. December 21, 1965

DECISION AND ORDER

On January 26, 1965, Trial Examiner Herbert Silberman issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor prac-