

to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an agreement is reached, embody such understanding in a signed contract. The appropriate unit is:

All production and maintenance employees at our Memphis, Tennessee, plant at the 1600 block of Clancy Street, excluding office clerical employees, guards, and supervisors as defined in the Act.

CHARLES H. BRATTON, MRS. NOLAH HOLCOMB, ORAN D. BRATTON, J. ROSE HOLCOMB, JR., JAMES A. HOLCOMB, MRS. DOVIE M. KUHN and FREDERICK S. KUHN,  
A PARTNERSHIP D/B/A SOUTHERN LAMINATING CO.,

*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, 746 Federal Office Building, 167 North Main Street, Memphis, Tennessee, Telephone No. 534-3161.

**Jack Roesch, d/b/a Roesch Transportation Company, Western Trail Stages, and Best Way Charter Service and Brotherhood of Railroad Trainmen, Lodge 390. Cases Nos. 31-CA-8-2 (formerly 21-CA-5620-2), and 31-CA-49 (formerly 21-CA-6519). March 7, 1966**

### DECISION AND ORDER

On November 16, 1965, Trial Examiner Paul Bisgyer issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent and the General Counsel filed exceptions to the Decision and supporting memorandums.

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 Fanning and Jenkins].

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 Trial Examiner's Decision, the exceptions and memorandums, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as modified herein.<sup>1</sup>

<sup>1</sup>The General Counsel excepts to the Trial Examiner's failure to provide in his Recommended Order that the Respondent be ordered to give retroactive effect to the provisions of the contract it is ordered to execute, and to make employees whole for any losses they incurred because of the Respondent's failure to execute the agreement reached. We find merit in the exception and have modified the Trial Examiner's Recommended Order and notice accordingly. *Qutel Bros. Electric Sign Service Co., Inc.*, 153 NLRB 326; *Ogle Protection Service, Inc., et al.*, 149 NLRB 545.

## 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, as modified herein, and orders that the Respondent, Jack Roesch, d/b/a Roesch Transportation Company, Western Trail Stages, and Best Way Charter Service, San Bernardino, California, his agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified:

1. Delete subparagraph (a) of paragraph 2 and substitute in lieu thereof the following:

"(a) Upon request, execute with the above-named Union, as the exclusive representative of his employees in the above-described unit, the collective-bargaining agreement negotiated by them on February 16, 1965, and, upon such request, give retroactive effect to the terms of said agreement, including but not limited to the provisions relating to wages and other benefits, and make whole employees for any losses suffered by reason of Respondent's refusal to execute the agreement."

2. Delete the first indented paragraph of the Appendix and substitute in lieu thereof the following:

WE WILL, upon request, execute the agreement reached by us and Brotherhood of Railroad Trainmen, Lodge 390, on February 16, 1965, and upon such execution give retroactive effect to all the terms of said agreement, including but not limited to the provisions relating to wages and other benefits, and make whole employees for any losses suffered by reason of our refusal to execute the agreement.

3. Amend paragraphs 2(b) and 2(c) of the Trial Examiner's Recommended Order wherever Region 21 is given, to read "Region 31."

4. Amend the address and telephone number in the notice to read: "Seventeenth Floor, U.S. Post Office and Courthouse, 312 North Spring Street, Los Angeles, California, Telephone No. 688-5850."

## TRIAL EXAMINER'S DECISION

## STATEMENT OF THE CASE

This proceeding was heard before Trial Examiner Paul Bisgyer on July 20, 1965, in San Bernardino, California, on the consolidated complaint of the General Counsel<sup>1</sup> and the answer of Jack Roesch, d/b/a Roesch Transportation Company, Western Trail Stages, and Best Way Charter Service, herein called the Respondent. The questions presented for decision are (1) whether the Respondent, in violation of Section 8(a)(5) of the National Labor Relations Act, as amended, after an informal settlement of unfair labor practice charges, refused to bargain collectively with Brother-

<sup>1</sup> On November 22, 1963, the charge in Case No. 21-CA-5620-2 was filed and a copy was served by registered mail on the Respondent. An amended charge in that case was thereafter filed on January 28, 1964, and a copy was served by registered mail on the Respondent the next day. The charge in Case No. 21-CA-6519 was filed on March 1, 1965, and a copy was similarly served on the Respondent the following day.

hood of Railroad Trainmen, Lodge 390, herein called the Union, as the exclusive representative of the Respondent's employees in an appropriate unit, and (2) whether, by this and other conduct, the Respondent violated Section 8(a)(1) of the Act. At the close of the hearing the parties waived oral argument. Thereafter, only the Respondent submitted a brief which was given due consideration.

Upon the entire record,<sup>2</sup> and from my observation of the demeanor of the witnesses, I make the following

## FINDINGS AND CONCLUSIONS

### I. THE BUSINESS OF THE RESPONDENT

The Respondent is an individual proprietor engaged in San Bernardino, California, in the business of furnishing passenger transportation and charter bus service under the trade names of Roesch Transportation Company, Western Trail Stages, and Best Way Charter Service. In the course and conduct of these operations, the Respondent annually receives gross revenues in excess of \$500,000 and purchases goods and materials exceeding \$40,000 in value directly from suppliers located outside the State of California.

It is undisputed, and I find, that the Respondent is, and at all times material herein has been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act. I further find that it will effectuate statutory policies to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

The Respondent concedes, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *The evidence*

The essential facts are either stipulated or otherwise undisputed and may be summarized as follows:

On October 10, 1963, 23 out of 34 employees in the appropriate unit<sup>3</sup> signed authorization cards designating the Union as their "representative for the purpose of bargaining collective with [their] . . . employer in respect to rates of pay, wages, hours of employment and other conditions of employment." The next day the Union requested recognition which the Respondent declined to grant. As a result, the Union filed a representation petition in Case No. 21-RC-8648. On October 22, 1963, the Union wrote to the Respondent, warning him against persisting in certain alleged acts of interference, restraint, and coercion of employees,<sup>4</sup> reasserting and offering to prove its majority status, and renewing its demand for bargaining over terms and conditions of employment of his operating employees. On October 23 the Union sent the Respondent another letter to confirm their telephone conversation in which the Respondent agreed to refrain from engaging in any further unfair labor practices.

On January 20, 1964, an election was held in the previously instituted representation proceeding, which the Union lost. As a consequence, it filed timely objections to conduct affecting the results of the election and, on January 28, an amended unfair labor practice charge in Case No. 21-CA-5620-2, alleging, among other things, a refusal to bargain in violation of Section 8(a)(5) of the Act and other conduct prohibited by Section 8(a)(1).

<sup>2</sup> On October 24, 1965, the parties submitted a stipulation providing for the receipt in evidence of an exact copy of Respondent's Exhibit 1 which has disappeared from the Respondent's exhibit file. The stipulation is accepted and the substitute document and the stipulation are received in evidence as Respondent's Exhibit 1. It also appears that the official reporter's stamp on a sheet of paper in the Respondent's exhibit file, to which the missing exhibit was previously attached, was altered by an unknown person to delete the notation that the original Respondent's Exhibit 1 had been received. I have physically corrected this notation to reflect the receipt of Respondent's Exhibit 1 in evidence.

<sup>3</sup> The parties are in agreement that all operators of buses, baggage trucks, and station wagons employed by the Respondent at his San Bernardino, California, operation, excluding all other 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.

<sup>4</sup> These and later acts are the subject of the consolidated complaint herein.

To obviate any further proceedings and to dispose of the unfair labor practice charges, the parties entered into a settlement agreement which the Acting Regional Director approved on June 26, 1964. Under this agreement, the Respondent, without admitting the commission of any unfair labor practices, consented to post at his place of business an attached notice addressed to employees and to comply with all the terms and provisions of this notice which included a commitment to recognize and bargain collectively with the Union as the exclusive representative of his operating employees, concerning their terms and conditions of employment and to embody any understanding reached in a signed contract. The settlement agreement also required the Respondent to refrain from engaging in specified unlawful conduct<sup>5</sup> and expressly stipulated that the agreement was "[c]ontingent upon compliance with . . . [its] terms and provisions."

Thereafter, pursuant to the settlement agreement the Respondent and the Union held a number of bargaining sessions beginning about September 18, 1964. These meetings were fruitful and produced agreement on all terms and conditions of employment on February 16, 1965. At the request of the Union's negotiator, Local Chairman Kenneth R. Moore, signing of the contract was deferred to enable him, in accordance with union policy, to submit it to the employees for their approval and ratification. At this juncture, the Respondent, Jack Roesch, insisted on a mail ballot, which Moore rejected. A heated discussion ensued in which George Kennedy, Commissioner of the Federal Mediation and Conciliation Service, who attended that meeting, advised Roesch that the matter of ratification was no concern of the Respondent but a procedure customarily employed by unions to ascertain the will of their members for their own purposes. This conference adjourned with the understanding that Roesch and Moore would meet the following day when Roesch would furnish Moore with a list of employees in the unit who would be eligible to participate in the referendum.

At their meeting on February 17 Moore gave Roesch a copy of the negotiated collective-bargaining agreement, which Moore had reduced to final form. After reading it, Roesch acknowledged in writing that it was "a correct document" embodying their agreement reached the preceding day. Moore, in turn, acknowledged in a letter signed by him that he had received a list of names of employees eligible to vote in the referendum. The letter further stated that, after checking the list,

. . . those found to be considered regular full time bus and coach operators, . . . will be informed of a meeting time, place and date at which time the contract agreement will be explained to them and they will be allowed to express their acceptance or rejection of the agreement in an appropriate manner.

Upon ratification of the agreement, it is further agreed that you and the undersigned will place our signatures to this agreement.

Roesch noted in this letter over his signature "Received and terms accepted." It also appears that in the course of their discussions Moore mentioned that he had heard that a few employees were in favor of the Teamsters Union. Apparently Roesch was not happy about this development and expressed the hope that it was not true. In reply to Roesch's inquiry as to what would happen if the employees rejected the contract, Moore replied that he would be forced to demand additional benefits. At some point not indicated Moore asked Roesch to help him sell the contract to the employees.

On February 23, the day before the scheduled ratification vote, Moore appeared at the Respondent's facility where he exhibited the contract to several employees and explained its contents. Because three employees were expected to be out of town on the day of the referendum, Moore consented to Roesch's request that these employees be permitted to vote at that time. This the three employees did and their ballots were placed in a securely locked ballot box which Moore had borrowed from the Los Angeles County Registrar of Voters. Although Moore tried in vain to impress upon Roesch that the ratification vote was none of the Respondent's business and that it was used solely "as a barometer [to determine] whether the members are satisfied with the agreement," Moore acceded to Roesch's demand that the ballot box be placed overnight in a safe in a local hotel.

<sup>5</sup> In particular, the Respondent agreed not to make unilateral changes in terms and conditions of employment; deal directly or indirectly with employees concerning such matters, suggest to employees to form a shop committee or union; offer, promise, or grant employees any benefits to induce them to withdraw their support of the Union or any other labor organization; threaten to terminate operations, discharge employees, withdraw benefits, or take other reprisal action because of their union membership or activities; interrogate employees concerning their union activities or those of fellow employees; or discourage union membership by discriminating against employees in regard to their hire or tenure of employment.

Early in the morning of February 24 Moore, in the presence of Roesch, picked up the ballot box at the hotel. Moore then proceeded to the American Legion hall where he had arranged for the voting to take place and to confer with employees who desired information concerning the negotiated agreement. Shortly after 10 a.m., while Moore was explaining the agreement to several employees before they voted, Roesch and his son, Randy, without any invitation from the Union, entered the hall. Over Moore's protest, Roesch placed his own lock on the ballot box, in addition to that previously put on by Moore. In reply to Roesch's demand to see a ballot,<sup>6</sup> Moore told Roesch that voting was a membership matter and that he was not entitled to vote. In any event, Moore held up a ballot for Roesch to read. Roesch seized it and charged Moore with lying to the men. Then addressing three or four employees<sup>7</sup> Roesch declared that "it does not matter how you vote." "When you are voting for, you are voting against. When you are voting against, you are voting for." Roesch also informed the employees that the ballot was supposed to be a simple yes or no one, although, according to Moore's testimony which I credit, the type of ballot or its wording was never considered by the parties. At some point in the harangue, Roesch called the employees out of the hall and told them to "write on here—. . . No I can't do that . . . You know how to vote. Go ahead and vote." Roesch and his son then left but returned in the afternoon to ask Moore for the names of employees who had not yet voted so that they could arrange for them to come to the hall to cast their ballots. Moore refused to give them the names, asserting that he heard rumors that Roesch was trying to persuade the employees "to vote the contract down." Again Roesch and his son departed but later Randy returned alone and sat down where Moore was explaining the contract to a number of operators. Moore asked Randy to leave because the employees wanted to ask questions and cast their ballots and his presence was making the men nervous. After making some derogatory remarks, Randy reluctantly left the hall but remained outside the door for 15 or 20 minutes when he requested Moore to tell his father that he could be found at a designated coffee shop. Moore conveyed the message to Roesch when Roesch arrived at the hall. At that time Moore was discussing the contract with some employees and asked Roesch to leave, which he did. At the close of the balloting Roesch again returned and, at his insistence, Moore brought the ballot box to the local hotel for safekeeping.

The next day, February 25, Moore met Roesch and his son at the hotel and picked up the ballot box. There, an employee, who had previously not voted, was permitted to cast a ballot. Moore, Roesch, and Randy then proceeded to Moore's office where, in the presence of Commissioner Lester Huling of the Federal Mediation and Conciliation Service and others, the ballot box was opened and the ballots counted. The tally of ballots showed that 17 employees voted for acceptance of the contract and 14 for rejection. A written certification of the results of the balloting was signed by Huling and others. Although requested by Moore, Roesch refused to sign that document or "anything else," stating that Moore "will be hearing from [Roesch's] attorney," and left. According to Roesch's testimony, he refused to sign the negotiated collective-bargaining agreement after the ratification vote was taken because the wording of the ballot was confusing and did not accord the employees a true choice and, for this reason, he lost complete confidence in the Union. The Respondent, however, does not otherwise assail the integrity of the balloting procedures.

## B. Concluding findings

### 1. With respect to the refusal to bargain

The Respondent argues that he was justified in refusing to sign the negotiated collective-bargaining agreement because (1) the ratification ballot was confusing and improper, and (2) the Union lost its majority status. He therefore requests dismissal of the 8(a)(5) allegations of the complaint. I find these contentions totally without merit.

There is no question that the Respondent and the Union had reached complete accord on all terms and conditions of employment and that signing of the agreement was deferred at the Union's request only to enable it to submit the agreement to the employees in the bargaining unit for their approval. It is also perfectly clear that, although the employees thereafter ratified the agreement, the Respondent declined to

<sup>6</sup> Roesch testified that on that day employee Robinson had telephoned him to tell him that the ballot was confusing the employees, thereby making it difficult to vote. It appears that at the hall that day Robinson asked Moore for a ballot to show to Roesch but that Moore refused to permit any ballot to leave the hall.

<sup>7</sup> It is not clear whether these remarks were made to these employees before or after Roesch called them out of the hall.

affix his signature to the document. This refusal, I find, was not only in breach of his written commitment made on February 17, 1965, to execute the agreement "[u]pon ratification," but also was in plain disregard of the mandate of Section 8(d) of the Act. That provision defines, in no uncertain terms, the bargaining obligation of employers and unions alike to include "the execution of a written contract incorporating any agreement reached," as the "final step in the bargaining process."<sup>8</sup>

I am not impressed by the Respondent's attempted justification for not discharging his bargaining obligation that the wording of the ballot used in the referendum was not appropriate for the purposes. Under settled law, ratification of a negotiated agreement by employees is not a matter of legitimate concern to an employer without the consent of the employees' exclusive bargaining representative. Thus, it has been held both by the Board and the courts that an employer violates Section 8(a)(5) of the Act if, over the objection of his employees' representative, he conditions the execution or effectiveness of a collective-bargaining agreement on ratification by a majority of the employees, for the reasons that such a condition does not relate to a mandatory subject of bargaining, subverts the authority and independent status conferred by the Act on the duly designated bargaining representative, and, indeed, amounts to an unwarranted intrusion into the internal affairs of the union and its relationship with its constituents.<sup>9</sup> In language no less applicable to the ratification requirement than to the "ballot clause" in the *Borg-Warner* case<sup>10</sup> which called for a prestrike secret vote of the employees as to the employer's last offer, the Supreme Court there observed that:

. . . The "ballot clause" is not within . . . [the] definition [of mandatory bargaining]. It relates only to the procedure to be followed by the employees among themselves before their representative may call a strike or refuse a final offer. It settles no term or condition of employment—it merely calls for an advisory vote of the employees. . . . [It] deals only with relations between the employees and their unions. It substantially modifies the collective-bargaining system provided for in the statute by weakening the independence of the "representative" chosen by the employees. It enables the employer, in effect, to deal with its employees rather than with their statutory representative. Cf. *Medo Photo Supply Corporation v. N.L.R.B.*, 321 U.S. 678.

The Supreme Court accordingly sustained the Board's finding that the employer violated its statutory bargaining obligation by imposing the "ballot clause" as a condition of agreement.

In the present case, the Respondent, by withholding his signature from the negotiated agreement because of his dissatisfaction with the wording of the ballot which a majority of employees had cast in favor of acceptance of the agreement, in effect conditioned execution of the agreement upon ratification by employees under his own terms. Plainly, adamant insistence upon such a condition in the face of the Union's objection is incompatible with the Respondent's statutory duty to sign the agreement reached by the parties. Precisely in point is the Board's decision in *North County Motors, Ltd.*,<sup>11</sup> where the employer was found to be in violation of Section 8(a)(5) of the Act for refusing to execute a written agreement on the ground that the contract had not been properly ratified by a majority of the employees in the unit. There, as here, the ratification vote was requested by the union. Although employees were duly notified by the union, only one appeared at the appointed time to cast a vote, which was for acceptance of the agreement. In finding untenable the employer's challenge to the validity of the ratification vote, the Board noted (674):

. . . The Act imposes no obligation upon a bargaining agent to obtain employee ratification of a contract it negotiates in their behalf. In a case such as this the requirement for ratification could only have been one which the Union itself assumed. It was thus for the Union, not for the Respondent, to construe the meaning of the Union's internal regulations relating to ratification. Whether the one-vote ratification in the circumstances here present was enough to satisfy the Union's bylaw requirement . . . was a matter for the Union to decide, and not for the Respondent to challenge once assured by the Union that the latter's ratification requirements had been met.

A contrary holding in the instant case would not only sanction employer interference with a union's internal affairs but, indeed, would also place the employer in a position to sit in judgment over the union's conduct of its business.

<sup>8</sup> *H. J. Heinz Company v. N.L.R.B.*, 311 U.S. 514, 525.

<sup>9</sup> *N.L.R.B. v. Darlington Veneer Company, Inc.*, 236 F. 2d 85 (C.A. 4), enf. 113 NLRB 1101; *N.L.R.B. v. Corsicana Cotton Mills*, 173 F. 2d 344, 347 (C.A. 5).

<sup>10</sup> *N.L.R.B. v. Wooster Div. of Borg-Warner*, 356 U.S. 342, 349-350.

<sup>11</sup> 146 NLRB 671.

Quite apart from the fact that the Union's ratification procedures were no concern of the Respondent, I find the wording of the ballot neither confusing nor misleading. This ballot, which in pertinent part is reproduced below,<sup>12</sup> accorded employees the choice of acceptance of the negotiated agreement or its rejection which was coupled with a request that the Union seek "additional wages and benefits" from the Respondent. It is the Respondent's position that the rejection choice improperly included a request to the Union to attempt to secure greater benefits. He argues that there were several employees who voted for acceptance of the agreement rather than rejection because the latter choice meant further negotiations which they did not want because of their knowledge of the Company's precarious financial condition. I find this interpretation farfetched, unreasonable, and incredible. Moreover, I find the proffered testimony of several employees who allegedly voted for acceptance—a matter itself obviously incapable of verification—respecting their motivation for their vote<sup>13</sup> would, at best, be an unreliable and futile method for determining the validity of the ballot. On the other hand, an objective appraisal of the language of the ballot reveals nothing to impugn its integrity. In short, the Respondent can derive no support for refusing to execute the negotiated agreement in the wording of the referendum ballot.

Turning to the Respondent's other justification for not signing the agreement that the Union had already lost its majority status before the ratification vote, I find this defense equally untenable. As discussed earlier in this Decision, the agreement in question was the product of negotiations the parties had conducted pursuant to the settlement agreement approved by the Acting Regional Director on June 26, 1964, which disposed of unfair labor practice charges the Union had previously filed alleging, among other things, the Respondent's unlawful refusal to bargain. Admittedly, the Union was the duly designated bargaining representative of the Respondent's employees in an appropriate unit on October 10, 1963, prior to the execution of the settlement agreement. In entering into the settlement agreement in which he obligated himself to recognize and bargain with the Union "as the exclusive representative of all employees in the bargaining unit," the Respondent impliedly acknowledged the Union's continuing majority status.

In *Poole Foundry*,<sup>14</sup> a leading case on the subject, the Board held that if a bargaining provision in a settlement agreement is to achieve its purpose, the parties must be given a reasonable time in which to negotiate and conclude an agreement, irrespective of any possible or proved loss of majority. "Otherwise," as the Fourth Circuit observed in sustaining the Board's holding (p. 743), "settlement agreements might indeed have little practical effect as an amicable and judicious means to expeditious disposal of disputes arising under the terms of the Act."

Considering all the facts in this case, the time interval following the execution of the settlement agreement, and the series of bargaining conferences between the parties resulting in an agreement on all terms and conditions of employment, I find that the Respondent was not relieved of his statutory obligation to complete "the final step in the bargaining process"<sup>15</sup> by signing the negotiated agreement. Having failed to do so, I conclude that the Respondent violated Section 8(a)(5) of the Act.

<sup>12</sup> The choice provided in the ballot reads as follows:

I ACCEPT the conditions of this labor agreement as mutually agreed to by the negotiating team of Roesch Transportation Company and the Brotherhood of Railroad Trainmen.

- I REJECT the labor agreement which was mutually agreed to by the negotiating team of Roesch Transportation and Brotherhood of Railroad Trainmen, and I request that the representative of the Brotherhood of Railroad Trainmen place upon the management of Roesch Transportation Company, a demand for additional wages and benefits over and above those which have been agreed to by the parties.

<sup>13</sup> At the hearing I rejected the Respondent's offer to produce certain employees who would give testimony of this nature. I adhere to my ruling and find such testimony has little, if any, probative value. As the late Justice Frankfurter once observed: "According to an early English judge, 'The devil himself knoweth not the mind of man,' and a modern reviewing court is not much better equipped to lay bare unexposed mental processes." *N.L.R.B. v. Donnelly Garment Company*, 330 U.S. 219, 229.

<sup>14</sup> *Poole Foundry and Machine Company*, 95 NLRB 34, enfd. 192 F. 2d 740 (C.A. 4), cert. denied 342 U.S. 954; see also *N. J. MacDonald & Sons, Inc.*, 155 NLRB 67.

<sup>15</sup> *H. J. Heinz Company v. N.L.R.B.*, 311 U.S. at 526.

## 2. With respect to interference, restraint, and coercion; unilateral action

On February 24, the date scheduled for the ratification vote, employees appeared throughout the day at the Union's meeting hall to hear Local Chairman Moore explain the negotiated agreement, to ask questions about its contents, and to cast a ballot for or against acceptance. As discussed above, Respondent Roesch and his son, without being invited by the Union, made several appearances at the Union's meeting place. On one occasion, in the presence of employees, Roesch placed his own lock on the Union's ballot box, maligned Moore, severely criticized the ballot used in the referendum, and reluctantly departed with his son when Moore asked them to leave, taking three or four employees with them. On another occasion during the day, Roesch's son also took a seat in the union hall, made disparaging remarks to Moore, and, after being ordered out of the hall, stationed himself outside the door for 15 or 20 minutes before leaving.

There can be little doubt that such conduct was an inexcusable intrusion into the private affairs of the Union and the employees it represented and plainly created an atmosphere not conducive to a free exchange of ideas concerning the negotiated agreement between the Union and its constituents. This, I find, was an unwarranted infringement by the Respondent of the employees' self-organizational rights guaranteed to them by the Act and unquestionably constituted a violation of Section 8(a)(1) thereof.

At the hearing, the Respondent stipulated that before the settlement agreement he had engaged in the acts set forth in the paragraphs of the consolidated complaint numbered 10(a) and (b) and 11(a) through (f), inclusive, subject, however, to his contention that these allegations are barred by the 6-month limitations proviso contained in Section 10(b) of the Act.<sup>16</sup> More particularly, these acts are described in the consolidated complaint as follows:

Paragraph 10 (a) On or about October 21, 1963, and on various dates in January 1964, Jack Roesch, without consultation with or notice to the Union, urged employees to form or elect a committee for the purpose of bargaining with Respondent concerning rates of pay, wages, hours of employment, and other terms and conditions of employment.

(b) On or about October 21, 1963, and on various dates in January 1964, Jack Roesch, without consultation with or notice to the Union, promised, offered, and granted to the employees employed in the appropriate unit . . . improvements in rates of pay, wages, hours of employment, and other terms and conditions of employment.

Paragraph 11 (a) On or about October 7, 1963, Richard T. Cook interrogated employees concerning their membership in and activities in behalf of the Union.

(b) On or about October 21, 1963, Jack Roesch promised benefits to employees if they ceased supporting the Union.

(c) On or about January 7, 1964, Jack Roesch threatened employees with a loss of benefits if they continued supporting the Union.

(d) On or about January 7, 1964, Jack Roesch threatened to go out of business in the event the employees selected the Union as their collective-bargaining representative.

(e) On or about January 22, 1964, Jack Roesch threatened the discharge of employees who continued to support the Union.

(f) At various times during the period October 11, 1963, to January 7, 1964, Jack Roesch interrogated employees concerning their membership and activities in behalf of the Union and the union sympathies of other employees.

I find the Respondent's 10(b) defense groundless. As shown in footnote 1 of this Decision, *supra*, the charge and amended charge in Case No. 21-CA-5620-2 and the charge in Case No. 21-CA-6519 were timely filed and served on the Respondent.<sup>17</sup>

Accordingly, I find that by the conduct set forth above the Respondent interfered with, restrained, and coerced employees in violation of Section 8(a)(1) of the Act. I further find that, by granting employees improvements in rates of pay, wages,

<sup>16</sup> The proviso to Section 10(b) states in relevant part: "That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made . . ."

<sup>17</sup> If the 10(b) defense is intended to apply to the Respondent's unlawful refusal to execute the agreement reached as found above, I also find it factually unsupported.

hours of employment, and other terms and conditions of employment, without first notifying and bargaining with the Union as the employees' exclusive bargaining agent in an appropriate unit, the Respondent additionally violated Section 8(a)(5) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

#### V. THE REMEDY

Pursuant to Section 10(c) of the Act, I recommend that the Respondent cease and desist from engaging in the unfair labor practices found and in like and related conduct and take the affirmative action hereinafter provided which is designed to effectuate the policies of the Act. I do not recommend a broad cease-and-desist order for the reason that the Respondent's unfair labor practices following the execution of the settlement agreement were limited to his refusal to sign the negotiated labor agreement and his improper intrusion into the Union's contract ratification procedures.

Since it has been found that the Respondent and the Union have mutually reached complete accord upon all terms and conditions of employment, I recommend that the Respondent, upon request by the Union, execute such consummated agreement. I also recommend that the Respondent post at his place of business the notice attached to this Decision marked "Appendix."

Upon the basis of the foregoing findings of fact and upon the entire record in the 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. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. All operators of buses, baggage trucks, and station wagons employed by the Respondent at his San Bernardino, California, operation, excluding all other employees and supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. At all times material herein, the Union has been the exclusive representative of the Respondent's employees in the aforesaid appropriate unit within the meaning of Section 9(a) of the Act.
5. By refusing to execute the agreement consummated as a result of negotiations between the Respondent and the Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
6. By granting employees improvements in rates of pay, wages, hours of employment, and other terms and conditions of employment, without first notifying and bargaining with the Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
7. By engaging in the foregoing conduct and the acts described in section III, B, 2, above, the Respondent has interfered with, restrained, and coerced employees in the exercise of their statutory rights within the meaning of Section 8(a)(1) of the Act.
8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law and upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that Jack Roesch, d/b/a Roesch Transportation Company, Western Trail Stages, and Best Way Charter Service, San Bernardino, California, his agents, successors, and assigns, shall:

1. Cease and desist from:
  - (a) Refusing to sign the agreement he negotiated on February 16, 1965, with Brotherhood of Railroad Trainmen, Lodge 390, as the exclusive representative of all

operators of buses, baggage trucks, and station wagons employed by the Respondent at his San Bernardino, California, operation, excluding all other employees and supervisors as defined in the Act.

(b) Granting employees in the above-described bargaining unit any improvements or changes in rates of pay, wages, hours of employment, and other terms and conditions of employment, without first notifying and bargaining with the above-named Union as their exclusive bargaining representative.

(c) Intruding into the internal affairs of the above-named Union or into the Union's discussions with the employees it represents; urging employees, in derogation of the Union's representative status, to form or elect a committee for the purpose of bargaining with him concerning rates of pay, wages, hours of employment and other terms and conditions of employment; coercively interrogating employees concerning their membership in, and activities on behalf of, the Union, or the union sympathies of other employees; promising employees benefits if they refrained from supporting the Union; threatening employees with loss of benefits if they continued their support of the Union; and threatening to go out of business in the event the employees selected the Union as their collective-bargaining representative.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Brotherhood of Railroad Trainmen, Lodge 390, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, 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 by Section 8(a) (3) of the Act.

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

(a) Upon request, execute with the above-named Union, as the exclusive representative of his employees in the above-described unit, the collective-bargaining agreement negotiated by them on February 16, 1965.

(b) Post at his place of business in San Bernardino, California, copies of the attached notice marked "Appendix."<sup>18</sup> Copies of said notice, to be furnished by the Regional Director for Region 21, shall, after being duly signed by the Respondent, be posted by him immediately upon receipt thereof and be maintained by him for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 21, in writing, within 20 days from the date of the receipt of the Trial Examiner's Decision, as to what steps the Respondent has taken to comply herewith.<sup>19</sup>

<sup>18</sup> In the event that 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."

<sup>19</sup> In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 21, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

## APPENDIX

### NOTICE TO ALL EMPLOYEES

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

WE WILL, upon request, execute with Brotherhood of Railroad Trainmen, Lodge 390, as the exclusive representative of our employees in the unit described below, the collective-bargaining agreement which we negotiated on February 16, 1965. The employees included in the appropriate unit are:

All operators of buses, baggage trucks, and station wagons employed by us at our San Bernardino, California, operation, excluding all other employees and supervisors as defined in the Act.

WE WILL NOT grant employees in the above-described bargaining unit any improvements or changes in rates of pay, wages, hours of employment, and other terms and conditions of employment, without first notifying and bargaining with the above-named Union as their exclusive bargaining representative.

WE WILL NOT intrude into the internal affairs of the above-named Union or into its discussions with the employees it represents; urge employees, in derogation of the Union's representative status, to form or elect a committee for the purpose of bargaining with us concerning rates of pay, wages, hours of employment and other terms and conditions of employment; coercively interrogate employees concerning their membership in, or activities on behalf of, the Union, or the union sympathies of other employees; promise employees benefits if they refrained from supporting the Union; threaten employees with the loss of benefits if they continued their support of the Union; or threaten to go out of business in the event the employees selected the Union as their collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Brotherhood of Railroad Trainmen, Lodge 390, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, 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 Act.

JACK ROESCH, D/B/A ROESCH TRANSPORTATION COMPANY, WEST-ERN TRAIL STAGES, AND BEST WAY CHARTER SERVICE,

*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, Eastern Columbia Building, 849 South Broadway, Los Angeles, California, Telephone No. 688-5229.

**Local Union No. 742, United Brotherhood of Carpenters and Joiners of America (J. L. Simmons Company, Inc.) and Robert L. Reinero. Case No. 38-CB-5 (formerly 13-CB-1772). March 7, 1966**

DECISION AND ORDER

On September 10, 1965, Trial Examiner Robert E. Mullin 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, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.<sup>1</sup> The General Counsel filed a brief in answer to Respondent's exceptions.

The National Labor Relations Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial

<sup>1</sup> Respondent's request for oral argument is hereby denied as, in our opinion, the record, the exceptions, and the briefs adequately present the issues and positions of the parties.