

(b) Furnish the Union with the financial data on which Respondent relies to support any claimed financial inability to meet the Union's economic demands."

(c) Furnish the Union with forms pertaining to the employee insurance program.

(d) Post at its plant at Scottdale, Georgia, the attached notice marked "Appendix."¹ Copies of such notice, to be furnished by the Regional Director for Region 10, after being signed by an authorized representative of the Respondent, shall be posted immediately upon the 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 such notices are not altered, defaced, or covered by any other material.

(e) Notify the said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps the Respondent has taken to comply herewith.²

¹ In the event that this Recommended Order is 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 is 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."

² In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, 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 bargain upon request with International Chemical Workers Union, Local 722 as the exclusive representative of our production and maintenance employees.

WE WILL, upon request of that Union, furnish it with forms relevant to the employee insurance program.

WE WILL NOT change wage rates or other terms or conditions of employment without giving the Union notice and an opportunity to bargain with respect thereto.

L. E. BECK & SON, 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, 528 Peachtree-Seventh Building, 50 Seventh Street NE., Atlanta, Georgia 30323, Telephone 526-5741.

National Biscuit Company and International Union of Operating Engineers, Local Union No. 1, AFL-CIO. Case 27-CA-1917.
June 27, 1966

DECISION AND ORDER

On May 10, 1966, Trial Examiner William E. Spencer 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. He also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the General Counsel filed exceptions and a supporting brief, which were limited to questioning the effectiveness of the Trial Examiner's Recommended Order.

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 [Members Fanning, 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 exceptions, the brief, and the entire record in this case,¹ and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications.

[The Board adopted the Trial Examiner's Recommended Order with the following modifications:

[A. Delete paragraph 1 and substitute the following:

[1. Cease and desist from:

["(a) Announcing operational changes affecting the wages and working conditions of its employees in a manner interfering with, restraining, or coercing employees in the exercise of their rights protected by Section 7 of the Act.

["(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Union of Operating Engineers, Local Union No. 1, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of mutual aid or protection, as guaranteed in Section 7 of the Act, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959."]

¹ The Respondent filed cross-exceptions and an answering brief which, under the Board's Rules and Regulations, Series 8, as amended, Section 102.46(d) and (e), were untimely filed. However, upon due consideration, we find that, even if accepted, neither the cross-exceptions nor answering brief raises issues, theories, or arguments which would alter our findings and conclusions herein.

[B. Delete the "WE WILL NOT" paragraph in the attached notice marked "Appendix" and substitute the following:

[WE WILL NOT announce operational changes affecting the wages and working conditions of our employees in a manner interfering with, restraining, or coercing them in the exercise of rights guaranteed by Section 7 of the Act.

[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 International Union of Operating Engineers, Local Union No. 1, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding under Section 10(b) of the National Labor Relations Act, as amended, hereinafter the Act, was heard before Trial Examiner William E. Spencer in Denver, Colorado, on February 15 and 16, 1966, pursuant to due notice. The complaint, issued November 26, 1965, on a charge and an amended charge filed October 12 and 29, 1965, respectively, by the Union herein, alleged, and Respondent in its duly filed answer denied, that the Respondent engaged in unfair labor practices violative of Section 8(a)(1), (3), and (5) of the Act.

Upon the entire record in the case, my observation of witnesses appearing before me, and after considering the briefs filed with me by the General Counsel and Respondent, respectively, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a New Jersey corporation, with its principal office in New York, New York, at all times material maintained a branch plant and place of business in Denver, Colorado, where it has at all material times been engaged in producing bakery goods.

During a representative year, in the conduct of its Denver, Colorado, operations, it has manufactured, sold, and distributed products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from the Denver plant directly to points outside Colorado.

II. THE LABOR ORGANIZATIONS INVOLVED

International Union of Operating Engineers, Local Union No. 1, AFL-CIO, hereinafter the Union, and American Bakery and Confectionery Workers International Union, are, respectively, labor organizations within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The issues*

Respondent's Denver bakery, with which we are here concerned, is one of 12 of Respondent's production plants located in various States. At times material, production employees of the Denver plant were represented by the American Bakery and Confectionery Workers International Union, hereinafter ABC, its mechanics and engineers, a relatively small unit, by the Union. On September 18, 1965, ABC called a strike of Respondent's production workers, including employees of the Denver plant—the first strike in the history of this plant. The strike became effective on that date and picket lines were established. The issues in this case arise largely out of the Union's decision to honor the picket lines thus established. All future references are to the Denver operation.

The issues, briefly stated, are: (a) whether certain statements made by Respondent's plant manager on September 19 and 20, and October 4, 1965, were violative of Section 8(a)(1); (b) whether the institution of certain rules and operative changes on and after October 4, constituted a violation of Section 8(a)(3) and (5) of the Act.

As of September 1965, Respondent's mechanical superintendent was Jack Schure; its sanitation foreman, Jacob Spomer; its plant manager, W. R. Corbett. Corbett replaced Charles Jacobson as plant manager on August 15, and therefore had been in this position only about a month when the strike and picketing began. As of the same period, Art Schaul was ABC's business manager; Ralph Diltz business agent for the Union; and C. M. Crouch shop steward for the mechanics in the unit represented by the Union.

B. *September 19 and 20 statements*

On September 19, Corbett and Schure met at the plant with the several union representatives, and at this meeting Corbett requested that an engineer be left on duty to tend the boilers during the strike in order to keep various materials in the pipes from hardening and for reasons of safety. He also requested permission to meet with the engineers and mechanics to explain why pressure on the boilers should be maintained at a certain level. Either Schaul and Diltz agreed that he could meet with the employees, or Corbett understood that he had their consent. The meeting between the employees and their union representatives occurred on the following day, but Corbett was not permitted to attend the meeting. On its conclusion, the employees left the plant, and Schaul, accompanied by Diltz and others, advised Corbett that no engineers would be permitted on the job during the strike. Corbett reiterated his reasons for wanting an engineer on duty at all times; stated that engineers would remain at the other struck plants throughout the country; said that the Union's decision not to permit an engineer to remain on the job showed a lack of responsibility; said that he would advise Respondent's main office that employees of the Denver plant were not concerned about its security; said that he intended to investigate the feasibility of obtaining boilers that would not require attendants, in order to assure maximum plant protection in the future. There was testimony to the effect that Corbett also threatened to recommend that the Denver plant be closed, but this was denied by Corbett. Edward George Plymell, a shop steward who was present at this meeting, testified that Corbett said something to the effect that he "couldn't care less" what happened to the Denver bakery, or did not "care if the bakery closes down," and that he would not hesitate to make this viewpoint known to the "people back East," but corroborated Corbett in his denial that he threatened to "recommend" that the plant be closed "if the men did not cross the picket line." I accept Plymell's version of Corbett's statements as being the most convincing among the several versions testified to.

Corbett obtained the services of a retired mechanical superintendent who was brought in to attend the boilers until the conclusion of the strike.

I do not believe that Corbett's statements to union stewards and representatives on either September 19 or 20 were violative of the Act. He had made what he thought was a reasonable presentation to the Unions for the maintenance of the boiler during the period of the strike; was denied an opportunity to present his case to the employees; and was understandably angry when he was informed that no engineer would remain on the job during the strike. His censure of the Unions for irresponsibility in the matter may not have been prudent but it was not unlawful; his suggestion that he would explore the matter of acquiring automated boilers to meet future crises was neither unlawful nor improper under the circumstances;

and I find that he made no threat to recommend that the plant be closed as a reprisal against employees refusing to cross the picket lines—as they had a legal right to do. He expressed his momentary indifference to the plant's continued operation but these and kindred observations would be understood by any reasonable man as a spontaneous outburst of disgust and anger on learning that the boilers would be left unattended, and not as reasoned or premeditated threats. I think they were neither intended as such nor had that effect.

C. October 4 statements

The strike was settled on October 2, and the employees returned to work on October 4. On the latter date Corbett called a meeting of the seven maintenance employees represented by the Union. Mechanical Superintendent Schure also attended the meeting. During this meeting, which lasted some 2 hours, Corbett in effect criticized the mechanics for their part in the strike, characterized them as "sheep" for following the leadership of Business Agent Diltz, and indicated that he held them responsible for inducing the engineers to honor the picket line. An exchange occurred between him and Employee Walter Barc, during which both became angry, Barc apparently believing that he was singled out by Corbett as having instigated the engineer walkout, and culminated by Corbett saying that the "door was open" for Barc "to walk out," if he wanted to leave, or for anyone to leave, as the case may be, the testimony being in conflict whether he addressed this remark to Barc singly, or to the group collectively. No one left.

Corbett then announced that the mechanics' lockers would be moved from the boilerroom where they had been located for some 20 years to the front of the plant, and the boilerroom would thenceforth be "off limits" to maintenance employees; that "excessive" talking during working hours would not be tolerated in the future; and that there would be a reevaluation of the necessity of overtime work which until then normally had been provided mechanics on Saturday mornings for purposes of "preventative maintenance." Corbett also made some references to the Denver plant as being a marginal operation. On the following Saturday no overtime work was provided.

I thought Corbett gave a fairly reasonable and logical explanation for moving the lockers from the boilerroom and for closing off this room to the use of maintenance employees. It appears that in the past the boilerroom had been used as a sort of gathering place for the mechanics and that the engineers objected to this loitering in the vicinity of their work. I accept Corbett's testimony that he told the mechanics that too much of their time had been spent in the past loitering in the boilerroom, and that henceforth "that area should be utilized only if a person had a specific need to be here." The same reasoning, I think, applies to the removal of the lockers to the front of the plant. According to some of the employees who testified, the new location of the lockers delayed their reporting in on their jobs and their departure from the plant at the end of the work day. I have no doubt that some or most of them felt that this change was in the nature of a penalty, but I am convinced that there was no substantial overall inconvenience caused by the change. The suggestion, or threat of a cut in overtime, as the case may be, was obviously of a more serious character.

It is borne in mind that Corbett had assumed the managership of the plant shortly before the strike; his testimony that during the period of the strike, he canvassed various operational factors with his supervisors is accepted; and it is not entirely unreasonable that as a result of this survey he came to the conclusion that work formerly done on Saturdays as overtime, with more efficient management might be accomplished during the normal workweek. Nevertheless, his juxtaposing all of these changes with his angry denunciation of the mechanics for their strike activity, his invitation to those who did not like his remarks to walk out, his reference to the plant as a marginal operation, all occurring on the very day that the strikers returned to work, gave to his announced changes the unmistakable color of reprisal, and the employees would reasonably assume that they were being penalized for having honored the picket line. The removal of the lockers and admonition to stay clear of the boilerroom in the future and to forgo excessive talking would not be disassociated in the employees' minds with his angry denunciation of Barc and others for having induced the engineers to refrain from work during the period of the strike, although in a different context such changes might have appeared in a different light. On the whole I am unable to say that this coupling of announced changes, at least some of which employees reasonably

would regard as having an adverse affect on their earning capacity or working conditions, was unintentional. Corbett obviously was still angry over the engineers leaving their jobs unattended, and I think there was more than a little rancor mixed in with the timing of his announcement of operational changes which he would have reason to believe would not be entirely to the mechanics' liking. I am convinced, contrary to certain portions of his testimony, that he did not present the cut in overtime in the reasoned, logically explained manner that he now presents it, but presented it in such a manner that the employees would reasonably infer that their future earning capacity would be adversely affected, and this, together with his references to the Denver plant as a marginal operation, could hardly have failed to register as a threat. Upon the entire evidence, I find that Corbett's announcement of operational changes at the October 4 meeting, considered in the context of its timing and his rancorous criticism of the employees' strike activity, was coercive and violative of Section 8(a)(1) of the Act.

D. *The alleged 8(a)(3) violations*

I am not, however, convinced that the removal of the lockers from the boilerroom, the prohibition against loitering and excessive talking, and the failure to provide overtime on the Saturday immediately following the strike, constituted a violation of Section 8(a)(3) of the Act. Certainly, the way in which these changes were announced gave them the *appearance* of reprisals, and I have so found, but I cannot say that the changes actually constituted reprisals. The prohibition against excessive talking can hardly be construed as an act of reprisal and, as I have previously stated, the other changes do not appear to me to be discriminatory but rather to reflect the enterprise of a new manager out to improve on the operational techniques of his predecessors. The timing was unfortunate, but Corbett was not estopped from initiating changes which he believed would improve the operation of the Denver plant by the fact that a strike had occurred. That he *utilized* these changes to work off some of his rancor toward the striking mechanics does not establish that the changes were actually instituted for discriminatory purposes. What appears to have been a curtailment of overtime following the strike is not to be disposed of lightly, but on the entire evidence before me I am unable to conclude that this is necessarily viewed as a reprisal or penalty for strike activity, but find it as reasonably viewed as attributable to a shift in managerial direction.

E. *Alleged 8(a)(5) violation*

I am also of the opinion that the removal of the lockers from the boilerroom and the rule that the locker room was off limits to the mechanics and that excessive talk during working hours was prohibited, did not constitute a refusal to bargain within the meaning of Section 8(a)(5) of the Act. The Union was at all material times the duly constituted representative of all Respondent's Denver, Colorado, maintenance department employees, including shift engineers, electricians, "A" and "B" maintenance men, and apprentice engineers, excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act, but Respondent was not under a duty to consult and bargain with the Union every time Corbett sneezed. To prohibit excessive talking during working hours was managerial prerogative, and I think the shuffling of the locker rooms and the rule against loitering fall in the same category. "Loitering" and "excessive talking" are not matters in which the employees have an enforceable bargaining interest, and on all the evidence I am convinced that the relocation of the lockers was no more related to working conditions than the relocation of a time-clock, a toilet, or an entrance to or exit from a plant. Had the suggested change, or threat of change in overtime, and its effectuation on the Saturday following the strike, been alleged as a refusal to bargain, there might be some substance in the allegation, but it was not, and in the matters alleged I can find at most, a technical violation which does not merit the application of legal formulas and a remedy.

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 an employer within the meaning of Section 2(2) of the Act, 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 Respondent's Denver, Colorado, maintenance department employees, including shift engineers, electricians, "A" and "B" maintenance men, and apprentice engineers, excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act, constituted at all material times and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. The Union is now, and has been at all material times, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining.

5. The Respondent has not refused to bargain with the Union in violation of Section 8(a)(5) of the Act.

6. By announcing operational changes affecting the wages and working conditions of its employees in a manner, and at a time, calculated to restrain and coerce its employees in the future exercise of rights guaranteed in Section 7 of the Act, and having that reasonable effect, the Respondent has interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act.

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

8. The Respondent has not engaged in conduct violative of Section 8(a)(3) of the Act.

RECOMMENDED ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the Act, it is recommended that the Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from interfering with, restraining, or coercing its employees in the right to self-organization, to form labor organizations, to join or assist the Union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, 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 authorized in Section 8(a)(3) of the Act.

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

(a) Post at its Denver, Colorado, place of business, copies of the attached notice marked "Appendix."¹ Copies of said notice, to be furnished by the Regional Director for Region 27, after being duly signed by a representative of the Respondent, shall 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 employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 27, in writing, within 20 days from the receipt of this Decision, what steps the Respondent has taken to comply herewith.²

¹ In the event that this Recommended Order is 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 is 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."

² In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, 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 NOT interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or

assist International Union of Operating Engineers, Local Union No. 1, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection.

NATIONAL BISCUIT COMPANY,
Employer.

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

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 609 Railway Exchange Building, 17th and Champa Streets, Denver, Colorado 80202, Telephone 297-3551.

Mitchell Plastics, Incorporated and International Union, Allied Industrial Workers of America, AFL-CIO. *Case 6-CA-3373.*
June 27, 1966

DECISION AND ORDER

On March 7, 1966, Trial Examiner William Seagle issued his Decision in the above-entitled proceeding, finding that Respondent had engaged 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. The Trial Examiner also found that Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended that these allegations be dismissed. Thereafter, the Respondent and the General Counsel filed exceptions to the Trial Examiner's Decision, and the General Counsel filed supporting briefs.

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 entire record in this case including the Trial Examiner's Decision, the exceptions and briefs, and finds merit in some of the General Counsel's exceptions. Accordingly, the Board adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith.

Respondent is engaged in the manufacture of plastic products in Pittsburgh, Pennsylvania. In mid-1965, it employed approximately six nonsupervisory employees, and on June 1 of that year it moved its plant from the north to the east side of Pittsburgh. Shortly thereafter, Respondent's employees began to engage in organizational activities. A petition for a representation election was filed with the