

Region 9 of the Board, after having been duly signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and shall be maintained by it 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 9, in writing, within 20 days from the date of this Decision, what steps Respondent has taken to comply herewith ²⁹

²⁹ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 9, 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 recognize and deal with Kenneth Bolton as a duly authorized representative of International Brotherhood of Electrical Workers, Local 1198, AFL-CIO, and, upon request, grant him access to the production areas of the plant for the purpose of standing by during a job rating review.

WE WILL NOT refuse to bargain collectively with International Brotherhood of Electrical Workers, Local 1198, AFL-CIO, as the exclusive bargaining representative of our employees in the appropriate unit concerning rates of pay, wages, hours of employment, and other terms and conditions of employment, by refusing to meet or deal with Kenneth Bolton or any other duly authorized representative of the aforesaid Union. The following unit of employees is appropriate for collective bargaining.

All hourly rated employees assigned to jobs included in the certification issued by the National Labor Relations Board in Case 9-UA-666, dated June 25, 1948, but excluding office and clerical employees (both office and factory), foremen, supervisors as defined in the Act, professional employees, engineers, timekeepers, guards, draftsmen, and watchmen.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed in Section 7 of the Act.

GENERAL ELECTRIC 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, Room 2023, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202, Telephone 684-3627.

American Fire Apparatus Company and United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO. Case 18-CA-2167. September 27, 1966

DECISION AND ORDER

On June 30, 1966, 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, the General Counsel filed a statement of exceptions and a brief in support thereof, and Respondent 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 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 briefs, and the entire record in the proceeding, and adopts the findings, conclusions, and recommendations of the Trial Examiner, as modified herein.

The Trial Examiner found that Respondent had violated Section 8(a) (3) and (5) by unilaterally discontinuing the 1965 Christmas bonuses formerly paid to employees in the appropriate unit. However, he did not order that employees be reimbursed for their monetary loss, because computation of the bonus would be difficult, if not impossible, and Respondent had not committed other unfair labor practices, including other refusals to bargain.

As the Trial Examiner acknowledged, restitution is the ordinary remedy for the discriminatory withholding of a monetary benefit from employees. Only by requiring such restitution can the violation found be fully remedied. The reasons given by the Trial Examiner for denying the usual remedy are not tenable. The fact that Respondent has not committed other unfair labor practices is hardly a reason for denying an effective remedy for the unfair labor practices it did commit. Nor is the difficulty of computing the employees' loss as the result of Respondent's unfair labor practices a legitimate reason for denying them all compensation. We are not required at this stage of the proceeding to decide either the detailed formula to be used in determining compensation due to the employees, or the amounts so due. This can be determined by agreement of the parties, or, if agreement cannot be reached, in a backpay proceeding.

We shall therefore order Respondent to make its employees whole for the monetary loss they suffered as the result of the unlawful withholding of the 1965 Christmas bonus, the amount of the loss to be determined by the formula, as near as can be ascertained, used in making bonus payments in previous years, with interest at 6 percent per annum.¹

¹ *Zelrich Company*, 144 NLRB 1381, enfd. 344 F.2d 1011 (C.A. 5).

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

[1. Reletter the present paragraph 2(a) and substitute the following:

["(a) Pay to each of its employees the amounts due them under the 1965 Christmas bonus plan, to be computed in the manner set forth in this Decision and Order."

[2. Reletter the present paragraph 2(b) and substitute the following:

["(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms hereof."

[3. Add the following as the third indented paragraph of the Appendix attached to the Trial Examiner's Decision:

[WE WILL pay the 1965 Christmas bonus to our employees, with interest thereon at 6 percent per annum.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Pursuant to a charge by the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board by the Regional Director for Region 18 (Minneapolis, Minnesota), issued the complaint in this proceeding dated February 28, 1966. The complaint alleges that American Fire Apparatus Company, herein referred to as the Respondent or Employer, has engaged in unfair labor practices proscribed by Section 8(a)(1), (3), and (5) of the National Labor Relations Act in refusing to pay its employees the annual Christmas bonus and in unilaterally discontinuing the annual Christmas bonus. By answer duly filed the Respondent denied the commission of any unfair labor practices.

Pursuant to notice a hearing was held before Trial Examiner Harry R. Hinkes in Marshalltown, Iowa, on April 28, 1966. All parties were present and afforded full opportunity to participate, examine witnesses, and adduce relevant evidence. Briefs have been filed by the General Counsel and the Respondent and given careful consideration by me.

Upon the entire record in the case I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is, and has been at all times material herein, a Michigan corporation maintaining its principal office and place of business in Battle Creek, Michigan, with a branch plant located just outside of Marshalltown, Iowa, in Timber Creek Township, Marshall County, Iowa, where it is engaged in the manufacture, sale, and distribution of fire apparatus and firetruck bodies. During the past calendar year Respondent sold and shipped products valued in excess of \$50,000 directly to States of the United States other than the State of Iowa and had delivered to its Marshalltown plant materials valued in excess of \$50,000 from States of the United States other than the State of Iowa.

The complaint alleges, Respondent's answer admits, and I find that the Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the Respondent's answer admits, and I find that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The issue in this case as stated by counsel for the Respondent is whether or not a cash "Christmas payment" consistently paid but not calculated according to a consistent pattern can be unilaterally canceled, withdrawn, or withheld by the Respondent after it and the Union entered into a collective-bargaining agreement which made no explicit mention of any Christmas payment.

Most of the facts are not in dispute. The parties have stipulated that all production and maintenance employees including the stockroom clerk and the janitor of the employer employed at its Marshalltown, Iowa, plant, exclusive of office clerical employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act; provided, however, that the present janitor should be excluded from the unit since he is only part-time and on Social Security. On May 13, 1965, a majority of the employees in the unit described above, by secret-ballot election conducted under the supervision of the Regional Director for Region 18 of the National Labor Relations Board, designated and selected the Union as their representative for the purposes of collective bargaining with Respondent and on May 20, 1965, said Regional Director certified the Union as the exclusive bargaining representative of the employees in said unit. The Respondent admits the Union's status as such exclusive collective-bargaining representative.

Thereafter, negotiations commenced for a contract of employment between the unit and the employer. On June 19, 1965, the Union submitted to the attorney for the Respondent a proposed contract of employment and a covering letter which stated:

We propose that those policies and practices that were established prior to union activity be continued.

Said proposal was not contained in the employment contract proposed by the Union but was considered "in addition to" the proposed contract.

The Respondent began its Marshalltown operations in 1955. Starting in 1956 all employees were given a cash bonus or payment and said practice continued through Christmas 1964. The bonuses varied from \$5 to \$40, the differences apparently based in part upon rates of pay and in part upon length of service. There was no fixed formula for the determination of the amount of the bonus, said amounts being fixed by Anderson, the Respondent's president, who computed the bonuses from an "overall standpoint."

During the contract negotiations referred to previously no specific mention was made of the Christmas bonus by any of the negotiators. In fact, the union spokesman at the negotiating meeting was unaware of the existence of the Christmas bonus until much later. The contract, which was signed on September 21, 1965, does not mention the Christmas bonuses nor for that matter does it contain the provision proposed by the Union in its letter of June 19, 1965, calling for the continuation of past policies and practices. The contract does contain a provision that:

. . . should any difference arise between the Company and any of its employees as to the meaning and application of any of the provisions of this agreement, or should any local trouble of any kind arise in the plant there shall be no interruption of operations by any employee or group of employees on account of such differences or for any other reason whatsoever . . . It is mutually recognized that a grievance requiring collective bargaining does not exist until a request on the part of the steward has been made to the plant superintendent and rejected . . . Committeemen shall act as stewards . . .

The employees of the unit received no Christmas bonus in 1965 although other employees of the Respondent at the Marshalltown plant did receive one. On December 28 two union committeemen spoke to the factory manager, Enos, and asked the reason for the nonpayment of the bonus. Enos told them that the men "lost several things going union" and that the Company would have to close its

doors to pay the Christmas bonus. Enos could not recall the December 28 conversation and denied saying that the discontinuance of the bonus was the result of union activity. Considering the demeanor of the witnesses whose testimony is in conflict on this issue, I credit the testimony of the two committeemen.

Testimony by some of Respondent's witnesses indicates that one of Respondent's agents went bankrupt in 1965 and another bankruptcy was possible. Profit and loss statements for the Respondent's Marshalltown operation show the following:

Fiscal year ending—	Net profit or (loss)
November 30, 1962-----	(\$13, 071. 25)
November 30, 1963-----	2, 629. 50
November 30, 1964-----	(3, 518. 80)
November 30, 1965-----	2, 303. 70

Enos also admitted that prior to the May election he met privately with all of the unit employees and told them that "if they were to form a union [he] could not guarantee the 5 hours of overtime that they were now receiving nor could [he] guarantee them their fringe benefits that they were receiving prior."

IV. CONTENTIONS AND CONCLUSIONS

The Respondent asks that the complaint be dismissed arguing that the contract finally negotiated between the Union and the employer fails to provide for the continuation of the Christmas bonus and that the grievance procedure of that contract was not used by the Union in connection with the Company's failure to pay the Christmas bonus.

The Respondent points to the fact that the Union had proposed the continuation of past policies and practices but that the contract finally reached between the parties fails to contain such a provision. From this Respondent apparently argues that it was under no obligation to negotiate with respect to the Christmas bonus, the Union having waived or lost such right of negotiation by the terms of the contract. I do not agree. As the Board held in *Smith Cabinet Manufacturing Company, Inc.*, 147 NLRB 1506:

. . . The mere silence of the contract on the subject does not constitute a relinquishment on the part of the Union of its statutory right to bargain about employment conditions for employees

Similarly, in *Cloverleaf Division of Adams Dairy Co.*, 147 NLRB 1410, the Board held:

The fact that the Union attempted unsuccessfully to include in its contracts a statement of its statutory right to bargain about changes in working conditions, coupled with a provision giving it a veto over institution of any such changes, is not evidence that the Union waived its statutory right to advance notice and opportunity to bargain about such changes To hold that mere failure [to achieve a specific contractual provision] under such circumstances operates as a forfeiture of a statutory right would have the effect of restricting a Union's freedom in a legitimate area of collective bargaining. It would greatly lessen the possibility that a union would bring up matters of this sort in the hope and expectation that good faith exploration of the issues might result in agreements which would eliminate future disputes, save in situations where a union was sure it could achieve its demands or where it was willing to strike to force employer concurrence. This would be "disruptive rather than fostering in its effect upon collective bargaining" and hence, contrary to the broad policy directives of the Act.

Respondent places considerable reliance on *N.L.R.B. v. Nash-Finch Company*, 211 F.2d 622 (C.A. 8), where the court reversed the Decision of the Board requiring an employer to bargain about certain benefits which were discontinued by the employer after their continuation was not provided for in the contract negotiated between the company and the union. In that case the court pointed out that the company had told the employees that the named benefits would be discontinued and these benefits were referred to by name during the contract negotiations. Moreover, when the union in that case proposed the maintenance of employment conditions "in effect" at the time of the signing of the agreement, the company countered with a proposal to maintain employment conditions "specified in this agreement" rather than "in effect." It is clear that under such circumstances the union and the

employer were consciously negotiating the subject of employment conditions and the continuation of specified benefits. In this case, however, at no time did the Union or the Company mention the subject of Christmas bonuses and, indeed, the union spokesman was not even aware of their existence at that time. The Union's proposal concerning continuation of policies and practices was not discussed by the parties and there is nothing to indicate that the parties consciously canceled the Christmas bonus in negotiating the new contract. As the Trial Examiner stated in *New Orleans Board of Trade, Ltd.*, adopted by the Board in 152 NLRB 1258;

. . . it is plain that in the brief bargaining negotiations on February 20, 1963, the subject of bonuses was not raised or discussed and that the contract is silent thereon. The circumstances raised by Respondent, including the contract clause, are entirely too vague to provide a basis for inferring the alleged waiver by the Union. As the subject was not "consciously explored" in the negotiations, and the Union did not "clearly and unmistakably waive its interests in the matter," this contention of Respondent is rejected.

I conclude, therefore, that the Union had not waived its right to bargain on the Christmas bonus when Respondent changed its prior practices with respect thereto.

Respondent's argument with respect to the grievance procedure is also unconvincing. It should be noted that the grievance procedure applies to a difference between the Company and its employees as to the "meaning and application of any of the provisions of this agreement or . . . local trouble of any kind." I am not convinced that the subject of Christmas bonuses can reasonably be included in either category. It is neither a provision of the agreement nor is it "local trouble."

Assuming, nevertheless, that the subject of Christmas bonuses is included in the grievance procedures of the contract it should be further noted that the only consequence of that result is an agreement by the employees not to interrupt operations. There is no suggestion that the employees have breached that agreement. Furthermore, the contract provides that a grievance requiring collective bargaining does not exist until the steward's request has been rejected by the plant superintendent. This provision was fully complied with when the committeemen (whom the contract specifies to be stewards) asked Enos about the nonpayment of the bonus on December 28. His refusal to consider the Christmas bonus was a clear rejection of their request and would constitute a grievance requiring collective bargaining under the terms of the contract.

Finally, the subject of Christmas bonuses does not arise from the collective-bargaining agreement or its administration and alleged unfair labor practices with respect to them are not removed from scrutiny by the Board. As the Board stated in *Smith Cabinet Manufacturing Company, Inc.*, *supra*:

The Union's complaint, which is the subject of our consideration here, does not grow out of the collective-bargaining agreement or its administration. It is not directed at any asserted violation or misapplication on the part of Respondent of any item of the contract. Rather, it is directed at—and seeks redress for—the denial of a statutory right guaranteed by Section 8(d) of the Act, namely, the right of the Union to bargain about terms and conditions of employment which are not covered by the contract.

Counsel for the General Counsel urges a finding of a violation of Section 8(a)(3) by the Respondent because, it is argued, the discontinuance of the bonus was discriminatorily motivated. He points to the fact that unit personnel failed to receive the bonus while nonunit personnel did; that the bonus which had been paid for 10 years was discontinued the very year the unit employees obtained union representation; and that Enos warned the employees prior to the election that if they went Union he could not guarantee continuation of their benefits.

Respondent's argument that the discontinuance of the Christmas bonus had no antiunion discriminatory aspects cannot be accepted. Similar statements by management personnel have been held to be discriminatorily motivated in violation of Section 8(a)(3) of the Act. *Electric Steam Radiator Corporation*, 136 NLRB 923, *enfd.* 321 F.2d 733 (C.A. 6); *Stark Ceramics Inc.*, 155 NLRB 1258; *Zelrich Company*, 144 NLRB 1381, *enfd.* 344 F.2d 1011 (C.A. 5). The fact that the unit employees got no Christmas bonus while nonunit employees did is possibly explainable in view of the fact that the unit employees received wage increases under the contract. Similarly, the fact that the bonus was discontinued after the unit employees obtained union representation, although it had been in effect for 10 years prior thereto, is similarly understandable because of the wage increases that took place

at the same time. I am unable, however, to accept Respondent's explanation for the statements that Enos made, not only before the contract was negotiated but before the NLRB election was held, that he could not guarantee continuation of their benefits if they were to form a union. Enos testified that his preelection statement to the employees concerning discontinuance of their benefits had nothing to do with union activities and that the employees were in danger of losing such benefits even if the plant was not unionized, due to the Company's "economic situation." The Company's records, however, show that even during fiscal year 1962, when the Company sustained a net loss of over \$13,000 and during fiscal year 1964 when the Company sustained a net loss of over \$3,000, Christmas bonuses were, nevertheless, paid. There is no reason, therefore, to assume the discontinuance of the Christmas bonus because of poor business in 1965 when the Company experienced a net profit of over \$2,000. I, therefore, cannot accept his explanation for the statement made to the employees, and when considered in connection with the fact that only the unit employees suffered that loss and then only after they had obtained union representation, I conclude that the loss of Christmas bonuses in 1965 was discriminatorily motivated.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The acts of the Respondent set forth above, occurring in connection with 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.

VI. THE REMEDY

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

Although ordinarily restitution is ordered when unlawful unilateral action has been taken to the detriment of the employee, *General Telephone Company of Florida*, 144 NLRB 311, such remedy is not automatic or unavoidable. In this case, although the bonus had been paid for 10 years, there was no formula used to arrive at the amount due each employee. Length of service was considered as well as the job classification. Even then the amount varied from year to year and was within the complete discretion of management. Under those circumstances the ascertainment of the amount of the bonus due in 1965 would be difficult, if not impossible. Moreover, the record discloses no other unfair labor practices or refusal of Respondent to bargain with the Union. As in *New Orleans Board of Trade, Ltd., supra*, the Respondent accorded the Union full recognition and in fact an agreement was executed as the result of good-faith bargaining. Under such circumstances it is sufficient if the Respondent be required upon request by the Union to bargain on the discontinuance of the 1965 bonus, thus insuring to the Union the full enjoyment of its right to bargain collectively.

CONCLUSIONS OF LAW

1. All production and maintenance employees of the Respondent, including the stockroom clerk and the janitor, employed at its Marshalltown, Iowa, plant, exclusive of office clerical employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act; provided, however, that the present janitor should be excluded from the unit since he is only part-time and on Social Security.

2. The United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, is the exclusive bargaining representative of the employees in the unit described above.

3. By the unilateral discontinuance of the Christmas bonus in 1965 without bargaining with or giving notice to the exclusive bargaining representative, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

4. By its unilateral action in discontinuing the Christmas bonus in 1965, Respondent discriminated in regard to a term or condition of employment to discourage membership in the Union in violation of Section 8(a)(1) and (3) of the Act.

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

RECOMMENDED ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is recommended that Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union with respect to the Christmas bonus or any other term or condition of employment by unilaterally changing the bonus or any other term or condition of employment of its employees in the appropriate bargaining unit in derogation of the rights of the Union or any other labor organization which they may select as their exclusive bargaining representative.

(b) Discouraging membership in the Union or any other labor organization of its employees by discriminating in regard to Christmas bonus or any other term or condition of employment.

(c) In any like or related manner interfering with the rights of employees guaranteed in Section 7 of the Act.

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

(a) Post in its place of business copies of the attached notice marked "Appendix."¹ Copies of said notice, to be furnished by the Regional Director for Region 18, after being duly signed by the Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for at least 60 consecutive days thereafter, including all places where notices to employees are customarily posted. Respondent shall take reasonable steps to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 18, in writing, within 20 days from the receipt of this Decision, what steps it has taken to comply therewith.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 refuse to bargain collectively with the United Automobile, Aerospace and Agricultural Implement Workers (UAW), AFL-CIO, by unilaterally changing the Christmas bonuses or any other terms or conditions of employment of any employee in the appropriate bargaining unit in derogation of the rights of the Union.

WE WILL NOT discriminate with respect to the Christmas bonus or any other term or condition of employment to encourage or discourage membership in any labor organization.

WE WILL NOT engage in any like or related conduct which interferes with, restrains, or coerces you in the exercise of the rights guaranteed to you in Section 7 of the Act. The appropriate unit is:

All production and maintenance employees of the Respondent, including the stockroom clerk and the janitor, employed at its Marshalltown, Iowa, plant, exclusive of office clerical employees, guards, and supervisors as defined in the Act; provided, however, that the present janitor should be excluded from the unit since he is only part-time and on Social Security.

AMERICAN FIRE APPARATUS 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, 316 Federal Building, 110 South Fourth Street, Minneapolis, Minnesota 55401, Telephone 334-2618.

**Die Supply Corporation and United Steelworkers of America,
AFL-CIO.** *Case 1-CA-5031. September 27, 1966*

DECISION AND ORDER

On June 6, 1966, Trial Examiner Leo F. Lightner 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 filed exceptions to the Trial Examiner's Decision and a supporting brief, and the General Counsel filed a 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 Fanning and Jenkins].

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

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

[1. Delete paragraph 1(b), and reletter those subject thereto accordingly.

[2. Delete the second paragraph of the notice to all employees in its entirety.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding was heard before Trial Examiner Leo F. Lightner in Providence, Rhode Island, on November 17, 18, 19, and 30, 1965, on the complaint of General Counsel, and the answer of Die Supply Corporation, herein called the Respondent.¹ The complaint alleges violations of Sections 8(a)(5) and (1) and 2(6) and (7) of the Labor Management Relations Act, 1947, as amended, 61 Stat. 136, herein called the Act. The parties waived oral argument and briefs filed by the General

¹ The charge herein was filed on June 2, 1965. The complaint was issued on August 6, 1965.