

Lloyd A. Fry Roofing Company, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13. *Case 27-CA-1969. December 1, 1966*

DECISION AND ORDER

On August 16, 1966, Trial Examiner Herman Marx issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions and a brief in support thereof.

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

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

[The Board adopted the Trial Examiner's Recommended Order.]

DECISION OF THE TRIAL EXAMINER

STATEMENT OF THE CASE

The complaint, as amended, alleges, in material substance, that the respondent, Lloyd A. Fry Roofing Company, Inc. (herein the Company), has violated Section 8(a)(1) of the National Labor Relations Act, as amended (herein the Act),¹ by telling employees they were being subjected to economic reprisals because they had voted for a labor organization (herein Local 13 or the Union);² and has violated Section 8(a)(1) and (3) of the Act by denying employees participation in a group insurance plan maintained by the Company, because employees had selected Local 13 as their collective-bargaining representative.³

Upon the entire record in this proceeding, from my observation of the witnesses at a hearing held in Denver, Colorado, on May 10, 1966, upon the issues held before Trial Examiner Herman Marx, and having read and considered the respec-

¹ 29 U.S.C. Sec. 151, *et seq.*

² As used herein, the designations "Local 13" and "Union" refer to International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13.

³ The complaint is dated February 11, 1966; was amended on April 20, 1966; and is based upon a charge filed by Local 13 with the Board on January 3, 1966, and an amendment thereof filed on February 2, 1966. Copies of the charge, the amendment thereof, the complaint and its amendment, and a notice of hearing have been duly served upon all parties entitled thereto.

tive briefs that the parties have filed with me since the conclusion of the hearing, I make the following findings of fact:

FINDINGS OF FACT

I. NATURE OF THE RESPONDENT'S BUSINESS; JURISDICTION OF THE BOARD

The Company is a Delaware corporation; maintains its principal office and place of business in Chicago, Illinois, and a manufacturing plant in Denver, Colorado; is engaged at the Denver facility in the manufacture and sale of asphalt roofing shingles and related products; and is, and has been at all material times, an employer within the meaning of Section 2(2) of the Act.

During the year immediately preceding the issuance of the complaint, the Company, in the course and conduct of its business, manufactured and sold at its Denver plant products valued in excess of \$50,000, which were shipped from its said facility directly to locations outside the State of Colorado. By reason of such interstate shipments, the Company is, and has been at all times material to the issues, engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Accordingly, the Board has jurisdiction over the subject matter of this proceeding.

II. THE LABOR ORGANIZATION INVOLVED

Local 13 is, and has been at all times material to the issues, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Prefatory findings

The Company operates a number of plants, but the issues in this proceeding center only in its Denver facility. That plant began operations on May 17, 1965, and has approximately 30 employees.

The Company maintains, and has maintained at all times material to the issues here, a group insurance program for employees in all its plants.⁴ Under the program, employees automatically become eligible for participation upon completion of 180 days of "continuous employment" by the Company. Under the Company's standing operating procedure, as an employee becomes eligible, the Company provides him with a card form. This contains a printed "request" for the insurance, and an authorization for periodic deductions (weekly at the Denver plant) from the employee's pay to cover his contribution to the premium cost. The card form is completed with pertinent data affecting the employee, including the effective date of the insurance and names of his beneficiaries and dependents, and is then signed by him. As the Denver plant's office manager, Michael Barry, testified, under the Company's "instructions," the signatory employee is covered by the group policy from the day he signs the card.

The Denver plant holds regular monthly meetings attended by management personnel and employees. At one such meeting, held on Friday, November 26, 1965, some employees inquired of management concerning their eligibility for the group insurance (which already covered a number of employees at the plant), and Barry and the plant manager, Billy R. McCracken, named six employees, not yet covered, as eligible.⁵

On the following Monday, November 29, 1965, the plant office, under Barry's auspices, attended to the preparation of the requisite insurance cards for each of the six employees, typing pertinent data on them, including the effective date of the insurance and the amount to be deducted by the Company "weekly" from the given employee's pay for his contribution to the premium cost; and then procuring the execution of the given card by the employee to whom it applied. Each card, as prepared by the Company, specified November 29, 1965, as the "date insurance begins." Securing the signature of one of the employees, Jerry Curtis, Barry told him much the same thing, stating that he was insured "from then on," and, in

⁴ The record does not clearly spell out the types of benefits provided. There is no doubt that they include "health" (medical) benefits

⁵ The six employees were Ronald P. Teel, Jerry Curtis, James P. Dunn, Douglas Whalen, Winston Huff, and Charles Runkle.

similar vein, told another, Winston Huff, at the time the latter submitted his executed card, that as soon as his "forms were sent in" (in other words, according to the sense of the evidence, upon transmission of his card to the Chicago office), he "would be covered up to [sic] that date" (from that date, as is evident from the card).

Barry forwarded the completed cards on the day of their execution, or the next day, to the Company's Chicago office, sending them to its vice president, Paul McInerney, whose duties include direction of the Company's labor-management relations.

A representation election affecting an appropriate bargaining unit of the Company's Denver employees, including the six who had signed the insurance cards on November 29, was scheduled for December 9, 1965, and, in the course of his duties, McInerney visited the Denver plant 2 days before the election. He testified that on that occasion, Barry, discussing the insurance program, told him that he had "signed up six men" who had recently become eligible for the insurance; that he then told Barry that it would not be proper "to give these men the insurance" in view of the pending election, which (according to McInerney), the Company expected "to be very close"; and that he thereupon telephoned the Chicago office, and "stopped the issuance of insurance certificates" to the six men. The record does not spell out the function of the "certificates" in the insurance program.

The election was held, as scheduled, under the supervision of the Regional Director of the Board's Region 27 (Denver) with the result that of the 27 ballots cast, a majority (14) voted for designation of Local 13 as the bargaining representative of the unit; 12 cast their ballots against the Union; and 1 ballot was challenged by the Company.

About 2 weeks after the execution of the insurance cards, and shortly after the election, Winston Huff, noticing that no deductions for his premium contributions had yet been made, although two successive paydays, December 3 and 10, had passed,⁶ inquired of the plant superintendent, Donald Ellis, concerning the matter, and the latter took him to McCracken's office and submitted the inquiry to the plant manager (who, as may be inferred, is Ellis' superior).⁷ In reply, McCracken told Huff, in substance, that the insurance was not in effect because it was now a matter for negotiation between the Union, as the employees' representative, and the Company. Huff expressed the view that that was unfair because he had canceled "personal insurance" in reliance upon what Barry had told him when he submitted his executed card. At this, Ellis remarked that Huff "should have thought about that before (he) joined the Union."⁸ Another of the six employees, Charles Runkle, similarly noticing that no insurance deduction had been made from his pay, inquired of Ellis about the matter on Friday, December 10, 1965, the day following the election, and the second regular weekly payday after the execution of the cards. Ellis replied that the insurance had been "cancelled or they're holding it up," and gave Runkle no reason for the action.⁹

⁶ The record does not precisely spell out the pay period covered by the employees' December 3 paychecks, and thus it is impossible to tell whether the deductions authorized on November 29 should have begun with the December 3 payroll. There is no doubt, however, that the relevant deductions would have been made from the December 10 paychecks but for the suspension or cancellation of the insurance in question.

⁷ As is evident, Ellis and McCracken are supervisors within the meaning of Section 2(11) of the Act.

⁸ There is basic accord in the record as to the office conversation, except that unlike Huff, McCracken, and Ellis do not quote the latter as telling Huff that he should have thought of "that" (insurance coverage) before he joined the Union. I think it likely that Ellis made the remark in question. For one thing, McCracken, like Huff, quotes the latter as complaining that he had dropped his personal insurance, and this adds some corroborative weight to Huff's account. For another matter, neither Ellis nor McCracken specifically denies that Ellis made the remark in question. I am satisfied that the superintendent did so, and have made the corresponding finding.

⁹ Runkle does not, in terms, specify the date of his inquiry, but the date is inferable from his testimony that he spoke to Ellis after receipt of his paycheck on a payday about 2 weeks after he executed the card. December 10 was the second regular payday (each Friday) following the effective date of the insurance. It does not appear whether Runkle spoke to Ellis before or after Huff's similar inquiry.

The Company filed objections to the conduct of the election with the Regional Director, and the latter, following an investigation, filed a report dated December 23, 1965, recommending that the objections be overruled, and that the Union be certified as the unit employees' bargaining representative.

Thereafter, the Company filed timely exceptions to the report with the Board, and the upshot of this was that the Board, on February 24, 1966, holding that the exceptions "raise no material or substantial issues of fact or law" warranting reversal of the Regional Director's findings and recommendations, adopted these, and certified the Union as the bargaining representative of the unit employees.¹⁰

Following the issuance of the complaint in this proceeding, the Company, through McInerney, wrote a letter, dated March 3, 1966, to the Board's Region 27 office (which had issued the complaint), outlining its purported reasons (much the same as those given by McInerney in his testimony and discussed below), for withholding the group insurance, and stating, among other things, that the Company is willing to make the group insurance plan available to its eligible employees in Denver "provided the Union agrees"; that in view of the pendency of the charge, the Company "cannot unilaterally take this step"; and that it would be glad "to enter into a settlement agreement in which the Union will concur making this plan available to those employees in Denver who are not already covered if the complaint is withdrawn." A copy of the letter was sent by the Company to the Union and received by the latter on March 7, 1966. The Union has not replied.

B. Discussion of the issues; concluding findings

The ultimate issues here are (1) whether the Respondent unlawfully discriminated against unit employees by denying them participation in the insurance program; and (2) whether remarks made by McCracken and Ellis to Huff in the plant manager's office were coercive and unlawful.

The first is the major issue, and on that question, the Respondent, through McInerney's testimony, offers the justification that he "stopped the issuance of (the) insurance certificates" in the interest of a fair election, and to avoid the filing of unfair labor practice charges, and adhered to that course while the objections were pending because of "a possibility that the Board would rule in (the Company's) favor" (resulting in another election); and that since the disposition of the objections, the Company has been willing to "give this insurance to the employees concerned," but that the application of the insurance to them now requires the Union's agreement. The thrust of the latter position, reading McInerney's testimony and the letter of March 3, 1966, together, appears to be that unit employees may not now be brought into the insurance program "unilaterally" because (1) such coverage is a subject of mandatory bargaining, and (2) the charge in this proceeding is pending.

These purported reasons do not weather examination. McInerney's allusion to the "insurance certificates" is, for all practical purposes, meaningless, since we are not told what their role is. The significant fact is that the insurance for the six employees went into effect on November 29, 1965, some 10 or 11 days before the election, and this is established by the Company's own records, consisting of the cards it prepared for the employees to sign, not to speak of the Company's standing "instructions" to Barry, and what he told Curtis and Huff when he procured their signatures.

With the effective date of the insurance in mind, I find it difficult to believe that the insurance was "stopped" to facilitate a fair election, or to avoid unfair labor practice charges. To say, as does McInerney, that "had those certificates (been) passed . . . out, it could very probably influence the election" is indeed a slender support for the profession of fairness of purpose, in view of the fact that there is no believable explanation why the insurance for the six employees could not have been left in effect until after the Board's disposition of the objections, and the "certificates passed . . . out" thereafter. Nor is it explained how McInerney's action could effectively promote the fairness of the election, since, as is evident, the six employees were not told prior to the election that the "certificates" had been "stopped" or that any other step had been taken to suspend or cancel their

¹⁰ Findings as to the election and related representation proceedings are based on the Board's "Decision and Certification of Representative" (in Case 27-RC-2894), a copy of which is in evidence.

insurance coverage.¹¹ Indeed, if anything imperilled the fairness of the election, it was McInerney's action, for if any unit employee learned of it, he could reasonably read into it a signal by the Company that the continuance of the program for unit employees hinged on the rejection of the Union in the election.

Moreover, the claims of concern that the issuance of the "insurance certificates" would lead to unfair labor practice charges, and that restoration of the insurance to the six men would be illegal without the Union's agreement, sound a hollow note. Obviously, as the six employees became automatically eligible to participate in the group insurance under the Company's longstanding practice, the application of the program to them was not "informed by a large measure of (managerial) discretion" (*N.L.R.B. v. Katz* [*Williamsburg Steel Products Co.*], 369 U.S. 736, 739). Thus, in the circumstances presented, under well-established principle, there was nothing unlawful in putting the insurance into effect in the regular course of business, before the election, as the Company did, nor in continuing it unilaterally following the election, at least in the absence of any bargaining request by the Union on the subject.¹² That being the case, it would be surprising, indeed, if an executive of McInerney's status and specialized responsibility for direction of the Company's labor-management relations genuinely believed that there was anything unlawful or irregular in the issuance of the "certificates" for insurance already in

¹¹ I note, in passing, that McInerney does not, in terms, say that he actually canceled the insurance for the six employees before the election. What he says is that he "stopped the issuance of (the) certificates," but, as previously indicated, we are not informed of the role these play in the insurance program. Testimony by Barry that McInerney told him 2 or 3 days before the election that the insurance had been "stopped" may be a reference to the "certificates," and, in any case, is hearsay. Be that as it may, there is no dispute that at least since the election, the Company has excluded the six employees in question from its group insurance program. Quite apart from McInerney's testimony, this is established by the omission to make the payroll deductions on December 10, Superintendent Ellis' statement to Runkle on December 10; Plant Manager McCracken's remarks to Huff shortly after the election; and McInerney's letter of March 3, 1966, to the Board's Denver regional office.

¹² *N.L.R.B. v. Katz*, *supra*, 746, where the Supreme Court, some years before the issue here arose, held that certain wage increases, granted without consultation with the bargaining representative of the employees there involved, were not "in line with the company's long-standing practice of granting quarterly or semi-annual merit reviews," and were thus unlawful. The evident converse of this is that an employer may unilaterally give an employee a benefit which automatically becomes due under a "long-standing practice" that came into existence, as here, before the selection of a bargaining representative by the relevant unit. See also *Electric Steam Radiator Corporation, a subsidiary of Landers, Frary and Clark*, 136 NLRB 923, 924-925, enfd 321 F.2d 733 (CA 6); *Dan Howard Mfg. Co.*, 158 NLRB 805; *Federation of Union Representatives v NLRB*, 339 F.2d 126, 129 (CA 2); *Certain-Teed Products Corporation*, 153 NLRB 495, *Dixie Broadcasting Company*, 150 NLRB 1054, 1075; *NLRB v Southern Coach & Body Co., Inc.*, 336 F.2d 214, 217 (CA 5), citing and relying on the Supreme Court's decision in *Katz*. On the point under discussion, I find no conflict of principle between the cited cases and *NLRB v Crosby Chemicals*, 274 F.2d 72 (CA 5). That case involved an employer's omission in a given year to pay summer and winter bonuses, as had been the custom in prior years. Regarding the summer bonus, the court pointed out that "the amount of the bonus and the factors weighed in fixing it were matters considered and acted upon solely by the employer." It is true that the court does not say this, in terms of the winter bonus, but it is evident, upon a reading of the relevant evidentiary details in the Board's decision (121 NLRB 412, 416), that there is as much warrant for treating the winter bonus as "informed with a large measure of discretion" as the summer bonus. (That the Board found that the amounts of both bonuses "varied only slightly from year to year" does not alter the fact that the court, as is evident from its opinion, did not view the bonuses as automatically due the employees under established preexisting standards.) Thus the court's holding (at p 78) that following the selection of a bargaining representative, the employer "was obliged to bargain" regarding a given bonus payment is inapposite here. Clearly, the unilateral application of the Respondent's longstanding insurance program, with its fixed standards, is distinguishable from a unilateral grant of a bonus which had been subject, as in *Crosby Chemicals*, prior to the selection of a bargaining representative, to the variables of managerial discretion. Finally, by holding the unilateral application of the Company's group insurance plan to be lawful, in the circumstances presented, I intend no implication that either the Company or the Union may refuse to bargain regarding it upon appropriate demand by the other.

effect, or that he has really ever believed that the insurance he "stopped" may not be continued or restored without the Union's concurrence.

For the reasons stated, I am unable to accept the claimed justification for the cancellation of the insurance of the six men. The action "was inherently coercive,"¹³ and as its natural consequence is discouragement of membership in the Union, the Company's protestation that it did not intend that result must be unavailing.¹⁴ But, in addition, looking to the whole record, the Company's motive is not difficult to find, particularly if one bears in mind that the insurance for the six was already in effect prior to the election. With that as a background, and as the Company's purported justification for cancellation of their insurance does not survive scrutiny, I am persuaded, and find, that what the Company did was to hold further processing of the insurance, such as payroll deductions, in abeyance pending the outcome of the election (it is well to note that McInerney does not specifically say that he canceled the coverage before the election, but only that he "stopped the issuance of insurance certificates" to the men), and that when the electoral result ran against the Company, it took the position that it could not unilaterally apply the insurance program to the six employees and others in the unit who became eligible after the election in order to demonstrate to the unit employees that selection of the Union was disadvantageous to them. This is the evident implication of Superintendent Ellis' remark to Huff, replying to the latter's protest that he had canceled his "personal insurance" in reliance upon Barry's assurance that he was covered by the Company's group insurance, that he "should have thought about that before (he) joined the Union."

The Company's letter of March 3, 1966, does nothing for the Respondent's case. What it does, in substance, is to reiterate, in self-serving vein, the purported justification for withholding the insurance from unit employees, already discussed above; to add to that an untenable claim that the pendency of the unfair labor practice charge upon which this proceeding is based prevents the Company from "unilaterally" making the group insurance program "available to its eligible" unit employees (in the process ignoring the fact that the insurance had already been made "available" to the six employees prior to the election); and to offer to make the plan available to the employees in question provided the Union agrees and "the complaint is withdrawn," or, in other words, as regards this last condition, provided the government abandons this proceeding. The letter, obviously, is immaterial to the issue of the legality of the Company's action in canceling the insurance for the six men, but it was received in evidence for any possible bearing it could have on the allegation in the complaint, placed in issue by the answer, that the Respondent was continuing to discriminate against employees by denying them participation in the insurance program. The issues here require no determination of the motive that would lead the Respondent to advance so palpably untenable a claim as that the pendency of the charge prevents application of the insurance program to the relevant employees without the Union's concurrence, or to harness its proposal to so foreseeably unacceptable a condition as the abandonment of this proceeding. The material point is that at least because of the conditions posed, the proposal has neither the effect of bringing the unlawful discrimination to an end, nor of tolling any monetary liability that has resulted therefrom.

The sum of the matter is that by withdrawing and withholding from eligible unit employees participation in the Company's group insurance program, as found above, the Company has discriminated, and is discriminating, against employees to discourage membership in a labor organization, thereby violating Section 8(a)(3) of the Act, and has interfered with, restrained, and coerced employees in the exercise of rights guaranteed them by Section 7 of the Act, and is continuing to abridge such rights, thereby violating Section 8(a)(1) of the statute.

McCracken's statement to Huff to the effect that he was not covered by the Company's insurance plan because such coverage was now a matter for negotiation between the Union and the Company, and Ellis' remark that Huff "should have thought about that before (he) joined the Union," were, in the context of circumstances, as much as to tell Huff that his loss of the coverage was the price of choosing a bargaining representative.

To be sure, McCracken and Ellis did not, in so many words, say that the Respondent, in the language of the complaint, "was taking economic reprisals

¹³ *Federation of Union Representatives v. N L.R.B.*, *supra* at 129

¹⁴ *Radio Officers' Union of the Commercial Telegraphers Union, AFL [Bull Steamship Co.]*, 347 U.S. 17, 68-69.

against certain employees" because of selection of the Union as their bargaining representative, but, clearly, an employee in Huff's situation would be reasonably led to believe from what was said by each of the supervisors, who were, as is evident, in the upper echelon of management at the Denver plant, that the loss of the insurance was a penalty for choosing union representation. Whether or not one views the statements in question as amounting to remarks that denial of the insurance was an "economic reprisal," their natural tendency would be to inhibit employees in their choice or support of a bargaining representative, and thus I find that by each of the statements, in the context of circumstances, the Company abridged Section 7 rights of employees, and thus violated Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Company 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 the free flow of commerce.

V. THE REMEDY

Having found that the Company has engaged in unfair labor practices violative of Section 8(a)(1) and (3) of the Act, I shall recommend below that it cease and desist from its unfair labor practices, and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Company has violated Section 8(a)(1) and (3) of the Act by refusing to permit participation by various employees at its establishment in Denver, Colorado, who are members of a bargaining unit represented by Local 13, in a group insurance program maintained by the Company, as found above, I shall recommend that the Company forthwith include in the coverage of such insurance, and undertake and follow all procedures necessary to effect such insurance of all employees in the unit, whether or not named in the findings above, who were eligible for such insurance coverage on November 29, 1965, under the eligibility standards then in effect, or who have since become eligible under such standards, but who are not covered by such group insurance; and that from the date of each such employee's eligibility for participation in the group insurance until the date of his inclusion in the coverage of such insurance, as provided above, make him whole for all monetary benefits he has not received, but would have received had he been covered by the Company's group insurance program when he became eligible for it under the said standards, and for all expenditures (including payments of premiums for other insurance), he has made or incurred that would have been made for him, or for which he would have been reimbursed, under the said group insurance had he been covered by it when he became eligible for it, as aforesaid, by payment to such employee of sum of money equal to the amount of such monetary benefits and expenditures, together with interest at the rate of six percent per annum on the amount of each such benefit and expenditure computed from the date such employee would have been entitled to receive such monetary benefit, or to have such expenditure made for his benefit, or on his behalf, under the said group insurance program, as the case may be, had he been covered by such group insurance, until the date of such payment, less the total amount that would have been deducted from such employee's wages as his contributions to the premiums for such group insurance had he been covered by it; provided, however, that if the total amount of such contributions for the period when such employee should have been but was not, covered by the said group insurance, as aforesaid, exceeds the total amount due him, for the said period, on account of monetary benefits and expenditures, as aforesaid, he shall have the option of declining payment of such amount due him for benefits and expenditures, and of receiving and retaining the sums that would otherwise be deductible from his wages as contributions to the group insurance premiums.

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

CONCLUSIONS OF LAW

1. Lloyd A. Fry Roofing Company, Inc., is, and has been at all material times, an employer within the meaning of Section 2(2) of the Act.

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

3. By denying employees participation in its group insurance program, as found above, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

4. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed them by Section 7 of the Act, as found above, the said Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, I recommend that Lloyd A. Fry Roofing Company, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership of any of its employees employed in its enterprise in Denver, Colorado, in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, or in any other labor organization, by withholding, denying, or refusing to permit, participation by any of its said employees in any program of insurance or any other benefits provided or maintained by the Company.

(b) Directly or indirectly telling, or otherwise informing, any of its said Denver employees that they have been, are being, or will be, denied participation in any such insurance program or any other benefits because they have voted for, joined, or supported any labor organization, or if they vote for, join, or support any such organization.

(c) Or in any like or related manner interfering with, restraining, or coercing any of such employees in the exercise of any of the rights guaranteed them by Section 7 of the said Act.

2. Take the following affirmative actions which I find will effectuate the policies of the said Act:

(a) Forthwith include in the coverage of its group insurance referred to in the findings above and in section V, above, entitled "The Remedy," under the standards in effect for such coverage on November 29, 1965, and undertake and follow all procedures necessary to effect such insurance for, all employees employed in its enterprise in Denver, Colorado, who are members of the bargaining unit represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, and who were eligible for such insurance under such standards on November 29, 1965, or have since become eligible thereunder, but are not covered by such insurance; and make each such employee whole in the manner, and to the extent, provided in the section of this Decision entitled "The Remedy."

(b) Preserve until compliance with any order made in this proceeding by the National Labor Relations Board for inclusion of employees in group insurance, and for payment of all benefits or expenditures, is effectuated, and make available to the said Board, and its agents, upon request, for examination and copying, all policies and other contracts of group insurance provided or maintained by the Company for coverage of, and participation by, employees employed in its enterprise in Denver, Colorado, all personnel records heretofore or hereafter used by the Company to determine the eligibility of the employees employed at its Denver, Colorado, establishment for such insurance; and all records setting forth the standards for such eligibility.

(c) Post in conspicuous places at its plant and place of business in Denver, Colorado, including all places there where notices to employees are customarily posted, copies of the attached notice marked "Appendix." Copies of said notice, to be furnished by the Regional Director for Region 27, after being duly signed by the Company's representative, shall be posted by the Company immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in such conspicuous

places Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.¹⁵

(d) Notify the Regional Director for Region 27, in writing, within 20 days from the receipt of a copy of this Decision, what steps have been taken to comply therewith.¹⁶

¹⁵In 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 additional event that the Board's Order is enforced by a decree of the 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."

¹⁶In the event that this Recommended Order is adopted by the Board, paragraph 2(d) thereof shall be modified to read: "Notify the Regional Director for Region 27, in writing, within 10 days from the date of this Order, what steps have been 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 discourage membership of any of our employees employed in our enterprise in Denver, Colorado, in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, or in any other labor organization, by withholding, denying, or refusing to permit, participation by any of our said employees in any program of insurance or any other benefits provided or maintained by us.

WE WILL NOT directly or indirectly tell, or otherwise inform, any of our said Denver employees that they have been, are being, or will be, denied participation in any such program or any other benefits because they have voted for, joined, or supported any labor organization, or if they vote for, join, or support any such organization.

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

WE WILL forthwith include in the coverage of the group insurance we provide and maintain for employees in our enterprise in Denver, Colorado, under the eligibility standards in effect for such insurance on November 29, 1965, all our employees in Denver, Colorado, who are members of the bargaining unit represented by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 13, and who were eligible on that date for such insurance under such standards, or have since become eligible thereunder, but are not covered by such insurance; and pay each such eligible employee not thus covered all monetary benefits he has not received, but would have received had he been covered by the said insurance when he became eligible for it, and all expenditures (including payments of premiums for other insurance), he has made or incurred that would have been made for him, or for which he would have been reimbursed, under the said group insurance had he been covered by it when he became eligible for it, together with interest at the rate of six percent per annum on the amount of each such benefit and expenditure, computed as provided in the order of the National Labor Relations Board, less the total amount that would have been deducted from such employee's wages as his contributions to the premiums for such group insurance had he been covered by it; provided, however, that if the total amount of such contributions for the period when such employee should have been, but was not, covered by the said group insurance exceeds the total amount due him, for the said period, on account of monetary benefits and expenditures, under the terms of the said order, he shall have the option of declining payment of such amount due him for benefits and expenditures, and of receiving and retaining the sums that would otherwise be deductible from his wages as contributions to the group insurance premiums.

All of our employees are free to join, or remain members of, any union.

LLOYD A. FRY ROOFING COMPANY, 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, 609 Railway Exchange Building, 17th & Champa Streets, Denver, Colorado, Telephone 297-3551.

Flowers Baking Company, Inc. and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO. *Case 10-CA-6355. December 1, 1966*

DECISION AND ORDER

On September 1, 1966, Trial Examiner Samuel Ross 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 decision.

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, and the entire record in the case, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner.

[The Board adopted the Trial Examiner's Recommended Order.]

¹ In adopting the Trial Examiner's finding that Respondent violated Section 8(a)(5) of the Act by unilaterally increasing the wages of employees represented by the Union on May 26, 1965, we make no finding with respect to a collective-bargaining agent's obligation in other circumstances to respond to a proposal to grant a wage increase.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

Upon a charge filed on November 3, 1965, by Amalgamated Meat Cutters and Butcher Workers of North America, AFL-CIO (herein called the Union), the General Counsel of the National Labor Relations Board issued a complaint on April 1, 1966, amended on April 21, 1966, alleging that Flowers Baking Company, Inc. (herein called Respondent or Company), engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act. In substance, the complaint alleges that after the Union was certified as the representative of one unit of its employees, the Respondent unilaterally, without bargaining with the Union, and before impasse, granted wage increases and other benefits to the employees in the certified unit, and engaged in surface, bad-faith bargaining with the Union. The Respondent filed an answer denying the commission of unfair labor practices.

A hearing in the above-entitled proceeding was held in Thomasville, Georgia, on May 24, 1966, before Trial Examiner Samuel Ross.