Dean A. Anderson, d/b/a Anderson's *and* District Lodge No. 114, Local Lodge No. 1663, International Association of Machinists and Aerospace Workers, AFL-CIO. *Case 27-CA-1957. December 2, 1966*

DECISION AND ORDER

On July 26, 1966, Trial Examiner Horace A. Ruckel issued his Decision in the above-entitled proceeding, finding that Respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a supporting brief. The Respondent filed an answering brief to the General Counsel's exceptions.

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 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 briefs, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, with the following modifications.

1. The Trial Examiner found, and we agree, that the Respondent did not violate Section 8(a)(5) of the Act by refusing to execute a collective-bargaining contract to which it had agreed.[1]

2. The General Counsel excepts to the failure of the Trial Examiner to find, as also alleged in the complaint, that the Respondent did not bargain in good faith. The General Counsel sets out in his brief various statements and conduct attributed to the Respondent which the General Counsel contends establish the Respondent's failure to bargain in good faith. We do not agree, however, that they do so. The first two factors relied on are that Respondent's President Anderson told Union Agent Halverson on April 20, 1965, that the only reason Anderson would meet with the Union in the future was because it was required by law, and on April 23, after only three meetings, that Anderson thought the parties had reached an impasse. Although we do not agree that these two statements, which were made more than 6 months before the charge was filed on December 13, 1965,

[1] We find no merit in the General Counsel's contention that the Trial Examiner's credibility resolutions should be overruled The Board has held that it will not overrule the Trial Examiner's credibility resolutions unless a clear preponderance of all the relevant evidence establishes that these resolutions were incorrect. Such is not the case here *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd 188 F.2d 362 (C.A. 3).

necessarily indicate a disposition to bargain in bad faith, we have taken them into consideration, as background,[2] to the extent that they shed light on the nature of the alleged conduct discussed below which fell within the 10(b) period.

The General Counsel also contends that the Respondent withdrew its agreement to a wage increase, treble pay on holidays, grievance procedure, and contract preamble language. However, in his discussion of the first allegation of the complaint, the Trial Examiner credited Respondent's witnesses[3] who testified, in support of Anderson's November 22 letter to the Union, that no agreement was ever reached as to these issues, and, the Trial Examiner found, Halverson admitted that Anderson's wage proposals were unacceptable to the Union. In these circumstances, we find no merit to these contentions. Moreover, the fact that Anderson made new proposals on October 5 does not, in the absence of prior agreement, indicate bad faith.

Finally, the General Counsel relies on Respondent's alleged failure to make more than one counterproposal in the course of the negotiations, and Halverson's testimony that Anderson told him, on December 1, that "it was his intent to bring about a decertification of the Union in March . . . ." The record shows, contrary to the General Counsel, that Respondent made at least two counter proposals on wages alone, many bargaining sessions took place between the parties, and the Respondent did, in fact, agree to many of the Union's proposals. Moreover, although the remark quoted above might, in certain circumstances, be indicative of bad faith, we do not believe that, standing alone, or in conjunction with the background evidence set forth above, it is sufficient to establish the alleged violation.

In all the circumstances, therefore, we find that neither the evidence relied on by the General Counsel in his exceptions and briefs, nor the record as a whole, establishes by a preponderance of the evidence that the Respondent failed to bargain in good faith. Accordingly, we shall dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

[2] *Local Lodge No. 1424, International Association of Machinists, AFL–CIO (Bryan Manufacturing Co.)* v. *N L R B*, 362 U.S 411. 416

[3] The Trial Examiner inadvertently referred to Parts Manager Marshall as Respondent's attorney.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This case comes before Trial Examiner Horace A. Ruckel upon an unfair labor practice complaint dated January 13, 1966, issued by the General Counsel of the National Labor Relations Board, herein called the Board, through its Regional Director for Region 27 (Denver, Colorado), against Dean A. Anderson, d/b/a Anderson's, herein called Respondent, based upon a charge filed on December 13, 1965, by District Lodge No. 114, Local Lodge No. 1663, International Association of Machinists and Aerospace Workers, AFL–CIO, herein called the Union. The complaint alleges that Respondent has engaged in unfair labor practices affecting

commerce within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act, herein called the Act. Specifically, the complaint alleges that Respondent failed and refused to bargain in good faith with the Union, and particularly that on or about November 22, 1965, Respondent refused to execute a written collective-bargaining contract embodying a complete agreement which the parties had reached on October 1, 1965. This is the sole issue in the case. Respondent filed an answer denying that it had engaged in any unfair labor practices.

Pursuant to notice, I conducted a hearing at Salt Lake City, Utah, on May 4, 1966, at which the parties were present and represented by counsel. At the close of the hearing, the parties waived oral argument and subsequently filed briefs.

Upon the record as a whole, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is an individual proprietor doing business as Anderson's, and has his principal office and place of business at Provo, Utah, where he is engaged in the sale and service of new and used automobiles and trucks. Respondent annually receives goods and materials valued at more than $50,000 directly from points outside the State of Utah. His annual gross revenue from sales and services exceeds $500,000. The complaint alleges and Respondent's answer admits that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

District Lodge No. 114, Local Lodge No. 1663, International Association of Machinists and Aerospace Workers, AFL–CIO, is a labor organization admitting employees of Respondent to membership.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The alleged refusal to bargain*

1. The appropriate unit

The complaint alleges, Respondent's answer admits, and I find that all mechanics, body and fender men, and clean-up men engaged in maintenance, repair, overhaul, and cleaning of new and used cars employed by Respondent at its location at 241 West Center Street, Provo, Utah, excluding all other employees, office clericals, salesmen, janitors, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

2. The Union's majority in the appropriate unit; the bargaining negotiations

As the result of an election conducted on March 18, 1965, the Board on March 26 certified the Union as the collective-bargaining representative of Respondent's employees in the appropriate unit. The first bargaining meeting between representatives of the parties was held on April 13, at which time Earl Halverson, business agent for the Union, presented Anderson, and his attorney Robert Marshall, with a proposed form of contract consisting of about 24 articles of which the parties discussed the first 12, including a preamble.

At the next meeting, on April 20, the parties discussed a proposed wage increase, and, in general terms, the idea of an incentive plan advanced by Anderson.

The last half of the Union's proposed contract was taken up at the next meeting on April 23. At this time it was agreed to call in a Federal mediator. Another meeting followed, but without any further agreement on the terms of a contract. Other meetings followed on May 4 and 14.

A sixth meeting was held on May 27, when overtime, holidays, and a grievance procedure were discussed. Halverson testified that he "understood" Anderson to agree to the number of holidays, and that he did agree to a grievance procedure. Wages, seniority, and a check-off of union dues were discussed at a meeting on June 10. It is not contended that any agreement was reached on these issues.

After June 10, the negotiations lapsed, and the next contact took place on September 16, when Halverson telephoned Anderson to tell him that he had heard that Anderson might be willing to pay hourly wages in the amount of

$2 65, an increase of 25 cents, and suggested another meeting. This took place on October 1, when Halverson called on Anderson at his office. As the result of this meeting and by agreement, Halverson drew up a memorandum in outline form which reduced to writing 21 items which, according to Halverson, had been agreed upon by the parties. When this was submitted to Anderson he objected to various ones, particularly those having to do with a 25-cent-an-hour wage raise and time and a half for overtime after 8 hours a day (although he had agreed to overtime after 40 hours a week). Anderson also insisted that the memorandum was in too rough and sketchy a form, and Halverson, on November 10, sent him a proposed formal agreement. On November 22, Anderson replied indicating which articles in this proposed agreement he would accept and those he would not. Among the latter were a provision binding his successors and assigns, a raise in pay to $2.85 an hour,[1] overtime after 8 hours a day, pay while transacting union business in the plant and a procedure for handling grievances, triple wages on holidays, and the duration of the contract. In conclusion, Anderson offered to meet again at any reasonable time, and stated that he would enter into a written contract "as soon as the matters set forth herein have been satisfactorily resolved."

On November 29, Halverson dropped in Anderson's office without previous notice and the two men discussed briefly Halverson's letter of November 10, but to no effect. Anderson repeated a previously made offer to pay his mechanics $2.65 an hour during the negotiations, "to give the mechanics some relief," as he put it, but Halverson refused to agree to this, and testified that he insisted the agreement would have to be "signed" as a whole, not each item by itself" On December 1, Halverson again dropped into Anderson's office and there was some mention, according to Halverson, of wages to be paid the wash boy and as to whether any general wage agreed upon would be retroactive. Anderson, during his testimony, did not mention any meeting on December 1. In any event, there was no meeting of the parties after December 1. On December 13 the Union filed the charge in this case.

Conclusions

The complaint rests upon the allegation that Respondent refused to bargain with the Union in its letter of November 22, 1965. The General Counsel insists that the several items of disagreement listed in that letter had been agreed upon by Respondent at one previous meeting or another. Particularly, the General Counsel urges that on May 27 Respondent agreed to overtime after an 8-hour shift. I do not find that Anderson ever agreed to this proposal, or any overtime excepting after 40 hours in one week. Similarly, it is contended that Respondent agreed to a permanent wage increase of 25 cents an hour. Anderson's testimony, corroborated by that of Marshall,[2] is that he did not, but proposed only an increase on a temporary basis, pending the negotiations, in order to appease the mechanics. Halverson himself admitted that he rejected the offer on this basis, insisting that the Union would not agree to anything other than a permanent raise, to go into effect upon the signing of a complete contract. I do not find that Respondent ever agreed to a permanent raise in wages. In my view of the record, it was still under negotiation along with overtime and other less important provisions. I do not find that there was ever a meeting of minds between the parties as to the final provisions of a collective-bargaining contract, as alleged in the complaint.

It follows that the complaint should be dismissed.

Conclusions of Law

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has not engaged in the unfair labor practices alleged in the complaint.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, I recommend that the complaint herein be dismissed.

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[1] This demand was included by mistake. It was intended to be $2.65 an hour, and corrected later.

[2] Halverson was the only witness called by the General Counsel.