WE WILL offer Donald Ostrowski, James Baker, Richard Bolero, Norbert Eberhardt, Robert Flick, David Fox, Kenneth Hernik, Arthur Makowski, Thomas Matuszewski, James Szymanski, Gerald Walter, Ronald Whitney, Martin Wozniak, and William Palumbo, their former or substantially equivalent jobs (without prejudice to seniority or other employment rights and privileges), and WE WILL pay them for any loss suffered because of our discrimination against them.

All our employees are free to become or remain members of any labor organization.

COLECRAFT MFG. CO., 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, Fourth Floor, The 120 Building, 120 Delaware Avenue, Buffalo, New York 14202, Telephone 842–3112.

Martin E. Wright, a Sole Proprietor, d/b/a West Side Transfer Co. *and* General Teamsters Union, Local No. 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind. *Case 7–CA–5576. January 9, 1967*

DECISION AND ORDER

On October 3, 1966, Trial Examiner John H. Eadie issued his Decision in the above-entitled case, 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 Charging Party filed exceptions and a brief in the above case.

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

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

[1] We believe that the Recommended Order of the Trial Examiner will effectuate the policies of the Act and that further remedial relief is not warranted in this case.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding was held before Trial Examiner John H. Eadie in Grand Rapids, Michigan, on August 16, 1966, on the complaint of the General Counsel and the answer of Martin E. Wright, herein called Wright or the Respondent.[1] The litigation was whether the Respondent violated Section 8(a)(1) and (5) of the Act. After the hearing the General Counsel and General Teamsters Union, Local No. 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., herein called the Union, filed briefs with me.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT[2]

I. THE BUSINESS OF THE RESPONDENT

Martin E. Wright is an individual proprietor doing business under the trade name and style of West Side Transfer Co. He maintains his only office and place of business in the city of Grand Rapids, Michigan, where he is engaged in the general trucking, transfer, and moving business.

During the year ending December 31, 1965, the Respondent, in the course and conduct of his business operations, performed services valued in excess of $50,000, which services were furnished to Haviland Products Co., Sachner Products, Inc., Copper and Brass Sales, Inc., General Motors Corporation, Steelcase, Inc., The Bulman Corp., and Grand Rapids Metalcraft Division, of F. L. Jacobs Co., among others, each of which is located in the State of Michigan and annually produces, sells, and ships goods valued in excess of $50,000 directly to customers located in States other than the State of Michigan.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization which admits to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

On November 29, 1965, the Union, through its Business Agent Robert Anderson, presented to Wright a letter, claiming to represent a majority of his employees in a unit of "drivers, helpers, warehousemen, and mechanics (excluding supervisory, office, clerical, and watchmen as defined in the Act)" and demanding recognition. The Union was recognized by the Respondent as bargaining agent for the employees in the aforesaid unit following receipt of the results of a card check conducted by the Michigan State Labor Mediation Board on December 14, 1965.

Roger Groendyk, a business agent of the Union, was present at the meeting held on December 14. He told Wright that the Union had different types of contracts. Wright replied that he would not "sign a contract with anybody," that he had signed one "years ago" and had "got struck," and that he would "never again sign another one." Thereafter Groendyk sent the Union's proposed contract to Wright.

On or about January 1, 1966, the Respondent unilaterally and without prior notification to the Union granted his employees in the bargaining unit a general wage increase.

Wright met with Groendyk and Anderson on March 8 at the offices of the State labor board. The parties discussed the Union's proposed contract. Referring to the cost of the Union's proposed fringe benefits, Wright stated that he did not see how he could "possibly arrive at that figure." He stated that at the next meeting he "probably" would present his proposal.

The parties met again on March 29. Robert Mason, a mediator of the Michigan Labor Board, was present. Concerning this meeting, Anderson testified as follows:

> . . . Mason wanted to be brought up to date on what had happened at the previous meeting of both parties. We told him exactly what happened and he said I understand Mr. Wright you were supposed to come with a proposal to the union, and he said he was not prepared to make a proposal, that the union's fringe benefits and rates of pay were too high, that he just simply could not afford to make a proposal at this time. He said that he was fifty-nine years

[1] The charge was filed on May 26, 1966. The complaint issued on June 17, 1966

[2] The Respondent rested his case without calling any witnesses after the close of the General Counsel's case.

of age and at his age bracket he didn't see anywhere possible he could sign a contract, seeing as how he was going to retire in the near future, to tie himself to problems that he couldn't handle had he been much younger.

I then asked him with all of his customers he had contracts with and he said no, I do not have contracts. I signed one once and I got burned real bad and I have never signed a contract since. I said are you telling me you are never going to sign a contract with the Teamsters union, and he said basically yes I am telling you I am not going to sign a contract with the Teamsters. I said will you bargain and he said yes I will bargain as often as you see fit but I will never reduce it to writing in a contract.

. . . I then asked him if he didn't think his people should have a raise and he said he had just given them one in December. I said after the cross check of cards which made us the bargaining agent, and he said, around the last week of December I increased the rates to my customers and I gave each man a dime an hour increase, no matter what his rate was at that time.

* * * * * * *

He said I will run this business as long as I possibly can, I will give the people increases whenever I see fit. I will increase the cost to my customers when I see fit. He said I will never sign my name to a contract, letting somebody else bargain for my people. I said what about signing a contract with your people and he said I will never sign a contract with my employees to tie me up.

The next meeting between the parties was held on May 17. Patrick Mackey, secretary-treasurer of the Union, was present. Mackey asked Wright how much he paid his employees. Wright replied that it was "none of Mackey's business." Mackey asked him if he would show his books "to an outside auditor to see if you have the inability or the ability to pay more money to your employees." Wright answered, "absolutely not unless it is by court order." Mackey then asked him if he would "bargain a contract with the Teamsters." Wright stated, "I will bargain a contract but I will never sign one." Mackey then said, "I understand that . . . you made some remark to the effect if people called you and you decided you couldn't pay the rate you would just answer the phone and tell them to call someone else, I am out of business, is that what you plan to do." Wright replied, "I will continue in business as long as I am able, and when I am not able I will get out."

At sometime during the spring of 1966, Wright told Harry Clark and other employees that he would negotiate with the Union on his own terms, that he would "retire from business" if he was "pushed too far," and that he would grant wage increases to his employees as he saw fit.

The evidence conclusively shows that the Respondent violated Section 8(a)(1) and (5) of the Act on and after December 14, 1965. Although Wright negotiated with the Union, he did not do so in good faith. This is shown by his statements to the effect that he would never enter into a final and binding written agreement with the Union, and by his threats to the Union and to his employees that he would close down his business rather than enter into such an agreement. The Respondent's granting of a unilateral wage increase on or about January 1, 1966, and refusal to supply financial data to support his claim of inability to grant increased economic benefits constitute separate violations of Section 8(a)(5) of the Act. I also find that Wright's statement to Clark and other employees was violative of Section 8(a)(1) of the Act in that it contained a threat of reprisal if the Union continued as their collective-bargaining representative.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the Respondent's operations described in section I, above, have a close, intimate, and substantial relationship 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

It has been found that the Respondent has engaged in certain unfair labor practices. It will be recommended that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that the Respondent be ordered to bargain with the Union upon request as the exclusive representa-

tive of all his employees in the appropriate unit concerning rates of pay, wages, hours, and other terms and conditions of employment, and, if understandings are reached, embody such understandings in a signed agreement.

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 Union is a labor organization within the meaning of Section 2(5) of the Act.
2. By interfering with, restraining, and coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
3. All truckdrivers, warehousemen, and mechanics employed at the Respondent's Grand Rapids, Michigan, place of business, but excluding office clerical employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. The Union has been at all times on and after December 14, 1965, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. By failing and refusing at all times on and after December 14, 1965, to bargain collectively in good faith with the Union as the exclusive representative of his employees in the aforestated appropriate unit, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
6. 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 the case, I recommend that the Respondent, its agents, successors, and assigns, shall be ordered to:

1. Cease and desist from:

(a) Threatening his employees with reprisal because of their membership in or activity on behalf of the Union, or any other labor organization.

(b) Refusing to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment with the Union as the exclusive representative of his employees in the appropriate unit.

(c) Instituting any unilateral changes in wages or any other working conditions without previously notifying or consulting with the Union, provided, however, that nothing herein shall require Respondent to vary or abandon any wage, hour, or other substantive feature of his relations with his employees established by Respondent, except as otherwise specifically provided in this Recommended Order.

(d) Refusing to supply to the Union pertinent data to substantiate a plea of financial inability to grant an increase in wage or other economic benefits, as the representative of his employees in the aforesaid appropriate unit.

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

(a) Upon request, bargain collectively with the Union as the exclusive representative of the employees in the above-described appropriate unit with respect to rates of pay, wages, hours of work, and other terms and conditions of employment, and embody in a signed agreement any understandings reached.

(b) Post at his place of business in Grand Rapids, Michigan, copies of the attached notice marked "Appendix." [3] Copies of said notice, to be furnished by the Regional Director for Region 7, after being duly signed by the Respondent or his authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained 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 said notices are not altered, defaced, or covered by any other material.

[3] 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."

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of the receipt of this Decision, what steps he has taken to comply herewith.[4]

[4] 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:

I WILL NOT threaten my employees with reprisal because of their membership in or activity on behalf of General Teamsters Union, Local No. 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., or institute any unilateral changes in wages or any other working conditions without previously notifying or consulting with the above labor organization.

I WILL, upon request, bargain collectively with the above-named labor organization as the exclusive bargaining representative of all employees in the following unit with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if understandings are reached, embody such understandings in a signed agreement. The bargaining unit is:

All truckdrivers, warehousemen, and mechanics employed at the Respondent's Grand Rapids, Michigan, place of business, but excluding office clerical employees, guards, and supervisors as defined in the Act.

I WILL, upon request, supply pertinent data to the above-named Union to substantiate my plea of financial inability to grant an increase in wage or other economic benefits.

All my employees are free to become, remain, or refrain from becoming or remaining, members of any labor organization.

MARTIN E. WRIGHT, A SOLE PROPRIETOR,
D/B/A WEST SIDE TRANSFER CO.,
Employer.

Dated_____ By_____
(Representative) (Title)

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 226-3200.

Local 25, International Brotherhood of Electrical Workers, AFL-CIO *and* New York Telephone Company

Local 25, International Brotherhood of Electrical Workers, AFL-CIO *and* New York Telephone Company and Communication Workers of America, AFL-CIO, and Its Local 1104.

Cases 29-CC-5 (formerly 2-CC-845), 29-CD-2 (formerly 2-CD-301), -2 (formerly 2-CD-301-2), -3 (formerly 2-CD-301-3), and 29-CD-4 (formerly 2-CD-303). January 9, 1967

DECISION AND ORDER

On April 19, 1966, Trial Examiner Paul Bisgyer issued his Decision in the above-entitled proceeding, finding that the Respondent