

**Acme Industrial Products, Inc. and Local No. 155, International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), Case 7-CA-6982**

December 15, 1969

### DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND ZAGORIA

On June 30, 1969, Trial Examiner Melvin Pollack 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 Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief and a request for oral argument; the General Counsel filed exceptions to the Recommended Order and a supporting brief; and the Charging Party filed a brief in answer to Respondent'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.

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 case,<sup>1</sup> and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the modifications set forth below.

The Trial Examiner found, and we agree, that Respondent violated Section 8(a)(5) and (1) by failing and refusing to bargain with the Union over its decision to relocate its "Standard" operations from its Madison Heights plant to its Livingston plant. In support thereof, the Trial Examiner found, and we agree, that (1) such relocation substantially reduced the scope of the bargaining unit by eliminating 20 or more jobs in several categories of employment, and thus adversely affected job opportunities, and (2) the displaced employees lost the benefit of their specialized skills and training, and, under the contract between the parties which provided that seniority for purposes of layoff is by job classification, such employees lost their accumulated seniority, thus becoming more vulnerable to layoff or discharge; and for these reasons the elimination of the "Standard" jobs significantly affected terms and conditions of employment in the bargaining unit, and accordingly

Respondent was under a statutory duty to bargain with the Union over its decision to relocate before taking such action.<sup>2</sup>

The General Counsel urges that Respondent be required to offer any employee displaced as a result of the relocation of the "Standard" facilities substantially similar positions at the Madison Heights plant without prejudice to seniority, wage rates, or other rights and privileges; and, if such positions are not available, or any displaced employee desires employment at the Livingston plant, that Respondent offer any displaced employee employment at the Livingston plant. He further urges that any affected employee be made whole for any loss of pay suffered by reason of the relocation of the Standard facilities or by reason of Respondent's failure to offer any such employee substantially equivalent employment at the Madison Heights or Livingston plant at the employees' option. He requests that this remedy be effective for a 3-year period.

While Respondent refused to bargain with the Union over its decision to relocate, Respondent did offer proposals on the absorption into other jobs at Madison Heights of employees affected by the relocation.<sup>3</sup> On the basis of such proposals, Respondent and the Union reached agreement, subject to the instant unfair labor practice proceeding, on such absorption. As a result, the affected "Standard" employees were given other jobs at the Madison Heights plant with no loss of pay or fringe benefits, but they did lose all of their accumulated seniority in these new jobs.

We agree with the Trial Examiner that, as the absorption of the "Standard" employees resulted in no direct loss of pay or overtime work, there is no warrant for a backpay remedy simply because there may be a future decline in Respondent's business which may result in loss of employment by these employees.<sup>4</sup> Similarly, as these employees already have been given other substantially equivalent positions at the Madison Heights plant, with no loss of pay or fringe benefits, we see no warrant for granting the General Counsel's request that these employees again be offered reinstatement to substantially equivalent positions at the Madison Heights or Livingston plant.

However, these employees have lost their seniority as a direct result of the relocation, over which Respondent unlawfully refused to bargain. Moreover, as we find, in agreement with the Trial Examiner, such loss was one of the two elements which significantly affected their terms and

<sup>1</sup> Respondent's request for oral argument is denied, as, in our opinion, the record and the exceptions and briefs adequately present the issues and the positions of the parties

<sup>2</sup> *Ozark Trailers, Inc.*, 161 NLRB 561, 564-570. We also agree with the Trial Examiner's subsidiary finding that Respondent's right under the parties' contract to determine the location of its plants was not a waiver by the Union of its right to bargain over the transfer of unit work out of the plant *Weltronic Company*, 173 NLRB No. 40

<sup>3</sup> The Union refused to submit proposals on the absorption of these employees, on the ground that such proposals would be a condonation of the unilateral action of moving.

<sup>4</sup> *Cities Service Oil Company*, 158 NLRB 1204.

conditions of employment, so as to render the refusal to bargain unlawful. Accordingly, we find that the policies of the Act could not fully be effectuated simply by the Trial Examiner's order that Respondent not take such unilateral action again, but require also that the seniority of these employees be restored to the extent that such restoration is not inconsistent with the seniority provisions of the parties' contract.<sup>5</sup>

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, as modified herein, and hereby orders that the Respondent, Acme Industrial Products, Inc., Madison Heights, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified.

1. Add to the Recommended Order the following as paragraph 2(a), and redesignate the succeeding paragraphs as 2(b) and 2(c):

"Restore their accumulated seniority to the employees who were employed in "Standard" operations positions at the Madison Heights plant prior to the relocation of such operations to the Livingston plant, to the extent that such restoration is not inconsistent with the seniority provisions of the contract between Respondent and the Union."

2. Add to the notice the following as a third paragraph:

WE WILL restore their accumulated seniority to the employees who were employed in "Standard Operations" positions at the Madison Heights plant prior to the relocation of such operations to the Livingston plant, to the extent that such restoration is not inconsistent with the seniority provisions of our contract with the Union.

<sup>5</sup>As noted above, the parties' agreement on absorption of the "Standard" employees in other jobs without their seniority was expressly made subject to the instant proceeding.

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

MELVIN POLLACK, Trial Examiner This case was heard on January 30 and May 7, 1969, at Detroit, Michigan, upon a charge filed on October 3, 1968, and a complaint issued on November 6, 1968. The complaint, which was amended at the hearing, alleges that Respondent, Acme Industrial Products, Inc., violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, by refusing to bargain with the charging Union over its decision to remove and relocate certain manufacturing facilities from its plant in Madison Heights, Michigan.

Upon consideration of the entire record in the case, briefs filed by the General Counsel and the Respondent, and my observation of the demeanor of the witnesses, I make the following.

### FINDINGS OF FACT<sup>1</sup>

#### I. THE BUSINESS OF RESPONDENT

Respondent is engaged in the manufacture, sale, and distribution of punches, die buttons, retainers, and related products. Its annual interstate purchases and sales at the Madison Heights plant each exceed \$50,000. I find that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

Local No 155, International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. *The Relevant Facts*

The Union has represented the production and maintenance employees at Respondent's Madison Heights plant since 1956. The bargaining unit from its inception included employees who operated machinery for the manufacture of punches, retainers, and buttons. These items are "standard" in Respondent's catalog and the equipment for their manufacture is known at the plant as the "Standard Products Facilities." The plant normally employs over 100 persons. In the spring of 1968,<sup>2</sup> 22 to 24 employees were engaged in the "Standard" operations. On April 3, Edward Sir, the Union's chief shop steward, asked Arthur Jordan, Respondent's president, whether there was "anything to this rumor" that Respondent was going to move "Standard" out of the plant. Jordan replied that Respondent had been thinking about such a move for 10 or 12 years but "there is nothing final." He said he would let the Union know should Respondent "decide to do something."

Sir and other union representatives spoke to Jordan about the rumored move one or more times a month during the next few months. Jordan put off their requests for a meeting to discuss the move by reiterating that he did not know whether or not the move would be made, but that he would let them know when Respondent came to a decision on the move. Late in August, the Union learned that Respondent was constructing a plant in Livingston County, Michigan. On August 29, Stephen Ryan, the Union's newly elected president, called Jordan and told him it would be advisable to have a meeting about the rumored move "to appease the men and avoid the possibility of friction in the plant." Jordan said he would call Ryan back on September 6 "with the thought in mind" of meeting on September 9 or 10.

By letter dated September 6, Respondent notified the Union: "Please be advised that we are relocating our standard production facilities to Livingston County, Michigan. It is contemplated that said relocation will be completed within the near future." A copy of the letter was posted in the plant on September 7.

The Union notified Respondent by letter dated September 10, 1968, that it wished to bargain "in respect

<sup>1</sup>Respondent's proposed findings of fact are accepted to the extent consistent herewith.

<sup>2</sup>All dates hereafter are in 1968 unless otherwise noted.

to your announced intention to transfer standard's work from your 12-Mile Road plant to a location in Livingston County." Representatives of Respondent and the Union met eight times between September 10 and November 14 concerning the relocation of the Standard operations. During the course of these meetings, Respondent explained why it had decided to relocate the Standard operations,<sup>3</sup> acknowledged that it was obliged to bargain with the Union about the effects of the move on the employees, but insisted that it was under no obligation to bargain with the Union over its decision to move the Standard facilities because, under its contract with the Union, Respondent retained the sole right to manage its business, including the right to decide the number and location of plants. Respondent and the Union, on the basis of proposals submitted by Respondent, reached agreement, "subject to this present [unfair labor practice] proceeding," on the absorption into other jobs of employees affected by the relocation.<sup>4</sup>

About November 11, 1968, the Standard machines were moved from the Madison Heights plant to the new Livingston plant. The employees who had operated these machines were offered other jobs at the same or a higher pay scale and without loss of any fringe benefits. Respondent's records for a representative 5-month period show no substantial change in overtime earnings for these employees or the other employees in the bargaining unit as a consequence of the assignment of new jobs within the bargaining unit to the displaced Standard employees. Seniority for purposes of layoff under the parties' contract is by job classification. The displaced Standard employees therefore went to the bottom of the seniority list in their new jobs.

### B. Analysis and Conclusions

Union representatives on and after April 3 questioned President Jordan concerning Respondent's plans for relocating the Standard facilities. Respondent concedes that the Livingston plant was under construction on or about August 1. Jordan, however, said nothing about the Livingston plant and kept on insisting that no firm decision had been taken to transfer the Standard facilities until September 6 when Respondent notified the Union by letter that it was relocating the Standard facilities to the Livingston plant "within the near future." At bargaining sessions between September 10 and November 14, Respondent refused to reconsider its decision to relocate the Standard facilities at the Livingston plant. I find from these facts that Respondent bypassed the Union and failed to bargain in good faith over its decision to relocate the Standard facilities at the Livingston plant.

Respondent contends that its decision to transfer the Standard facilities was not a mandatory subject of collective bargaining because it was motivated solely by economic considerations, involved a capital investment, and had no adverse effect upon rates of pay, hours, and

<sup>3</sup>Respondent said *inter alia* that it would be cheaper to operate "down there" and that the removal of the Standard equipment would enable it to bring additional equipment into the Madison Heights plant. The Union said it could not understand why Respondent was not utilizing the property it had "right next door."

<sup>4</sup>The Union refused to submit proposals on the absorption of employees, explaining to Respondent that such proposals would be "condoning the action of moving." When it inquired whether Respondent would "relocate" the Standard employees, Respondent replied that any employee who wanted to do so could apply for work at the Livingston plant as a new hire.

other conditions of employment. It is the Board's view, however, that economically motivated management decisions which involve "the commitment of investment capital, or . . . may be characterized as involving 'major' or 'basic' change in the nature of the employer's business," are nevertheless subject to the collective-bargaining requirements of the Act where they have a significant impact upon the terms and conditions of employment of employees in a bargaining unit. *Ozark Trailers, Inc.*, 161 NLRB 561, 564-570. See also *Town & Country Mfg. Co., Inc.*, 136 NLRB 1022, enfd. 316 F.2d 846 (C.A. 5); *Fibreboard Paper Products Corp.*, 138 NLRB 550, enfd. 322 F.2d 411 (C.A.D.C.), affd. 379 U.S. 203.<sup>5</sup> The critical question in this case, accordingly, is whether Respondent's relocation of the Standard facilities significantly affected the terms and conditions of employment of the employees represented by the Union at the Madison Heights plant.

The removal of the Standard facilities to the Livingston plant substantially reduced the scope of the bargaining unit by eliminating 20 or more jobs in several categories of employment and thus adversely affected job opportunities. The displaced employees lost the benefit of their specialized skills and training and, under a contract which emphasized the importance of seniority on a particular job, went to the bottom of the seniority list on their new jobs, so becoming more vulnerable to layoff or discharge. For these reasons, I find that elimination of the Standard jobs significantly affected terms and conditions of employment in the bargaining unit and, accordingly, that Respondent was under a statutory duty, before taking such action, to notify the Union of its intention and to afford the Union an opportunity to consult and, on request, to bargain with it about the matter. Cf. *Weltronic Company*, 173 NLRB No. 40; *Cities Service Oil Company*, 158 NLRB 1204.

I find no merit in Respondent's contention that the Union waived its statutory right to be consulted over the relocation of manufacturing facilities by accepting a contract clause (Article I, Section 4) reserving to Respondent "the sole right to manage its business, include the right to decide the number and location of plants." A waiver of statutory right "must be clearly and unmistakably established and is not lightly to be inferred." *Cloverleaf Division of Adams Dairy Co.*, 147 NLRB 1410. The Union's acceptance of Respondent's right to determine the location of its plants is not a clear and unequivocal waiver of its right to bargain over the transfer of unit work out of the plant. *Weltronic Company*, 173 NLRB No. 40; *Unit Drop Forge Division*, 171 NLRB No. 73.

I conclude that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain in good faith with the Union over its decision to relocate the Standard facilities at the Livingston plant.

### CONCLUSIONS OF LAW

1. Acme Industrial Products, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

<sup>5</sup>Relying on its interpretation of the Supreme Court decision in the *Fibreboard* case, the Board in *Ozark Trailers* declined to follow circuit court rulings that an employer must bargain only upon the effects of a "major" or "basic" economic decision. See, e.g., *N.L.R.B. v. Royal Plating & Polishing Co.*, 350 F.2d 191 (C.A. 3); *N.L.R.B. v. Adams Dairy, Inc.*, 350 F.2d 108 (C.A. 8), cert. denied 382 U.S. 1011; *N.L.R.B. v. Rapid Bindery, Inc.*, 293 F.2d 170 (C.A. 2).

2. Local No. 155, International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees at the Madison Heights plant of Respondent, excluding supervisors, foremen, salaried employees, professional employees, plant guards, confidential employees, and office and clerical employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. The Union at all times material has been the exclusive representative of the employees in the above-described unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to bargain with the Union over its decision to transfer the Standard Production facilities from the Madison Heights plant, 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 affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent has violated Section 8(a)(5) and (1) of the Act, I shall recommend that Respondent cease and desist from such conduct and that it take certain affirmative action designed to effectuate the policies of the Act.

The Union urges that Respondent be required to return the Standard facilities to the Madison Heights plant. It is not disputed, however, that Respondent transferred the Standard facilities to the Livingston plant for economic reasons; it appears that no employee of Respondent was laid off, discharged, or suffered a loss of pay, as the result of its unilateral action; and there is no evidence of any prior unfair labor practices by Respondent in its dealings with the Union. I find in these circumstances that it would be inappropriate to direct that the *status quo ante* be restored by ordering the return of the Standard facilities to the Madison Heights plant. Cf. *Cities Service Oil Company*, 158 NLRB 1204, 1206-1207.

The General Counsel urges in his complaint that Respondent be required to offer any employee displaced as a result of the relocation of the Standard facilities substantially similar positions at the Madison Heights plant without prejudice to seniority, wage rates, or other rights and privileges; and, if such positions are not available, or any displaced employee desires employment at the Livingston plant, that Respondent offer any displaced employee employment at the Livingston plant. He further urges that any affected employee be made whole for any loss of pay suffered by reason of the relocation of the Standard facilities or by reason of Respondent's failure to offer any such employee substantially equivalent employment at the Madison Heights or Livingston plant at the employee's option.<sup>6</sup>

The record shows that the Respondent, pursuant to contract posting procedures, assigned the displaced employees to other jobs at the same or higher wage rates and that this action resulted in no loss of pay or fringe benefits to any unit employee.<sup>7</sup> Although Respondent acknowledged its statutory obligation to bargain on the effects of its decision to move the Standard facilities to Livingston, the Union chose to make no proposals on

seniority or transfer of the displaced employees to Livingston. In these circumstances, I see no basis for recommending the relief requested by the General Counsel.

#### 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 Respondent, its officers, agents, successors, and assigns, shall be ordered to:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union as the exclusive bargaining representative of Respondent's employees in the appropriate unit by unilaterally transferring unit work to other locations, or otherwise changing the wages, hours, and other terms and conditions of employment of the unit employees without prior bargaining with the Union or any other labor organization they may select as their representative;

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under the Act.

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

(a) Post at its plant at Madison Heights, Michigan, copies of the attached notice marked "Appendix."<sup>8</sup> Copies of said notice on forms provided by the Regional Director for Region 7 shall, after being duly signed by Respondent, be posted by it immediately upon receipt thereof and maintained 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 Respondent to insure that said notices are not altered, defaced or covered by any other material.

(b) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Decision, what steps it has taken to comply herewith.<sup>9</sup>

<sup>6</sup>As the absorption of the Standard employees resulted in no direct loss of pay or overtime work, I see no warrant for a backpay remedy simply because a decline in Respondent's business may result in loss of employment.

<sup>7</sup>In the event this Recommended Order be 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 the Board's Order be 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."

<sup>8</sup>In the event this Recommended Order be 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 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 we hereby notify our employees that:

After a Trial in which both sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the act and has ordered us to post this notice and to keep our word about what we say in this Notice.

<sup>9</sup>The General Counsel requests that the remedy be effective for a 3-year period.

## DECISIONS OF NATIONAL LABOR RELATIONS BOARD

The Board found we violated the law when we did not consult or bargain with the Union before transferring Standard Products Facilities work to a plant in Livingston County, Michigan.

WE WILL NOT hereafter transfer work out of this plant without first discussing and negotiating such transfer with the Union, and we will not otherwise refuse to bargain collectively with the Union as required by law.

ACME INDUSTRIAL  
PRODUCTS, 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, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 226-3200.