

Warehousemen's Union Local 17, International Longshoremen's & Warehousemen's Union and Los Angeles By-Products Co. Case 20-CB-1727

June 13, 1968

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND ZAGORIA

On April 11, 1968, Trial Examiner Howard Myers issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief. The General Counsel filed a brief in support of the Trial Examiner's 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.

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

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 and hereby orders that Respondent, Warehousemen's Union Local 17, International Longshoremen's & Warehousemen's Union, Sacramento and Los Angeles, California, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order as so modified:

1. In paragraphs 1 and 2(a) of the Recommended Order substitute the date "August 11, 1967," for the date "July 21, 1967."

2. Substitute for the sole paragraph in the notice the following:

WE WILL immediately have one of our officials, who is duly authorized to execute collective-bargaining agreements on our behalf, sign

the collective-bargaining agreement submitted to us by a representative of Los Angeles By-Products Co. on August 11, 1967; and we will forthwith forward to Los Angeles By-Products Co., a duly executed copy or copies of said executed agreement.

¹ The Trial Examiner in the last sentence of the "Concluding Findings," in the "Remedy," in his "Recommended Order," and in the "notice" inadvertently refers to the agreement reduced to writing by the Employer as having been submitted to Respondent on July 21, 1967. This date is incorrect, the correct date of such submission being August 11, 1967.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

HOWARD MYERS, Trial Examiner: This proceeding, with the General Counsel of the National Labor Relations Board (herein respectively called the General Counsel¹ and the Board), and Warehousemen's Union Local 17, International Longshoremen's & Warehousemen's Union (herein called Respondent), represented by counsel, was heard before me at Sacramento, California, on January 23 and 24, 1968, upon a complaint, dated October 26, 1967, issued by the General Counsel through the Regional Director for Region 20 (San Francisco, California), and Respondent's answer duly filed on November 1, 1968.

The complaint, based upon a charge duly filed on August 21, 1967, by Los Angeles By-Products Co. (herein called By-Products), alleged, in substance, that Respondent violated Section 8(b)(3) of the National Labor Relations Act, as amended, from time to time, herein called the Act.²

Upon the entire record in the case³ and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OPERATIONS OF THE CHARGING PARTY

By-Products, a California corporation, has its principal offices at Los Angeles, California, and operates plants at Sacramento, Milpitas, San Lean-

¹ This term specifically includes counsel for the General Counsel appearing at the hearing.

² Specifically, as to the unfair labor practices, the complaint alleged that Respondent violated Sec. 8(b)(3) of the Act by refusing, since on or about July 21, 1967, to execute a contract incorporating the terms of the collective-bargaining agreement reached between it and Los Angeles By-Products Co., which agreement was reached by and between said parties on or about July 10, 1967.

³ Including the briefs filed by the General Counsel and by Respondent's counsel (in letter form on March 18, 1968, which have been carefully considered.

Under date of March 18, 1968, the General Counsel moved to correct certain inaccuracies appearing in the stenographic transcript of the hearing. The motion is hereby granted and the motion papers are received in evidence as TX Exh 1.

dro, and Martinez, California. At said plants By-Products processes precipitation material consisting mainly of discarded tin cans and other light gauge ferrous material for the copper and steel industries. By-Products, in the course and conduct of its business, annually purchases supplies from points located outside the State of California valued in excess of \$50,000 and its annual out-of-State sales amount in excess of \$50,000.

Upon the basis of the foregoing facts, I find, in line with established Board authority, that By-Products is, and at all times material was, engaged in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act, and that its business operations meet the standards fixed by the Board for the assertion of jurisdiction.

II. THE LABOR ORGANIZATION INVOLVED

Respondent is a labor organization admitting to membership employees of By-Products.

III. THE UNFAIR LABOR PRACTICES

A. *The Pertinent Facts*

Respondent and By-Products were parties to a collective-bargaining agreement from July 1, 1963, through May 31, 1967.⁴

Under date of March 1, Frank E. Thompson, Respondent's secretary, wrote Carl Sexton, By-Product's president, as follows:

You are hereby notified that the undersigned Local Union desires to open the agreement between us and to negotiate changes or revisions in said Agreement, Supplements and Addenda thereto for the contract period commencing June 1, 1967, as provided in 22 thereof.

You are hereby further notified that this Local Union has given a power-of-attorney to the Northern California Warehouse Council, IBT-ILWU, as our representative for the purpose of negotiations.⁵

Under date of March 20, Thompson wrote Sexton as follows:

You will have already received our letter dated March 1, 1967, informing you of our desire to open our present Agreement with your firm for the purpose of negotiating changes, etc. The letter also informed you that this Local Union was giving power-of-attorney to the Northern California Warehouse Council, IBT-ILWU, the authority to negotiate wages and fringes covering warehouse and distribution workers in the Northern California Area. The Warehouse Council will submit, prior to April 1, the Council's proposals regarding wages, fringes, etc.

At this time we are recommending changes in our present Agreement in addition to those that will be received from the Northern California Warehouse Council, as follows:

1. Sick Leave: We are requesting that the sick leave be increased from the present one week to four weeks accumulative sick leave on the basis of one week per year, said sick leave to be integrated with Workman's Compensation Insurance and California Disability Insurance, sick leave beginning the first day in all cases.
2. Vacations: We will request three weeks' vacation for all employees with five years' or more service, and four weeks' vacation for all employees with ten years' or more service; five weeks' vacation for all employees with fifteen or more years of service. We will also request prorated vacations for employees with two or more years' service on the basis of one day for each 173 hours worked for those with two years or more of service, and one and one-half days for each 173 hours worked for those with more than five years of service.
3. Holidays: Employees entitled to paid holidays, if required to work on such holidays, to receive pay at the rate of time and one-half in addition to their holiday pay. Holidays falling on a Sunday to be celebrated on the following Monday; and holidays falling on a Saturday to be celebrated on the Friday preceding the holiday, with option. Holidays falling during an employee's vacation period to be compensated for by an extra day's pay, or vacation.
4. Regarding classifications: We will request the present rate for truck drivers remain the same, except that any operator on diesel trucks receive a rate of \$3.05 per hour instead of the present \$2.87 per hour. We are also proposing that the classification of subforeman be increased 10 cent per hour over and above the present \$2.99 1/2 per hour. We also are proposing that the classification of metal sorter be reclassified to \$3.05 per hour instead of the rate at present \$2.87; and that the rate for metal sorter at present be changed to metal cleaner (a new classification) \$2.87 per hour.
5. We will also propose a three-year Agreement.

The above proposals are being submitted in addition to the wage and health and welfare proposals that will be submitted by the Northern California Warehouse Council.

In conclusion, we would appreciate an im-

⁴ All dates hereinafter mentioned refer to 1967, unless otherwise noted

⁵ By-Products did not answer this letter

mediate meeting with you or your representatives for the purpose of discussing and negotiating the above proposals at the earliest possible moment, at which time we will explain to you the purpose of the Northern California Warehouse Council.

Under date of March 22, Sexton wrote Thompson as follows:

I wish to acknowledge receipt of your letter dated March 1, 1967, notifying us of your desire to open our labor agreement to negotiate changes or revisions commencing June 1, 1967.

I also acknowledge receipt of your letter of March 20, 1967 in which you advise that your Union has given power-of-attorney to the "Northern California Warehouse Council, IBT-ILWU." Your letter states that this organization has authority to negotiate wages and fringes for members of your Union in the Northern California area.

I am somewhat confused since you first indicated that the Council will negotiate wages and fringes, and then you go on to request a meeting with you for discussion of changes in sick leave, vacations, holidays, classifications, etc. Certainly most of these items would be considered fringe benefits in addition to wages.

I have, from time to time in the last 25 years, represented our company in labor negotiations, and this is the first time any Union local with whom we have had a contract has relegated its authority to another in contract negotiations. This poses some very serious questions in my mind as to the propriety of this procedure. In order that I may clearly understand the situation, I would very much like to have the following information:

1. The names and addresses of all the employers involved in the proposed negotiations with the Northern California Warehouse Council.
2. The names and addresses of all the Union Locals that make up the Northern California Warehouse Council.
3. Copy of the resolution or other appropriate document approved by the membership of Local 17 with respect to granting the power-of-attorney to the Northern California Warehouse Council.

As soon as this information is received, I will discuss it with our attorney and then contact you to arrange for a meeting. Certainly we would like to settle this matter as soon as possible, and we sincerely hope that everything can be settled on a friendly basis to the satisfaction of both our company and our employees.

Under date of March 24, Thompson replied to Sexton's March 22 letter as follows:

In answer to your letter of March 22, we will first answer question number one requesting

the names and addresses of all employers involved in the negotiations with the Northern California Warehouse Council:

Industrial Employers & Distributors Association
J. Hart Clinton, President
58 Sutter Street
San Francisco, California

San Francisco Employers Council
Murray Parker, Mgr.
114 Sansome Street
San Francisco, California

The foregoing employer associations represent the vast majority of the employers in Northern California and will meet with the Northern California Warehouse Council in the French Room, Fairmont Hotel at 10:00 a.m. April 12, 1967. Also the United Employers Council located in Oakland, California, the Peninsula Employers Council (Mr. Sam Beard) located at San Mateo, California, Mr. Richard Jacinto, Sacramento Valley Employers Council, 1801 J. St., Sacramento, California, and Mr. Ron Barklow, San Joaquin Employers Council, 1130 El Dorado St., Stockton, California.

The foregoing employers groups are also invited to this meeting in the French room of Hotel Fairmont in San Francisco. For your information, Mr. Sexton, your company or its representative is also cordially invited to attend this session.

Answering question number two raised in your letter for names and addresses of all Unions that make up the Northern California Warehouse Council are as follows:

Local 17, I.L.W.U., with jurisdiction over warehouse and distribution workers in the Sacramento River Valley; Warehouse Union, Local 6, I.L.W.U., 255 9th Street, San Francisco, representing some 8200 warehouse and distribution workers in San Francisco, Oakland, the peninsula, Richmond and Stockton San Joaquin Valley, California. The other locals comprise some 20 Locals of the International Brotherhood of Teamsters from Fresno to the Oregon State Line.

The headquarters of the Northern California Warehouse Council, IBT-ILWU, is located at 1870 Ogden Dr., Burlingame, California, 94001-415-697-0500. The Co-Chairmen of the Northern California Warehouse Council are: Mr. George Meek, International Vice President, I.B.T., and Mr. Louis Goldblatt, Secretary-Treasurer of the International Longshoremens and Warehousemens Union.

Question number three: In answer to this question, the membership of Local 17, ILWU, representing employees of some thirty-five em-

ployers, voted during the regular business meeting February 23, 1967, to instruct the officers to open all agreements expiring on May 31 or thereafter.

We think the foregoing information answers all the questions in your letter of March 22, and we suggest that we meet with you or your representative here in Sacramento at the earliest opportunity regarding the matters raised in our letter to you of March 20, 1967. We do not believe there should be any confusion in regard to overall negotiations or our meeting here locally in Sacramento, because we believe a full understanding can be reached on all matters in our opening letter and our letter of March 22.

Trusting to hear from you at the earliest possible moment, we remain,

Under date of March 30, Sexton wrote Thompson as follows:

On March 1, 1967 you notified us of your desire to negotiate changes and revisions of our labor agreement with Local 17. On March 20 you wrote us and listed some of the demands and requested that we meet with you to discuss this matter. You also advised that the Northern California Warehouse Council will submit prior to April 1 the Council's proposal regarding wages, fringes, etc.

On March 22, 1967 I wrote you requesting certain information so that I could properly understand the nature of the negotiations which you have proposed. You failed to answer my question No. 3 with respect to some evidence satisfactory to us that members of Local 17 had in fact given power-of-attorney to the Northern California Warehouse Council. I would still like to have an answer to this question, and would appreciate very much your sending me a copy of whatever document or resolution that was involved. You realize that my primary concern is to make sure that we can legally negotiate with someone other than officers of Local 17.

Section 22 of the present agreement reads in part as follows:

"In the event that the Agreement is reopened, as provided above, the party reopening the Agreement shall submit with its notice of reopening a detailed statement of demands, and the other party may, within ten (10) days thereafter, submit a counterproposal. If no counterproposal is submitted within said ten (10) days, then the hourly wage rates as then in effect shall be considered the counterproposal. There may be no enlargement of the original demands or the counterproposal after they have been submitted."

In your letter of March 20, you requested negotiations on sick leave, vacations, holidays,

wage rates and classifications, and also proposed a three-year agreement. The letter received from the Northern California Warehouse Council listed in a very general and indefinite manner the items to be negotiated. All of the items covered in your letter were duplicated by the Northern California Warehouse Council, and as it stands today I have no clear-cut understanding of your demands. I am sure you realize that it is impossible for us to negotiate the same terms and conditions with two different organizations.

Under the circumstances there would be no point in calling a meeting at this time.

We are not a party to negotiations proposed for April 12 at the Fairmount Hotel, as we have never been a participant in the master contract and have always negotiated independently and directly with Local 17.

I suggest that you review this situation and submit a clear-cut statement of the Union's demands with respect to our individual contract at our plant in Antelope, California. As soon as we receive a clear statement of the Union's demands in accordance with Section 22 of the Agreement, we will then be in a position to submit our counterproposal and arrange for a meeting with you.

In the forepart of April 1967, By-Products became a member of Sacramento Valley Employers Council, an employer organization existing, in part, for the purpose of representing its members in negotiating and administering collective-bargaining agreements with labor organizations representing the employees of its respective members and to execute all collective-bargaining contracts agreed to but only for those members who specifically authorize it to do so.

The first of the seven bargaining sessions between the parties here involved took place on April 13 at the offices of the employer association. Wayne L. Menebroker, an attorney for the aforementioned employer association, not only represented By-Products at this meeting but he also represented Associated Metals Co. of California (herein called Associated Metals), another member of Menebroker's aforesaid client and whose 1963-1967 collective-bargaining contract had been opened by Respondent on or about March 1.

Present at the meeting referred to immediately above, besides Menebroker, were Sexton, president of By-Products; J. N. Mitchell, a By-Products vice president; Ben Litchfield from By-Products; Robert L. Novack, president of Associated Metals; John Sabo from Associated Metals; Frank Thompson, Respondent's secretary and business agent; Carl Olsen, a representative of Local 150 of the Teamsters Union; and several unnamed members of a committee representing Respondent. Menebroker acted as the principal spokesman for By-Products and Associated Metals, not only at this meeting but also at

all seven bargaining meetings. Thompson acted in the same capacity at all bargaining meetings for Respondent.

At the outset of the aforementioned April 13 meeting, Thompson announced that he and Olsen were in attendance there "as a subcommittee for the Northern California Warehouse Council"; that as such subcommittee he and Olsen were acting for and on behalf of said Council; and "no local union would enter into an agreement [with either By-Products or Associated Metals] without the approval of the Council." In response to Thompson's above-quoted remark, both Menebroker and Sexton replied, to quote from Menebroker's credited testimony, "Local 17 had . . . the right to appoint any representative they chose to represent them in bargaining, however, Los Angeles By-Products and Associated Metals were dealing individually and independently on a local level with Local 17."

During the course of the above-described meeting, Thompson presented a written set of proposals bearing the legend, "Northern California Warehouse Council" together with a set of written "proposals which came from Local 17."⁶ After some discussion was had regarding the two sets of proposals, the meeting broke up with the understanding that Menebroker would study the proposals and would discuss them further at the next meeting of the parties.

On May 4, Menebroker, Mitchell, Litchfield, Novack, and Sabo met with Thompson, and other Respondent representatives. There, discussion was had with respect to the two sets of proposals which were submitted by Thompson at the April 13 meeting, but no agreement was reached as to any provisions thereof.

The parties met again on May 14, at which time Menebroker submitted certain oral proposals to Thompson and his associates. These proposals were discussed but no agreement was reached as to any of them.

On May 29, the parties again met. Discussion was had regarding Thompson's original proposals and Menebroker's May 14 proposals. Menebroker also suggested other oral provisions and Thompson offered certain oral counterproposals. Although discussion was had regarding all the proposals, no decision was reached as to any of them.⁷

Thompson, Oscar Jordan, a paid organizer for Respondent, Novack, Menebroker, Litchfield, and Sabo attended a bargaining session held on June 6 in Thompson's offices. Regarding what transpired at this June 6 meeting, Menebroker testified, and I find, that Thompson stated, "It looked like the locals represented by the Southern California Warehousemen's Council would go out on strike on June 12th, that the Northern California Warehousemen Council had . . . prepared an interim agreement which he [Thompson] said that

any employer that didn't want to take a strike could execute"; Thompson showed a copy of the so-called interim agreement to him and the company representatives, which they read; said so-called interim agreement contained provisions relative to "terms and conditions of employment, wages, hours and so forth"; and the aforementioned instrument was discussed but not executed by either By-Products or Associated Metals.

On June 12, Respondent struck By-Products and Associated Metals.

The next bargaining session was held on July 5 at which discussion was had regarding the various proposals and counterproposals which had been theretofore submitted by the parties. No agreement was reached, however, regarding any of the matters submitted.

The next and final bargaining session was held on July 10 in the offices of the aforementioned employer association. Present thereat were Menebroker, Litchfield, Mitchell, and Novack for By-Products and Associated Metals. Respondent was represented by Thompson, Dexter Beaver (presently a member of Respondent's executive board and a former By-Products employee), Jordan, Salvadore Garcia (a committeeman and a then By-Products employee), and Bob Hawkins (a committeeman and a then By-Products employee). A Mr. Plouffe, identified in the record merely as being "from Local 17," was also present.

Menebroker testified that at the meeting referred to immediately above, which lasted about 2 hours, he opened the discussion by asking Thompson "what his present position was"; that Thompson replied, "Local 17, his union wanted the Northern California Warehousemen settlement that they had made with the Industrial and Distributors Association in San Francisco and the San Francisco Employers Council or an alternative money package"; a caucus then took place with the employers' representatives conferring among themselves and Respondent's representatives meeting in private; and upon returning to the bargaining table, he suggested to Thompson that the matter be settled by the parties adopting the expired 1963-67 agreement, incorporating the following changes:

1. 8 paid holidays
2. Holidays falling on a Saturday to be celebrated either on the Saturday or the preceding Friday at the Employer's option.
3. If a holiday fell on an employee's vacation, the employee was to get either an extra day's pay or an extra day's vacation at the option of the Employer.
4. Employees working on a holiday to get holiday pay plus time and one-half.
5. Sick leave benefits to begin after a 1 day waiting period unless the employee was hospitalized during his illness.

⁶ This second set of proposals was identical with those advanced by Thompson in his above-quoted March 20 letter to Sexton

⁷ Most of the discussions at all seven meetings centered around "cost items"

6. Health and Welfare benefits to be raised by \$6.50 per employee per month.
7. Wage increases of 24 cents an hour for the first year of the contract, 20 cents an hour the second and 20 cents an hour the third.
8. Metal sorters to be paid the burner wage rates.
9. Sub-foreman to receive an additional 5 cents an hour pay raise.
10. Employees not to lose vacation pay because of the strike.
11. The Employer to make health and welfare payments for July, 1967.
12. Term of agreement from June 1, 1967 to May 31, 1970.

Menebroker further testified that after some *tete-a-tete* "off-the-record" talk with Thompson, the parties returned to the bargaining table; and that the meeting broke up after Thompson had commented that Menebroker's proposal "was acceptable to him and he would take it back to his members that night if he could set up a meeting, and if they accept it, the employees would be back to work the next day, and then Mr. Thompson and the employees involved discussed which employees should report at which time if [the proposed agreement] was accepted."⁸

The following day, July 11, striking employees of By-Products and Associated Metals returned to work.

Either on July 11 or 12, Thompson notified Menebroker by telephone that the striking employees of By-Products and Associated Metals had ratified the agreement reached on July 10, adding that he (Thompson) would reduce the agreement to writing. The telephone conversation concluded with Menebroker suggesting that when the terms of the agreement had been reduced to writing, Thompson should send copies of the finished product to him for his perusal.

On July 21, Thompson went to Menebroker's office and delivered to Menebroker several copies of the contract.

On July 26, Thompson telephoned Menebroker inquiring about the contract which he had delivered to Menebroker on July 21.

Regarding the above-referred-to July 26 telephone conversation, Menebroker testified that, and I find, "I told [Thompson] I had a chance to go over the draft of the agreement and that he had inserted things in this draft that we hadn't agreed to and we wouldn't execute this agreement because these additional things were in there"; when Thompson, to quote from Menebroker's credited testimony, "Said that these things he had put in there had been agreed to in San Francisco between the Warehouse Council and the Industrial Distribu-

tors Association and San Francisco Employers Council, and that he had to have them in this agreement," he told Thompson, "We wouldn't execute the agreement with these conditions in it, that we hadn't agreed to them"; and that the conversation ended with Thompson asking for, and he agreeing to, a meeting of all parties involved.

On July 31, Menebroker, Litchfield, Mitchell, Sabo, and Novack met in the offices of aforementioned employer association with Thompson, Plouffe, and Alexander. There, Menebroker "went over Mr. Thompson's draft, pointing out the discrepancies" between the terms agreed upon on July 10 and the various provisions appearing in the agreement Thompson submitted to Menebroker on July 21, including the items which had appeared in the expired 1963-67 agreement but omitted entirely or substantially changed in Thompson's July 21 agreement. These omitted or changed provisions were:

1. The option the employer had for holidays falling on a Saturday had been omitted.
2. The option the employer had for holidays falling on an employee's vacation had been omitted.
3. The hours of work had been changed.

In addition to the omissions and changes appearing in the Thompson's July 21 agreement, Menebroker complained to Thompson at said July 31 meeting that the following additional provisions appear in Thompson's July 21 agreement which had not been agreed to on July 10:

1. Section 9(c) concerning reporting for work on day before and day after work was not agreed to.
2. Section 10 concerning minimums had additional language which had not been agreed to.
3. Section 14 concerning no strikes or lock outs had additional language which had not been agreed to.
4. Subsection (d) of Section 15 concerning the computation of straight time hours was an item that had not been agreed to.
5. Subsection (a) of Section 15 concerning sick benefit allowances had language which they had not agreed to.
6. Section 19 concerning life insurance had language not previously agreed to, and
7. Section 20 concerning welfare benefits had language which the parties had not previously agreed to.

During the course of the discussion which ensued over the omissions, changes, and additions referred to immediately above, Thompson stated he was in error as to some of them and agreed to make the necessary corrections. As to Thompson stating, "He had to have these provisions and that was it."

⁸ Novack's version as to what was said and done by the parties at this July 10 meeting is in substantial accord with Menebroker's. Menebroker, Novack, and Thompson were the only persons testifying in this proceeding.

Early in August, Menebroker informed Thompson by telephone that he "was going to draft the agreement incorporating the changes that were agreed to [on July 10] and that [he] would have the company⁹ sign it and submit it to him for his signature."

Under date of August 11, Menebroker wrote Thompson as follows:

Enclosed are six (6) signed copies of collective bargaining agreement between Los Angeles By-Products Co. (Sacramento Plant) and your Union, incorporating only those changes agreed to in the negotiating sessions of July 10, 1967. We request that you execute same and return at least three (3) copies to this office.¹⁰

On or about August 15, Thompson went to Menebroker's office and, according to Menebroker's credited testimony, Thompson asked, "Why did you send this to me?";¹¹ when he stated, "Frank, I told you I was going to send it to you," Thompson remarked, "I am not going to sign it or execute it"; and Thompson thereupon handed him the aforesaid August 11 letter and the documents enclosed therein.

Under date of August 31, Thompson wrote Menebroker as follows:

Please accept this letter as a formal request for renewal of collective bargaining regarding the Agreement between this Union and the Los Angeles By-Products Company, situated at Antelope, California.

In line with this request we will specifically ask that we discuss and negotiate the language of the option on the paid holidays. Also, we will discuss the language covering the starting and finishing time for day shift work at the company's plant at Antelope and/or the can sorters at Milpitas, Oakland, Martinez and other Northern California towns or cities. Further, we will discuss and negotiate any clerical mistakes in the proposed Agreement that we have submitted to you and your constituent—Los Angeles By-Products Company. Also we are prepared to discuss the Hospital, Medical and Dental language in full, including life insurance, to correct any mistakes or misunderstanding that might exist in our original draft to you.

In conclusion, please be advised that we are prepared to meet after the Labor Day holiday.

Trusting that we may hear from you on this matter, we remain. . . .

B. Concluding Findings

Respondent does not dispute the General Counsel's assertion that an agreement was reached on

July 10 with respect to all the material provisions to be embodied in a collective-bargaining agreement between Respondent and By-Products. It contends, however, that the agreement which Thompson handed to Menebroker on July 21 contained all the items agreed upon on July 10.

Upon the entire record in the case, I am convinced, and find, that on July 10, Respondent and By-Products came to a complete accord regarding all the provisions which were to be embodied into the collective-bargaining contract and that the contract enclosed in Menebroker's August 11 letter to Thompson contained all such agreed-to provisions and that Thompson's July 21 contract did not reflect the agreement reached by the parties on July 10. This finding is based mainly, but not entirely, on the fact Menebroker and Novack each impressed me as each being one who is careful with the truth and meticulous in not enlarging his testimony beyond his actual memory of what was said and what was done at the July 10 collective-bargaining session. On the other hand, Thompson gave me the distinct impression that he was studiously attempting to conform his testimony to what he considered to be in the best interest of Respondent. Under the circumstances, I find that Menebroker's and Novack's version of what was agreed to relative to the terms and conditions of employment of the By-Products employees here involved to be in accord with facts. Accordingly, I find that Respondent, by failing and refusing to execute the agreement which Menebroker forwarded to Thompson on July 21, violated Section 8(b)(3) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with By-Products' business 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

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

Having found that Respondent has failed and refused to execute the agreement Menebroker submitted to it, through Thompson, on July 21, 1967,

⁹ Meaning By-Products. Associated Metals signed Thompson's July 21 agreement concurrently with a document called "Letter of Understanding." Novack testified that he signed the aforesaid agreement and letter "in order to keep my men at work."

¹⁰ This document bore the signature of J. N. Mitchell, as vice president of By-Products.

¹¹ Meaning Menebroker's August 11 letter and its enclosures.

which agreement embodied all the terms and conditions agreed to by Respondent and By-Products, relative to the employees of By-Products here involved, at the aforementioned July 10, 1967, bargaining session, I recommend that Respondent be ordered to immediately execute said July 21, 1967, agreement and to forthwith forward to By-Products a copy or copies thereof signed by an official of Respondent duly authorized by Respondent to execute collective-bargaining agreements on its behalf.

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. By-Products is, and at all times material was, an employer within the meaning of Section 2(2) of the Act, and is engaged in, and during all times material was engaged in, commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent is, and during all times material was, a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to execute the collective-bargaining agreement which Menebroker forwarded to Respondent, through Thompson, on July 21, 1967, which agreement embodied all the terms and conditions reached by and between Respondent and By-Products on July 10, 1967, Respondent has engaged in, and is engaging in, unfair labor practices proscribed by Section 8(b)(3) of the Act.

4. 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 record as a whole, it is recommended that Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from refusing to execute the collective-bargaining agreement submitted to it through Thompson by Menebroker on July 21, 1967.

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

(a) Immediately execute, in the manner set forth above, the collective-bargaining agreement submitted to it, through Thompson, by Menebroker on July 21, 1967, and forthwith forward to By-Products a duly executed copy or copies of said executed agreement.

(b) Post at its offices copies of the attached notice marked "Appendix."¹² Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices

to its members 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.

(c) Deliver to the Regional Director for Region 20 signed copies of said notice in sufficient number to be posted by By-Products, if willing.

(d) Notify the Regional Director for Region 20, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.¹³

¹² 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."

¹³ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the Regional Director for Region 20, in writing, within 10 days from the date of this Order, what steps Respondent hastaken to comply herewith."

APPENDIX

NOTICE TO ALL MEMBERS OF WAREHOUSEMEN'S UNION, LOCAL 17, INTERNATIONAL LONGSHOREMEN' & WAREHOUSEMEN'S UNION

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 you that:

WE WILL immediately have one of our officials, who is duly authorized to execute collective-bargaining agreements on our behalf, sign the collective-bargaining agreement submitted to us on July 21, 1967, by a duly designated representative of Los Angeles By-Products Co., which agreement embodies all the terms and conditions of employment for those of our members who are employed by Los Angeles By-Products Co. for the period from June 1, 1967, through May 31, 1970.

WAREHOUSEMEN'S UNION
LOCAL 17,
INTERNATIONAL
LONGSHOREMEN' &
WAREHOUSEMEN'S UNION
(Labor Organization)

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 members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 13050 Federal Building, 450 Golden Gate Avenue, Box 36047, San Francisco, California 94102, Telephone 556-0335.