

Wincharger Corporation, Subsidiary of Zenith Radio Corporation and International Association of Machinists and Aerospace Workers, AFL-CIO, Victory Lodge 1637. Case 18-CA-2439

June 21, 1968

DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On April 9, 1968, Trial Examiner Robert E. Mullin issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in unfair labor practices as alleged in the complaint and recommending that the complaint be dismissed, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

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, conclusions, and recommendations of the Trial Examiner.

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 the complaint herein be, and it hereby is, dismissed.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

ROBERT E. MULLIN, Trial Examiner: This case was heard in Sioux City, Iowa, on November 6, 1967, pursuant to charges duly filed and served,¹ and a complaint that was initially issued on August 24, 1967. The complaint, as amended on October 11, 1967, presents questions as to whether the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended. In its

answer and amended answer, duly filed, the Respondent conceded certain facts with respect to its business operations, but it denied all allegations that it had committed any unfair labor practices.

All parties appeared at the hearing and were given full opportunity to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally at the close of the hearing, and to file briefs. Oral argument was waived by the parties. On December 21, 1967, briefs were submitted by the General Counsel and the Respondent. A motion to dismiss, made by the Respondent at the close of the hearing, was taken under advisement. It is disposed of as appears hereinafter in this Decision.

Upon the entire record in the case, including the briefs of counsel, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is engaged in the manufacture of radios, electrical generators, electrical motors, and electronic equipment at its plants in Sioux City, Iowa. During its last fiscal year, a representative period, it manufactured, sold, and shipped from these plants, finished products valued in excess of \$50,000 directly to points outside the State of Iowa. Upon the foregoing facts the Respondent concedes, and the Trial Examiner finds, that Wincharger Corporation a subsidiary of Zenith Radio Corporation, is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent concedes, and the Trial Examiner finds, that International Association of Machinists and Aerospace Workers, AFL-CIO, Victory Lodge 1637 (herein called Union or IAM), is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Appropriate Bargaining Unit*

Since 1947, when the IAM was certified by the Board as the bargaining agent for a production and maintenance unit at the Respondent's operations in Sioux City, the Union and the Company have had continuous collective-bargaining relations. From the beginning of this relationship, the employee classifications of "supervisor" and "lead workman" have been included within the bargaining unit. The current contract provides that such supervisors shall receive compensation at the minimum rate of

¹ The original charge was filed on June 27, 1967. On September 22, 1967, the Union filed a first amended charge.

20 cents an hour above the highest rate payable to employees under their supervision and that lead workmen shall receive at least 10 cents an hour more than the highest rate applicable to employees under their direction. The parties are in agreement that supervisors and lead workmen, as those classifications apply at the Respondent's operations in Sioux City, are not supervisors within the meaning of the Act.²

The General Counsel contends, the Respondent concedes, and the Trial Examiner finds, that at all times material herein the Union has been the certified collective-bargaining agent of a unit consisting of all production and maintenance employees, including all hourly paid workers employed by the Respondent at its plants in Sioux City, Iowa, but excluding office clericals and all supervisory personnel as defined in the Act.³

B. The Company's Expansion and Internal Reorganization During the Period from 1965 to 1967

Sometime during the course of the year 1965 the Respondent made a decision to increase the number of foremen and foreladies and assistant foremen and assistant foreladies⁴ employed by the Company. This resulted, in part, from the Company's plan to add another building to its existing facilities that would enable it to double the number of employees and, in part, from a desire to strengthen the management structure.

Roy Barnum, personnel director for the Respondent, testified that in August 1965, when a number of supervisors were promoted to higher classifications,⁵ the Respondent concluded that a different type of supervision was needed in certain areas which the existing classification of supervisor did not provide. Barnum testified that up until then the effectiveness of a supervisor in the Company's personnel structure was limited by several factors.

Principal among these, according to Barnum, was the fact that under the collective-bargaining agreement, in the event of a layoff a supervisor could bump back into the hourly paid position he had held before becoming a supervisor. Barnum testified that this made it difficult for a supervisor to direct the employees on a line or question their work ability when he knew that at a later day he might be returned to his former rank-and-file job on the same line. A similar explanation for this move was offered by Ernie J. Hillebrand, who became factory manager in 1965. According to Hillebrand, upon first assuming his new post in 1965, he concluded that the Company was not getting the most out of the factory's supervision and that the management hierarchy was inadequately staffed.

Hillebrand testified: "When I first came here there was only one general foreman for all of the radio division, which was entirely too much for one man to handle . . . the hourly paid supervisors weren't really in there supervising the lines the way a management person should, they didn't take proper disciplinary action, operators were performing a poor quality of work . . . some [absentees] were never a point of discussion unless the foreman of that division would question the hourly paid supervisors, and then he would take the disciplinary action." Hillebrand further testified that because of the foregoing problems "[E]ven prior to the opening of the second plant [in the fall of 1966] we had made a decision to put one salary person . . . a management forelady, on one chassis line and have an hourly paid supervisor on the other chassis line." According to Hillebrand, this arrangement was established to enable the salaried forelady to be in charge of both lines with an hourly paid supervisor as her assistant.⁶

Eldon B. Hansen, an employee of the Respondent for many years and chairman of the union negotiating committee, testified that in 1965 and prior to the time that several supervisors were

² The current collective-bargaining agreement carefully spells out the exclusions so that, as noted above, supervisors and lead workmen are kept within the bargaining unit. Thus, article II, the recognition clause, provides that the unit shall consist of "all production and maintenance employees in the Sioux City, Iowa plants of the Company as certified by the National Labor Relations Board on March 27, 1947, excluding office personnel and supervisory employees with the authority to hire, promote, discharge, discipline, change the status of an employee, or effectively recommend such action, provided that the above language shall not exclude anyone below the rank of Assistant Foreman, it being the intention [of the parties] that all employees of the Company paid on an hourly basis shall be included within such unit" (Emphasis supplied).

³ For the sake of clarity, wherever "supervisor," or "bargaining unit supervisor," appears hereinafter, the term is used in the same sense as in the collective-bargaining agreement, rather than in the meaning accorded it by the statutory definition set forth in the Act.

⁴ In his brief the General Counsel has raised the question as to whether there were foreladies or assistant foreladies in the plant hierarchy prior to 1965. The record, however, is silent on this issue.

⁵ On August 16, 1965, the Respondent effected the following reclassifications:

(1) Joe Mitchell from supervisor in radio phasing to assistant foreman in radio phasing.

(2) Given Ives from leadman in rivoting to assistant foreman in rivoting

(3) Clara Sachau, Virginia Gallagher, and Doris Ullrich from supervisors on the radio chassis line to assistant foreladies on the chassis line

(4) George Boykin, Ronald Ellefson, and Eugene Swart from supervisors in radio final assembly to assistant foreman in radio final assembly

⁶ The parties stipulated as to the number and types of such reclassifications which took place in 1966. They were as follows:

(1) Pauline Schroeder from supervisor in armature winding to assistant forelady armature winding

(2) Richard Platzcek from supervisor in radio inspection to assistant foreman radio inspection.

(3) Kenneth Taylor from supervisor in final assembly to assistant foreman final assembly

(4) Evelyn Courey from supervisor in armature winding to assistant forelady armature winding

(5) Marlys Antrim, Gloria Downs, Phyllis Krabbenhoft, and Jeanette Clift from supervisors on the radio chassis line to foreladies on the radio chassis line

(6) Donald Dion from supervisor in radio final assembly to foreman in radio final assembly

promoted to assistant foremen, the Respondent had a supervisor on each production line. Thereafter, according to Hansen, some of the supervisor positions were eliminated.

In July 1965 there were nine supervisors in the radio assembly department.⁷ In August 1965 six supervisors in this department were reclassified to assistant forelady or assistant foreman. Apparently, only one of these supervisors was replaced, for in September of that year there were four supervisors left in the radio assembly department.

In October 1966 the opening of the new plant resulted in a considerable expansion⁸ and during that month the Respondent had six supervisors in the radio assembly department. In November 1966 the Respondent reclassified four of these supervisors to foreman or forelady. The following month the number of supervisors in that department was reduced to two, and by July 1967 there was only a single supervisor there.

The General Counsel endeavored to establish that throughout the period from 1965 to 1967 there was a steady decline in the number of supervisors. This contention, however, was only partially supported by the evidence. The Respondent offered an exhibit which set out the following tabulation on the ratio of supervisors and lead workmen to hourly paid employees in the bargaining unit:

Date	Employees in unit	Supervisors	Lead Workmen	Total Supervisors and Lead Workmen	Ratio of Supervisors & Lead Workmen to Total Number in Bargaining Unit
7/19/65	861	19	6	25	1 to 34.4
9/20/65	782	14	8	22	1 to 35.5
10/17/66	1,025	18	10	28	1 to 36.6
12/20/66	1,076	17	10	27	1 to 39.9
7/17/67	783	8	6	14	1 to 55.9
10/17/67	1,460	23	15	38	1 to 38.4

From the foregoing it will be seen that whereas there was a proportionate decline in the number of supervisors to the total number of hourly paid employees, the reduction was not a precipitous one. Moreover, the record does not bear out the suggestion, also made by the General Counsel, that during the period in question when a supervisor was reclassified to assistant foreman, the vacancy thereby created in the supervisor's position was never filled. The record establishes that, in fact, several of these vacancies were filled. Thus, of seven witnesses for the General Counsel, all of whom had been reclassified from supervisor to assistant foreman or forelady during the period from 1965 to 1967, three testified⁹ that subsequent to their being reclassified, a replacement supervisor was appointed to fill the vacancy.

⁷ This department consisted of subassembly, chassis assembly, and final assembly.

C. The Union's Request for Bargaining on the Reclassification Issue and the Company's Response

In April 1967 during a meeting of the negotiating committee with Barnum and Hillebrand, Business Agent O'Connor protested that a number of the supervisors had been removed from the bargaining unit. The Respondent's representatives took the position that the matter of changing the status of these employees was within the sole discretion of the management.

On April 28 O'Connor wrote a letter of protest to R. F. Weinig, vice president of the Respondent, wherein he reviewed the discussion on the supervisory issue with Barnum and Hillebrand, stated that the Union would not accept the position of the latter officials on the question and requested a meeting with Weinig to explore the matter more fully. O'Connor attached to the letter a list of former supervisors, who, the Union contended, were still doing bargaining unit work, notwithstanding their reclassification to foremen or foreladies.

In a letter dated May 10, Weinig wrote O'Connor that representatives of management would be willing to discuss the issue with the Union's shop committee but that the Company did not consider the matter a subject for negotiation. In his letter Weinig stated:

[The matter] is beyond the scope of the authorization granted you as bargaining agent for the Company's hourly paid production and maintenance employees by the National Labor Relations Board on March 27, 1947. All the employees in question are either supervisory employees at, or above, the rank of Assistant Foreman, or Salaried Engineering employees, or Salaried Office Employees; all of which are not included in your certification by the National Labor Relations Board.

In a letter dated May 17, O'Connor renewed the request for a meeting with the management to discuss the removal from the bargaining unit of certain employees who were promoted to foreman or forelady positions. In this connection, O'Connor stated, in relevant part:

We were told some time ago that the company would need some more foremen and foreladies when it moved in to its new plant, but it appears that the company has promoted many of these employees and they continue to perform the same duties as they did prior to promotion We are very doubtful of the true status of many of the employees the company has promoted to foremen and foreladies. It appears that most of them continue to do the same work they did before being promoted.

⁸ On October 17, 1966, there were 1,025 employees in the bargaining unit, as compared with 782 on September 20, 1965

⁹ Viz, Virginia Gallagher, Joseph C. Lange, and Joseph Mitchell.

Thereafter, on about June 15, O'Connor and the shop committee met with William A. Amsler, secretary and treasurer of the Respondent, and Personnel Director Barnum. At this meeting the latter representatives reiterated the Respondent's previously stated position that the matter in question was not subject to negotiation.

On September 6 O'Connor wrote to Amsler to protest that Arthur Franker, a supervisor in quality control, had been reclassified to foreman in that department, without changing the duties of his job and without any notice having been given to the Union.

The record reflects no formal answer to this letter from the Union. In any event, it is undenied that the Respondent's position, with respect to the issue raised, remained unchanged from that which it had expressed in the earlier correspondence and at the meetings which management had held with the union committee.

On September 22, 1967, the Union filed an unfair labor practice charge¹⁰ alleging that the Respondent had violated Section 8(a)(1) and (5) of the Act by unilaterally removing two supervisors, Arthur Franker and Joseph Thomas, from the bargaining unit by reclassifying them as foremen and thereafter having them continue to perform the same bargaining unit work which they had performed prior to reclassification.

D. Contentions of the Parties; Findings and Conclusions With Respect Thereto

In support of the allegation that the Respondent violated Section 8(a)(5), the General Counsel relies only on the reclassification of Arthur Franker and Joseph C. Thomas.¹¹ The work of these last named individuals, both before and after their reclassification, will now be considered.

Thomas was reclassified on March 16, 1967, from supervisor in the material control department to foreman in the same department. He testified that as a supervisor he watched the stock and supervised the stock clerks as they supplied material to the production lines. Five employees, classified as stock clerks, or stock chasers, worked under him. According to Thomas, about 50 percent of the time he himself helped the clerks on those occasions when they fell behind. Thomas received \$2.32 an hour as a supervisor.

After becoming a foreman in the same department, Thomas continued to oversee the stock clerks and chasers, but the number for which he

was responsible tripled. Thomas testified that since his reclassification he spends very little time actually working with the stock clerks and that he does so only in an emergency. From Thomas' undenied and uncontradicted testimony it is likewise clear that as a foreman he now has the authority which clearly brings him within the statutory definition of a supervisor. Thus, Thomas now: issues reprimands; recommends whether a probationary employee is to be retained or terminated;¹² grants time off and assigns a replacement in case an employee is ill; keeps daily attendance records; selects the employees who are to be authorized to work overtime; has responsibility for the departmental budget; recommends who will be assigned to work in the department; and, if a grievance is filed, handles the first stage of the grievance processing. Upon being reclassified to foreman, Thomas received a salary of \$412 per month.¹³ Thomas' former position as supervisor was never filled. Harvey A. Davis, manager of the material control department and the one immediately over Thomas in the management hierarchy, testified that when first moving into the new plant, Thomas was in charge of chassis assembly which then had only one or two production lines. According to Davis, shortly after the move, this unit was expanded to 13 lines and, to fill the need for a foreman there, Thomas was promoted.

Franker was reclassified on August 16, 1967, from supervisor in the quality control department to foreman in the same department. Franker testified that as a supervisor he helped the employees in the balance area, radio final area, and the quality control laboratory when they had minor problems. Any major problems were referred to J. L. De Vries, manager of the quality control department. While he was a supervisor, Franker had five to eight employees under him.

After he became a foreman, Franker was responsible for a total of 14 employees. Included within this number were those whom he had supervised before his reclassification. Franker testified that whereas as a supervisor he spent about 25 to 30 percent of his time working along with the employees, he now spends only about 5 percent of his time in this fashion, and that this occurs mostly in emergency situations. From Franker's credible and uncontradicted testimony it is apparent, and the Trial Examiner finds, that as a foreman, Franker now: assigns employees to their jobs; issues warnings to, and disciplines, employees; makes recommendations as to filling any vacancy which

¹⁰ This was actually a first amended charge, an original charge having been filed on June 27, 1967.

¹¹ The General Counsel makes this concession in his brief, since all other reclassifications which occurred at the Respondent's plant were effected more than 6 months prior to the filing of the first charge.

¹² Thomas testified that if a probationary employee is unsatisfactory, "I can have him dismissed."

¹³ This constituted a slight pay increase for Thomas. His hourly wage as a supervisor gave him a total at the end of each month that was the equivalent of a monthly salary of \$402.

arises;¹⁴ has the sole discretion to reject finished products when they do not meet quality standards; has liaison duties with foremen of other departments in connection with problems arising as to defective materials; prepares numerous reports on the quality of production; and has a clerk that works under him to assist in the preparation of these reports.¹⁵ As a supervisor, Franker was paid \$2.79 an hour. After being promoted to foreman he was given a salary of \$515 per month, or the equivalent of \$2.91 an hour.¹⁶

From the findings set forth above, the Trial Examiner concludes and finds that both Thomas and Franker, upon their reclassification to the position of foreman, had the status of supervisors within the meaning of Section 2(11) of the Act.¹⁷

Throughout the General Counsel's argument, and in his brief, there seems to be an assumption that neither Thomas nor Franker, upon their reclassification, became foremen within the meaning of the Act. This assumption, however, is unfounded, for the evidence clearly establishes that upon their promotion these individuals became part of the management hierarchy. Furthermore, there is nothing in the record to indicate, nor does the General Counsel contend, that their selection was in any way discriminatory.

The initial question is whether the Respondent was under a statutory obligation to bargain with the Union regarding the nondiscriminatory choice of supervisory personnel. The Board has already answered that question in the negative. *Kono-TV-Mission Telecasting Corporation*, 163 NLRB 1005.¹⁸ The General Counsel contends, however, that the promotion of these individuals and the duties assigned to them removed work from the bargaining unit. In a sense, this is frequently the situation when a leadman, or gang leader, is promoted to foreman over his coemployees, as well as others, and his old job in the unit is not immediately filled. Further, in the Respondent's plant, with its personnel phenomenon of a nonstatutory classification of "supervisor," there was frequently an overlap between the duties of such supervisors and those in the lower levels of management.

The General Counsel further sought to establish that many of the positions classified as supervisor

were either abolished or abandoned when the incumbent was promoted to foreman. This appears to have been the case with respect to the supervisory jobs which Thomas and Franker had. On the other hand, it was not true of some of those which had been held by other witnesses for the General Counsel who at an earlier date had been reclassified to foreman or forelady.¹⁹ Moreover, the data produced by the Respondent clearly established that by no means was the post of supervisor eliminated as a job classification within the unit. On September 20, 1965, when there were 782 employees in the bargaining unit, the Respondent had 14 supervisors. On October 17, 1967, when there were 1460 employees in the unit, the Respondent had 23 supervisors.

The Respondent's plan to increase the number of foremen in order to provide more effective discipline and meet the problems involved in a rapid expansion of the plant personnel, all fell within an area that has been left to the prerogative of the Employer. Consequently, the Respondent was not obligated to give notice to, or negotiate with, the Union about its decisions or plans in this connection. *Kono-TV-Mission Telecasting Corporation*, 163 NLRB 1005; cf. *N.L.R.B. v. American National Insurance Company*, 343 U.S. 395. Moreover, insofar as the Respondent's plans provided for an increase in the number of foremen by reclassifying supervisors to these newly created positions, the Company was adhering to its traditional practice. Amsler, a member of management for over 30 years, testified that it had always been the Company's policy to recruit its salaried supervision by promotions from within the plant.

The issue here is somewhat analogous to that in *Westinghouse Electric Corp.*, 150 NLRB 1574. In that case the Board found that the employer had not violated Section 8(a)(5) by unilaterally contracting out unit work where the contracting in question did not involve a departure from past practices, did not effect a change in conditions of employment, and did not impair, significantly, tenure, security, or work opportunities for those in the bargaining unit. See also *American Oil Company*, 155 NLRB 639, 655. Similarly, here the General Counsel did not establish that the Respon-

¹⁴ After Franker became a foreman, four positions in his department were filled by transfers from other sections in the plant. Where qualifications of the applicants were equal, selections were made on the basis of seniority. This was done in filling two of the positions. As to the two other vacancies, however, the qualifications of the applicants were not equal. Franker testified that in these latter instances, the applicants of his choice were selected.

¹⁵ As a supervisor, Franker was responsible for preparing only one report.

¹⁶ After Franker was reclassified to foreman, no supervisor was appointed to fill the position he had vacated.

¹⁷ As background evidence the General Counsel offered the testimony of several witnesses who had been reclassified from supervisor to assistant foreman or assistant forelady during the period from August 1965 to November 1966. These were Evelyn Courey, Virginia Gallagher, Phyllis Krabbenhoft, Joseph C. Lange, and Joseph Mitchell. On cross-examination all of the foregoing testified that subsequent to such reclassification, he (or

she) had authority comparable to Franker and Thomas as described above. Thus, all of the foregoing testified that after being promoted they assigned work, issued warning notices, disciplined employees under them, and prepared evaluation reports on probationary employees which were used by the personnel director to determine whether to retain or to terminate those on probation. Accordingly, it is apparent, and the Trial Examiner finds, that, upon their reclassification to assistant foreman or forelady, Courey, Gallagher, Krabbenhoft, Lange, and Mitchell became supervisors within the meaning of the Act.

¹⁸ "[T]he size and composition of an employer's supervisory staff, including the identity of the individuals chosen to fill supervisory jobs must be regarded as falling within the area of management prerogative." *Kono, idem*

¹⁹ As noted earlier, Gallagher, Lange, and Mitchell testified that subsequent to their promotion to foreman, a supervisor was appointed to fill the place which each had vacated.

dent's promotion of Thomas and Franker resulted in the removal of unit work which had any significant impact on "the job tenure, employment security or reasonably anticipated work opportunities for those in the bargaining unit." *Westinghouse Electric Corp.*, *supra* at 1546. See also *Allied Chemical Corp.*, 151 NLRB 718, 719, *affd.* 358F.2d 234 (C.A. 4)²⁰

Consequently, since it has been found that the promotions of Thomas and Franker were not a mandatory subject of bargaining and since, in any event, on this record, it appears that the Respondent's unilateral action in these reclassifications was nondiscriminatory, arose solely from economic considerations, and resulted in no significant detriment to the employees in the bargaining unit, the Trial Examiner concludes and finds that the General Counsel has not proved by a preponderance of the evidence that the Respondent's refusal to bargain with regard thereto constituted a violation of Section 8(a)(5) and (1) of the Act.²¹

CONCLUSIONS OF LAW

1. Wincharger Corporation, a subsidiary of Zenith Radio Corporation, is engaged in com-

²⁰ *Dixie Ohio Express Company*, 167 NLRB 573, cited by the General Counsel in his brief, is distinguishable from the present situation, for that case involved not only a reorganization of the Company's work practices, but also the termination, without notice to the bargaining agent, of 15 employees in the unit. The latter element, not being present in the instant case, substantially differentiates the basis for the Board's decision in *Dixie Ohio Express* from the factual situation herein.

²¹ The Respondent also contends that any duty to bargain with the Union about the reclassification issue was discharged in 1965 when, at the Union's request, the collective-bargaining contract was reopened for negotiations which resulted in an amended agreement being signed in December 1965. There is some conflict in the record as to how much the union representatives knew at that time about the Respondent's plans for

merce, and the Union is a labor organization, all within the meaning of the Act.

2. The Union is, and at all times material herein has been, the certified collective-bargaining agent of a unit consisting of all production and maintenance employees, at the Respondent's plants in Sioux City, Iowa, including all hourly paid employees, but excluding all office personnel and supervisory personnel as defined in the Act.

3. The General Counsel has failed to establish by a preponderance of the evidence that the Respondent is engaging in or has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

Pursuant to Section 10(c) of the Act, the Trial Examiner hereby issues the following:

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and on the entire record in this case, the Respondent's motion to dismiss the complaint in its entirety is granted.

enlarging its staff of foremen. From the testimony of Barnum, it is clear that, at some point during the summer, Business Agent O'Connor was told about the prospect for promotions which the Company's expansion plans would necessitate. While on the stand, O'Connor conceded that during this period he was aware that a number of employees had been promoted from a bargaining unit classification to assistant foreman or foreman. On the other hand, since it is the conclusion of the Trial Examiner that the Respondent was under no obligation in 1967 to bargain with the Union about the reclassification of Franker and Thomas, it is unnecessary to decide whether, in any event, and in this record, the Union, through laches during the negotiations when the contract was reopened in 1965, waived any right to notice of the Respondent's plans to promote its supervisors