

**Gravenslund Operating Company d/b/a Washington Hardware and Furniture Co. and Retail Clerks Union No. 1612, Retail Clerks International Association, AFL-CIO. Case 19-CA-3981**

March 26, 1969

DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On September 25, 1968, Trial Examiner George H. O'Brien issued his Decision finding that Respondent had not engaged in unfair labor practices and recommending that the complaint be dismissed, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions, and the Charging Party filed exceptions and a supporting 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 brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent herewith.

As more fully set forth in the Trial Examiner's Decision, the record establishes that in each year from 1950 through 1964, the Respondent had paid its employees a Christmas bonus computed on the Respondent's evaluation of the services rendered by the recipients thereof, but in 1965 the bonus was unilaterally discontinued. Thereafter, the 1965 bonus was paid in December 1967, following issuance of the Board's Decision and Order, dated November 26, 1967, in a prior case alleging that such action was unlawful.<sup>1</sup> It was there held<sup>2</sup> that the Respondent's Christmas bonus constituted an integral part of the wage structure which was a mandatory subject of bargaining, and that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally deciding to discontinue, and by unilaterally discontinuing, the payment thereof in 1965.

After the events involved in the prior case, the Respondent again did not pay a Christmas bonus in either 1966 or 1967, and did not consult with the Union concerning this at any time. On April 1, 1968, the Union filed the instant charge, alleging that the Respondent acted unlawfully in unilaterally failing to pay the 1967 bonus.<sup>3</sup> The Respondent conceded before the Trial Examiner that a Christmas bonus is a mandatory subject of bargaining but argued that the Union had not requested bargaining on this subject at any relevant time. Although a new contract was executed in 1968,<sup>4</sup> it contained no provision or reference to this bonus.

The Trial Examiner concluded that because the Board in the prior case specifically found that in 1965 the Respondent discontinued the practice of paying the Christmas bonus, albeit unlawfully, and as the Board's order therein did not direct that the practice be resumed, the bonus was no longer in existence and was no longer a part of the wage structure after 1965. He further held that, since the Respondent effectively discontinued the bonus payment, it was the Union which was seeking a change in existing conditions of employment, i.e., it was attempting to secure reinstatement of the bonus payment, and it was incumbent upon the Union to request discussion thereof. The Examiner found that, as the Union had failed to request bargaining concerning such a change, the Respondent had not violated Section 8(a)(5) of the Act. We find merit in the exceptions to these findings.

It is patent that the order in the prior case was directed to the facts then before the Board; i.e., the 1965 failure to pay the bonus. It is also obvious that, in directing the Respondent to pay the amount of that bonus to employees and to cease and desist from refusing thereafter to bargain collectively by unilateral changes in bonus payments or other conditions, the decision contemplated the continued payment of such bonuses unless the Respondent bargained with the Union before it failed to make such payment in the future. To hold otherwise would be to permit the Respondent to profit by its unlawful conduct by giving effect to its unilaterally adopted change while relieving the Respondent of its

<sup>1</sup>The Union filed no charge based on the failure to pay the 1966 bonus for the stated reason that the prior case was pending before the Board for determination of whether the Respondent had an obligation to bargain concerning the Christmas bonus. When the decision issued in that case involving the 1965 bonus, the 10(b) period, during which a charge could be filed concerning the 1966 bonus, had expired.

<sup>2</sup>The previous collective-bargaining agreement between the Employer and Union was entered on November 18, 1965, and was effective to May 11, 1968. During negotiations for a new contract in June 1968, the Union was informed by the Respondent that the Company could not pay the 1967 Christmas bonus because it had no profit in 1967, and the Union responded that it would leave the matter to the Board for determination and if the Company would demonstrate to the Board that it made no profit in 1967, no bonus would be required. No evidence was adduced to support this assertion other than testimony by Respondent's secretary-treasurer, Mr. John Gravenslund, that 1967 was an unprofitable year. However, this would be relevant only to the computation of the amounts of the bonuses to be paid.

<sup>1</sup>*Gravenslund Operating Company d/b/a Washington Hardware and Furniture Co.*, 168 NLRB No. 72

<sup>2</sup>Member Brown dissented in the prior case because he would not have reached the merits at that time, but would have held the matter in abeyance pending utilization by the parties of their privately arrived at grievance-arbitration method of resolving disputes. However, as the majority of the Panel did consider and resolve the issues in that proceeding, Member Brown accepts the findings of his colleagues in that case as conclusive of the underlying facts and legal questions involved herein.

obligation to bargain with the Union about such change upon payment of 1 year's bonus. Such a result is incongruous and inconsistent with the conclusions reached in that case, and falls far short of returning the parties and the employees to the *status quo ante* to the extent possible.

In view of the above, it is clearly implicit that the Christmas bonus continued as a part of the wage structure at all times relevant herein, and continuously constituted a mandatory subject of bargaining which the Respondent could not lawfully modify without first discussing it with the employees' collective-bargaining representative.<sup>5</sup> It is also apparent that the Respondent was the party seeking to change an existing condition of employment, and that therefore good-faith bargaining would require that the Respondent propose such change to the Union and request its agreement. This the Respondent admittedly failed to do at any time, and particularly in connection with the failure to pay the Christmas bonus in 1967, which was the subject of the charge and complaint herein. Accordingly, we find that the Respondent, by unilaterally discontinuing the payment of the Christmas bonus in 1967 to its employees in the appropriate unit, violated Section 8(a)(5) and (1) of the Act.

#### THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth herein, occurring in connection with its operations, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

#### THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, we shall order Respondent to cease and desist therefrom and take certain affirmative action which we find necessary to effectuate the policies of the Act.

We shall also order the Respondent to make its employees whole for the monetary loss suffered by them as a result of the unlawful withholding of the 1967 Christmas bonus, the amount of loss to be determined by the formula, as nearly as can be ascertained, used in making bonus payments in previous years,<sup>6</sup> with interest at the rate of 6 percent

<sup>5</sup>The fact that the Union did not protest, or file a charge based on the Respondent's failure to pay the 1966 bonus is immaterial in this situation, since it was awaiting Board decision on the underlying questions of whether the Christmas bonus was a part of the wage structure and whether any change therein was a mandatory subject of bargaining. It is well settled that each failure to satisfy its statutory obligation to bargain constitutes a separate violation of the Act. Cf. *West Penn Power Company*, 143 NLRB 1316, 1321, enforcement denied on other grounds 337 F.2d 993 (C.A. 3)

per annum.<sup>7</sup>

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. Gravenslund Operating Company d/b/a Washington Hardware and Furniture Co. is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Retail Clerks Union No. 1612, Retail Clerks International Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time employees employed by the Respondent at its retail outlet at 6 West Kennewick Avenue, Kennewick, Washington, excluding guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining - within the meaning of Section 9(b) of the Act.

4. The Union is, and at all times since July 27, 1964, has been, the exclusive certified representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. By unilaterally discontinuing the payments of Christmas bonuses in 1967 to its employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Gravenslund Operating Company d/b/a Washington Hardware and Furniture Co., Kennewick, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union with respect to Christmas bonuses or any other term or condition of employment by unilaterally effectuating changes in bonus payments or any term or condition of employment of its employees in the appropriate bargaining unit in

<sup>6</sup>Although some difficulty may be encountered in computing the employees' loss as a result of the Respondent's unfair labor practices, this is not a legitimate reason for a total denial of compensation. The formula to be used in determining the amount of compensation due to the employees can be determined by agreements of the parties, or, if necessary, in a backpay proceeding. *American Fire Apparatus Company*, 160 NLRB 1318, 1319

<sup>7</sup>*Isis Plumbing & Heating Co., Inc.*, 138 NLRB 716, *Zelrich Company*, 144 NLRB 1381, enf'd 344 F.2d 1011 (C.A. 5)

derogation of the rights of the Union or any other labor organization which employees may select as their exclusive bargaining representative.

(b) In any like or related manner interfering with the rights of employees guaranteed in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Pay to each of its employees in the appropriate unit the amounts due them for the 1967 Christmas bonus, to be computed in the manner set forth in this Decision and Order.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms hereof.

(c) Post at its place of business in Kennewick, Washington, copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by an authorized representative of the Respondent, 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 employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 19, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

<sup>1</sup>In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order"

## APPENDIX

### NOTICE TO ALL EMPLOYEES

Pursuant to the Decision and Order of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that.

WE WILL NOT refuse to bargain collectively with Retail Clerks Union No. 1612, Retail Clerks International Association, AFL-CIO, by unilaterally changing Christmas bonuses or any other term or condition of employment of any employees in the appropriate bargaining unit in derogation of the rights of the Union.

WE WILL NOT engage in any like or related conduct which interferes with, restrains, or coerces you in the exercise of the rights guaranteed you in Section 7 of the Act.

WE WILL pay the 1967 Christmas bonus to our employees in the appropriate amount due them, with interest thereon at the rate of 6 percent per annum.

The appropriate unit is:

All full time and regular part-time employees employed by us at our retail outlet at 6 West Kennewick Avenue, Kennewick, Washington, excluding guards and supervisors as defined in the Act.

GRAVENSLUND  
OPERATING COMPANY  
D/B/A WASHINGTON  
HARDWARE AND  
FURNITURE CO  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_ (Representative) \_\_\_\_\_ (Title)

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

If employees have any question concerning this notice or compliance with its provisions they may communicate directly with the Board's Regional Office, Republic Building, 1511 Third Avenue, Seattle, Washington 98101, Telephone 206-583-4532.

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

GEORGE H. O'BRIEN, Trial Examiner This proceeding, heard at Richland, Washington, on August 9, 1968, pursuant to a charge filed April 3, 1968 and a complaint issued June 28, 1968, presents the question as to whether Respondent violated Sections 8(a)(1) and (5) of the National Labor Relations Act as amended herein called the Act by failing to pay a bonus to its employees at Christmastime, 1967.

Upon the entire record in the case and after due consideration of briefs filed by the General Counsel and by the Respondent I make the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF RESPONDENT

Gravenslund Operating Company d/b/a Washington Hardware and Furniture Co., herein called Respondent, is and has been at all times material herein, a State of Washington corporation engaged at Kennewick, Washington, in the retailing of general merchandise. During its past fiscal year, Respondent, in the course and conduct of its said business, had gross sales exceeding \$500,000 and purchased and received at its Kennewick store goods and material from directly outside the State of Washington valued in excess of \$50,000. I find that Respondent is an employer within the meaning of Section 2(2) of the Act, engaged in commerce, and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

Retail Clerks Union No. 1612, Retail Clerks International Association, AFL-CIO, herein called the Union is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

A *Preliminary Statement*

On November 26, 1967, the Board handed down its Decision and Order in *Gravenslund Operating Company d/b/a Washington Hardware and Furniture Co. and Retail Clerks Union No. 1612, Retail Clerks International Association, AFL-CIO*, Case 19-CA-3368, 168 NLRB No. 72, herein called the prior case. This Decision and Order was based upon a stipulation of fact dated September 22, 1966 Facts found by the Board in the prior case are, by the rule of *res judicata*, uncontrovertible, but only through September 22, 1966. As to the period after September 22, 1966, the Board's findings have only presumptive validity.<sup>1</sup>

In taking official notice of the facts found by the Board in the prior case and while recognizing the presumption of law that a fact once established is presumed to continue until the contrary is shown, I have not given finality to that presumption. The Board in the prior case found that as of December, 1965 annual Christmas bonuses were part of Respondent's wage structure. The principal issue in this case is whether annual Christmas bonuses were still part of Respondent's wage structure in December, 1967. Evidence hereinafter detailed demonstrates that they were not.

B *Material Findings in Prior Case*

The Board found in the prior case that the Union, since its certification on July 27, 1964, had been the statutory representative of all Respondent's selling and nonselling employees, excluding guards and supervisors, and that on November 18, 1965, Respondent and the Union entered into a 3-year contract. The parties stipulated in the prior case (TXD):

Since about 1950 and prior to 1965 Respondent has paid to its employees [in the bargaining unit] shortly before Christmas each year a bonus in the form of a check. The amount of the check for each employee has varied from year to year. Some employees have received a greater amount than other employees. The amount was not based on profit, sales, or any particular formula, but the Respondent attempted to adjust the amount according to the value of each employee's services to the Respondent. None of the employees were told at or prior to hiring that they would be paid a Christmas bonus . . .

In the year 1965 Respondent decided that its economic position did not justify the payment of Christmas Bonuses. Respondent failed to pay said bonuses without giving notice to or offering to bargain with the Union concerning its decision

On the basis of these facts, and the parties' entire stipulation, the Board found and concluded:

It has long been held that Christmas bonuses which are not gratuities and which have been paid with regularity over extended periods of time are not only an integral part of the wage structure, but also constitute a mandatory subject of bargaining. In view of the Respondent's regularity in the payment of such bonuses over 15 consecutive years, we are persuaded that the Christmas bonuses are not mere gifts or "discretionary"

bonuses as claimed, and that, as also has long been established, the Respondent's employees had the right to expect and rely upon the continuation of such bonus payments as part of their wages. It then follows that since the subject of Christmas bonuses was not discussed during negotiations and because the contract does not contain an express provision giving the Respondent the right to take unilateral action with regard thereto, the Respondent was under a statutory duty to bargain about its decision to discontinue, and its discontinuance of, its past practice of paying such annual bonuses. The Respondent's unilateral actions which resulted in changes in the wages and terms of employment of its employees, therefor, even though such actions may not have been taken in bad faith violate its statutory bargaining obligation. Accordingly we find that the Respondent, by unilaterally deciding to discontinue, and by unilaterally discontinuing, the payment of Christmas bonuses in 1965 to its employees in the appropriate unit, violated Section 8(a)(1) and (5) of the Act. [footnotes omitted.]

In its order in the prior case, the Board required the Respondent to cease and desist from refusing to bargain with the union with respect to Christmas bonuses or any other term or condition of employment by unilaterally effecting changes in bonus payments or any term or condition of employment of its employees and to "pay to each of its employees in the appropriate unit the amounts due them for the 1965 Christmas bonus, to be computed in the manner set forth in this decision and order"

Respondent was not specifically ordered to reinstate its practice of paying annual Christmas bonuses.

C. *Developments Subsequent to September 22, 1966*

The Respondent did not pay Christmas bonuses for the year 1966 nor for the year 1967. The Respondent did, after issuance of the Board's order of November 26, 1967 pay the bonus which it had unlawfully withheld in 1965.

The collective-bargaining agreement entered into between the Union and the Respondent on November 18, 1965 expired on May 11, 1968 and the parties at the time of this hearing were in negotiations for a new contract. The Union has not at any time since September 22, 1966 requested the employer to negotiate on the subject of Christmas bonus. The Union did not ask the employer to pay a Christmas bonus in either 1966 or 1967. The Union did not protest the nonpayment of the 1966 Christmas bonus. The Union did not, other than by the filing of the instant charge, protest the nonpayment of the 1967 Christmas bonus. The Respondent did not notify the Union of its intention to pay no bonus in 1966, nor did it notify the Union of its intention to pay no bonus in 1967, nor did it, prior to June, 1968, offer to bargain with the Union on the subject of bonus.

Burton Silvey, the Union's business agent, interrogated by the General Counsel, testified that negotiations for a renewal contract began in April, 1968 and that as far as he knew, the only time Christmas bonus has been mentioned was at a meeting in June which he attended, and that the following occurred:

Q. (by Mr Weninger) Would you tell us what was said on the question of Christmas bonuses at the meeting you were in attendance?

A. At that time John [Gravenslund] told us that there was no money to pay the Christmas bonuses -- or no profit to pay the Christmas bonuses for the year 1967

<sup>1</sup> *Mallory Capacitor Company, a Division of P. R. Mallory & Co., Inc.*, 169 NLRB No. 5, *Fitzgerald Mills Corporation*, 139 NLRB 802, 803, *NLRB v. M. L. Townsend*, 185 F.2d 378, 381 (C.A. 9)

Q. Did he say anything else on the subject?

A. No, this was as far as we went.

Q. Is that all he said on that subject?

A. Yes.

Q. Are those his exact words to the best of your knowledge?

A. Yes, they were.

Under cross-examination by Respondent's Counsel, Mr. Silvey testified

Q. You stated that you were at a meeting in June of 1968 and you heard Mr. Gravenslund state in reference to the matter of Christmas bonuses for '67 that "there was no money to pay them" What did Dorothy Harrold [Secretary-treasurer of the Union] then state? What did you then state to that?

A. Then Dorothy said that we should file or go ahead with this decision of the National Labor Relations Board and let them decide the case and let Gravenslund prove to the N.L.R.B. there wasn't profits enough to pay the Christmas bonuses.

Q. She indicated that if the company did not show a profit for 1967 it would be all right for the union not to have a bonus for that year. Is that her position?

A. That is what she stated.

In explanation of the Union's failure to make any demand for payment of the 1967 Christmas bonus or to request bargaining on subject of Christmas bonus, Mr. Silvey testified:

Well at this time we did not know what the Board's decision was going to be. We didn't know that they weren't going to cover the bonus for Christmas of '66 or '67.

#### D. Respective Arguments of General Counsel and Respondent

The General Counsel argues in substance that the annual Christmas bonus is still part of Respondent's wage structure, and that Respondent was and is under a continuing duty to pay such bonuses. He asserts that Respondent's failure to pay the bonus in December, 1966 and in December 1967, constituted unilateral changes in wages and working conditions in breach of such duty. He concedes that Section 10(b) of the Act precludes the finding of a violation based on the nonpayment of the 1966 bonus. He points out the fact that the Union has never consented to the nonpayment of any Christmas bonus and has not waived its statutory right to bargain on the subject of Christmas bonus.

Respondent concedes that Christmas bonus is a mandatory subject of bargaining and that it is obligated to bargain with the Union upon request. Respondent points out that the Union has not at any relevant time requested bargaining on the subject of Christmas bonus. Respondent further relies on the testimony of Silvey, above set forth, to establish that the parties bargained and reached an accord on the 1967 Christmas bonus. Its argument is, in essence, that when Respondent's negotiator stated that there was no money to pay the 1967 Christmas bonus, the Union's negotiator agreed that there should be no bonus provided Respondent could demonstrate to the Board that it made no profit in 1967, and that the Union's condition was satisfied by the testimony of Gravenslund in this proceeding. Respondent further urges, on the authority of *General Telephone Company of Florida v N L R B*, 337 F.2d 452 (C.A. 5), that an order requiring Respondent to pay any past or future bonus would be inappropriate, since there has not been any deliberate, purposeful refusal

by Respondent to engage in negotiations.

The General Counsel attempts to justify the Union's silence by asserting that the Union was not seeking any change in the established and existing bonus practice, and that there was, therefore, no occasion for it to make any demand for bargaining. If the Respondent wished to change its bonus practices, it was the obligation of the Respondent to broach the subject to the Union. When the Respondent took unilateral action it violated Section 8(a)(5) of the Act. As to Respondent's contention that the parties had reached an accord on the subject of the 1967 bonus, the General Counsel, without conceding that in any sense there was an agreement, asserts that such an agreement would not excuse Respondent's unilateral action, nor oust the Board of jurisdiction. The General Counsel requests that, *inter alia*, Respondent be ordered to pay the 1967 bonus.

#### E. Concluding Findings

The theory of the General Counsel is, in essence, that the Board, having found that the Christmas bonus was an integral part of the wage structure, and having ordered Respondent to pay the 1965 bonus, and having ordered the Respondent to refrain from unilateral action in the future, the annual Christmas bonus was part of the wage structure in 1967, and Respondent's failure to pay the 1967 bonus was a *per se* violation of Section 8(a)(5) of the Act. This proposition rests on a false assumption and on a presumption of law which has been overcome by the evidence before me. The proposition assumes that the Board's order required the employer to restore and maintain its practice of paying annual Christmas bonuses. I do not so read the order. The Board specifically found "that the Respondent, by unilaterally deciding to discontinue, and by unilaterally discontinuing, the payment of Christmas bonuses in 1965 to its employees in the appropriate unit, violated Section 8(a)(1) and (5) of the Act." This is a clear finding that the practice, which had continued for many years had been effectively, albeit unlawfully discontinued. It was well within the power of the Board to order that the practice be resumed but the Board chose not to exercise this power.<sup>2</sup> As of the date of the hearing in the prior case, September 22, 1966, the annual Christmas bonus was not part of the wage structure. The record before me demonstrates that it was not part of the wage structure in 1966, nor in 1967, nor at the time of the hearing in 1968. Good faith bargaining requires that the party seeking a change in existing conditions of employment has the obligation and duty to propose such change to the other party and request his agreement. Respondent breached this duty when in 1965 it effected a unilateral change in the wages of its employees. The Board's order in the prior case constitutes a complete remedy for this violation. In the case before me, it is the Union which is seeking to effect a change in existing conditions of employment. The Union's failure to make any request of the Respondent is fatal to the position of the General Counsel. *Motoresearch Company*, 138 NLRB, 1490, 1493.

There is no merit to Respondent's contention that agreement was reached on the subject of the 1967 bonus. Respondent did, although belatedly, offer to negotiate and the Union rejected this offer because it preferred to let the

<sup>2</sup>Cf. *L. J. Dreiling Motors*, 168 NLRB No. 76, wherein the Board ordered the Respondent to resume the practice of paying for Sunday holidays, and make employees whole.

Board decide the case.

#### CONCLUSIONS OF LAW

1. Gravenslund Operating Company d/b/a Washington Hardware and Furniture Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act

2. Retail Clerks Union No 1612, Retail Clerks International Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full- and regular part-time employees employed by the Respondent at its retail outlet at 6 West Kennewick Avenue, Kennewick, Washington, exclusive of guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining

within the meaning of Section 9(b) of the Act.

4. The Union is, and at all time since July 27, 1964, has been, the exclusive certified representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment

5. Respondent has not taken unilateral action in derogation of the rights of the Union as the exclusive collective-bargaining representative of Respondent's employees, and has not refused to bargain with the Union within the meaning of Section 8(a)(1) and (5) of the Act

#### RECOMMENDED ORDER

It is recommended that the complaint be dismissed.