

Industrial Welding Company and Sheet Metal Workers' International Association, AFL-CIO, Local Union No. 570. Case 1-CA-6332

April 22, 1969

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND JENKINS

On December 17, 1968, Trial Examiner Myron S. Waks 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 Decision and a supporting brief. General Counsel filed a brief to which 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 the brief, 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 Respondent, Industrial Welding Company, Wethersfield, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

MYRON S WAKS, Trial Examiner:- The complaint in the present case alleges that the Respondent has refused to furnish the Union with information necessary and relevant to the Union's performance of its role as exclusive bargaining representative of an appropriate bargaining unit of Respondent's employees and has thereby committed an unfair labor practice affecting commerce within the meaning of Section 8(a)(5) and (1) and 2(6) and (7) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.*, herein called the Act. The Union's charge was filed May 14, 1968, and the complaint

was issued June 28, 1968.

Pursuant to notice, a hearing was held at Hartford, Connecticut, on July 25 and 26 and August 26, 1968, before me. The General Counsel and the Respondent appeared by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. On October 3, 1968, I received briefs from the General Counsel and the Respondent and have given them due consideration.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, The Industrial Welding Company, is a Connecticut corporation maintaining its principal office and place of business in Wethersfield, Connecticut, where it is engaged in the manufacture, sale, and distribution of weldment fabrication. Respondent annually ships to, and receives from, States outside of Connecticut materials valued in excess of \$50,000. The complaint alleges, the Respondent's amended answer admits,¹ and I find that Respondent is engaged in commerce within the meaning of the Act.

II THE LABOR ORGANIZATION INVOLVED

Sheet Metal Workers' International Association, AFL-CIO, Local Union No. 570 is and at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act.

III THE ISSUE PRESENTED

The issue presented in this case is whether the Respondent violated Section 8(a)(5) and (1) by failing to provide the Union with unit wage rate information, or whether Respondent was privileged in its refusal to supply the information either because the Union's information request was made in bad faith to harass the Employer and coerce midterm bargaining of the contract, or because the right to the information had been waived, or because the presumed relevance of the wage rate information was effectively rebutted by the circumstances.

IV THE UNFAIR LABOR PRACTICES

A. The Facts

In 1957, the Union was certified as the collective-bargaining agent for a unit of Respondent's production and maintenance employees including truckdrivers.² Thereafter, the parties negotiated five contracts, the current contract runs from April 1967 to April 1970. The relevant clause of the present contract provides at section 8.5 that the "Union is agreeable to rates of pay in excess of those established in Appendix A for exceptionally qualified employees, provided the Company proves the qualifications of such employees

¹At the hearing Respondent amended its answer to admit certain allegations of the complaint including those allegations pertaining to the Board's jurisdiction.

²While not accurately reflected in the contract admitted in evidence, the complaint alleges, the answer admits, and the testimony is that this is the certified bargaining unit and the unit for which the Union has bargained.

prior to such time as the increases are granted." Pursuant to section 8.5 of the contract the Company has granted merit increases, sometimes referred to herein as red circle rates. This provision has been in each of the contracts since 1957 and as a result, a number of the employees in the bargaining unit are now receiving rates in excess of Appendix A.

According to the Company, when an employee is deemed qualified by his performance to receive a merit increase, it is granted without first notifying or bargaining with the Union. The Union on its part through Adam Vabalas,³ the financial secretary and business agent of the Union, when requested to do so by unit employees, has discussed red circle rates for such employees with the Employer. Generally Vabalas has raised the matter with the foreman and/or general manager of the Company. Quinn, president of the Company, testified that while he is the only person who grants a red circle rate he relies on the recommendation of the foreman and general manager. Because of the manner in which the Respondent has implemented the contract the Union is not aware of the wage rates of the unit employees, i.e., whether employees are receiving Appendix A rates or so-called red circle rates which are higher in varying amounts than the Appendix A rate.

In March 1968 Business Agent Vabalas requested General Manager Frederick W. Hockert to provide him with the following information: The classifications of the unit employees, a seniority list, information concerning the insurance and pension plans, the names of the supervisors of the Company, and the current wage rates of the employees in the bargaining unit. In response to this oral request Hockert informed Vabalas that he would look into the matter. Thereafter, on April 3, 1968, Vabalas addressed a letter to the Company in which he repeated his request for information in order that he might "more intelligently represent" the members of the bargaining unit. On April 10, Business Agent Vabalas again had a conversation with General Manager Hockert. At that time Hockert said he would give the Union the information regarding the classifications, seniority list, insurance and pensions plans but he would "definitely not" give him the wage rates. Hockert stated that if he gave Vabalas the wage rates it would cause dissension in the shop. On April 15, 1968, John Quinn, president of the Company addressed a reply to Vabalas' letter of April 3, 1968, advising Vabalas that the Company was taking the information request under advisement. On May 2 General Manager Hockert gave Business Agent Vabalas a copy of the insurance and pension plans but withheld the information regarding the current wage rates of the employees in the unit. The Company has at all times thereafter refused to supply the Union with the requested wage information.

At the time of the Union's request for information there were no negotiations taking place concerning changes in any of the clauses of the contract in effect. Nor does it appear that the requested information is in aid of any formal grievance now pending under the contract. However, Business Agent Vabalas, in support of his request for information, testified that this information was needed for him to intelligently administer the collective-bargaining agreement. While some employees have obtained merit increases directly from the Employer,

as noted, it has been a practice under the contract for unit employees to request Vabalas to seek merit increases on their behalf. Thus, in the past several years Vabalas has sought to obtain red circle rates for a number of employees who have requested him to do so.⁴ Vabalas testified that he believes it is his duty as business agent to request a merit increase for an employee, if, after discussing the matter with the employee, the employee continues to request the increase. In order to carry out his function Vabalas urges that it is necessary for him to know the current wage rates of the unit employees so that, among other things, he would know the present rate of the employee seeking an increase;⁵ this would enable him to more effectively discuss the matter with the employee and more intelligently present the case to the Employer. Furthermore, if the request is denied, Vabalas believes he is called upon to argue the employee's case and he cannot intelligently discuss requests for red circle rates with the Company if he does not have the required information. At the time of the Union's request for wage information, Vabalas had pending two requests by unit employees that he seek merit increases on their behalf. Since the latter part of 1967 Vabalas has tried unsuccessfully to obtain a merit increase for employee Ted Sarna, the secretary-treasurer of the Union, and has had several discussions with General Manager Hockert about the matter, the last of these having occurred in April or May 1968. In addition, Vabalas has been requested to seek an increase for employee Bourque but has not yet raised the matter with management since Vabalas believes that without the requested wage rate information he cannot intelligently present Bourque's case.

Since the inception of the bargaining relationship between the parties in 1957 they have maintained good relations. While there was a wildcat strike at the plant in 1966, the Company and the Union, i.e., Vabalas and management, prior to March 1968 have been able to work out all grievances without difficulty. Indeed prior to January of this year substantially all grievances taken up with the Company have been taken up orally and disposed of without the need to reduce the grievances to writing. In January of this year the Union began filing grievances in written form and between March 1968 and June 1968 a total of six or eight written grievances have been filed. In March 1968 Business Agent Vabalas had a meeting with the International Organizer of the Union, Morran, and made known to him the employees' dissatisfaction with regard to the pension and insurance plans under the contract. Vabalas did not seek to have the contract rewritten, but he did want further information on the insurance plan. The Union had not negotiated the details of the insurance plan, the only discussions had concerned the Union's agreement that if the Company could get a cheaper rate for insurance with the same coverage, the Union would not object to the Company changing to another carrier. Dissatisfaction had apparently arisen concerning insurance coverage with the new carrier. International Representative Morran sought to get

³Vabalas' testimony which I credit was that he had discussed red circle rates over the years with General Manager Hockert's predecessors, Krulis and Flynn. More recently he discussed with Hockert red circle rates for a number of employees including Carlson, Biakowski, McLaughlin, and Sarna. Hockert was vague and uncertain about his discussions with Vabalas and to the extent that his testimony is inconsistent with that of Vabalas, it is not credited.

⁵Vabalas sometimes is told by the employee the rate he is then making and sometimes is not. Vabalas in any case feels that to be certain of the rates he needs the information from the Company.

⁴Vabalas has been employed as a machinist by the Company since 1956, he has been the financial secretary of the Union since its certification in 1957 and has been its first business agent since 1962.

together with the Company to discuss the situation. On March 22, 1963, Morran addressed a letter to Quinn. In that letter he called attention to the fact that there were grievances which the Union felt should be processed and, to avoid filing a number of grievances, suggested a meeting of the respective grievance committees as soon as possible.*

Following receipt of this letter President Quinn called Union Representative Morran and told him he thought they should follow the rules as laid out by the contract. Morran replied that maybe that was the best way to proceed. Nothing further was said and thereafter grievances were filed. General Manager Hockert testified that in conversations relating to grievances which were filed in the period between March and June 22 there never was any discussion by Vabalas about renegotiation of the contract. According to Hockert, Vabalas stated to him that unless the Union and Company had conversation regarding the problems involved, the grievances would continue and Hockert replied that they would handle any legitimate grievance in the best way they could.

B. Analysis, Additional Findings, and Conclusions

It is settled law, as recently noted by the United States Supreme Court in *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436, that it is "the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties. *Labor Board v. Truitt Mfg. Co.*, 351 U.S. 149" and that "the duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement *NLRB v. C & C Plywood Corp*, ante, p. 421, *Labor Board v. F. W. Woolworth Co.*, 352 U.S. 938." Similarly it is well settled, as stated by the Court of Appeals for the Third Circuit, that

[W]age and related information pertaining to the employees in the bargaining unit is *presumptively* relevant, for, as such data concerns the core of the employer-employee relationship, a union is not required to show the precise relevance of it, unless effective employer rebuttal comes forth. . . .

N.L.R.B. v. Curtiss-Wright Corporation, Wright Aeronautical Division, 347 F.2d 61, 69, enfg. 145 NLRB 152. See also *Boston-Herald Traveler Corporation v. N.L.R.B.*, 223 F.2d 58 (C.A. 1). *Cowles Communications, Inc.*, 172 NLRB No. 204; *Weber Veneer & Plywood Company*, 161 NLRB 1054. The presumption of relevance regarding so basic an item as unit wage information reflects recognition by the Board and the courts that such information is so obviously related to the continuing process of collective bargaining and the union's duty to police and administer the agreement that it is "virtually

impossible" to forecast with any accuracy that the information will not be relevant to the union in fulfilling its obligation as the statutory bargaining representative. See *Cowles Communications Inc., supra, NLRB v. Yawman & Erbe Manufacturing Co.*, 187 F.2d 947, 949 (C.A. 2). Furthermore, because of the recognized interest of the statutory representative in wage rate information, the fact that such information may otherwise be available through the unit employees does not relieve the employer of its obligation to furnish such information on request. *Weber Veneer & Plywood Co., supra*. Similarly, the argument that such information may be "personal" or "private" in that some unit employees may not want it revealed does not privilege the employer from disclosing wage rate information to the union. *Cowles Communications Inc., supra*.

The Respondent at the trial and in its brief concedes that under the statute the Employer is obliged to furnish the wage information requested by the Union if such information is relevant to the policing of the contract, and further, that unit wage information is presumptively relevant and should be disclosed unless effective employer rebuttal comes forth. By way of defense to the alleged unfair labor practice the Respondent contends (1) that the Union's wage information request in this case was not made to aid it in the administration of the contract but was made in bad faith and as such did not give rise to any statutory obligation on the part of the Employer, (2) that in the circumstances of this case the wage information sought is not relevant to the policing or administration of the contract, (3) that the Union has waived its right to the requested information. In sum, it is the Employer's position that its failure to produce such information is not violative of the Act.

1. The bad-faith defense

With regard to the Respondent's defense of union bad faith, it alleged that the sole purpose for the information requested was to disrupt and create dissension among the employees and to coerce the Employer into renegotiating the current contract in mid-term. The Respondent conceded that there was no direct evidence to establish that the Union's request was made in bad faith but urged that such an inference should be drawn from the particular circumstances of this case. Primarily Respondent urged at the trial that the entire course of conduct of Business Agent Vabalas demonstrated his hostility to the Company, and that "his actions have been one of disruption rather than good faith bargaining." Indeed, at one point Respondent's counsel stated that it is because the only purpose of the Union is to cause disharmony that it does not wish to disclose the information, and suggested such information would be disclosed "If we were dealing with a man we could trust, a man whose word we could rely on." In addition to the alleged purpose of Business Agent Vabalas to cause dissension, Respondent pointed to the letter of March 22, 1968, from International Organizer Morran, which it alleges constituted the threat of a plan to flood the Employer with grievances unless the Company agreed to renegotiate the contract, and the filing of six or eight written grievances in the period thereafter from March or April to June 1968. Finally the Company seeks to support the inference of bad faith from the fact, alleged by it, that the Union in the past has not been "hampered" by the lack of such information, and that there is no need for the information under the contract, noting particularly the

*The following is the substance of the letter:

At a recent meeting of SMWIA Local 570 members, employed by your company, it was forceably brought to my attention that there are a number of grievances that they feel should be processed.

Realizing that you are desirous of harmonious labor relations in your plant and that you would not like to be flooded with a rash of grievances at this time, I feel that it is imperative that a meeting of the respective grievance committees should be scheduled as soon as possible.

It is our hope that a meeting of you and your committee and myself and the shop committee can be set up in the near future for the purpose of forestalling the filing of several grievances.

Hoping to hear from you shortly, regarding the date and time of a meeting and assuring you that the union committee is ready to meet at your convenience, I remain

practice followed with regard to section 8.5.

The request for wage information while presumptively relevant does not give rise to an employer's obligation to provide the information where, if it be the fact, the information is not sought in good faith by the union as an aid to the performance of its statutory duties but is sought for a bad-faith purpose. See *Boston-Herald Traveler Corp v N.L.R.B.*, *supra* at 63; *Utica Observer-Dispatch v. N.L.R.B.*, 229 F.2d 575, 577 (C.A. 2). However, for the reasons discussed *infra* I find that the evidence adduced by the Respondent does not support the inference that the Union's request for unit wage information was made in bad faith.

Respondent's major argument at the hearing was that an examination of Vabalas' course of conduct would demonstrate that his manner had been one of attempted disruption rather than good-faith bargaining. In Respondent's argument reference was made to Vabalas' leading a wildcat strike 2 years earlier, Vabalas' repeated threats to take the Company before the Labor Board, Vabalas' pressing grievances where the employee grievant sought to withdraw; threats to flood the Company with grievances, and the alleged object to cause dissension among the employees in order to coerce mid-term bargaining. However, the evidence adduced by Respondent did not support its argument.⁷

It is uncontradicted that Vabalas led a "wildcat" strike 2 years prior to the present controversy. According to President Quinn the strike concerned a dispute relating to the interpretation of the wage increase provided by the contract. This event, occurring some 2 years before the present request, without more could hardly demonstrate that Vabalas' entire course of conduct was one of hostility to the Company. Indeed, notwithstanding this incident, President Quinn admitted in his testimony as did the Respondent in its brief that prior to March 1968 the Company had "very good relations" with the Union, which I take to mean with Adam Vabalas, since as business agent he dealt with the Company in the negotiation of the contract and, more importantly, in carrying out the day-to-day administration of the collective-bargaining agreement. The fact is that throughout the bargaining relationship of some 10 or 11 years, Vabalas, prior to January of this year, was able to resolve all or almost all grievances orally. Vabalas' denial that he threatened the Respondent repeatedly with filing charges with the Board was uncontradicted. According to Vabalas' credited testimony he only made reference to a charge under the Act, when the Company refused to supply the requested wage information involved in this case. Similarly without basis is the contention that Vabalas' hostility and purpose to harass the Employer was demonstrated by the fact that he actively sought out grievances among the employees. Respondent counsel's argument and the only supporting testimony, that of General Manager Hockert, related to a single incident which I find to be totally without support for this claimed conduct of Vabalas. Thus, while Vabalas denied that he had sought out any of the grievances filed, which I credit, General Manager Hockert testified that from the last grievance filed⁸. . . it was pretty evident that he was actually seeking the individual out because [Vabalas] wrote the grievance up and asked the individual to sign it, and the individual refused to process a claim in grievance.

⁷In any event the stated intention to file charges as well as the processing of many grievances may evidence only the vigorous exercise of its duties by a collective-bargaining agent.

. . . [Vabalas] decided to process it as a union grievance. . . ." Further examination revealed that Vabalas was himself an aggrieved party and had pressed the grievance on his own behalf and not merely as a representative of the Union. The grievance concerned the failure to receive payment under the insurance plan for dental bills; while the other employee who declined to join in the grievance apparently had dental bills unpaid, Vabalas also was a claimant for unpaid dental bills which he had personally incurred.

Equally without support is the alleged threat of a plan of Vabalas and the Union to flood the Company with grievances for the purpose of disrupting the plant and coercing the Company into renegotiating the contract. The March 22 letter from Union Representative Morran to President Quinn, relied on by the Company, merely advised the Company that there were a number of grievances being raised by the employees which the Union felt could be ironed out through conversations with the Company rather than by filing each grievance individually. There were no threats before the letter, in the letter itself, or thereafter, to seek to create grievances or otherwise conspire to flood the Company with grievances to harass the Employer or bring about mid-term bargaining. Quinn's testimony regarding his conversation with Morran, following the receipt of the letter, failed to disclose any suggestion of an attempt to coerce the Company generally or with regard to renegotiating the contract. Similarly, General Manager Hockert conceded that Vabalas at no time spoke of renegotiating the contract. What happened is that since the Company did not wish to discuss the problems raised by the grievances, the Union followed the regular grievance procedures.⁸ Furthermore, while it is true that the amicable relations of the parties prior to March 1968 may have resulted in the total or nearly total absence of written grievances, I do not regard six or eight grievances among 26 employees over a period of about 3 months as evidencing a planned conspiracy to harass the Employer with grievances. Furthermore, and most significantly, the evidence does not support the further finding that would be needed in this case — namely, that the request for wage rates was for the purpose of creating dissension among the employees concerning individual wages⁹ in order to provide the basis for more grievances with which to harass the Company and cause it to renegotiate the contract.

Finally, Respondent's reliance, as part of its bad-faith argument, on the alleged fact that the Union was not "hampered" in the past by the lack of wage rate information and the absence of any pending or contemplated negotiations, is misplaced. In the first place

⁸Vabalas' denial that the purpose of the grievances filed was to harass President Quinn or to cause the Company to renegotiate the contract with respect to medical and insurance coverage is credited. In any event it does not appear from the evidence adduced that the problems raised by the grievances concerned any express terms of the contract itself which the Union sought to change. At least some of the grievances apparently arose from the Company's change in insurance carriers which allegedly resulted in some difference in coverage. It was Vabalas' position, which was unchallenged, that the change of carriers had been agreed upon only if there were no changes in coverage. Thus, the object of the requested discussions with the Company may well have related to the Union's understanding of what had been agreed upon by the parties rather than any attempt to modify that agreement.

⁹President Quinn admitted that so far as he knew Vabalas at no time during his 11 years as the employees' representative had created dissension among the employees concerning wage rates. And it appears that over the years individual changes in job classifications with the accompanying change in rates were discussed with Vabalas as union representative.

the fact that the Union has operated in the past without full knowledge of the red circle rates does not impel the conclusion that its request at this time was made in bad faith. As a concomitant of the presumption of relevance of wage rate information to the bargaining agent the Board has refused to infer a purpose of harassment from the Union's failure to demonstrate its need for the information *Whitin Machine Works*, 108 NLRB 1537, enfd 217 F 2d 593 (C A. 4), cert denied 349 U.S. 905. *International Powder Metallurgy Company, Inc.*, 134 NLRB 1605, 1606 Furthermore, it is noteworthy in this case that, as Vabalas indicated, at one time under the contract most of the employees were under Appendix A and when a wage increase was granted he was told about it, however, in recent years Vabalas has sometimes been told of a merit increase and sometimes not. This circumstance, combined with the fact that Foreman Soucie told Vabalas following the contract negotiations in 1967 that as many as 75 percent of all unit employees are now receiving red circle rates, could well have induced him to request the information, particularly at a time when, after several months of discussion with Hockert, he had been unable to obtain a merit increase or reclassification for Sarna, the secretary-treasurer of the Union,¹⁰ and another employee, Bourque, had also requested that Vabalas seek a merit increase for him. In these circumstances, the timing of the wage request does not in itself or together with the other facts found herein establish that the Union's wage request was made in bad faith. Accordingly, I conclude that the Respondent failed in its efforts to establish that the Union's purpose in requesting the wage information herein was to harass the Company and/or coerce it into renegotiating the contract

2 The defense as to the relevancy of the wage information requested

As noted the Respondent conceded that wage information is presumptively relevant and should be disclosed unless effective employer rebuttal is forthcoming. I find that the Employer failed to effectively rebut the presumption of relevance of the wage information requested in this case. Respondent in support of its argument that the requested information was irrelevant to the representative function of the Union urged that merit increases are a management prerogative under section 8.5 of the contract and not a bargainable matter, that no grievances could be filed under that section, and that since there is a union-security clause in the contract requiring union membership of all unit employees there could be no grievance raised with regard to the discriminatory use of red circle rates to discourage union membership

With respect to its management prerogative position Respondent contends that the Union has waived its right to bargain about red circle rates under the plain language of section 8.5, and, in any event, the practice of unilaterally giving merit increases without union objection under five successive contracts establishes a waiver of this statutory right. I do not find that the "plain" language of section 8.5 relinquishes entirely the Union's right to bargain in this area. Indeed, it appears that the language of section 8.5 in providing that the "Company proves the qualifications of such employees prior to such time as the

increases are granted" contemplates that the Employer must establish to the Union that the employee is "exceptionally qualified" before it may grant the red circle rate.¹¹ At any rate the language of section 8.5 would not meet the test for a "clear and unmistakable waiver" established in Board cases.¹² Nor does it appear, contrary to the Respondent's contention, that disputes arising under section 8.5 are removed from the operation of the grievance procedure set forth in the later article XIV which defines the term "grievance" as "any difference or dispute . . . concerning . . . the application of . . . this agreement with respect to *rates of pay*, hours and working conditions." (Emphasis supplied.)¹³ Furthermore, it is questionable that, because the Company's past practice of unilaterally granting red circle rates has been left unchallenged by the Union through successive contracts, the Union thereby waived its right under the statute or the contract to require that the Company "proves" the qualifications of an employee before granting merit increases. See *LeRoy Machine Co., Inc.*, 147 NLRB 1431, 1439; *Miller Brewing Company*, 166 NLRB No. 90.¹⁴ In any event, even if the terms of the contract are deemed modified by the practice of the parties, the Company, while granting red circle rates unilaterally when acting upon a direct request of an employee, has discussed red circle rates with the Union in cases where the Union was acting upon the request of a unit employee.¹⁵ Thus I

¹¹In a colloquy between the Trial Examiner and Respondent's counsel relating to the language that the "Company proves the qualifications," counsel attempted to explain this language as requiring merely that the employees prove their qualifications to the Employer. However, such reading is inconsistent with the language of section 8.5. Moreover, since the opening language of the section permits the Employer to make merit increases for "exceptionally qualified employees," subject to the proviso, the Employer's interpretation would make the proviso meaningless. To give meaning to the proviso it appears, rather, that the condition precedent to the granting of such increase after the Employer has made its initial determination is that the Employer proves the qualifications of such employees to the Union.

¹²*Tide Water Associated Oil Company*, 85 NLRB 1096, 1098, *Rockwell-Standard Corporation*, 166 NLRB No. 23, *Timken Roller Bearing Co. v NLRB*, 325 F.2d 746, 751 (C.A. 6), cert denied 376 U.S. 971, *NLRB v Item Company*, 220 F.2d 956, 958-959 (C.A. 5), cert denied 350 U.S. 836.

¹³Particularly here where the general purpose of the parties set forth in section 8.1, states "The Company and the Union recognize that properly evaluated jobs and comparable rates of pay are conducive to better understanding between the employees, the Union, and the Company," it can be argued that the parties were not seeking to remove pertinent wage provisions of article VIII from the broad applicability contemplated by the language defining the grievance procedure. The fact that only section 8.4, which gives the Employer the "sole right" to evaluate new and revised job classifications, expressly makes disputes arising therefrom subject to the grievance procedure does not require the conclusion that the grievance procedure is inapplicable to other sections of article VIII. A more reasonable explanation is that because the language of section 8.4 expressly makes a complete grant of authority to the Employer, the need arose to make clear the applicability of the grievance procedure.

¹⁴It was admitted at the hearing that the Company has granted and continues to grant merit increases without consultation with the Union and it does not appear that the Union has in the past or is presently questioning the Employer's conduct in this regard. The only violation alleged in the complaint and tried before me was the failure to supply the current wage rates requested by the Union, there was no allegation that the Employer's unilateral grant of red circle rates was violative of the Act, and I make no finding regarding the lawfulness of that conduct.

¹⁵As previously found Business Agent Vabalas has discussed red circle rates over the years with Company Managers Flynn, Krulis, and Hockert. Vabalas testified that the Union's right to discuss red circle rates with the Company arises under section 8.5 of the contract. Thus while the practice of the parties had departed from the language of the contract, the Union, although it has not questioned the Company's granting merit increases

¹⁰While Vabalas testified that he did not need the information for Sarna since he knew his wage rate, the pendency of that matter together with that of Bourque could well have triggered his request for wage information at a time when information was being requested on other items.

find that even if the Union's right to bargain over red circle rates has been narrowed to that which has been followed in practice, the requested information would nevertheless be relevant to the Union's carrying out its statutory function in representing unit employees seeking red circle rates. The Union can more intelligently discuss the employee's request for a merit increase with the employee and the Employer if it has the requested information. Business Agent Vabalas does not always know the wage rate of the requesting employee; moreover in discussing any request for a merit increase, knowledge of the rate of the requesting employee relative to other employees would be relevant.

Furthermore, apart from any right the Union has to bargain about red circle rates and the relevance of the requested information incident to the performance of that representative function, I find that the requested information in any event has "probable" relevance to the Union's administration of the contract and for this reason the Employer is obligated to satisfy the Union's request. It is elemental that unit wage rate information is necessary to enable the bargaining agent to continuously police the contract to assure that employees are receiving at least the minimal rates set forth for their classification. Similarly, to properly police the contract the Union would necessarily be interested in determining whether the Employer's unilateral granting of wage increases has resulted in unfair or inequitable wage distinctions based upon mistakes, hostility, favoritism, or any other discriminatory motivation.¹⁶

The Employer's argument that because all unit employees must be union members under the union-security clause of the contract there is no need to police the contract for union discrimination overlooks the various possibilities for the exercise of discrimination in these circumstances that are reflected in the case law. There may be attempts to undermine a statutory bargaining agent by employer discrimination aimed at punishing union adherents and rewarding union dissidents who, while the contract may compel their membership, are opposed to the Union's continued representative status.

As previously discussed the Board and the various courts have recognized the "presumptive relevance" or "probable relevance" approach to an information request concerning unit wage rates. This was recently confirmed by the Board in *Cowles Communications Inc.*, *supra*. This approach was also approved by the United States Supreme Court in the *F. W. Woolworth* case.¹⁷ The Board urged considerations like those noted here before the Supreme Court, contending, contrary to the Court of Appeals for the Ninth Circuit,¹⁸ that "the employer ought to know . . . without demonstration . . ." that the requested wage data is information relevant to the Union's performance of its role in the administration of the contract." The court of appeals which had rested its decision on the holding that "there must under all the circumstances be a showing of reasonable need of the

unilaterally, has by practice reserved to itself the right to seek and discuss merit increases on any employee's request. The Union has not always had the data to enable it to best present the employee's case; however, apart from this limitation which the Union seeks to overcome, Vabalas has discussed the request with the Employer and where the Employer has refused a request for a red circle rate, the Union, as in the case of Sarna, has argued the employee's case for reconsideration.

¹⁶In article IV of the contract the Employer expressly undertakes not to discriminate against its employees and this would be subject to the grievance procedure set forth in article XIV.

information to meet a condition," was summarily reversed by the Supreme Court.

In sum, I find that the Respondent failed to effectively rebut the presumption that the unit wage information requested in this case was relevant to the proper performance of the duties of the collective-bargaining representative in the policing and administration of the collective-bargaining agreement.

3. The waiver of the right to information defense

Finally, I find without merit Respondent's contention that the Union has waived its right to the requested information. It is Respondent's position on this aspect of the case that the language of section 8.5 "plainly constitutes a 'clear and unmistakable waiver'" of the Union's right to bargain with respect to red circle rates; that "Having waived its right to bargain with respect to such rates, the Union has also waived its right to require disclosure of information regarding them"; that "To rule otherwise would allow the Union to compel disclosure of information for which it could have no legitimate use." As noted it does not appear to me that the language of section 8.5 constitutes a clear and unmistakable waiver by the Union of all its bargaining rights concerning red circle rates; however, even assuming *arguendo* that this has become a management right, it is well settled that the waiver of the right to negotiate merit increases does not mean that the Union has given up its right to know the names of the employees receiving merit increases and the amounts. See *Union Electric Steel Corporation*, 140 NLRB 138, 144; *N.L.R.B. v. Item Co.*, 220 F.2d 956 (C.A. 5).¹⁹ As the court noted in the *Item* case at 959,

. . . assuming *arguendo* that the new contract authorized respondent to bypass the Union in granting individual employee merit increases, such a construction of its terms would not *ipso facto* establish a waiver of the Union's right to obtain information as to the merit increases thus unilaterally granted. The right to grant merit increases without the consent of [the employees'] statutory bargaining agent obviously should not imply the right to withhold information thereon, since such a rule might foster discrimination against union adherents in the granting of merit increases, and thereby promote the industrial strife and unrest which the Act seeks to avoid.

For the reason indicated by the court of appeals in the *Item* case as well as those reasons set forth *supra*. Respondent's contention that a contrary result would compel disclosure of information for which the Union has no legitimate use is patently without merit. Accordingly, I conclude that the Respondent has failed to establish that the Union has waived its right to the unit wage information which it requested.

¹⁷352 U.S. 938. As noted *supra*, the *F. W. Woolworth* case was cited with approval by the Supreme Court in its most recent decision requiring an employer to comply with a union's request for information. See *N.L.R.B. v. Acme Industrial Co.*, 385 U.S. 432, 437, 438. In *Acme Industrial Co.* the Court approved the Board's acting on the "probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities" that the Board could act on "the potential relevance of the requested information."
¹⁸235 F.2d 319.

¹⁹See also *Utica Observer-Dispatch, Inc. v. N.L.R.B.*, 229 F.2d 575, 576 (C.A. 2), where the court observed: "The fact that the Union had never before requested individual wage data is immaterial. The information was relevant and the Local had a right to request it whenever it chose to do so."

On the basis of the above considerations, I find and conclude that Respondent by failing to supply the Union with the unit wage information requested by it violated Section 8(a)(1) and (5) of the Act.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

The activities of Respondent found to be unfair labor practices as set forth in section IV, above, occurring in connection with the Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI THE REMEDY

Having found the Respondent refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act by refusing to furnish the Union the wage data requested by it, it will be recommended that the Respondent supply such information to the Union.

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

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees including truckdrivers employed by the Respondent at its Wethersfield, Connecticut, plant, exclusive of office clerical employees, professional employees, watchmen, guards, and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Union has been, and now is, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing at all times since March 1968 to furnish the Union the current rates of pay of each employee in the appropriate bargaining unit, the Respondent has refused to bargain collectively with the Union and has thereby 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.

Upon the foregoing findings of fact and conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I issue the following:

RECOMMENDED ORDER

The Industrial Welding Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit by refusing to furnish the Union information showing the current wage rate for each employee in the appropriate bargaining unit.

(b) In any other like or related manner, interfering with, restraining, or coercing its employees in the exercise of their right to bargain collectively through the representative of their own choosing.

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

(a) Furnish the Union with the current rate of pay for each employee in the appropriate bargaining unit.

(b) Post at its plant at Wethersfield, Connecticut, copies of the attached notice marked "Appendix."²⁰ Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondent's representative, shall be posted by the Respondent 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material

(c) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.²¹

²⁰In 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"

²¹In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with the Sheet Metal Workers' International Association, AFL-CIO, Local Union No. 570, as the exclusive representative of the employees in the appropriate unit by refusing to furnish to that Union information showing the current wage rate for each employee in the bargaining unit. The bargaining unit is:

All production and maintenance employees including truckdrivers employed by the Respondent at its Wethersfield, Connecticut, plant, exclusive of office clerical employees, professional employees, watchmen, guards, and all supervisors as defined in Section 2(11) of the Act.

WE WILL NOT in any other like or related manner interfere with, restrain, or coerce the employees in the bargaining unit in the exercise of their rights to bargain collectively through the representative of their own choosing.

WE WILL furnish Sheet Metal Workers' International Association, AFL-CIO, Local Union No. 570, the

current wage rate for each employee in the bargaining unit.

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, 20th Floor, John F. Kennedy Federal Building, Cambridge and New Sudbury Streets, Boston, Massachusetts 02203, Telephone 617-223-3300.

THE INDUSTRIAL
WELDING COMPANY
(Employer)

Dated

By

(Representative)

(Title)