

United States Tube & Foundry Co., Inc. and Shopmen's Local Union No. 455, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO. Cases 29-CA-1802 and 29-CA-1893

February 2, 1971

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND JENKINS

On September 25, 1970, Trial Examiner Sidney J. Barban 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. The Trial Examiner further found that Respondent had not engaged in certain other unfair labor practices alleged in the complaint. Thereafter, the General Counsel and the Union filed exceptions to the Decision and supporting briefs. Respondent filed only exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the briefs, and the entire record in this 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 Respondent, United States Tube & Foundry Co., Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.¹

¹ In footnote 10 of the Trial Examiner's Decision, substitute "20" for "10" days.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

SIDNEY J. BARBAN, Trial Examiner: This matter was heard at Brooklyn, New York, on July 14 and 15, 1970, upon allegations in the complaints, as amended at the hearing, in the above cases, which were consolidated for hearing by order of the Regional Director dated March 3, 1970.¹ The charges in these cases were filed on August 28, 1969, and January 13, 1970. The complaints, issued on November 28, 1969 (Case 29-CA-1802), and March 23, 1970 (Case 29-CA-1893), allege that the above-named Respondent engaged in conduct in violation of Sections 8(a)(1), (3), and (5) of the Act, by interrogation of employees concerning union membership and activities, by termination of its practice of paying and refusing to pay transportation costs for night-shift employees, by threatening employees with discharge and other reprisals because of union membership or activities, or participation in a concerted work stoppage allegedly caused and prolonged by Respondent's unfair labor practices, by negotiating in bad faith with the above-named Charging Party (herein "the Union"), the duly designated representative of an appropriate unit of Respondent's employees, and by refusing to furnish the Union with certain data requested in connection with the negotiations between the Union and the Respondent.

Respondent's answer, as amended at the hearing, admits allegations in the complaint sufficient to justify the assertion of jurisdiction in this matter, under current standards of the Board, and to support a finding that the Union is a labor organization within the meaning of the Act, but denies the commission of any unfair labor practices.

Upon the entire record in this case, from observation of the witnesses, and after due consideration of the brief filed by the General Counsel,² the Trial Examiner makes the following:

FINDINGS AND CONCLUSIONS

I. ALLEGED INTERFERENCE WITH EMPLOYEE RIGHTS

A. *Alleged Interrogation*

Employee activity on behalf of the Union began on August 11, 1969 (all dates herein in 1969, unless otherwise noted). According to the testimony of employee Vincent Montalbano, on Monday, August 18, Respondent's president, Jerome Featherman, called Montalbano into his office in the morning as Montalbano was coming to work and asked the latter what he knew "about this union," and when Montalbano asked what Featherman meant, Featherman pressed him to "be honest" and to "tell [him] the truth," asking if Montalbano had signed a card for the Union. Montalbano states that after he admitted that he had done so, Featherman then asked how another employee, Danny Gallagher, felt about the Union. When Montalbano disclaimed any knowledge of Gallagher's sentiments, he asserts Featherman told him to leave. Soon thereafter, as

¹ These cases were originally consolidated with Case 29-CB-696, which latter case was severed during the hearing upon execution of an agreement in settlement. Hearing in Case 29-CB-696 was continued pending notification of the Trial Examiner of compliance with the settlement agreement in that case.

² General Counsel's motion to correct the record, to which no opposition has been filed, is granted, except as to the proposed correction at p. 152, 1. 13

Montalbano was with another employee, Jimmy Baccoli (though called a foreman, this employee was stipulated to be nonsupervisory), Featherman came up, according to Montalbano, and told Baccoli that he didn't "have to ask Vinnie about the Union, I already did."

Though Featherman admitted that he stopped Montalbano on the morning in question, and "asked him what's going on, and about this union thing," Featherman claims that Montalbano "just shrugged his shoulders and just walked on," and that there were no further words between them on this subject. Indeed, Featherman contends that the only two employees with whom he had discussions about the Union before August 27, the date of the strike against Respondent, were Montalbano and employee Frank Devito, who assertedly volunteered that he had signed a card for the Union. Nevertheless, Featherman also admitted at another place in his testimony that he recalled asking Baccoli if he knew who had signed up for the Union, to which Baccoli answered that he did not know.

Montalbano's testimony is credited. Though brief, it was detailed and had the ring of genuine recollection. Featherman's testimony indicated a wider range of interest in and questioning about employee union activity than he was willing to concede at the hearing.

Montalbano's testimony that some 3 or 4 years previous he had heard Featherman tell Baccoli that "he would put a lock on the place before he would let a union come in" is likewise credited. In respect to this latter testimony, Featherman testified only that he "never had any conversation with [Montalbano] about union matters," at any time, except, as he later added, during the negotiations in 1969.

B. Termination of Transportation on the Night Shift

Almost all of Respondent's employees employed on the second, or night shift alternated between that shift and the day shift. For several years, Respondent had a practice of paying for the transportation of certain employees on the night shift, including payment to some employees who provided transportation for other workers on that shift. One such employee, D'Ascanio, stated that he received \$30 to \$35 a week for such service. Featherman testified that he paid up to \$50 a week to provide such transportation, "because of the difficulty in maintaining a night shift." Respondent's counsel, Morris Migden, referred to the danger of being on the streets in the plant area and the lack of public transportation at night as reasons for Respondent's practice.

On August 22, Respondent posted a notice stating that beginning the following Monday all men on the night shift would have to furnish their own transportation until further notice. D'Ascanio states that when he came to work that afternoon, Featherman came over to him prior to his entering the building, and said "Tony, don't worry about nothing. Everything will be all right after everything gets straightened out." D'Ascanio then went into the plant where he discovered the notice discontinuing night-shift transportation.

Featherman testified that the notice was posted because of falling production on the night shift, asserting that "during 1969 the loss of production on the night shift in particular caused us to lose orders, and as a consequence, we had expected that very shortly we would probably only be running one mill at night, and incurring these transportation costs . . . was no longer paying us." Featherman stated that he first became aware of a falling off of production on the night shift about April 1969, though his affidavit given an

agent of the General Counsel—and perhaps some of his testimony on cross-examination—would indicate that he first noted this in August. During cross-examination, also, Featherman asserted that the decrease in production on the night shift "became more severe" after the middle of July.

Respondent's counsel, Migden, testified that adjustments were made to D'Ascanio for transportation payments to August 27, the date of the strike, and that he advised the Union that, if the strike were called off, the night shift would be reinstated on the previous basis.

C. Alleged Threats to Employees

In support of the allegations that Respondent threatened its employees because of their union or concerted activities, General Counsel relies upon a telegram which Respondent sent, about September 3, to 17 of its employees who were on strike, as follows:

THIS IS TO ADVISE THAT ALTHOUGH YOU ARE INVOLVED IN A WORK STOPPAGE THE COMPANY IS STILL HOLDING YOUR JOB OPEN FOR YOU HOWEVER WE CANNOT DO THIS INDEFINITELY IF YOU DO NOT REPORT TO WORK BY FRIDAY SEPT 5, 1969 THE COMPANY WILL ASSUME THAT YOU NO LONGER WISH TO WORK HERE AND WE WILL BE COMPELLED TO REPLACE YOU

II THE STRIKE

Featherman testified that about the middle of August he received a telegram from the Union claiming to represent certain of Respondent's employees and seeking negotiations. William Colavito, an officer of the Union, came into Respondent's office on August 27 and told Featherman, according to the latter, that Colavito "was pulling the men out, that we hadn't answered his telegram and it could have been handled much differently." Colavito left his name and telephone number with Featherman. On that date most of Respondent's production and maintenance employees went out on strike. The strike remains current.

Montalbano gave the only testimony concerning the meeting on August 26, when the employees decided to strike, stating that the reasons discussed at that meeting for the strike were "the firing of Tommy Giusto³ and the transportation being taken away from the men on the night shift, and Jerome Featherman altering our working conditions."

III ALLEGED REFUSAL TO BARGAIN

A. The Negotiations

On August 19, the Union filed a petition with the Board for certification as representative of production and maintenance employees of Respondent. On October 29, an election was conducted by the Board among the following employees, which are found to constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: "All production and maintenance employees and truck drivers employed by the Respondent at its Brooklyn, New York plant, including mill set-up man Gallagher and working foreman Baccoli, but excluding office clerical employees, guards, and all supervisors as defined in Section 2(11) of the Act." A majority of the employees in that unit voting in the election voted for

³ The discharge of Giusto, on August 23, originally included in the charge in Case 29-CA-1802, was later withdrawn by the Union.

the Union, which was certified by the Regional Director of the Board, on November 7, as the exclusive bargaining agent of such employees within the meaning of Section 9(a) of the Act.

Pursuant to the request of the Union, the parties met for the purposes of collective bargaining on December 5 and 12. While there is some conflict among the witnesses as to the details of what was said and done at the meetings, the record establishes the following:

Prior to the arrival of Belle Harper, the Union's chief spokesman, on December 5, Featherman objected to the participation of Montalbano, and perhaps employee Gallagher, in the negotiations, assertedly because of activities during the strike. After discussion with Harper, Respondent agreed that the two could attend the meetings, but should be silent. (Respondent contends that they nevertheless spoke up. The men deny this.) The Union distributed to the negotiators a typed document entitled, in part, "General Concept of Collective Bargaining Demands," which set forth requests for "Hours of Work," "Overtime Pay," "Holidays," "Wash-up and Rest Periods," "Sick Leave," "Pay Days," "Vacations," "Wage Rates and Classifications," "Welfare Fund," "Pension Fund," and "Training and Educational Fund."

All of the witnesses agree that the first three items in the Union's document were discussed in detail. In each case, the Respondent rejected the Union's demands, indicating its desire to retain its present conditions in those areas.⁴ However, all witnesses indicate that the Union showed no immediate concern about these matters, but was chiefly interested in the matter of wages.

At the December 5 meeting, Respondent rejected any increase in wages. Featherman expressed concern that increased costs would place Respondent at a disadvantage in respect to its competitors, whom he named. It was stated that Respondent felt that it was paying as well or better than its competition at the time.⁵ Featherman also suggested that the Union try to obtain the collective contracts under which these competitors were operating so that the parties could check the wage rates that they were paying. Respondent stated that it could not afford to increase the wages paid because it had lost money in the current fiscal year, beginning March 1. The Union asserted that it could not end the strike without some improvement to take back to the men. Since Featherman advised that he had not had an opportunity to go over Respondent's records with his accountant, the Union suggested that he do so, to see if he couldn't make a counteroffer at their next meeting.

Respondent and the Union met again on December 12. Featherman advised that he had consulted with his account-

⁴ Respondent's counsel, Migden, asserted that Respondent indicated some concession in the matter of holidays, though General Counsel's witnesses recalled none. The situation is probably accurately presented in Featherman's testimony that in discussing holidays, Respondent "[was] prepared only to offer the holidays that we had," though thereafter Migden stated that Respondent might agree to additional money for July 4, which fell in the normal vacation period.

⁵ Featherman testified that his conclusion that Respondent was paying better wages than its competitors was based on the fact that several of Respondent's employees who had worked for its competitors, or could do so, came back to work for Respondent, and one of them stated that he preferred to work for Respondent. Featherman stated that he had no knowledge of the actual rates paid by his competitors. Respondent, however, desired to have the record in these proceedings kept open to enable it to obtain the rates paid by its competitors, for the purpose of supporting Featherman's position. The request was denied on the basis that the facts sought, if they indeed supported Featherman's position (a matter unknown to Respondent), would be only remotely relevant, if at all, to the issue of Featherman's good faith during the negotiations.

tant, and though there is a dispute as to whether he stated a specific amount, there is no question that he confirmed that Respondent had suffered losses during the current fiscal year, notwithstanding it had made profits in prior years. Featherman further stated that Respondent couldn't afford to make the Union an offer of a wage increase at that time. He said that Respondent had no orders then as a result of the strike, but that if the Union would end the strike and send the men back Respondent would be willing to review the situation at the end of 6 months. The Union stated that the negotiations were at an impasse. The meeting ended with the Union suggesting that they get together again when Respondent advised the Union that it had something to offer.

Respondent insists, in particular, that it offered at both meetings to let the Union see its books in confirmation of its claim that it couldn't afford wage increases. General Counsel's witnesses dispute this. The Trial Examiner finds it unnecessary to resolve this conflict. It is clear that during the meetings the Union evidenced no interest in the basis for the claimed inability to raise wages, and did not request that the Respondent substantiate its position by means of records prior to January 9, 1969. This matter is discussed below.

Respondent, as Featherman testified, lost approximately \$60,000 during the 6 months following March 1, the beginning of its fiscal year. This was attributed to increased cost of steel and to a drop in production, which Featherman attributed to the second shift, in particular.⁶ The record, however, furnishes no objective basis for Featherman's asserted belief that the loss of production had occurred principally on the second shift. Respondent's accountant stated that these losses were attributable to price increases in steel, to a rather small extent from a decline in production (which he did not attribute to any particular shift), and to some considerable degree to variations in the gauge of steel delivered.

B. *The Request for Information*

The Respondent and the Union met at the Regional Office of the Board in Brooklyn, on January 9, 1970, to discuss settlement of the charges filed against Respondent in Case 29-CA-1802. At that time Respondent was informed that the Union would like its accountant to examine Respondent's books and records. It was also stated that the Union intended to file charges that Respondent had violated Section 8(a)(5) of the Act. As a result, no settlement of the pending charges was secured.

It was stipulated that on February 13, 1970, the Union's accountant met with Respondent's accountant and requested production of certain books of account of Respondent for the fiscal years ending February 28, 1967, 1968, and 1969, and, according to the union accountant, tax returns for these years (Respondent's accountant does not recall a request for tax returns). Respondent's accountant showed the Union's accountant only the payroll book for the week ending August 28, and read to the latter the income and expense items for the period from March 1 through August 31, giving the figures shown on Respondent's books. Respondent's accountant explained that his instructions from Respondent were to give only this material to the Union.

⁶ Migden indicated that there was reference during the negotiations to problems on the second shift. However, neither Migden nor Featherman assert that Respondent referred to increases in steel costs during these meetings as a source of their difficulties, though Respondent's cross-examination of Harper indicated such a position.

Featherman testified that he had told his accountant that "we had made a statement to the union about losses in the six months of the fiscal year and that he should supply figures to the union's accountants from our records that would either substantiate or dispute those claims." Though Featherman was informed that the Union wanted to see more than just the last 6 months, he did not alter these instructions.

The accountants met again on June 2, 1970, after Respondent's counsel, Schlossberg, offered the Union additional examination of Respondent's books. At that time, the Union's accountant was permitted to examine and make notes from all records of Respondent which he requested, which included certain ledger and financial statements and tax returns for the fiscal years ending February 28, 1967, 1968, and 1969, and for the 6 months ending August 31, 1969, certain real estate bills, and the payroll for the week ending August 28.

So far as the record shows, neither the Union nor the Respondent has requested further negotiations since December 12.

IV. ANALYSIS AND CONCLUSIONS

A. Interrogation

The evidence of coercive interrogation of employees by Respondent, on the basis of General Counsel's witnesses, is minimal. So far as shown, Featherman's questioning of employees, obviously triggered by the Union's claim of representation of the employees, was not extensive. Nevertheless, I do not believe that employees should be put in a position, like Montalbano, where they must feel compelled to declare themselves with respect to the Union to Respondent and to be queried about the sentiments of other employees toward union representation. It is therefore found that Respondent by coercive interrogation of employees violated Section 8(a)(1) of the Act.

B. Discontinuance of Transportation Payments

The day after the interrogation of Montalbano about the Union, the petition for certification was filed by the Union with the Board. Three days thereafter, on August 22, Respondent posted a notice that it was discontinuing payment of transportation for the night shift employees, which General Counsel contends was in reprisal for the employees' union activities. Respondent claims that it took this action to reduce its costs, since it was losing a large amount of money in its operations and was experiencing decreased production on the night shift.

However, Respondent's asserted reason for discontinuing payment for employee transportation on the night shift does not seem, upon analysis, credible. Respondent was apparently aware of its financial problems for some time, but so far as this record shows, it undertook no action to economize or rectify its situation except to eliminate this one, relatively small expenditure.⁷ Further, though it is stated that Respondent was aware since April of a production problem on the night shift, it is significant that Respondent made no effort to correct or alleviate the situation until

⁷ Featherman's asserted reason for not discussing this alleged falling off of production on the night shift with the employees—that the employees worked on the night shift only on alternate weeks—was particularly incredible. Indeed, the record as a whole raises considerable doubt that the decline in production constituted a considerable problem in Featherman's mind at the time

shortly after the Union came into the picture. The reasons which apparently impelled Respondent to institute the transportation payments in the first instance—lack of public transportation and the safety of the employees in the area at night—would certainly seem to continue valid so long as the night shift continued. And notwithstanding Featherman's assertion that he was thinking of eliminating the night shift, this apparently was not done. During the negotiations, Respondent's counsel advised the Union that if they would call off the strike, the night shift would be reinstated on the former basis.

On the basis of the above and on the record as a whole, it is found that by posting the notice advising that it was discontinuing transportation payments for the night shift workers, and discontinuing such payments, Respondent discriminated against its employees in respect to their conditions of employment, discouraging membership in and activities on behalf of the Union, and interfered with the employees' rights under Section 7 of the Act, in violation of Section 8(a)(3) and (1) of the Act.

C. The Nature of the Strike

Montalbano's credited testimony was that Respondent's action in discontinuing transportation payments was one of the causes for the strike, though there were also other, economic causes for the work stoppage. Therefore, since one significant cause of the strike was conduct of the Respondent which was an unfair labor practice under the Act, the resultant strike was an unfair labor practice strike, and the strikers are entitled to such protection as the Act affords to work stoppages in protest of an employer's unfair labor practices.

D. The Telegrams to the Strikers

It is well established that employees engaged in an unfair labor practice strike are entitled to reinstatement upon their unconditional request to return to work, notwithstanding that they may have been replaced in the interim. Since the strike in this matter is an unfair labor practice strike, the strikers could not be deprived of their jobs by replacements, and Respondent's threats to do so by the telegrams to the strikers therefore constituted interference with their right to strike and violated Section 8(a)(1) of the Act. See *Maxville Stone Company*, 166 NLRB 888,892.

E. The Negotiations

I do not find, however, on the basis of the facts in this record that Respondent acted in bad faith in its conduct during the negotiations or in the presentation of the information requested by the Union. Basically, Respondent's position during the two bargaining sessions requested by the Union was that Respondent wanted to retain its present conditions, but was willing to reconsider its position in 6 months if the strike was called off and its business resumed. In support of this position, Respondent asserted that it was losing money in the current fiscal year, and, since the strike, had no orders for its products. The Union evidenced absolutely no interest during these meetings in whether Respondent could substantiate these positions, and at the end of the second session declared that the negotiations were at an impasse. Since that time the Union has made no attempt to resume the negotiations, quite obviously relying on the effect of the strike to persuade Respondent to make concessions.

F. *The Union's Request for Information*

The Union first indicated, on January 9, 1970, that it would like to see the records upon which Respondent relied on claiming inability to raise wages. At the Union's request, the accountants for the two parties met on February 13, 1970. At this time the Respondent insisted on limiting the information supplied to figures for the current fiscal year and insisted upon reading the figures off rather than letting the union accountant see the records and copying them. However, it is not claimed that the figures supplied were not correct or that they were not sufficient to substantiate the fact that Respondent had lost a substantial amount of money in that fiscal year.

In the circumstances, I do not find that Respondent's conduct in this instance violated the Act or was in bad faith. Since Respondent was relying only upon its losses in the fiscal year beginning March 1 to justify its refusal to make economic concessions, I cannot find that it was in bad faith in concluding that its obligation was limited to substantiating that claim. While the Union's accountant should have been permitted to examine the pertinent documents himself, rather than have the figures read to him, in the circumstances here, particularly where it is not claimed that the figures were inaccurate and the Union was, indeed, later permitted to examine the documents, the deficiency does not seem material.

In June 1970 the Union was given access to all of Respondent's records which it desired. Assuming that the Union was entitled to examine all of these documents in this situation, I would ordinarily consider that this was too long delayed. However, in this case I am convinced that access to these documents, or lack thereof, has neither hindered nor assisted the negotiations. The record is quite convincing that the Union was not particularly interested in what the Respondent's records showed. Quite apparently they revealed what Featherman said they would. Nevertheless, the Union has shown no desire to resume negotiations.

On the basis of this analysis and the entire record, it will be recommended that the allegations that Respondent negotiated with the Union in bad faith without intention to arrive at an agreement, and that Respondent has refused to furnish data to the Union, in violation of Section 8(a)(5) and (1), be dismissed.

CONCLUSIONS OF LAW

1. The Respondent is an employer 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. Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1) of the Act by the interrogation of employees concerning Union membership and activities, and by threatening reprisals against employees engaged in an unfair labor practice strike against Respondent, as set forth herein, and by violation of Section 8(a)(1) and (3) of the Act by discontinuing and refusing to pay transportation costs of certain of its employees working on its night shift in order to discourage membership in or support of the Union, as set forth herein.

4. The unfair labor practices set forth herein affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. Respondent has not engaged in conduct violative of Section 8(a)(5) of the Act.

THE REMEDY

It having been found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It will be recommended that Respondent restore its prior practice of paying transportation costs for employees on the night shift and reimburse its employees for any loss they may have suffered by reason of the discontinuance of Respondent's practice of paying the transportation costs of employees employed on Respondent's night shift, as set forth hereinabove, with interest at the rate of 6 percent per annum.

RECOMMENDED ORDER ⁸

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in this case, it is recommended that the Respondent, United States Tube & Foundry Co., Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Altering working conditions or otherwise discriminating against employees in order to discourage membership in or support of Shopmen's Local Union No. 455, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO, or any other labor organization.

(b) Threatening reprisals against its employees for participating in lawful concerted activities in connection with their working conditions.

(c) Interrogating employees concerning union membership or activities in a manner interfering with, restraining, or coercing employees in the exercise of their rights under the Act.

(d) 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) Restore its prior practice of paying transportation costs for employees on the night shift.

(b) Reimburse its employees for any loss they may have suffered by reason of the discontinuance of Respondent's practice of paying the transportation costs of employees employed on Respondent's night shift, with interest at the rate of 6 percent per annum.

(c) Upon application, offer to employees engaged in the unfair labor practice strike, which began August 27, 1969, reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, dismissing replacements for the strikers if necessary, and make the striking employees whole for any losses suffered by such employees by reason of any refusal by Respondent to reinstate them upon application beginning 5 days after such application and terminating on the date such employees are offered reinstatement, with interest thereon at 6 percent per annum.

(d) Preserve and make available to the Board or its

⁸ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

agents, upon request, 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 employees, and rights of employment under the terms of this Order.

(e) Post at its operations located at New York, New York, copies of the attached notice marked "Appendix."⁹ Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to 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.

(f) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.¹⁰

IT IS FURTHER RECOMMENDED that except for the unfair labor practices found herein allegations of unfair labor practices in the complaint be dismissed.

⁹ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted pursuant to a Judgment of the United States Court of Appeals enforcing and Order of the National Labor Relations Board."

¹⁰ In 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 EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT change your working conditions or otherwise discriminate against you in order to discourage membership in or support of Shopmen's Local Union No. 455, International Association of Bridge, Structur-

al & Ornamental Iron Workers, AFL-CIO, or any other labor organization.

WE WILL NOT threaten you with reprisals because you engage in a lawful strike or other concerted activity in connection with your working conditions.

WE WILL NOT question you about your union membership or activities, or the union membership or activities of your fellow employees, in a manner that interferes with your lawful right to join and assist unions.

WE WILL NOT in any like or related manner interfere with you in the exercise of rights protected under the National Labor Relations Act.

WE WILL reimburse our employees for any loss they may have suffered because we stopped paying transportation costs for employees on the night shift, with interest at the rate of 6 percent per annum, and we will continue to pay transportation for our night shift employees in accordance with our prior practice.

It has been found that the company's employees, on August 27, 1969, began a strike caused and prolonged by the company's unfair labor practices. Therefore—WE WILL, upon their application, offer to our employees, who continue lawfully on strike, reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing if necessary any employees hired to replace the strikers, and we will make each employee whole for any losses suffered as a result of our failure to reinstate such employee within 5 days after the application to return to work.

UNITED STATES TUBE
& FOUNDRY Co., INC.
(Employer)

Dated

By

(Representative)

(Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Fourth Floor, 16 Court Street, Brooklyn, New York 11201, Telephone 212-596-3535.