

American Standard, Inc. and International Brotherhood of Pottery & Allied Workers, Local 218, AFL-CIO. Case 31-CA-2920

June 4, 1973

DECISION AND ORDER

BY CHAIRMAN MILLER AND
MEMBERS KENNEDY AND PENELLO

On September 1, 1972, Administrative Law Judge Martin S. Bennett issued the attached Decision in this proceeding. Thereafter, General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in support of the Administrative Law Judge's Decision.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge, without reaching the merits, deferred to arbitration issues arising from 8(a)(5) allegations based upon Respondent's refusal to furnish the Union with available job descriptions pertaining to its Torrance facility. On the facts and for the reasons set forth below, we conclude that the alleged violation is so insignificant as not to warrant a finding of violation or a remedial order.

Respondent and the Union have negotiated several contracts over the years. Commencing with the 1959 negotiations and during every negotiation for a new contract since, Respondent has proposed a wage plan wherein task and job descriptions would be provided and wage rates established therefor. Each time the Union rejected the proposal.

In preparation for the 1962 national negotiations, Respondent instructed its industrial engineers to conduct time and motion studies and draft job descriptions which were to be incorporated into the wage plan proposal for the upcoming negotiations.¹ Respondent averred that by making its wage plan more concrete, it hoped to persuade the Union to accept it. But once again the Union rejected the plan and it has never been incorporated in any agreement between the parties. The job descriptions developed by Respondent for use in the abortive 1962 negotiations

¹ It appears that many, if not most, of the job descriptions which were so developed for the 1962 negotiations were of a hypothetical or illustrative nature to exemplify how they were proposed to be used

were the only ones it has ever prepared.

In August 1971, Shop Steward Chapa requested copies of the aforementioned job descriptions from Respondent's foremen in the glost and shipping departments. When asked why he wanted them, Chapa indicated that the Union needed them in order to determine whether complaints by employees in those departments alleging an increase in job duties should be the subject of grievances. After both foremen refused to provide the requested information, formal grievances were filed and were processed through the first three steps. At each step, Respondent rejected the grievances, contending that current job descriptions were not available, that jobs were not evaluated on the basis of job descriptions, and that the contract did not require the issuance of job descriptions.²

The Union filed the instant charge on February 22, 1972. The following day, the Union wrote Respondent requesting arbitration. In subsequent discussions between the parties, both sides agreed that arbitration should be deferred pending the outcome of the Board's decision in this proceeding. They further agreed that if the Union received an adverse decision from this forum, it could still take the matter to arbitration.

The Administrative Law Judge concluded that the aforementioned contract grievance procedure would "manifestly encompass the matter in litigation herein" and, accordingly, that the Board, following *Collyer Insulated Wire*,³ should defer to the parties' agreed-upon method for resolution of the instant controversy. He therefore found it unnecessary to decide the case on the merits.

It is now well settled that a collective-bargaining representative is entitled to information which may be relevant to its task as bargaining agent, and this is not a matter for deferral to arbitration where, as here, the material is sought as a statutory, rather than a contract, right.⁴ It is clear in the case before us that there is no contract clause dealing specifically with the furnishing of information necessary and relevant to the processing of grievances or any other clause by which the Union waives its statutory right to such information.⁵ Under these circumstances we do not agree with the Administrative Law Judge that this issue should be deferred to the arbitration procedure under *Collyer*.

² Although the contract provides for a change of wage rates where there has been a substantial change in job duties and provides grievance machinery culminating in final and binding arbitration, nothing in the contract addresses itself to or regulates the respective rights and obligation of the parties with respect to information

³ *Collyer Insulated Wire, A Gulf and Western Systems Co.*, 192 NLRB 837
⁴ E.g., *The Timken Roller Bearing Company*, 138 NLRB 15, enfd 325 F 2d 746 (C A 6, 1963)

⁵ See, e.g., *Acme Industrial Company*, 150 NLRB 1463, 1465, enforcement denied 351 F 2d 258 (C A 7, 1965), reversed and remanded 385 U.S. 432 (1967)

On the merits, however, we find that the information sought was either irrelevant or, if relevant, of such picayune significance that there is no basis whatever for concluding that failure to supply it would impede the Union in its proper functioning or that its possession might enable the Union to represent the employees more effectively.⁶ Thus, we have concluded that the only appropriate order to enter in this case is one of outright dismissal.

The job descriptions requested by the Union here were 9 years old. Even at the time they were developed, the descriptions did not, for the most part, actually reflect the job content of the jobs described, since they were purposely designed to be hypothetical in nature to illustrate the workings of the proposed wage plan. And finally, during consecutive contract negotiations the Union rejected the wage plan and the accompanying job descriptions. Accordingly, it is apparent that they were not matters even arguably relevant to the Union's grievances.

Further, even if relevant, Respondent's refusal to provide information so remote to the subject matter of the real dispute between the parties is not a matter worthy of serious consideration by this Board. As we said in a recent case,⁷

[T]he alleged misconduct here is of such obviously limited impact and significance that we ought not to find that it rises to the level of constituting a violation of our Act. The Board's rising case load and the problems involved in handling it could be alleviated if cases of this type were not processed. . . .

Similarly here, the subject matter of this entire proceeding is of so insignificant a nature that we would not utilize it as a basis for finding a violation or issuing a remedial order. Accordingly, we shall dismiss the complaint in its entirety.

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 Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

⁶ See *Acme Industrial Company*, *supra*.

⁷ *American Federation of Musicians, Local 76, AFL-CIO*, 202 NLRB No 80. See also cases cited in fn. 6 therein.

DECISION

STATEMENT OF THE CASE

MARTIN S. BENNETT, Administrative Law Judge: This matter was heard at Los Angeles, California, on June 29, 1972. The complaint, issued April 11 and based upon a charge filed February 22, 1972, by International Brotherhood of Pottery & Allied Workers, Local 218, AFL-CIO, herein the Union, alleges that Respondent, American Standard, Inc., has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act. Briefs have been submitted by the General Counsel and Respondent.

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

FINDINGS OF FACT

I JURISDICTIONAL FINDINGS

American Standard, Inc., is engaged in the manufacture of chinaware at various plants throughout the United States including a plant at Torrance, California, the only plant involved herein. Respondent annually ships products valued in excess of \$50,000 from its Torrance plant directly to points outside the State of California. I find that the operations of Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

II THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Pottery & Allied Workers, Local 218, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

III THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issue*

Respondent and the Union have at all times material herein been signatory to contracts covering production and maintenance employees, with varying exclusions, at seven plants, including the plant at Torrance. The last of these covers the period from June 1, 1971, through May 31, 1973. The facts herein are either stipulated or not in dispute. The sole issue is whether Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act by refusing to supply the Union job descriptions of employees in the bargaining unit represented by the latter at Torrance. As will appear, the case is disposed of upon another ground, although I deem it in order to set forth the bargaining history.

B. *Background*

During the 1959 negotiations, Respondent proposed that the new contract incorporate a wage plan wherein tasks and job descriptions were formulated and wage rates established therefor; this concept was rejected by the Union. In 1960, Respondent made a similar proposal and this was again

rejected by the Union. In preparation for the 1962 negotiations, and in the hope of selling this concept to the Union, Respondent's industrial engineer made time and motion studies and drafted job descriptions. These proposals were submitted to the Union. Again, there was disagreement and the May 1962 agreement did not incorporate them.

These job descriptions, the parties agree, were not intended as general descriptions, but rather as examples of how the proposed wage plan would operate. They were not used by Respondent with respect to the Torrance employees. Prior to the 1963 negotiations, Respondent again submitted a proposed wage plan to the Union, but this too was rejected.

The April 1962 job descriptions are the only ones Respondent has ever prepared. While the Union originally had these in its possession, it no longer has and it is the attempt of the Union to obtain them that is the crux of this case. The April 1962 job descriptions have not been revised or changed to reflect any new processes or jobs and the parties agree that some 42 foremen have not used the 1962 job descriptions in any manner to deal with employees.

Prior to 1966 negotiations, the Union decided to reject any wage plan prepared or submitted by Respondent which reflected time studies or job evaluation programs. Respondent did submit its wage plan at that time and it was duly rejected. In 1969 and 1971 negotiations, Respondent resubmitted the wage plan concept and it was again rejected.

C. *The Instant Dispute*

In August 1971, Shop Steward Ray Chapa of the glost and shipping departments asked Foreman Walter Howells of the glost department for job descriptions.¹ This was predicated on the fact that Chapa was receiving complaints that employees were being assigned duties beyond those assigned by a predecessor foreman and, according to Chapa, he so advised Howells. The latter replied that management reserved the right to make any changes it deemed necessary.

Chapa later again requested this information and Howells asked that he put his request in writing. On August 24, Chapa submitted a written request for "all job duties" in the glost and shipping departments. Howells next told Chapa that the front office preferred that he file a grievance pursuant to the contract.²

Late in August, Chapa made a similar request to Foreman Louis Funk of the shipping department and the next afternoon, Funk gave Chapa job descriptions for both piecework and hourly rated employees; these included hourly rated employees in the shipping department. Chapa put the documents in his desk but, several days later, discovered that they were missing. He asked Funk for another set and Funk refused, stating, according to Chapa, that these were for company use only.³

Chapa next told Howells that Funk had supplied him

¹ Respondent has both hourly paid and piecework employee job descriptions. The latter descriptions have been made available and the instant dispute involves only the hourly paid employees.

² The grievance and arbitration language of the contract is treated hereinafter.

³ Funk vaguely recalled the incident. He testified that he gave one or two of the 1962 job descriptions to Chapa, but denied that he told Chapa that they were solely for use by Respondent in dealing with the Union.

with job descriptions. According to Chapa, Howells admitted that Respondent possessed such job descriptions, but claimed that they were solely for company use so that Respondent would know what the men were doing.

D. *The Grievances*

On September 28, Chapa filed two formal grievances, respectively asking for copies of the job descriptions and job duties of all positions in the shipping and glost departments. During the first week of October, the grievances were rejected at the first step on the grounds that the jobs were not evaluated on the basis of job descriptions and that job descriptions were not available.

In October, the grievances were presented at the second step, the Union contending that it needed these job descriptions so that it could evaluate any grievances alleging a change in job content. Respondent rejected the grievances. According to Chapa and Union President Pedro Garcia, Respondent's representative asserted that these were for company use only. In the grievance forms, dated in October and November, Respondent stated that current job descriptions are not available and that jobs are not evaluated on the basis of job description.

The grievances went to the third step and were again rejected on December 9 on the ground that the contract did not require job descriptions and, further, that the descriptions were not current. By letter of December 10, the Union requested job descriptions for all positions covered by the contract. On December 17, Respondent replied and referred to the two above-described grievances. Plant Manager Day therein stated that no current job descriptions were available and, *inter alia*, wrote that there was no reason for providing job descriptions.

On January 19, 1972, another meeting was held and, by letter of February 7, Plant Manager Day again rejected the grievances on the ground that no current job descriptions were available. On February 23, International Representative Thomas Perazzo of the Union wrote to Respondent and requested arbitration, pointing out that the Union would accept whatever descriptions Respondent had, even if outdated.

The instant charge was filed on February 22, 1972. Perazzo next asked Personnel Director Malonek if we wished to go to arbitration, pursuant to his letter, or await a decision by the Board. Malonek then proposed that arbitration be deferred. Perazzo and Malonek agreed that the case should be submitted to the Board and that, if the Union received an adverse decision from the Board, the matter could then be taken to arbitration. This is the present posture of the case. Arbitration has been deferred; Respondent has the 1962 job descriptions, such as they are; and it refuses to furnish them to the Union. While the contract, discussed below, provides that arbitration may be resorted to within 15 days after an adverse decision by the plant manager, I find that the parties manifestly waived this requirement.

E. *Language of the Contract*

Article XXI, section 3, provides that when new processes or job duties are established which result in a substantial

change in job duties or requirements, rates will be established by Respondent based upon comparable fixtures. Section 4 states that new rates are subject to review by either party within a 30-day trial period.

Section 5 provides that if Respondent "makes an installation of equipment or changes an operation or establishes a new job which is impracticable to continue on piecework" the Union may process this through the grievance and arbitration procedures of section VII of the contract.⁴

Turning to article VII, section 1 states that any difference or dispute between the parties shall be resolved by the grievance procedure. A grievance is defined in section 4 as a complaint which involves the application, interpretation, or alleged violation of the contract.

Section 6 states that if, after processing the grievance through the various steps, the Union is dissatisfied, the matter may then be appealed to arbitration within 15 working days and, in section 7, it is provided that the decision of the arbitrator shall be final and binding.⁵

F. Concluding Findings

I do not reach the instant issue on the merits because I believe that the principle in *Collyer Insulated Wire*, 192 NLRB 837, is controlling herein. In that case, the Board held that arbitration is the preferred procedure for resolving a dispute which could be submitted to arbitration concerning the meaning of the parties' agreement.

In the instant case, the parties have had a long-established collective-bargaining relationship. The contract contains a grievance procedure covering all grievances involving the application, interpretation or alleged violation of the agreement and that would manifestly encompass the matter in litigation herein. Although the Union originally took up the matter under the established grievance procedure, at the suggestion of Respondent it suspended such procedure.

The Board in similar circumstances has held that the policy of promoting industrial peace and stability through collective bargaining warrants requiring the parties to honor the contractual grievance and arbitration obligation that they themselves have voluntarily established. *Titus-Will Ford Sales, Inc.*, 197 NLRB 147. Indeed, I note that in *Brotherhood of Teamsters & Auto Truckdrivers Local No. 70*,

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (National Biscuit Company) 198 NLRB No. 4, the dissent pointed out that the charging party, there the employer, had not attempted to have the dispute resolved through the established contractual machinery and that the time limit for such use had expired, unlike the present case, where there has been a waiver thereof.

In essence, the parties are in the position of shopping for a forum. Their long-established grievance procedure and, more particularly, the arbitration clause thereof is being kept in limbo until such time as they may find fault with the decision of the Board. In view thereof, I shall recommend that the complaint be dismissed, provided that jurisdiction is retained by the Board for the limited purpose of entertaining an appropriate and timely motion for further consideration upon a proper showing that either (a) the dispute has not, with reasonable promptness after the issuance of this Decision, either been resolved by amicable settlement under the grievance procedure or submitted promptly to arbitration, (b) the grievance or arbitration procedure has not been fair and regular or has reached a result which is repugnant to the Act, or (c) the decision by the arbitrator is not wholly dispositive of the issues in this proceeding.

CONCLUSIONS OF LAW

1. American Standard, Inc., is an employer whose operations affect commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Pottery & Allied Workers, Local 218, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not engaged in unfair labor practices with the meaning of Section 8(a)(5) and (1) of the Act.⁶

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

ORDER ⁷

The complaint is dismissed.

⁶ This, of course, is subject to the retention of jurisdiction outlined above.

⁷ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 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.

⁴ Whether or not this applies only to piecework is not revealed.

⁵ As noted, I deem the mutual decision of the parties to defer arbitration pending the instant case as a waiver of the 15-day clause.