

**Alexander Typesetting, Inc. and Indianapolis Typographical Union No. 1 Case 25-CA-5473**

November 13, 1973

**DECISION AND ORDER**

BY CHAIRMAN MILLER AND MEMBERS JENKINS  
AND KENNEDY

On August 7, 1973, Administrative Law Judge Marion C. Ladwig issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the 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,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

**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 herein be, and it hereby is, dismissed.

<sup>1</sup> As we agree with the Administrative Law Judge's finding that Respondent and the Union reached an impasse in their negotiations prior to the date Respondent granted its employees a wage increase, we find it unnecessary to pass upon the Administrative Law Judge's conclusion that, under the circumstances herein, the increase may have been lawful even in the absence of such a bargaining impasse.

**DECISION**

**STATEMENT OF THE CASE**

MARION C. LADWIG, Administrative Law Judge: This case was tried at Indianapolis, Indiana, on June 21-22, 1973.<sup>1</sup> The charge was filed by the Union on March 21 and the complaint was issued on May 30. The primary issue is whether the Company, the Respondent, unlawfully placed into effect a unilateral wage increase during negotiations, in violation of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Company, I make the following:

<sup>1</sup> All dates are in 1973 unless otherwise stated.

**FINDINGS OF FACT**

**I. JURISDICTION**

The Company, an Indiana corporation, is engaged in commercial trade typesetting at its plant in Indianapolis, Indiana, where it annually receives materials valued in excess of \$50,000 directly from outside the State and performs services with a gross value exceeding \$500,000. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**A. Background**

For years before December 1972, the Company was represented in collective-bargaining negotiations by the Indianapolis Union Printers Division of the Printing Industries of Indiana, Inc., herein called the Association. In December 1972, the Company timely withdrew from the multiemployer bargaining, and thereafter engaged in separate bargaining with the Union for a unit of its composing room employees. (During these negotiations, disputes arose over certain inclusions and exclusions of employees in the bargaining unit. Part of this issue over jurisdiction was referred to arbitration under the Association agreement which expired on February 28, and part of it continues to be discussed in negotiations. The Union clearly represented a majority of the composing room employees.)

About March 2, the Union and the Association reached a new agreement, providing for a wage increase of \$10.50 a week for the first year, retroactive to March 1, and \$10.30 a week for the second year.

**B. Alleged Unlawful Unilateral Increase**

**1. Undisputed facts**

The Company and the Union exchanged proposals and met in negotiations on January 26, February 13, 19, 23, and 28, March 7 and 14, and May 24. They planned to continue negotiations following the trial herein (in June).

Throughout these negotiations, the parties were apart on several basic issues. The Company particularly sought to include different classifications in the agreement (instead of having only journeymen and apprentices). It believed that in order better to compete with certain nonunion firms, it must employ lesser skilled "miscellaneous help," at a lower rate, to perform nonjourneyman work. It sought to change the union-controlled "priority" (or seniority) provisions in the agreement, and to delete from the agreement the incorporation of the Union's "General Laws." It also sought, among other changes, to delete the contractual restrictions on the use of outside computer tape, and to have separate company sponsored (instead of union sponsored) pension, as well as health and welfare plans. The Union, in turn, sought certain contractual changes.

When the 1972-73 Association agreement expired on

February 28, the Company continued the wage scale and certain other benefits, but also continued to hire "miscellaneous help" outside the Union. The next negotiations were set for March 7.

On March 4, the Union held its regular monthly membership meeting, ratified the new, 2-year Association agreement, and voted to seek permission from the International to strike the Company. When negotiations with the Company resumed on March 7, the Union discussed with the Company the new Association agreement, which contained new provisions on the use of outside tape but none of the other above-mentioned changes sought by the Company. The Company refused to accept the Association agreement.

The following morning, March 8, the Company unilaterally decided to raise the journeyman rate \$10 a week, effective March 2. (As noted above, the Association had agreed to pay a wage increase of \$10.50 a week, effective March 1.) The \$10 increase was included in the Company's weekly paychecks on March 9, without any explanation to the employees. Meanwhile, on the afternoon of March 8, the Union received the requested strike sanction from its International and began posting notices of a strike vote to be held at a special membership meeting on March 11. The union membership met on that date and authorized a strike against the Company. (No strike had been called at the time of trial.)

The Company and Union held a short negotiating session of March 14, but failed to reach any agreement. No protest was then made of the Company's unilateral action in granting the \$10 wage increase. However a week later, on March 21, the Union filed the charge herein, alleging that the Company "unilaterally changed existing wage rates," in violation of Section 8(a)(5) and (1) of the Act. About March 23, upon receipt of a copy of this charge, the Company posted a notice, with the charge, stating that "The Union is saying that we are guilty of a unfair labor practice because we increased wages \$10.00 a week. Is this Union really interested in the welfare of the people, or interested in harassing the Company?" At the trial, the General Counsel stated that he "is not contending that [the notice] constitutes any sort of violation of the Act."

Previously, in 1964, 1969, and 1972, the Company had unilaterally placed into effect wage increases during negotiations, without protest from the Union. In 1969, it was a \$10 weekly increase, which was later deducted from the negotiated retroactive pay (of a larger amount).

## 2. Disputed facts

A dispute arose at the trial concerning whether or not the Company offered in the March 7 bargaining meeting to pay the \$10.50 first-year wage increase which the Union and the Association had negotiated the week before. Three of the General Counsel's witnesses, Union President Ned Richer, and scale committeemen Nathan Leek and Dennis Thompson testified that, in the March 7 meeting, the Company merely stated that it and the Union were not far apart on wages. Leek's rather sketchy notes, taken at the meeting, indicate that the Company stated "that we were not far apart on wages and holidays but couldn't propose a day of funeral leave."

On the other hand, Company Officials Dwight and Arthur Alexander both testified that the Company offered at that meeting to pay the \$10.50 first-year wage increase. The detailed notes taken at the meeting by Dwight Alexander specifically indicate that the Company stated that it "would be willing to go the 10.50 the first year." (This is shown on the first page of Dwight's notes. Apparently referring to the same thing mentioned in Leek's notes, page 5 of Dwight's notes show that, later in the meeting, the Company stated, "I don't think we are apart on money. To clear this up, we would propose a floating holiday in lieu of birthday & veterans day for veterans. Will not propose funeral day.")

The General Counsel offered no rebuttal testimony.

In the absence of any rebuttal, or other reason for not accepting Dwight Alexander's detailed notes as being accurate, I credit the testimony that the Company offered in the March 7 meeting to pay the \$10.50 wage increase.

## 3. Impasse in bargaining

When the Company decided in December 1972 to break away from multiemployer bargaining, it did so because it was insisting on certain contractual changes which the Association in the past had been unable to obtain in negotiations with the Union. These changes included demands for a "miscellaneous help" classification for lesser skilled jobs, unrestricted use of outside computer tape, etc. During their separate bargaining in January and February, the parties engaged in hard bargaining on these issues, but did not agree on any of them. Meanwhile, on March 2, the Union had reached agreement with the Association on a new contract.

On March 4, when the union membership ratified the Association agreement, Union President Richer (as disclosed by the union minutes) reported that the negotiations at the Company "are at a stalemate," that the Company was "refusing to change any part of its original proposal," that the Company had "made it clear they would hire miscellaneous help after the [February 28] expiration date of the [old Association] contract," and that "It appears that the Union is faced with a showdown" with the Company.

In the next negotiating session on March 7, the Company flatly refused to accept the new Association contract as the basis for an agreement. The Company continued to insist on a number of its demands, including a provision for miscellaneous help. It expressed such strong feelings about this issue that at one point (as revealed by company notes) it told the Union: "We feel our proposal will help the union, and you feel that the opposite is true. The only way we can protect this work at the moment is to go nonunion & we don't want to." (The Union would not refer persons to work in a lower classification.) Near the end of the meeting, the Company asked "Are we deadlocked" on this issue, and the Union answered yes. The company notes of the meeting further reveal that the Union thereafter stated, "The last thing I want is a strike against your company . . . but that if" that is "what it takes then that's what it takes." When the Company still refused to accept the terms of the Association contract, the Union stated, "We see no need to continue the meeting," and that the Union would

take "whatever appropriate action it deems necessary." The meeting concluded after the parties agreed to meet the following week."

On March 14, after the Union's strike vote, the Company and Union met for a few minutes: The Union still insisted on an agreement based on the Association contract, and the Company refused.

In its brief, the General Counsel contends that because of the concessions the Union made in the new Association contract, the progress made in the March 7 meeting on the economic issues, and the continued bargaining, there was no impasse on that date. However, in agreement with the Company, I find that "it was clear that the Union had no intention of reaching an agreement with the Company that differed from" the Association agreement, and that it is "apparent the parties had reached an impasse" on March 7, when the Company refused to agree to the terms of the Association contract.

#### 4. Concluding findings

The Company and the Union reached an impasse in the March 7 negotiations, after the Company offered to pay the \$10.50 weekly wage increase provided in the new Association contract, but refused to drop its various demands and sign an agreement based on the Association contract. Two days later, on March 9, the Company included in the employees' paychecks, without any explanation, a \$10 weekly wage increase retroactive to March 2.

Contrary to these findings, the General Counsel contends that there was no impasse in bargaining and that the Company did not offer the \$10.50 increase in negotiations. I disagree for the reasons heretofore stated.

In the absence of any allegation or proof of prior bad-faith bargaining on the Company's part, I find that the Company's granting of the \$10 unilateral increase on March 9 did not violate Section 8(a)(5) or (1) of the Act. As held in *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), "after bargaining to an impasse, that is, after good-faith negotiations have exhausted the prospects of concluding an agreement, an employer does not violate the Act by making unilateral changes that are reasonably compre-

hended within his pre-impasse proposals." Furthermore when granting the \$10 increase, the Company did nothing "to disparage the bargaining agent or undermine its prestige or authority," cf. *Reed & Prince Mfg. Co.*, 96 NLRB 850, 856 (1951), cited by the General Counsel. (It was not until 2 weeks later that the Company criticized the Union, in response to the charge filed herein.) The union membership was aware that the Union had been successful in negotiating a slightly larger increase in the new Association agreement. Inasmuch as the Company granted the \$10 increase without any explanation to the employees, it did not indicate that the Company "alone was entitled to credit for the increase," cf. *Texas Foundries, Inc.*, 101 NLRB 1642, 1669 (1952), also cited by the General Counsel. Moreover, the Board has held that "under certain circumstances a respondent employer, even while negotiations are pending, may grant to his employees the same benefits which have been rejected by the Union at the bargaining table" where the employer "acts in good faith in his relations with the union and engages in genuine bargaining." *Perry Rubber Co.*, 133 NLRB 225, 227 (1961). Having found that the Company had previously granted a wage increase unilaterally on three occasions without protest from the Union, I find that the Company was acting in good faith on this occasion.

I therefore find that the Company did not violate the Act by unilaterally granting the \$10 weekly wage increase on March 9.

#### CONCLUSIONS OF LAW

By acting in good faith when unilaterally granting employees a \$10 wage increase, after making an offer of \$10.50 in negotiations with the Union and after reaching an impasse in the negotiations, the Company did not violate Section 8(a)(5) or (1) of the Act.

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

#### ORDER<sup>2</sup>

The complaint is dismissed in its entirety.

<sup>2</sup> 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