A. W. Thompson, Inc. *and* Local 826, International Union of Operating Engineers, AFL–CIO. Cases 16–CA–5406 and 16–CA–5537

February 25, 1975

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND PENELLO

On November 7, 1974, Administrative Law Judge Wellington A. Gillis issued the attached Decision in this proceeding, as corrected by an erratum issued December 9, 1974. Thereafter, the Respondent filed exceptions, the General Counsel filed a brief in support of the Administrative Law Judge's Decision and an answering brief, and the Respondent filed a brief in reply.[1]

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 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 Respondent, A. W. Thompson, Inc., Odessa and Midland, Texas, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for the Administrative Law Judge's notice.

[1] The motions made by the General Counsel and the Respondent respectively to strike portions of the Respondent's exceptions and to strike the General Counsel's answering brief and motion to strike are denied.

APPENDIX

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

WE WILL NOT refuse to bargain collectively with Local 826, International Union of Operating Engineers, AFL–CIO, as the exclusive collective-bargaining representative of all our employees in the following unit:

All the employees of the Respondent working out of the Respondent's Odessa, Texas, facility, including employees working on rigs in the following Counties: Yoakum, Terry, Gaines, Dawson, Andrews, Loving, Winkler, Ector, Midland, Glasscock, Reeves, Ward, Crane, Upton, Reagan, Pecos, Crockett, Terrell and Martin (all in Texas), and Lea County, New Mexico, and including truckdrivers and maintenance employees working at the Respondent's Odessa, Texas, facility, but excluding office clerical employees, drillers, shop foremen, truck foremen, guards, and supervisors as defined in the Act, as amended.

WE WILL NOT withdraw recognition and refuse to meet with the Union as the exclusive collective-bargaining representative of our employees in said unit.

WE WILL NOT refuse to furnish the Union with the names and addresses of our employees.

WE WILL NOT grant wage increases to our employees, or otherwise change their wages, hours, or other terms and conditions of employment, without notifying and consulting with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act.

WE WILL bargain collectively with the Union upon request as the exclusive collective-bargaining representative of employees in the appropriate unit, and, if an understanding is reached, sign a contract with the Union.

A. W. THOMPSON, INC.

DECISION

STATEMENT OF THE CASE

WELLINGTON A. GILLIS, Administrative Law Judge: This case was initially tried before me on March 14, 1974, at Odessa, Texas, and is based upon a charge and an amended charge filed on January 4 and 9, 1974, respectively, by Local 826, International Union of Operating Engineers, AFL–CIO, hereinafter referred to as the Union, upon a complaint issued on January 30, 1974, by the General Counsel for the National Labor Relations Board, hereinafter referred to as the Board, against A. W. Thompson, Inc., hereinafter referred to as the Respondent or the Company, alleging violations of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended (61 Stat. 136), and upon an answer timely filed by the Respondent denying the commission of any unfair labor practices.

At the hearing all parties were represented by counsel, and were afforded full opportunity to examine and cross-

examine witnesses, to introduce evidence pertinent to the issues, and to engage in oral argument. Subsequent to the close of the hearing, on April 17, 1974, timely briefs were submitted by counsel for the General Counsel and for the Respondent.

Thereafter, prior to the rendering of a decision in the matter, based upon separate charges filed on April 22 and May 13, 1974, by the Union, the General Counsel, on May 13, 1974, issued a second complaint against the Respondent in Case 16–CA–5537, alleging additional violations of Section 8(a)(1) and (5) of the Act. Simultaneous with the issuance of complaint, the General Counsel filed with the Administrative Law Judge a motion to reopen the record and motion to consolidate cases. After having thereafter filed a timely motion in opposition to the General Counsel's motion and an amended answer, the Respondent by telegram dated June 6, 1974, withdrew its opposition to reopen and to consolidate, and agreed with counsel for the General Counsel to submit Case 16–CA–5537 by stipulation of the record in Case 16–CA–5406 and stipulation of fact and exhibits in Case 16–CA–5537 to the Administrative Law Judge to be considered together in lieu of a hearing in Case 16–CA–5537.

By order dated June 10, 1974, the Administrative Law Judge granted General Counsel's motion to reopen the record and consolidate cases. Thereafter, on June 21, 1974, a written stipulation executed by all parties was submitted to the Administrative Law Judge. By order dated July 1, 1974, the stipulation was approved and, pursuant to its terms providing for the filing of limited briefs, the date for filing of briefs was set for July 15, 1974, pursuant to which a supplemental brief was subsequently submitted by counsel for the Respondent.

Upon the entire record in this consolidated proceeding,[1] and from my observation of the witnesses, and their demeanor on the witness stand, and upon substantial reliable evidence "considered along with the consistency and inherent probability of testimony" (*Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 496 (1951), I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

A. W. Thompson, Inc., is a Texas corporation maintaining its principal office and place of business in Midland, Texas, and a yard office in Odessa, Texas. The Respondent is engaged in the contract drilling business in various counties in the State of Texas and Lea County, New Mexico, known as the Permian Basin. During the 12-month period immediately preceding the issuance of complaint, the Respondent performed services valued in excess of $50,000 for customers located outside the State of Texas. The parties admit, and I find, that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The parties admit, and I find, that Local 826, International Union of Operating Engineers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. Background and issues

On August 2, 1966, pursuant to a Stipulation for Certification Upon Consent Election, an election was held among employees working out of the Respondent's Odessa facility, including employees working on oil drilling rigs in certain West Texas and New Mexico Counties. A majority of the employees having voted for the Union, the Board on August 10, 1966, certified the Union as the collective-bargaining representative. Thereafter, on November 16, 1967, the Union and the Respondent entered into a collective-bargaining agreement, technically referred to as a Working Agreement, said contract terminating on or about August 2, 1968.

Following intervening noncontractual years, the parties on May 29, 1973, executed a Working Agreement covering the same employees. By letter dated October 22, 1973, pursuant to the terms of the contract, the Union advised the Respondent of its desire to open said contract for renegotiations. Subsequently, by letter dated December 3, 1973, Union Business Manager Kenneth Howell requested of Brooks Harman, attorney for the Respondent, dates for the commencement of negotiations to renew the contract, and also requested an updated list of Respondent's employees with addresses.

On December 20, 1973, Howell again wrote Harman, requesting a contract negotiations meeting with the Respondent at 10 a.m. on December 27 in the latter's office, and also reiterating his earlier request for the employee list. Again, by letter dated December 26, 1973, Howell requested a date for contract negotiations, stressing the fact that the current contract was about to terminate on December 31, 1973. On December 28, 1973, Harman wrote to Howell stating that he had been instructed by the Respondent to inform the Union that the Company in good faith doubted that the Union represented a majority of the Respondent's employees in the bargaining unit, and that the Company declined to negotiate a new or renewal contract. The letter closed by suggesting that if the Union really believed it represented a majority of the Company's employees it should so demonstrate.

On January 1, 1974, by written notice, the Company notified its employees that the union contract had expired, that the Company had apprised the Union that it no longer recognized it as the exclusive bargaining representative, that it did not believe that the Union represented the majority of the employees, and that, as this was the normal time for consideration for wage increases, it was granting specified hourly wage rate increases to the employees effective with the pay period commencing January 6, 1974.

[1] The General Counsel's motion to correct errors in the transcript, filed after the close of the hearing with notice to all parties, is hereby granted and the transcript is corrected.

By notice, dated April 11, 1974, and posted at its 12 rigs, the Respondent without notice to the Union notified its employees of further wage rate increases, effective April 14, 1974. The notice, in setting forth specified hourly rate increases, stated that "It is our understanding that wages paid by our primary competitors are due to be increased in the very near future. Therefore, in order to retain our competitive position in the industry, and to make every reasonable effort we can to keep our qualified and trained personnel and to reduce our turnover, we are increasing wages effective the pay period beginning April 14, 1974,. . . ."

Simultaneous with this action, the Respondent on April 14, 1974, again without notice to the Union, notified its employees by the distribution of an insurance booklet that their group insurance benefits were being upgraded, increased, and extended, retroactively effective as of February 1, 1974.

The above facts, alleged in the complaints as constituting conduct violative of Section 8(a)(1) and (5) of the Act, are uncontroverted. The Respondent, in effect admitting all but the conclusionary "bad faith" allegations of both complaints, raises as an affirmative defense a good-faith doubt as to the Union's majority status based upon the following assertions: (1) the Union at no time notified the Company of the appointment of any rig stewards as provided by the Working Agreement; (2) no grievances were ever processed by the Union under the contract's grievance procedure; (3) the bulletin boards at the rigs were never used by the Union for any purposes during the period of the contract, although so provided for by the contract; (4) no communication of any kind had been received by the Company from the Union other than the request of October 22, 1973, to renegotiate the contract; (5) the Company, with rigs working over a very wide area of West Texas and New Mexico, had experienced a rapid turnover among its necessary crew complement; (6) the only comments received by the Company from unit employees were unfavorable toward the Union; (7) during the earlier period in which the Union enjoyed a bargaining representative status, it failed to fairly represent the unit employees, thereby causing disaffection of the employees toward the Union. The Respondent justifies its actions concerning both pay raises and the increased insurance benefits on the ground that, for reasons set forth in its affirmative defenses, the Union was no longer the exclusive bargaining representative of the employees, and thus, having withdrawn its recognition of the Union, it had no legal obligation to consult with the Union with respect to such economic actions.

2. Affirmative defenses

a. *Appointment of stewards*

The Respondent, as a first affirmative defense, asserts that "Article IV of the Working Agreement between Respondent and Local 826 provided for rig stewards and that the Union would notify the Company in writing upon the appointment of any steward. The Company has never been notified of the appointment of any steward and has never heard of any steward being appointed or anyone acting as steward on any rig. The Company operated 11 to 12 rigs during the period of the contract."

The General Counsel admits, and the evidence discloses, that such was the case, that no union stewards were appointed, and that the Company was never informed of any appointments. As testified by Frank Thompson, Respondent's president, the Union during contract negotiations had insisted on having stewards represent the Union on the rigs, giving rise to the subject contract provision, and that, pursuant thereto, the Union was supposed to inform the Company of the names of the stewards. This was never done.

b. *No grievances processed*

As a second affirmative defense, the Respondent argues that, notwithstanding that article III of the Working Agreement provides for grievance procedure, no grievances were ever processed with the Respondent by Local 826 or any representative of Local 826.

This fact, also, is unrefuted, the evidence reflecting that during the contract period no grievances were filed and, accordingly, none was processed. It also appears that nothing of any moment occurred giving rise to the use of the grievance machinery, for, as Thompson testified, he could recall nothing happening which would have caused employees to be dissatisfied with their working conditions, that nothing came to his attention concerning problems with employees registering complaints.

c. *Use of bulletin boards*

As a third affirmative defense, the Respondent asserts "The Working Agreement in Article V provided for the Union's use of bulletin boards in the clothes changing doghouses at each rig. The bulletin boards have never been used by the Union for any purpose during the period of the contract."

The Respondent's evidence in this regard is limited to the testimony of Thompson and his administrative assistant, Theodore Toft, to the effect that, during the contract period, they never saw any union literature posted on the rig bulletin boards, or never heard of any having been posted. Neither, however, could testify that none was posted, and Toft admitted that notices could have been posted of which he had no knowledge. Thompson testified that, during the contract period, he probably visited each rig once, while Toft testified that he probably visited each rig about three times. Union Business Representative Kenneth Howell, on the other hand, testified that notices of union meetings are mailed to employees and that, on occasion, employees posted them on the doghouse bulletin boards, and, on other occasions, employees came by the Union's Odessa office to pick up copies of notices for posting on the bulletin boards.

d. *No union communication*

The fourth affirmative defense relied upon by the Respondent states "No communication of any kind has been received by Respondent from the Union except the request to re-negotiate the contract, which request was dated October 22, 1973."

In this regard it is unrefuted, and the evidence indicates, that such was the case, that between the May 29, 1973, execution of the Working Agreement the Union's request of October 22, 1973, to renegotiate that agreement, there had been no communication by the Union with the Company, and that the only communication thereafter with Thompson, or the Respondent's attorney, were the December follow-up negotiation demands and the request for an updated employee list.

e. *Employee turnover*

As a fifth affirmative defense, the Respondent asserts that it had experienced a rather rapid turnover among its necessary crew complement and that Respondent's rigs were working over a very wide area of West Texas and New Mexico. The evidence reveals that during the period between 1966 and the end of 1973, the Respondent's operations had increased from approximately 105 jobs to around 200 jobs. Thompson testified, without refutation, that annually the rate of employee turnover is about 4 to 1, that in calendar year 1973 the Respondent processed 817 W-2 forms, which means that, during the year, over 800 men were employed in the Respondent's 200 jobs.

f. *Unfavorable employee comments*

The Respondent's sixth affirmative defense asserts that the only comments from unit employees coming to management were unfavorable toward the Union. Evidence in support of this assertion is confined to rather vague testimony of Thompson and Toft. When initially asked for the basis upon which he doubted the Union's majority in the fall of 1973, Thompson, after alluding to employee turnover, was asked if he had finished. His reply was, "Oh, I might think of something else in a few minutes." Whereupon, he testified that "several hands did come in and ask how they could get loose from the Union." Thompson admitted that they did not talk to him personally and that he did not know who they are, but that "I could probably get their names." At another point, when asked whether he ever attempted to find out whether any of his employees wanted the Union, Thompson replied that in casual conversations with his employees at different times, "I got the idea that they didn't care about the Union, or didn't know we had it." When later pressed as to whether at any time prior to withdrawing recognition from the Union on December 28, 1973, he had received a report that any particular employee did not want the Union, Thompson admitted that he had not. Thompson testified that he took no measure to determine whether a majority of his employees wanted the Union and did not know as a fact whether such was the case. Toft's testimony was equally vague, in that he testified that over a period of time, he heard employees question, "When can we get rid of the Union" or "I thought we were rid of the Union." Toft testified that, in "casual conversations once in a while," he advised Thompson of what he heard, but did not recall giving Thompson any names of employees in connection with such union sentiments.

B. *Analysis and Conclusions*

The General Counsel contends that the Respondent violated Section 8(a)(1) and (5) of the Act by refusing, since October 22, 1973, to meet and bargain with the Union; by withdrawing recognition from the Union on December 28, 1973; by unilaterally granting employee wage increases on January 6 and April 14, 1974; by refusing to furnish the Union with data relating to names and addresses of employees; and by unilaterally upgrading, increasing, and extending insurance benefits on April 14, 1974.

The Respondent, admitting the essential factual allegations of both complaints, defends its action on the assertion that for reasons advanced as affirmative defenses the Union was either unwilling or unable to service its employees, giving rise to its good-faith doubt as to the Union's continuing majority status. As a result of its good-faith doubt, argues the Respondent, it was entitled to withdraw recognition and, once the contract terminated on December 31, 1973, to grant the wage increases.

The principles governing an employer's continuing duty to recognize and bargain with a previously certified union are well established[2] and have recently been applied by the Board in a number of decisions, several of which involve oil drilling employers in the Permian Basin.[3] Thus, Board precedent holds that a certified union, upon the expiration of the year following its certification, enjoys a rebuttable presumption that its status as majority representative continues. An employer may lawfully refuse to bargain with the union after the lapse of the certification year if it affirmatively establishes (1) that at the time of the refusal the union no longer commanded a majority, or (2) that the refusal of the employer was predicated upon a reasonably based doubt as to the continuing majority. To establish the former, an employer must have affirmative proof that the majority of employees in the certified unit no longer desired the union to represent them. As to the latter, the employer need establish only that it had a reasonable basis for doubting the union's majority at the time of its refusal to bargain.[4] This, however, must be shown by objective facts and not merely by an assertion thereof or proof of the employer's subjective frame of mind.[5]

In applying the above principles to the case at hand, we need address ourselves only to the second of the two propositions, for there is no proof, nor does the Respondent so assert, that the Union had in fact lost its majority at any time. Accordingly, we must look to the objective facts upon which the Respondent assertedly relied in establishing a reasonable basis for doubting the Union's majority. They are to be found, if in fact they qualify, in the affirmative defenses set forth by the Respondent.

In appraising the affirmative defenses, one must keep in

[2] *Celanese Corporation of America*, 95 NLRB 664, 671–672 (1951); *Terrell Machine Company*, 173 NLRB 1480 (1969).

[3] *Leatherwood Drilling Company*, 209 NLRB 618 (1974); *Brahaney Drilling Company*, 209 NLRB 624 (1974); and *Hondo Drilling Company, N.S.L.*, 213 NLRB No. 32 (1974).

[4] *Orion Corporation*, 210 NLRB 633 (1974); *Automated Business Systems*, 205 NLRB 532 (1973); *Celanese Corporation of America, supra*

[5] *Montgomery Ward & Co., Incorporated*, 210 NLRB 717 (1974); *Laystrom Manufacturing Co.*, 151 NLRB 1482 (1965).

mind that the current Working Agreement alluded to was executed on May 29, 1973, that it expired on December 31, 1973, and thus, that the contract period involved was some 7 months in duration. Secondly, according to Thompson, a good-faith doubt concerning the Union's majority arose right after the May 29 execution of the contract.

With respect to the failure on the part of the Union to appoint rigs stewards, and thus to notify the Respondent of such appointments, on the one hand, or to process employee grievances with the Respondent, on the other, the Respondent was unable to show that the Union's failure in any way reflected adversely upon its responsibilities as bargaining representative. To the contrary, it appears that, during the entire period, no grievances were filed by employees, and that nothing occurred concerning alleged contract violations or employee discontentment with working conditions which would warrant the filing of grievances. Such conditions obviate the necessity of appointing rigs stewards, and thus the failure to notify the Respondent "upon the appointment of any steward," or to process grievances which were never filed, hardly constitutes a reasonable basis for doubting the Union's majority.

Concerning the Respondent's assertion that the bulletin boards at the rigs were not used by the Union during this period, it appears, first, that the provision of the Working Agreement alluded to by the Respondent in no way requires the Union to use the bulletin boards, but merely grants it the privilege of doing so, and, secondly, that, in fact, the Union did, at least on occasion, post its meeting notices on these boards. The fact that notices were often torn down raises a question as to the value of the bulletin boards as a means of communicating with employees. In any event, I find this argument without merit.

The Respondent's fourth affirmative defense, its assertion that no union communication of any kind, other than the October 22 negotiation request, was received by the Respondent, must fall on the admitted evidence herein. In addition to the initial negotiation request of October 22, the Union's letters of December 3 and 20, reiterating its request for bargaining negotiations as well as for an updated list of employees and addresses, went unanswered. It was not until December 28, after one more union communique had been received and 2 days before the expiration of the Working Agreement, that the Respondent replied, and then only to apprise the Union for the first time that it doubted its majority status and was declining to negotiate, in effect withdrawing recognition of the Union. This defense must fall for obvious reasons.

Turning to the Respondent's fifth affirmative defense, the unrefuted evidence supports the Respondent's assertion that it had experienced a rapid turnover among its employee complement. While the processing in excess of 800 W-2 forms in 1 year for a 200-job operation might well create in one's mind a question as to whether a union had retained its majority, the Board has specifically ruled that employee turnover alone is insufficient legal ground upon which to base a good-faith doubt of union majority.[6] The fact that the Board within the past few months reiterated this holding, and did so in three decisions involving operations in the Permian Basin identical to that of the Respondent, renders the Respondent's argument in this regard without merit.

As in the case of the foregoing defenses, I find that the Respondent failed to carry its burden of proving its sixth affirmative defense, that which asserts that the only comments coming from unit employees were unfavorable toward the Union. Apart from the fact that neither Thompson nor Toft was convincing in testifying as to this matter, neither was able to provide names or details concerning alleged employee expressions of dissatisfaction with the Union. The fact that "several" employees out of a unit of up to 200 employees may have casually expressed at one time or another dissatisfaction with, or indifference to, the Union, does not constitute a reasonable basis upon which to assert a good-faith doubt of majority. In this regard, the Board has held that evidence of dissatisfaction with the union, to be of any significance, must come from the employees themselves, not from the employer on their behalf.[7]

In finding, as I do, that the Respondent has failed in its burden of proof as to its affirmative defenses, I further find that the evidence does not support the Respondent's assertion that the Union was either unwilling or unable to service its employees and that such, independently, supports an asserted good-faith doubt.

Apart from its failure to meet the requirements for establishing a reasonable basis for a good-faith doubt of the Union's continuing majority, the fact that the Respondent, although asserting a good-faith doubt throughout the entire fall of 1973, failed to apprise the Union of its position in this regard until December 28, 1973, just 2 days before the Working Agreement expired, coupled with its earlier refusal to meet, to supply the Union with requested employee data, or to in any way justify its having ignored such requests, in itself casts a cloud on the sincerity with which the Respondent advances its good-faith argument. I find, in refusing since October 22, 1973, to meet and to negotiate in good faith with the Union, and in withdrawing recognition from the Union on December 28, 1973, the Respondent unlawfully refused to bargain in violation of Section 8(a)(5) and (1) of the Act.

I further find, under the conditions prevailing in the Permian Basin, including the employee turnover, the wide area covered by the Respondent's operations, and the inadequacy of alternative means of communicating with unit employees, the employee data requested of the Respondent by the Union on December 3, 1973, was relevant and necessary to the Union in order that it might properly fulfill its functions as bargaining representative of Respondent's employees. Accordingly, the Respondent's refusal to furnish the Union with an updated list of the names and addresses of its employees constitutes an independent violation of Section 8(a)(5) of the Act.[8]

Having found that the Respondent unlawfully withdrew recognition from the Union on December 28, 1973, it follows, without the need for elaboration, that the

[6] *Laystrom Manufacturing Co., supra*

[7] *Terrell Machine Company, supra; Montgomery Ward & Co, Incorporated, supra*

[8] The fact that the Respondent subsequently complied with this request pursuant to a subpena issued by the General Counsel of the Board in no way alters this finding.

Respondent's unilateral employee wage increase of January 6, 1974, announced to its employees contemporaneously with the announcement of its withdrawal of recognition, and its follow-up unilateral employee wage increase of April 14, 1974, constitute separate violations of Section 8(a)(5) and (1) of the Act.[9]

Remaining for resolution is the 8(a)(5) complaint allegation that the Respondent, on or about April 14, 1974, without prior notification to, or consultation with, the Union, distributed to its employees a booklet notifying them that their group insurance plan had been upgraded and that their benefits thereunder had been increased and extended effective February 1, 1974. The stipulated facts relating to this issue reveal that the Respondent had a group insurance plan in existence covering unit and nonunit employees, and that the Working Agreement in effect between May 29, 1973, and December 31, 1973, contains the following relevant provisions:

> 10.1 The Company has a group insurance program for employees of the company who qualify. The Company presently pays all premiums on such insurance.
>
> 10.2 The program consists of $5,000, double-indemnity, life insurance, hospitalization and medical major insurance. The hospitalization and major medical covers both the employee and dependents. All the insurance is subject to the employee qualifying and subject to the conditions set forth in the group policy.
>
> 10.3 The above-mentioned insurance is automatic to those employees who have completed one (1) year's continuous service as that term is defined under the Article "Vacation and Holiday."
>
> 10.4 The Company agrees to continue the present insurance program in effect at its present premium costs but reserves the right to unilaterally determine if it will increase its costs if the premiums increase.
>
> 10.5 Since the policy is one which covers employees other than bargaining unit employees, as well as bargaining unit employees, the Company shall have the right to negotiate with the insurance company or a different insurance company as to costs and benefits, as well as for comparable or increased benefits; and may institute such new policy upon authorization of participation of the necessary number of employees required by the insurance company.

Pursuant to the provision of the Working Agreement, an increase of group benefits was negotiated by the Respondent with the Hartford Life and Accident Insurance Company, said negotiations having commenced on September 7, 1973, and concluded on December 18, 1973, prior to the expiration of the Working Agreement. Thereafter, in March 1974, such increased and upgraded benefits were published and printed in booklet form by the Hartford Life and Accident Insurance Company, and subsequently transmitted to the Respondent for distribution to its employees. The booklet noted that the upgraded plan, with its increased and extended benefits, was effective February 1, 1974. The Respondent, in turn, made such distribution to its employees, unit and nonunit employees alike, on April 14, 1974.

I find, as argued by the Respondent, that the provisions of the Working Agreement clearly gave the Company the unilateral authority to negotiate with the insurance company or a different insurance company as to costs and benefits, and that the Respondent was authorized to put into effect such new policy upon authorization of participation of the necessary number of employees required by the insurance company. The Working Agreement contained no provision requiring union negotiation, consultation, or even notification, as a requisite to such action by the Respondent. The Respondent's negotiation of increased benefits with the Hartford Life and Accident Insurance Company was carried on and concluded during the life of the Working Agreement, was well within the unilateral authority of the Respondent under the Working Agreement to do so, and the fact that the booklet containing the increased benefits was not published by the insurance company and thus not distributed by the Respondent until the following March and April does not render the action unlawful. Accordingly, I find under these circumstances that the Respondent's conduct in this regard was not an unfair labor practice and that, in this particular, Respondent did not violate Section 8(a)(5) of the Act.

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

CONCLUSIONS OF LAW

1. A. W. Thompson, Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local 826, International Union of Operating Engineers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. The following constitutes a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All the employees of the Respondent working out of the Respondent's Odessa, Texas, facility, including employees working on rigs in the following Counties: Yoakum, Terry, Gaines, Dawson, Andrews, Loving, Winkler, Ector, Midland, Glasscock, Reeves, Ward, Crane, Upton, Reagon, Pecos, Crockett, Terrell and Martin (all in Texas) and Lea County, New Mexico, and including truck drivers and maintenance employees working at the Respondent's Odessa, Texas, facility but excluding office clerical employees, drillers, shop foremen, truck foremen, guards and supervisors as defined in the Act, as amended.

4. At all times since August 2, 1966, the Union has been and is now the exclusive bargaining representative of the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. By refusing since October 22, 1973, to meet with the Union and to confer in good faith with respect to wages,

[9] *Brahaney Drilling Company, supra.*

hours, and other terms and conditions of employment, and thereafter, on December 28, 1973, withdrawing recognition from the Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By refusing in December 1973, to furnish the Union with data relating to the names and addresses of its employees, and by unilaterally granting on January 6, 1974, and again on April 14, 1974, without notification to or consultation with the Union, wage increases to its employees, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. By the foregoing conduct, the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

9. Other than as above found, the Respondent has not violated the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

THE REMEDY

It having been found that the Respondent has engaged in certain unfair labor practices, it is recommended that it cease and desist therefrom and that it take certain affirmative action which is necessary to effectuate the policies of the Act.

Although it has been found that the Respondent unlawfully granted its employees wage increases on January 6, 1974, and again April 14, 1974, it is not recommended that the Respondent be ordered to rescind its actions in this regard or to retract the wage increases.

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

ORDER[10]

The Respondent, A. W. Thompson, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local 826, International Union of Operating Engineers, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All the employees of the Respondent working out of the Respondent's Odessa, Texas, facility, including employees working on rigs in the following Counties: Yoakum, Terry, Gaines, Dawson, Andrews, Loving, Winkler, Ector, Midland, Glasscock, Reeves, Ward, Crane, Upton, Reagan, Pecos, Corckett, Terrell and Martin (all in Texas) and Lea County, New Mexico, and including truck drivers and maintenance employees working at the Respondent's Odessa, Texas, facility, but excluding office clerical employees, drillers, shop foremen, truck foremen, guards and supervisors as defined in the Act, as amended.

(b) Withdrawing recognition from and refusing to meet with the Union as the exclusive bargaining representative of employees in the appropriate unit.

(c) Refusing to furnish the Union data relating to the names and addresses of its employees, unilaterally granting wage increases to its employees or otherwise changing wages, hours, or other terms and conditions of employment, without notification to, or consultation with, the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

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

(a) Upon request bargain collectively with Local 826, International Union of Operating Engineers, AFL–CIO, as the exclusive representative of the employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and embody in a signed agreement any understanding reached.

(b) Post in conspicuous places at its Odessa, Texas, facility, and at all bulletin boards located at the "doghouses" at each rig operated by the Respondent in the geographical area covered by the above appropriate unit, copies of the attached notice marked "Appendix."[11] Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by an authorized representative of the Respondent, shall be posted by it immediately upon receipt thereof, and maintained by it for at least 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[10] 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.

[11] In the event the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."