AAA Motor Lines, Inc. *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local Union No. 612. Case 10–CA–10278

December 16, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND JENKINS

On June 21, 1974, Administrative Law Judge John P. von Rohr issued the attached Decision in this proceeding. Thereafter, the Respondent, the General Counsel, and the Charging Party filed exceptions and supporting briefs.

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.

Respondent contends that its institution of certain changes in terms and conditions of employment for its employees on July 2, 1973, was not a violation of Section 8(a)(5) of the Act. In support of this contention, Respondent points out that in April 1973 Respondent submitted various contract proposals to Local 612 officials, requesting at the same time that arrangements be made to negotiate a renewal contract to the contract expiring at midnight, June 30, 1973. Respondent also points out that thereafter, and continuing through the expiration of the then current contract, Local 612's officials refused to meet with Respondent at any time for purposes of negotiating a new contract, and that the changes instituted on July 2, effective July 1, 1973, were necessary to protect various conditions of employment of its employees that would have automatically terminated as of midnight, June 30, 1973.[1]

For the reasons set forth below, we agree with the Respondent that its unilateral institution of certain terms and conditions of employment on the morning of July 2, 1973, did not violate Section 8(a)(5) of the Act. The record shows that on or about April 6, 1973, Respondent timely notified the Union of its intention to terminate the then existing contract effective June 30, 1973. The Respondent also timely notified the Union that it was withdrawing from the multiemployer bargaining association and at the same time submitted a proposed contract to Local 612 for consideration with a request that the parties meet and commence bargaining on Friday, April 13, 1973. Respondent received no reply from the Union, nor did anyone from the Union appear at Respondent's office on the 13th. On April 14 Dove, Respondent's president, contacted Sam Webb, Local 612's business manager, by telephone with regard to arranging a meeting. Dove suggested that a meeting be held on April 18, and advised Webb he would confirm this date by phone on the 17th. Dove also requested that in the event Webb could not meet on the 18th that he [Webb] furnish several alternative dates. On April 16, a message was relayed to Dove from Webb that he could not meet on the 18th. Dove then contacted Webb on the 17th and again requested that Webb establish a date for bargaining on the new contract. Webb advised Dove that he would be unable to meet until "after the master contract was settled." When Dove pointed out that the contract expired on June 30, Webb responded that he had to go by "certain rules and regulations." At Dove's request, Webb did agree to submit to Dove the Union's proposals on May 11. When Dove did not receive the Union's proposals as promised on May 11, he attempted to contact Webb at his office. Webb not being in the office, Dove left a message for Webb to call him. Receiving no response from Webb, Dove again called the office on May 21, and was advised that Webb had received Dove's message.

During this same period of time, Respondent received a letter dated May 14, from the International Union, advising that sometime in June a "properly authorized subcommittee" would be appointed to meet with Respondent and that it was "assumed" that this would occur "some time during the month of June." On May 22 Dove, by letter to the International Union, informed them that the proposed period for negotiations was unacceptable and again urged that a committee be appointed to meet with Respondent within not more than 5 days after receipt of the letter. Dove again enclosed a copy of Respondent's proposals for a new contract.

On June 6 Respondent, having received no response from the Union, filed a charge with the Board charging that the Union was refusing to meet and bargain in good faith in violation of Section 8(b)(3) of the Act. Shortly after the charge was served on Local 612, Dove

[1] In support of this position, Respondent points out that its employees' hospitalization insurance coverage under the old contract expired as of June 30, 1973, and that without another hospitalization plan in effect as of July 1, 1973, the employees would not be covered by any plan

received a telegram from Webb that Local 612 would meet with Dove in Washington, D.C., on June 14. Webb further advised that the purpose of meeting in Washington was because of other commitments of Local 612. Dove, along with Bunton, Respondent's general manager, arrived in Washington to meet with Webb and International Representative Smith at the appointed time. From the record testimony and exhibits, it is clear that (1) Webb did not believe that Dove would come to Washington, (2) neither Webb nor Smith was prepared to engage in any negotiations, (3) there were in fact no meaningful negotiations, and (4) Webb's purpose in inviting Dove to come to Washington was nothing more than a ploy to evade liability under the Section 8(b)(3) charge filed by Respondent. Dove and Bunton, frustrated in their attempt to engage in negotiations, returned to Alabama.

On June 26, Dove received a letter from Webb dated June 25 and ostensibly written by Webb from his Birmingham office, advising Dove that the Union was now ready to meet and that Dove should advise the Union as to the dates Dove would be able to meet with the Union. Dove immediately called Local 612's office and was advised that Webb was still in Washington. Dove then wired Webb that he would be available from 1 p.m. to 8 p.m. on each day from Wednesday, June 27, until agreement is reached. Upon receipt of Dove's wire, Webb wrote Dove on June 27, advising that he would be tied up in Washington until June 29, but that upon his return on June 29 he would contact Dove to set a date to "commence" negotiations. On Friday, June 29, Webb called Dove from his Birmingham office advising that he was back in town. Dove attempted to arrange a meeting with Webb that day and on Saturday. Webb's reply was that he could not meet because Smith, the International representative, would not be available, but that *"if"* Mr. Smith "talked to the boss" and *"if"* Mr. Smith could catch a flight back on Monday, Webb would call Dove and let him know something. (Emphasis supplied.)

From the above recitation of the facts it is clear that Respondent had been and continued to, throughout the term of the expiring contract, diligently and earnestly seek bargaining sessions with the Union's representatives, and that the union representatives were equally insistent on not meeting with Respondent until other matters which it considered of superior priority were resolved. It is also clear that, by virtue of its agents' conduct, Local 612 violated Section 8(b)(3) of the Act.[2] It is also clear that, as of June 29, Respondent had no hope of discussing any of its proposed contract terms with the Union prior to the contract's expiration. As of midnight, June 30, Respondent's contract with the Union expired. At the same time, the Union had had before it for almost 2-1/2 months Respondent's proposals for a new contract. Having refused to meet and bargain with the Respondent right up to the date the contract terminated, the Union placed the Respondent in the position of having to take immediate action to avoid losses of certain benefits to its employees. In doing so, we note that the Respondent instituted only those changes that had already been proposed to the Union; and that only matters of immediate concern to the employees were instituted as of July 1, 1973, those matters such as Respondent's proposed pension plan being left open for future negotiations with the Union.

In view of the circumstances herein, particularly the Union's refusal to meet and bargain with Respondent over terms for a new contract prior to the expiration of the old contract, we find that the Respondent was justified in unilaterally instituting certain changes in the terms and conditions of its employees effective the day after the old contract expired, and that by unilaterally instituting those changes, Respondent did not violate Section 8(a)(5) of the Act.[3] Accordingly, we shall dismiss the complaint.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

[2] See *Local Union # 612, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, etc (AAA Motor Lines, Inc)*, 215 NLRB No 148, issued this date, wherein the Union's conduct was found violative of Sec 8(b)(3) of the Act

[3] In view of our finding herein, we find it unnecessary to pass on Respondent's contention that the Union was also taking an intransigent position on its claim that the old "national master" agreement had not expired and that the Respondent would have to take the new "national master" or nothing

DECISION

STATEMENT OF THE CASE

JOHN P. VON ROHR, Administrative Law Judge: Upon a charge filed on July 16, 1973, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 10 (Atlanta, Georgia), issued a complaint on December 14, 1973, against AAA Motor Lines, Inc., herein called the Respondent or the Company, alleging that it had engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, herein called the Act. The Respondent filed an answer denying the allegations of unlawful conduct alleged in the complaint.

Pursuant to notice, a hearing was held before Administrative Law Judge John P. von Rohr in Birmingham, Alabama, on March 26–28, 1974. Briefs were received from the General Counsel, the Respondent and the Charging Party on May 13, 1974, and they have been carefully considered.

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

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

AAA Motor Lines, Inc., is an Alabama corporation with its principal office, terminal, and place of business located at Birmingham, Alabama, where it is engaged in the intrastate transportation of freight by motor vehicle. During the calendar year preceding the hearing herein, the employer received more than $50,000 in gross revenue from operations which functioned as essential links in the transportation of commodities in interstate commerce.

The parties concede, and I find, that the Company is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II THE LABOR ORGANIZATION INVOLVED

Local Union No. 612, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III THE UNFAIR LABOR PRACTICES

A. *The Facts*

The Union has been the collective-bargaining agent of the Company's driver and dockmen employees for 16 or 18 years. The last contract between the parties was effective from April 1970 to June 30, 1973. This contract was the National Master Freight Agreement negotiated by the International Teamsters Union negotiating committee and an employer association. Although the Respondent was not a member of the employer association, its practice had been to adopt the master agreement with minor modifications. This it did with respect to the last contract by an addendum executed on June 26, 1970.

On February 26, 1973, Frank Fitzsimmons, chairman of the Teamsters National Freight Industry Negotiating Committee, notified the Respondent and other affected employers of its desire to negotiate changes and revisions of the aforesaid national agreement. On March 9,[1] the Local Union sent a similar notice to the Company, with appropriate notices also being served upon the Federal and state agencies.

By letter dated April 6, the Company advised the employer association and representatives of the Local and International Union that it was withdrawing from the multiemployer bargaining unit and also that it was thereby revoking the authority of the employer association to bargain on its behalf.[2] On the same date, April 6, the Respondent in a special letter, signed by its president, Earl Dove, and addressed to Sam Webb, the president and business administrator of the Local Union, requested that a bargaining meeting be held at the company offices on April 13, 1973, with respect to a proposed new collective-bargaining agreement, a copy of which proposed contract on behalf of the Respondent was enclosed with the letter. Although Dove waited in his office on the date of the proposed meeting, no union representative appeared.

By letter of April 14, Company President Dove again wrote Webb to request a bargaining meeting. Alluding to the failure of any union representative to appear for his proposed April 13 meeting, Dove this time requested that a meeting be held at his office on April 18.[3] However, he further stated that if Webb could not be present on this date, that he furnish "several alternative dates for a meeting within the next ten days." Webb testified that in response to this letter he called Mr. Kilgore, Respondent's terminal manager in Birmingham, to advise that he could not meet on that date because his involvement in national negotiations in Washington, D.C. would prevent him from being in the area except on weekends. Dove testified that although he learned that Webb would not be present on April 18, he learned this through his father, John Dove, who advised that Webb had called him and notified him to this effect.

On April 17, Dove called Webb and again requested that a date be set for the commencement of contract negotiations. When Webb replied that he was going to Washington later that day and that he would not be able to meet and negotiate until after the master contract was settled, Dove protested that the contract ended on June 30 and that Webb's proposed time to meet would be too late. At this point Dove reiterated his request for a bargaining meeting, but Webb responded that "he had rules and regulations that he had to go by, and would not be able to meet until after the master contract was settled."[4] Dove finally asked that Webb provide him with a copy of the Union's contract proposals and Webb agreed to furnish them on May 11.

Dove credibly testified that he did not receive the contract proposal on May 11, whereupon he called the union office. Webb was not in but a secretary told Dove that she would notify Webb that he had called. Hearing no further word, Dove called Webb's office again on May 21. He again spoke to the secretary, who this time merely assured him that she had advised Webb of his earlier call.

On May 14, the Respondent received a copy of a form letter addressed to "Employers Withdrawing From National Negotiations," signed by Frank Fitzsimmons, which stated as follows:

> This will acknowledge receipt of your letter expressing your intention and desire to engage in negotiations for a new freight contract (over-the-road, local cartage, office and garage) on a local basis.

[1] All dates refer to the year 1973, unless otherwise indicated

[2] There is no issue in this case as to the timeliness or effectiveness of this notice by the Company

[3] Although Webb testified that he advised the Company that he could not be present on April 13, I am persuaded that he was mistaken in this testimony Otherwise there would be no reason, particularly at this time, for Dove to note in his April 14 letter that no union representative appeared at this time Indeed, in that letter Dove further noted that he called Webb's office on April 13, but was informed that Webb was out of town. I am sure that he would not have made this call if he had been advised in advance that the Union would not be present. Dove, it may be noted, resides in Montgomery, Alabama, whereas Webb resides in Birmingham, Alabama

[4] Credited testimony of Dove

> Since we are authorized to represent the Local Unions involved and since our principal negotiators will be engaged in negotiations in Washington, D.C., with the major part of the trucking industry, it will be necessary for us to appoint a properly authorized subcommittee to meet with you. This will be done as soon as time will reasonably permit. We assume that this will be sometime during the month of June.
>
> If this arrangement is not satisfactory, please let us know and we shall endeavor to accommodate you. This offer to negotiate with you individually is not to be construed as a waiver of our position that you are obligated and shall continue to be a part of the national multiemployer unit.

By letter dated May 22, Dove advised Fitzsimmons that any proposed June meeting for commencement of negotiations would be unacceptable. Reviewing the past attempts by the Company to commence bargaining, the letter concluded with the request that the Union "make arrangements to meet with AAA . . . within not more than five (5) days after your receipt of this letter."

On June 6, after receiving no response to the above letter, the Respondent filed unfair labor practice charges against the Union, alleging that it had violated Section 8(b)(3) of the Act. Webb testified that after discussing the charge with C. W. Smith, an International representative, it was determined that the following telegram be sent to the Company, which telegram in fact was sent to Dove on June 12:

> This is to advise you that a representative from Local Union 612, Sam Webb, will meet with you in Washington D C at the Shoreham Hotel, Room 130, at 9 AM on June 14th 1973 The purpose of the meeting in Washington is because of other commitments of Local Union 612

Dove and William Bunton, the latter a company vice-president, responded to the above telegram by going to Washington at the appointed time and place. The morning meeting was brief, with the parties, including Smith and Webb who were present for the Union, agreeing to exchange written contract proposals and agreeing to meet again at 1:30 p.m. in the afternoon.[5] However, according to the credited testimony of Dove, Smith at this time stated that they "might be allowed a break on the wages on a wage addendum but the work rules of the master contract would have to remain intact."

Upon returning to their hotel room, the company representatives ascertained that Smith had mistakenly given them a proposed amendment to an area supplement instead of the Union's proposal. Accordingly, they again sought out Webb and found him in the hotel lobby at about 11:40. According to the credited testimony of Dove, as substantially corroborated by Bunton, Webb at this time stated that they "were going to agree to the master contract with the wage addendum and that's it." He then told the company representatives that "we would meet at 1:30 and negotiate if that is what we wanted to do, but we were wasting our time . . . that the only reason that he sent the telegram . . . was to get around the unfair labor practice charge." He added that "there was some 2000 carriers that he was negotiating with and if he allowed one short haul carrier to change off of the master contract that he would have to deal with all of them"; and that neither he or the Union would allow any such thing to occur. To all this Dove finally responded that there would be no point in meeting at 1:30, but asked that they meet at 5:30 p.m. so that at that time he could at least apprise him of the Company's objections to various provisions in the master contract. Webb agreed to do so.

Dove met with Webb in the hotel cocktail lounge at about 5 p.m. When Dove began voicing certain objections to the master contract, such as the grievance procedure, Webb again expressed displeasure at the Respondent's filing unfair labor practice charges. He finally told Dove to return to Alabama and to stop bothering him, that when the master contract was settled, he and Smith would return to Alabama as negotiating agents and that they would settle all that needed to be settled in half a day.[6] With this the meeting concluded. Dove and Bunton returned to Alabama the next day without further discussion with the union representatives.

No further exchange took place between the parties until June 25, at which time Webb wrote that the Union was "now ready to enter contract negotiations" and that Dove should advise him of the dates and times he would be available. On June 26, upon receipt of the letter and after first attempting to reach Webb at his office by telephone, Dove wired Webb stating that he would be available for negotiations in Birmingham from 1 p.m. until 8 p.m. on each day from Wednesday, June 27, 1973, until agreement was reached. In a letter to Dove dated June 27, Webb advised that he was still tied up in Washington, but expected to be back in Birmingham on June 29 and would contact him immediately upon arrival "to set up dates to commence negotiating."

Shortly before noon on June 29, after returning to Birmingham, Webb called Dove with respect to the scheduling of a meeting. Dove asked that a meeting be held that day, but Webb stated that Smith was not in town and that he would have to talk to Smith first. Dove credibly testified that at this point the conversation continued as follows:

> I pressed for a meeting that day, Friday, or sometime over the weekend. Mr. Webb said that he could not meet with me that day or any time over the weekend. But that possibly Mr. Smith could catch a flight back from Jackson, Mississippi on Monday and that if Mr. Smith talked to the boss and it was worked [out] and that if Mr. Smith could catch a flight on Monday, July 2 and let me know something.

At about 8 or 8:30 a.m. on the morning of Monday, July 2, which was the time for the change in shifts, Respondent distributed copies of the following letter, which was dated July 1, to its employees:

[5] Although the Respondent had previously furnished its contract proposal to the Union on April 6, Webb conceded that up to this point he had only "glanced" at it and that Smith had never seen it before.

[6] The facts concerning the meetings at 11:40 a.m. and 5 p.m. on June 14 are set forth above largely in accordance with the testimony of Dove, whom I credit. Dove impressed me not only as an honest witness, but as also having a good memory concerning the details of these and other negotiating meetings. Insofar as Webb's testimony concerning the Washington meetings conflicts with that of Dove, I credit the testimony of Dove.

The agreement between AAA Motor Lines, Inc. and Teamsters Local Union 612, Birmingham, Alabama, expired according to its terms at midnight, Saturday, June 30, 1973.

Because we have been unable to reach an agreement with your bargaining representative, Teamsters Local 612, and because we believe that the terms of the contract which we proposed to Teamsters Local 612 and have explained to you is the best thing for the company and for you, all work performed beginning July 1, 1973, will be performed in accordance with our proposal to your bargaining representative Teamsters Local 612 to the extent permissible.

The proposals that we have discussed with you during the past several days will be put into effect in their entirety effective July 1, 1973, with the exception that the pension plan that we proposed cannot be installed. We must reach some sort of settlement with Local 612 before it can be determined which one of the two plans you will be in.

If you have any questions concerning our proposed contract and the conditions under which work will be performed on July 1, 1973 and days thereafter, ask them now or at any time. A general summary of our proposal to Local 612 which becomes effective July 1, 1973 is on the attached sheet. Be sure and ask questions if you have any or if there is any point that needs clarification. We look forward to working with you.

The principal attachment to the above letter stated as follows:

July 1, 1973 Letter to AAA Employees, page 2.

SUMMARY OF THE PROPOSAL OF AAA MOTOR LINES, INC
DATED APRIL 6, 1973:

It is effective immediately upon agreement and signature.

Your wages go from $4.59 to $5.29, effective July 1, 1973. This is a 70¢ per hour increase, which amounts to $28.00 per week. Your wages will continue to increase to $6.29 per hour during the term of the contract proposal. This amounts to a total increase in wages of $1.70 per hour over the contract term, which is a 37% increase in wages you will receive.

Jury Pay. Full pay while you are on jury duty.

Sick Pay. Full pay after the fifth day, with a minimum of 15 days allowable, a maximum of 90 days, depending on seniority.

Funeral Leave. Three days.

Paid Vacation. One week after 12 months, two weeks after 24 months.

Paid Holidays: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Eve Day and Christmas Day.

Pension Plan: $375.00 monthly retirement income at age 60, based on number of years seniority; early retirement privileges; full vesting after seven years, and excellent retirement program.

Hospitalization Program, as outlined attached

Again, be sure and ask questions if you have any or if there is any point that needs clarification We look forward to working with you.

With respect to any changes from the contract that are not self-explanatory in the above notice, it may be noted that regarding: (1) holidays—Memorial Day was substituted for the employee's birthday; (2) vacations—these were decreased to 2 weeks for employees who had over 15 years of service; (3) funeral leave—increased from 2 to 3 days; (4) hospitalization plan—an entirely new plan was substituted; and (5) pension plan—an entirely new plan was submitted.

It is undisputed that, except for the immediate implementation of the pension plan, the above changes were instituted immediately upon the July 2 announcement.

To continue with the sequence of events, Webb called Dove at 9 a.m. on July 2 and agreement was reached to meet that afternoon. This meeting was held at a Birmingham hotel and was attended by Webb, Smith, Bunton, and Dove. Smith had with him a copy of the letter dated July 1 which Respondent that morning had distributed to its employees. The parties went over the various items listed therein. Smith accepted the Company's position with respect to sick pay, jury pay, and funeral leave. He rejected vacations, asked that holidays be amended, and stated that they were only 1 cent apart "on the money." Having reached this point, Smith finally stated, according to the unrefuted testimony of Dove, that in his view "the terms of Article 39 [of the Master Contract] was still in full force and effect and at that time we had two contracts, the one that we had instituted and we had accepted part of, and the national master contract which continued in full force [and] effect." Dove took issue with Smith, however, and stated that in the Company's view the old contract had indeed terminated on June 30. The meeting closed with Webb's suggesting, and Dove agreeing, that Respondent check with its attorneys concerning the Union's position that the old contract was still in effect.

The parties, with the exception of Smith who did not attend, met again on July 6.[7] Webb again had with him the so-called company proposals, which were the terms the Company had already put into effect. Some discussion was had concerning the grievance procedure as provided in the old (master) contract. Dove pointed out certain provisions therein to which he specifically objected. Dove testified that at one point Webb stated that he would have to go along with the master agreement, with a wage addendum, that the Teamster International would not ratify his (Dove's) proposals even if the employees did. Nevertheless, as Dove conceded, Webb finally did say that he would take Respondent's proposal to the members to see what they thought of it.

Webb called a membership meeting of Respondent's em-

[7] The record reflects, as the General Counsel concedes, that Webb erroneously placed this meeting as having occurred on July 5

ployees on July 7. At this meeting the employees voted to reject Respondent's contract proposals. They also voted to strike, subject to sanction by the International.

A further negotiating meeting was held on July 12 with all parties, including Smith and a Federal mediator, present. At this meeting the parties again negotiated from Respondent's proposals. The parties reached tentative agreement on a number of items and initiated their agreement with respect to these provisions. The same parties met again on July 13, but on this occasion the negotiations became deadlocked on the issue of the use of casual employees

Webb met with the employee membership again on July 14. After explaining the Company's proposals and position, the employees again voted to strike. A strike ensued on July 15, the pickets bearing signs with the legend "AAA Motor Lines on Strike, Unfair Labor Practice Strike, Local 612." The strike remained in progress as of the time of the hearing herein.

B. *Conclusions*

The Unilateral Action

The complaint alleges that on or about July 2, 1973, Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing the existing wage rates, hours of employment, and other terms and conditions of employment of the employees in the appropriate unit.

Preliminarily, it is to be noted that in a companion case to this one, in which a Decision is being issued by me contemporaneously herewith,[8] the Union has been found to have violated Section 8(b)(3) of the Act by failing and refusing, from April 13, 1973, through on about June 25, 1973, to meet with the Respondent upon request.

In defense of the previously discussed unilateral changes which Respondent put into effect on or about July 2, 1973, Respondent contends that this action was not taken until an impasse had been reached, at which point it was legally justified in doing so. While Respondent is correct in its legal position that an employer generally is free to institute unilateral changes once an impasse is reached, the issue in this case is whether here the parties in fact had come to a genuine impasse on July 2 when the unilateral action was taken. In this connection, the essence of Respondent's contention is that the Union, by its failure to meet and bargain in good faith from April 13, 1973, to on or about the end of June 1, 1973, created a situation which was tantamount to an impasse.

Upon the entire record, and without condoning the Union's conduct in failing to bargain during the period mentioned above, I agree with the contention of the General Counsel that the parties had not yet reached the point where unilateral action by the Company was legally justifiable. The fact is, as President Dove conceded,[9] that during his telephone conversation with Webb on June 29, a Friday, he was made fully aware that it was "certainly possible" that the Union representatives would be available for a negotiating meeting on Monday, July 2. In fact, this is just what happened. However, notwithstanding the likelihood that such a meeting would be held, Respondent nevertheless announced and put into effect the aforenoted changes in wages, hours, and working conditions in early morning of July 2. In this connection, it is highly relevant to note that Respondent has failed to show any business consideration, or any other type of urgency, for so suddenly giving implementation to the changes which it sought in its contract proposals; and this it did without every notifying the Union that if it did not meet and negotiate prior to the expiration date of the contract, it intended to act unilaterally. The absence of any cogent reason for taking unilateral action, under circumstances similar to that here present, has been a factor in Board determination that unilateral action is not justified under the Act. *Manor Mining and Contracting Corporation,* 197 NLRB 1057 (1972). Cf. *Flowers Baking Co.,* 161 NLRB 1429, 1436–37.

In sum, the facts in this case impel me to find and conclude that the parties had not reached a point that was tantamount to an impasse in the bargaining negotiations. To the contrary, and has been heretofore related, the Union agreed to a number of Respondent's contract proposals when the negotiations began on July 2.[10] Accordingly, by unilaterally instituting changes affecting the employees' wages, hours, and other terms and conditions of employment, Respondent violated Section 8(a)(5) and, derivately, Section 8(a)(1) of the Act.

D. *The Alleged Unfair Labor Practice Strike*

The complaint alleges that the strike beginning on July 15, 1973, was an unfair labor practice strike. The General Counsel's theory in this regard is, of course, premised upon the assumption that the strike was caused, at least in part, by Respondent's unfair labor practice in instituting the unilateral changes heretofore discussed. For the reasons discussed below I am persuaded that notwithstanding Respondent's unilateral action, the strike in this instance was motivated solely for economic reasons.

As an apparent exception to the hearsay rule, at least insofar as cases arising under the Act are concerned, the Board has long admitted in evidence testimony of union representatives and union members concerning any discussions held or statements made during union meetings pertaining to authorization of strikes. This rule has been held to be particularly applicable, and is usually limited, to situations involving alleged unfair labor practice strikes, the reason being that testimony concerning the expressions at union meetings is relevant insofar as it may tend to reflect the motives of the membership in voting to strike. However, recognizing that there always is the possibility that statements made during the course of these meetings may be self-serving or conclusionary, it would appear to be clearly within the discretion of the trier of the facts to determine the weight to be given to any such testimony.

Turning to the union meeting of July 7, Webb gave a rather lengthy and rambling account of his discussion with the membership at this time. Thus, he testified he had "the

[8] See *Local Union # 612, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Inc (AAA Motor Lines, Inc.),* 215 NLRB No 148 (1974)

[9] R 554

[10] It is thus noteworthy that notwithstanding any protestations by Webb that Respondent would be required to accept the master agreement, with a possible modified wage agreement, the Union in fact did make concessions during the July 2 negotiations

union's proposal and the company's" and that he told the employees what "the company had said they put into effect"; that he told the employees "that the contract had not expired and that there could be two health and two pension plans at that time because we had taken the position that our pension plan and insurance was running"; that "I went completely through the July 5 letters and discussed it with the people"; and that "I wanted everybody to understand that it is [the] local union's position and I had talked to Mr. Smith after getting this July 5 letter that it's *our* position that the Company has acted on an unfair labor practice strike . . . and if we do have a strike, it will be an unfair labor practice strike." Webb also testified that, after answering questions from the floor concerning the Company's and the Union's pension, a secret ballot was taken and "they [the employee-members] turned down the Company's contract proposal 100%." A strike vote was subsequently taken, with the employees voting 100 percent to authorize a strike.

A second union meeting was held on July 14. Webb testified that at this meeting he told the employees what had transpired during the last [July 13] negotiating meeting with the Respondent, particularly stressing the problems that related to casual employees, insurance, and pension. Summing up, he testified:

> I explained every article that we had agreed to, and went back over all the other proposals, and told them they took a vote on it and they voted it down 100%. So I advised them that being as they had—the company had said that this was their final proposal. And so I told them that the strike would start on the 15, which it did.

So much for Webb's testimony concerning the two meetings wherein the employees voted to strike. Bearing in mind that these meetings were held while contract negotiations were still taking place, and notwithstanding Webb's assertion to the employees at the July 7 meeting that it was the Union's "position" that the Company had committed unfair labor practices, from the above testimony it seems clear that the employees were primarily interested in the Company's and Union's economic "proposals." In any event, I think more revealing of the Union's true motives in engaging in the July 15 strike is the testimony of Union Representative W. C. Smith taken on November 6, 1973, in a civil suit brought by the Respondent against the Union in the United States District Court for the Northern District of Alabama. Smith, it will be recalled, participated in the first negotiating meeting between the parties held on July 2. Indeed, at this meeting Smith acted as principal spokesman for the Union and it was he who accepted and initiated various of Respondent's contract proposals. He also participated in the negotiations held on July 12 and July 13. While Smith was not called as a witness in the instant hearing, Smith did testify on behalf of the Union in the aforenoted court proceeding. The relevant part of his testimony in that proceeding, which I received as an admission against interest, related to the purpose of the strike in question and is as follows:

> Q. Are you familiar with the Union's purpose in calling the strike?
>
> A. Yes.
>
> Q. What was that purpose, please?
>
> A. The employer ceased to pay Health and Welfare and Pension and other benefits in regard to the present contract that we considered was in effect. This Union and its members are on strike today for the benefits that that contract provides. Namely the employer ceased paying insurance, pensions and other things that is a continuation of service and payments that were very important to these people, pensions, life insurance and health and welfare. Without those payments these members, employees of AAA, had a break in service, a break in continuity of payments and we have tried to grieve it, the Local Union had on July the 3rd and that grievance was stopped and we didn't know when it would be able to continue and the picket line was placed in attempt to put that contract into effect.

Significantly, the sole reason given by Smith for engaging in the strike was strictly economic in nature, namely, to obtain a contract which incorporated the various economic benefits sought by the Union. In his entire testimony on the subject, there is no claim whatsoever that the strike was caused, in whole or in part, by any Respondent unfair labor practice. It is my view that Smith's testimony was given more objectively than was Webb's. Accordingly, I find and conclude that the strike which began on June 15 was solely economic in nature and that it was not an unfair labor practice strike.[11] Moreover, and while I do not regard this as decisive to this finding, I do think it appropriate to note that over the years Respondent appears to have had a good relationship with the Union. There is no evidence at all that Respondent is an antiunion employer or that it deliberately sought to undermine the Union.

In view of all the foregoing, I recommend that the allegation in the complaint pertaining to the alleged unfair labor practice strike be dismissed.

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 Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

[11] It is also noteworthy that Respondent engaged in three bargaining meetings (July 6, 12, and 13), *after* Respondent instituted its changes, a factor which is further indicative that the strike was for economic reasons rather than in protest of the unilateral action Although Webb testified that it was necessary to obtain the sanction of the International before engaging in a strike, it appears that this was given *prior* to the July 14 union meeting This would seem evident from the testimony of Webb who said that *after* the employees rejected Respondent's proposals at this meeting, "I told them that the strike would start on the 15th, which it did"

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce and the Union is a labor organization, all within the meaning of the Act.

2 All local truckdrivers and warehousemen employed by the Respondent at its Birmingham, Alabama, terminal, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

3. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 612, has at all material times herein been the exclusive 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.

4. By the unilateral announcement and implementation of changes in wages, hours, and working conditions on July 2, 1973, the Respondent has engaged in and is engaging unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

5. By the aforesaid refusal to bargain with the Union, the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

7. The strike which began on July 15, 1973, was not an unfair labor practice strike

[Recommended Order omitted from publication.]