Alameda County Association for the Mentally Retarded, Inc. *and* Social Services Union, Local 535, Service Employees International Union, AFL-CIO. Case 32-CA-2365

April 6, 1981

DECISION AND ORDER

On September 10, 1980, Administrative Law Judge David G. Heilbrun issued the attached Decision in this proceeding. Thereafter, the General Counsel, the Charging Party, and Respondent all filed exceptions and supporting briefs.

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

The Administrative Law Judge concluded that Respondent did not violate Section 8(a)(5) and (1) of the Act, as alleged, by failing and refusing to execute a letter of understanding, drafted by Respondent and executed by the Union, embodying the terms and conditions of the oral agreement reached by the parties in resolution of their dispute over the interpretation and application of the wages and classifications provision of their recently negotiated collective-bargaining agreement. For the reasons set out below, we disagree with the Administrative Law Judge's conclusion and his recommendation that the complaint be dismissed in its entirety. Instead, we find and conclude that Respondent has violated Section 8(a)(5) and (1) of the Act.

FINDINGS OF FACT

The Union was certified as the exclusive collective-bargaining representative for an appropriate unit of employees on January 22, 1979.[1] Thereafter, the parties negotiated their first collective-bargaining agreement.

The Union's principal negotiator was its northern regional director, David Aroner; Respondent's principal negotiator was William Bonnheim, an attorney in private practice. Aroner had advised Bonnheim that any contractual agreement reached would have to be ratified by the membership. Aroner also understood that the terms of any collective-bargaining agreement would have to be approved by Respondent's board of directors.

There were six or seven negotiating sessions, culminating in a collective-bargaining agreement dated July 25, to be effective retroactively from July 1, 1979, to August 31, 1980. The contract provided, *inter alia*, for "minimum straight-time monthly rates" as set out in a salary schedule appended to the contract. The salaries (by grade, with step increases within each grade) reflected a $125-per-month increase over previous minimum salary levels.[2]

Prior to the implementation of the new contract, six employees had, for various reasons not in issue here, been properly receiving pay on an "over scale" basis—i.e., they had been receiving a higher monthly salary than their grade and step level entitled them to under the precontract salary scales. When the contractual salary scales went into effect in late July, retroactive to July 1, the salaries of these six employees were raised to the levels called for under the new salary scales. This resulted in these six employees—unlike all other employees who had been receiving pay in accordance with the precontract scales—receiving less than a $125-per-month increase in their wages, albeit the contract salary scales *vis-a-vis* the precontract scales provided for increases in that amount.

This was quickly brought to the attention of the parties. The Union took the position that the negotiated $125-per-month increase was to be applied "across the board" to each employee regardless of whether they were being paid overscale under the former salary scales. Respondent took the position that the $125-per-month increase was to be applied to the old salary scales without regard to or allowances for formerly overscale employees.[3]

Aroner and Bonnheim met on August 24, September 27, and October 10 to discuss this issue. During the first two meetings, neither party made any proposals as to how to resolve it. Each party restated its position. Bonnheim told Aroner that "my client . . . was not prepared to make any proposals to settle this because they felt that the employees were not entitled to an increase and at that point they saw no reason to make a settlement proposal." Bonnheim testified that in using the term "they" he was referring to Earl Cruser, Respondent's executive director.

According to Aroner's uncontradicted testimony, prior to their October 10 meeting, Bonnheim called Aroner and told him that he had a proposal "for a way to resolve the issue." Thereafter, Aroner and Bonnheim met on October 10. Aroner testified that at that meeting Bonnheim explained that his proposal was that the six employees would receive the full $125-per-month salary increase, but that their

[1] All dates hereinafter are in 1979 unless specified otherwise.

[2] The precontract monthly salary levels are not in evidence. Nevertheless, the record establishes that the salary schedule appended to the new collective-bargaining agreement represents an increase of $125 per month over precontract levels.

[3] There is nothing in the record to indicate that during negotiations the parties discussed how, in particular, the $125-per-month increase would be applied to the salaries of the overscale employees.

resultant salaries would thereafter be frozen until the salary scales rose to the level of their respective salaries. Aroner told Bonnheim that he "thought that agreement would fly," but that he would "have to meet with the people and get back to [Bonnheim]."[4] Bonnheim likewise told Aroner that he "had to take it back to my principals."

Thereafter, on October 31, Aroner wrote a letter to Bonnheim in which Aroner stated the Union's willingness to resolve the dispute on the terms as discussed between Aroner and Bonnheim on October 10. The letter then set out the terms of the settlement as outlined above. Aroner's letter closed with the statement, "If this is satisfactory to you, you might draft an appropriate agreement and send it to us for signature."

Although Bonnheim did not "believe" or "recall" that he had seen this October 31 letter from Aroner prior to the evidentiary copy being shown to him at the hearing, on November 16 he sent Aroner a letter, together with (as the letter stated) "three copies of a letter of understanding pertaining to our agreement with regards to those employees that are presently being paid over scale." The covering letter of transmittal further advised:

> Please execute all three copies and forward them to [Respondent's executive director] Mr. Cruser for his signature.
>
> After the letter of understanding has been executed by all parties, we will return one fully executed copy to your office for your file.

The letter of understanding resolved the dispute as agreed to between Aroner and Bonnheim at their October 10 meeting, and set forth the terms of settlement in language almost identical to that contained in Aroner's October 31 letter to Bonnheim.

[4] Bonnheim's account of the October 10 meeting differs somewhat from Aroner's. According to Bonnheim, he had, for the first time, authority in the October 10 meeting to explore various possibilities for resolution of the dispute. Bonnheim did not remember making a proposal "*per se*," but rather testified that:

> [O]ut of that meeting came an understanding between Mr. Aroner and I as to what we would try to convince our respective clients would be acceptable. And I don't think I made that proposal as such. I didn't sit down at the table and say "Hi, David [Aroner] here's my proposal." The terms of that evolved out of the discussion that Mr. Aroner and I had as to what we thought our respective principals would accept as a settlement of this grievance. This was the first time I had any authority from my principals to discuss settlement.

In light of our finding that at the end of the October 10 meeting Aroner and Bonnheim were in full agreement as to the terms and conditions of the proposed settlement, and in light of our further finding that Respondent and the Union were in such full agreement as of November 16, we find it unnecessary to resolve any inconsistency in testimony between Aroner and Bonnheim as to precisely how they reached agreement in this October 10 meeting.

Bonnheim's November 16 letter to Aroner and the enclosed letter of understanding in resolution of the dispute were sent with Cruser's foreknowledge and approval. The November 16 letter also indicated on its face that a copy thereof had been provided to Cruser. As indicated above, the letter of understanding was prepared for Cruser's signature.

Aroner signed the letter of understanding as "Accepted and Approved" on November 19, and forwarded it to Cruser the same day, in accordance with the instructions in Bonnheim's November 16 letter to Aroner. The letter of understanding, executed by Aroner, was received by Respondent on November 26. Respondent has failed and refused to execute it.

Analysis

The Administrative Law Judge noted that Aroner testified that four of the six affected employees had filed grievances on the same subject as that of the Aroner-Bonnheim discussions; i.e., the dispute as to how overscale employees would be treated under the new contract. The Administrative Law Judge also characterized a September 19 letter from Cruser to Aroner as Respondent's procedural response to those grievances. The Administrative Law Judge also noted that, in the letter Aroner sent to Bonnheim on October 31, discussed above, Aroner expressed his willingness to resolve "the outstanding grievances" on the terms discussed by Aroner and Bonnheim at their October 10 meeting. Finally, the Administrative Law Judge noted that, on several occasions during their testimony at the hearing, Bonnheim and Cruser both referred to the subject of the dispute as "grievances." Based on the foregoing evidence, the Administrative Law Judge found that the parties had actually treated this dispute as merely their first grievance under the grievance-arbitration provisions of the new collective-bargaining agreement. Thus, finding that "[t]his aspect provides a controlling basis for case disposition," the Administrative Law Judge determined that the dispute between the parties was "uniquely and exclusively suitable for arbitral resolution if preliminary grievance handling fails." Accordingly, the Administrative Law Judge recommended that the complaint be dismissed.

The Charging Party, Respondent, and the General Counsel all except to the Administrative Law Judge's characterization of the dispute about salary treatment of overscale employees as a grievance, or as being suitable for arbitration under the grievance-arbitration provisions of the collective-bargaining agreement. We find merit in these exceptions.

Although, as noted above, the term "grievance" was used in connection with the dispute, the record does not support the Administrative Law Judge's finding that the parties treated the dispute about overscale employees as a grievance under the collective-bargaining agreement. To the contrary, the efforts of Aroner, Bonnheim, and Cruser to resolve the dispute, as evidenced by the meetings between Aroner and Bonnheim and the letters of October 31 and November 16 as well as the letter of understanding, were not conducted pursuant to the contractual grievance-arbitration procedure, nor in line with any of the four steps for processing grievances under those procedures. Rather, their efforts show that they were trying to negotiate an amicable settlement without resorting to the grievance-arbitration procedures.[5] Consequently, we conclude that the parties did not consider or treat this salary dispute as a grievance under their contract.[6]

In any event, we note that Respondent did not assert the appropriateness of deferral to arbitration as an affirmative defense in its answer to the complaint, nor raise any such contention at the hearing; indeed, Respondent has joined the Charging Party and the General Counsel in uniformly excepting to the Administrative Law Judge's *sua sponte* conclusion that the salary dispute is suitable for deferral to arbitration. Thus, the question of deferral was in no way litigated at the hearing, and the record before us is insufficient upon which to make any determination as to the appropriateness of deferral. *MacDonald Engineering Co.*, 202 NLRB 748 (1973).[7]

Alternatively, the Administrative Law Judge recommends dismissal of the complaint on the ground that Bonnheim had "an original and continuing role which at all times conditioned his dealings on the ratifying authority of Respondent's governing officials." Thus, it appears that the Administrative Law Judge has also recommended dismissal of the complaint on the ground that Bonnheim did not possess authority to bind Respondent to the terms of the resolution reached by Aroner and Bonnheim on October 10.

We will assume that Bonnheim had no actual authority to bind Respondent to the terms and conditions of the proposed resolution of the dispute reached on October 10 between Aroner and Bonnheim. Nevertheless, we find that Respondent's November 16 cover letter to Aroner evidenced its clear agreement with the terms and conditions set forth in the enclosed letter of understanding, which were those terms initially agreed to between Aroner and Bonnheim on October 10. Thus, the letter of understanding was drafted by Respondent; it opens by telling Aroner that "[t]his will confirm our understanding pertaining to the salaries of [the affected employees], subject to the following terms and conditions"; and it thereafter sets out the terms and conditions of the proposed settlement as initially agreed to between Aroner and Bonnheim on October 10, and in language substantially similar to that employed by Aroner in his October 31 letter to Bonnheim on this subject. Further, the letter of transmittal describes the enclosed letter of understanding as "pertaining to our agreement," instructs Aroner to execute all three copies and to forward them to Cruser for *his* signature, and tells Aroner that he will receive a copy of the letter of understanding for his files "[a]fter the letter of understanding has been executed by all parties."

In addition, Respondent concedes that the letter of understanding was sent with Executive Director Cruser's approval. In this regard, we note that the letter of understanding closes with the phrase "ACCEPTED AND APPROVED," followed by a space for the signature of "EARL CRUSER, Executive Director," and the signature of a union representative. Furthermore, Cruser's approval of the letter of understanding was made clear to the Union by the fact that the cover letter transmitting the letter of understanding was marked "cc: Mr. Earl Cruser." Finally, there is no claim by Respondent that Cruser contacted the Union after November 16 to in any way modify the contents or instructions in the November 16 correspondence or to indicate that Respondent had not approved the settlement or that it was, despite the clear wording of the transmittal letter, still subject to the approval of Respondent's "principals."

Thus, the facts establish an explicit, forthright demonstration of acceptance and approval of the terms of the letter of understanding and of the intention on the part of Respondent to execute it as a signed agreement. Consequently, the November 16

[5] This is further borne out by Cruser's attempt after November 16 to have the terms and conditions of the letter of understanding sanctioned by some members of Respondent's board of directors—a step nowhere to be found in the contractual grievance procedures.

[6] Thus, there is no basis for the Administrative Law Judge's characterization of Executive Director Cruser's September 19 letter to Aroner as "the Employer's procedural response" to the filing of grievances by four of the affected employees.

[7] Moreover, disputes, like the instant one, about the fundamental *existence* of an agreement between the parties—here, the November 16 letter of understanding—as opposed to disputes about the interpretation of any such agreements, are not subject to deferral by the Board. *Frank Naccarato, a Sole Proprietor, d/b/a Naccarato Construction Company, et al.*, 233 NLRB 1394, 1400 (1977).

Chairman Fanning would not in any event defer to arbitration in this proceeding for the reasons set out in his dissenting opinion in *Collyer Insulated Wire, A Gulf and Western Systems Co.*, 192 NLRB 837 (1971).

In agreeing with his colleagues as to the ultimate disposition of the question of deferral, Member Zimmerman relies entirely on the fact that the deferral issue is not properly before the Board. Thus, his rejection of deferral is not to be taken as a statement by him of adherence to or rejection of the principles espoused in *Collyer, supra*.

correspondence from Respondent, coming over a month after Bonnheim had expressed his initial agreement on October 10 subject to Bonnheim's having to "take it back to my principals," gave the Union every reason to believe in and rely on Respondent's expression of agreement therein and every reason to assume that *whatever* approval had to be given by Respondent's "principals" to Bonnheim's October 10 agreement with Aroner had been obtained. Accordingly, we find that there was, as of November 16, a final, unconditional agreement between the parties as to the salary treatment of overscale employees, and that Respondent's subsequent refusal to execute the written embodiment of that agreement constitutes a violation of Section 8(a)(5) of the Act.

Conclusions of Law

1. Alameda County Association for the Mentally Retarded, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Social Services Union, Local 535, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The unit as referred to in the parties' collective-bargaining agreement effective from July 1, 1979, through August 31, 1980, is an appropriate bargaining unit within the meaning of Section 9(b) of the Act.

4. Since January 22, 1979, the Union has been the duly certified exclusive collective-bargaining representative of the employees in the above-referenced unit within the meaning of Section 9(a) of the Act.

5. Respondent engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act by failing and refusing since November 26, 1979, to execute the letter of understanding resolving the dispute between the parties about the interpretation and application of the wages and classifications provisions of their July 1, 1979—August 31, 1980, collective-bargaining agreement.

6. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent has engaged in an unfair labor practice, we shall order Respondent to cease and desist therefrom and to take certain affirmative action which we find to be necessary to remedy the unfair labor practice and to effectuate the policies of the Act. Specifically, we shall order that Respondent execute the November 1979 letter of understanding prepared by it in resolution of the instant dispute over the interpretation and application of the collective-bargaining agreement, and that it make whole the employees named therein for any loss of wages they may have suffered as a result of Respondent's failure to execute the aforementioned letter of understanding, with interest thereon, computed in the manner set forth in *Ogle Protection Service, Inc., and James L. Ogle, an Individual*, 183 NLRB 682 (1970), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[8]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Alameda County Association for the Mentally Retarded, Inc., Oakland, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Social Services Union, Local 535, Service Employees International Union, AFL-CIO, by failing and refusing to execute the November 1979 letter of understanding resolving the dispute between the parties over the interpretation and application of the wages and classifications provision of the July 1, 1979-August 31, 1980, collective-bargaining agreement between the parties.

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

2. Take the following action necessary to effectuate the purposes and policies of the Act:

(a) Upon request of the Union, execute the November 1979 letter of understanding described above in paragraph 1(a).

(b) Upon execution of the aforementioned letter of understanding, make whole the employees named therein for any loss of wages they may have suffered as a result of Respondent's failure to execute said letter of understanding, with interest thereon, to be computed in the manner set forth in the section of this Decision and Order entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

[8] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(d) Post at its place of business in Oakland, California, copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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

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 Social Services Union, Local 535, Service Employees International Union, AFL-CIO, by failing and refusing to execute the November 1979 letter of understanding resolving the dispute between us and the Union over the interpretation and application of the wages and classifications provision of the July 1, 1979–August 31, 1980, collective-bargaining agreement between us.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL, upon request of the Union, execute the aforementioned November 1979 letter of understanding.

WE WILL make whole the employees named in the November 1979 letter of understanding for any loss of wages they may have suffered as a result of our failure to execute the letter of understanding, with interest.

ALAMEDA COUNTY ASSOCIATION FOR THE MENTALLY RETARDED, INC.

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge: This case was heard at Oakland, California, on July 1, 1980, based on an amended complaint alleging that Alameda County Association for the Mentally Retarded, Inc., herein called Respondent, violated Section 8(a)(1) and (5) of the Act, by refusinq to execute a certain letter of agreement which assertedly embodied an oral agreement resolving dispute over the interpretation of a wage provision contained in an underlying collective-bargaining agreement freshly entered into between it and Social Services Union, Local 535, Service Employees International Union, AFL-CIO, herein called the Union.

Upon the entire record, my observation of witnesses and consideration of post-hearing briefs,[1] I make the following:

FINDINGS OF FACT AND RESULTANT CONCLUSION OF LAW

After the Union's certification on January 22, 1979, as exclusive collective-bargaining representative for a unit of numerous full-time and regular part-time classifications, its northern regional director, David Aroner, aided by an employee committee, negotiated formally with Respondent for their first contract.[2] His counterpart over the course of six or seven meetings was attorney William Bonnheim, who had been designated in writing by Executive Director Earl Cruser as Respondent's "chief negotiator."[3] The effort produced a collective-bargaining agreement dated July 25 but retroactively effective to July 1. In form and general content this comprehensively covered 20 enumerated subjects. The topic of wages was treated in section XII by language setting forth various monthly amounts that were to be the "minimum straight-time monthly rates."[4] The contract had a schedule of

[1] Respondent's brief was filed on August 6, 1980, with a covering letter explaining the reasons for its lateness by 1 day. I see no prejudice present in this irregularity and thus disregard the slight untimeliness of filing.

[2] At all material times Respondent was a nonprofit California corporation with office and principal place of business located in Oakland, California, where it engaged in the educational and vocational rehabilitation of retarded and/or developmentally disabled individuals, annually receiving gross revenues in excess of $250,000 and funds in excess of $50,000 from various programs of the United States Government, while furnishing services valued in excess of $50,000 to users in the State of California, each of which met jurisdictional standards of the National Labor Relations Board on a direct basis. On these admitted facts I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and otherwise that the Union is a labor organization within the meaning of Section 2(5). Respondent is actually now renamed Association for Retarded Citizens—Alameda County.

[3] All dates and named months hereafter are in 1979, unless shown otherwise.

[4] At a point prior to July 25 Bonnheim had dictated a set of proposed substantive provisions which he was then recommending to Respondent's board of directors. These were eventually memorialized in board of director minutes and still later became available to Aroner. Item number (2) of this material reads:

> Salary Increase: (a) Effective July 1, 1979 employees presently working a 35 hour work week shall have their salary increased $125 per month. Employees presently working a 37 hour work week will

Continued

monthly wage rates appended for classification levels and steps within each level. A further one-page addition was headed "Letter of Understanding," from which the following excerpts are taken:

> 2. Appendix A to the Collective Bargaining Agreement shall be modified only as follows:
>
> Those employees who, for the period July 1, 1979 through December 31, 1979, work a thirty-seven and one-half (37-1/2) hour week will receive an additional $25.00 per month. They will not, however, continue to receive the seven (7%) percent differential after July 1, 1979.
>
> Employees who work a forty (40) hour week will also receive $25.00 per month additional for the period July 1, 1979 through December 31, 1979 and in addition will receive a seven (7%) percent differential from July 1, 1979 throughout the term of this Agreement.
>
> * * * * *
>
> 4. The Employer agrees to a bonus payment to employees on the payroll on June 30, 1979, as follows:
>
> Full-time employees shall be paid at the rate of fifty ($50.00) dollars per month calculated to the nearest pay period for up to (12) months' service prior to June 30, 1979. The maximum payable to any employee on this basis is six hundred ($600.00) dollars. Part-time employees shall be paid on a pro-rata basis.
>
> The full-time bonus payment shall be paid to each employee as soon as possible consistent with the Employer's cash flow needs but in no event later than September 30, 1979. Such bonus payment shall be paid in a separate check from regular wages so as not to exaggerate withholding tax deductions.

Shortly after implementation Aroner was telephoned by Chapter President Janet Lilly, who advised him that six employees of the bargaining unit had not received the wage payments reflective of an anticipated $125 monthly increase. From this originating advice a dispute quickly arose concerning whether all employees would enjoy an "across-the-board" raise of this amount, or whether the six in question would be excluded because they were already being compensated in "over scale" fashion.[5] Aroner explored resolution of the problem with Bonnheim during a series of meetings. In the first two of these on August 24 and September 27, no appealing proposal was made to him. On each of these dates Bonnheim told Aroner that Cruser saw no deserving equities to the situation as would yield extra money. Then on October 10 the two adversaries arranged a breakfast meeting. Aroner testified that after morning civilities the conversation "drifted" into discussion of this problem, and between them an idea of establishing a capped monthly increase of $125 was born. In turn this led to comments about how the additional $25 monthly increment due in January 1980 might not apply to the six affected employees, and on the total notion Aroner allowed as to how it might "fly" should his constituency be satisfied. Bonnheim's version is that this general theme represented an "understanding," which he would ultimately have been obliged to clear through Respondent's board of directors.[6]

On November 16 Bonnheim corresponded to Aroner. This letter had Cruser's assent and alluded in covering fashion to an enclosed agreement as follows:

> Attached for your execution are three copies of a letter of understanding pertaining to our agreement with regards to those employees that are being presently paid over-scale. Please execute all three copies and forward them to Mr. Cruser for his signature.
>
> After the letter of understanding has been executed by all parties, we will return one fully executed copy to your office for your file.
>
> Thank you very much for your cooperation in this matter.

The actual enclosure provided:

> This will confirm our understanding pertaining to the salaries of Bonnie Gallon, Jessie Grant, Irene O'Donnell, Laura Hunter, Estrella Dingcong and Debra Texara, subject to the following terms and conditions:
>
> 1. Each of the aforementioned employees shall receive a $125.00 per month salary increase, said increase to be retro-active to July 1, 1979:
>
> 2. The aforementioned employees shall not receive any additional salary increases, including cost of living increases until such time as the rate of pay for their classification exceeds their current salaries.
>
> If the foregoing conforms with your understanding, please indicate your acceptance and approval in the space provided below.

This was promptly signed by Aroner and forwarded on to Cruser by letter dated November 19. Cruser testified that at this point his earlier "desire" for a resolution was undercut by key members of Respondent's governing body. Upon experiencing such objections he simply

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receive $150 increase but said employee shall no longer receive the 7% differential. Employees presently working a 40 hour work week shall receive a $150 per month increase and their differential pay shall be reduced to 7%. (b) Effective January 1, 1980, only those employees presently working a 35 hour work week shall receive a salary increase of $25 per month. Employees working a 37 hour or 40 hour work week, shall not receive a salary increase at this time.

[5] Neither party chose to develop any evidence of prior monthly pay rates. In consequence there is no basis to compare precontract payroll with the particularized schedule appended to the new contract.

[6] During earlier negotiations toward the contract itself there was reciprocal notification by Aroner and Bonnheim that a form of ratification would be necessary to confirm whatever they created. Aroner testified that he construed this as referring to "major items," while Bonnheim added that he was never possessed of the authority to bind this board of directors. On the narrower point Aroner testified that as a "settlement proposal" he understood the adjustment devised on October 10 need not have board of directors approval, and here Bonnheim simply contradicts him in testimony asserting that he made clear it "had to be taken back to my principals."

never presented the formula for approval because it seemed to him futile to do so. Aroner learned of this when Lilly again advised him that "backpay" was not materializing. He contacted Cruser on the matter and was told of opposition emanating from the board of directors. After desultory discussion of a potential one-time lump sum payment the prospects for amiable resolution withered, and a triggering unfair labor practice charge ensued in December.

While these static facts pertain to the case, it has also proceeded on another plane. The underlying collective-bargaining agreement has an elaborate grievance procedure as its section IX, and Aroner testified expressly that four of the six affected employees had filed grievances on the matter. In this sense a letter dated September 19 from Cruser to him was taken as the Employer's procedural response.[7] Another letter dated October 31 showing itself as written and sent that date from Aroner to Bonnheim, but in dispute as to whether ever received, plainly follows this theme. It reads:

> We are willing to resolve the outstanding grievances filed by those over-scale employees on the following terms as discussed between us on October 10:
>
> 1. Each of the employees will receive the full $125.00 per month salary adjustment retroactive to July 1, 1979.
> 2. These employees will not receive any further increases until the pay scale for their classification exceeds their new rate of pay (including the $125.00 adjustment).
>
> If this is satisfactory to you, you might draft an appropriate agreement and send it to us for signature.

Both Bonnheim and Cruser also termed the August-October dynamics as involving a "grievance" matter.

This aspect provides a controlling basis for case disposition. The General Counsel has here ventured into an area of pure contract dispute which is uniquely and exclusively suitable for arbitral resolution if preliminary grievance handling fails.[8] I observe first that the contract is thorough and unambiguous with respect to the fundamentally stated subject of monthly pay rates. They are plainly stated in terms of a minimum, without hint of automatic concession to individual circumstances. It is precisely such certainty that a labor contract best fulfills, yet when the result is unfavorable to particular employees this does not afford an escape from the fair meaning of agreed words. There could be innumerable examples of why single employees or groups of them should have had closer analysis of their needs. The ground rules of collective bargaining realize this possibility by doctrines such as mandatory disclosure of information necessary and relevant to the bargaining process. Here, no one was better situated than the employees themselves to report their actual earnings rate, and there is no indication of the Union making even a rudimentary attempt to inventory rates in effect as the course of bargaining neared fruition.[9] Phraseology and semantics must be recognized as an integral part of evaluating a collective-bargaining agreement. Here the General Counsel has utterly failed to demonstrate that a supplementary form of agreement was created within the cognizance of Section 8(d) of the Act. On the contrary the parties themselves treated the matter as merely their first grievance, and it is understandable that one might arise in the intricate realm of cranking up actual pay entitlement based on the first contract that had been formulated in a given labor-management setting.[10] Cf. *Oswald Jaeger Baking Co.*, 42 LA 945 (P. Marshall): *East Liverpool City Hospital*, 60 LA 242 (D. Kahaker): *Wallace-Murray Corp.*, 61 LA 558 (M. Talent); *Beitzell & Co., Inc.*, 72 LA 475 (E. Spark): *Nitec Paper Co.*, 72 LA 633 (N. Stocker).

[Recommended Order for dismissal omitted from publication.]

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[7] This brief letter stated:

> Enclosed are copies of my response to the pay grievances of Laura Hunter, Irene O'Donnell, Debra Texara, and Jessica Grant.
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> Bill Bonnheim will be in town next week and I hope we will be able to resolve this issue at that time.

[8] On alternative grounds I credit Bonnheim with respect to his description of having an original and continuing role which at all times conditioned his dealings on the ratifying authority of Respondent's governing officials. It is not actually denied that he so represented himself even at the meeting of October 10, and to the extent that Aroner testified of his contrary "understanding" this is evidence which I discredit as baselessly at odds with all circumstances of this nascent bargaining relationship. Further, I emphasize that the core of this case is labor relations and analogies the General Counsel seeks to draw from Respondent's bylaws or from Cruser's job description are unavailing on the particular issue of whether Bonnheim boldly dissolved this knotty problem on his own initiative.

[9] The spirited controversy that arose at hearing concerning receipt of Aroner's October 31 letter is irrelevant, as all components of the fact situation are in place without reference to whether it was actually received by Bonnheim as an ordinary item of incoming business correspondence. This is particularly true because its contents fully mirror the letter of understanding that accompanied Bonnheim's transmittal dated November 16. Such later communication to the Union had issued with Cruser's express approval.

[10] An early expression of what had been latent trouble was embodied in a letter from Aroner to Bonnheim dated September 5. It read:

> I am in receipt of the documents sent by Linda Jardine relative to our pay dispute, affecting Bobbie Gallon, Debra Texara, Jessie Grant, Irene O'Donnell, Laura Hunter and Estrella Dingcong.
>
> After reviewing them it still appears to me that the Employer had the responsibility of advising us of any special pay conditions in existence prior to unionization which the Employer wished to maintain. In addition we consistently discussed the money as an across the board increase. The contract refers to the salary scale outlining minimum salaries which anticipates that some employees might be paid overscale.
>
> Furthermore, in reviewing my file I came across the three page summary of the settlement terms used at the ACAMR Board meeting prior to July 25, 1979 (see enclosed). A review of item number 2 should resolve this dispute.
>
> I trust that ACAMR will now pay the full $125.00 increase to the six above mentioned employees.

Belated invention of an "across the board increase" concept, and rather sterile argument that reference to "*minimum* salaries" would anticipate special circumstances, is but disingenuous, naive, or both.