

**The Water Association and United Paperworkers
International Union, Local 1967, AFL-CIO.
Case 9-CA-25231**

August 15, 1988

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
JOHANSEN AND CRACRAFT**

Upon a charge filed by the Union, the General Counsel of the National Labor Relations Board issued a complaint May 2, 1988, against the Respondent alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that since March 18, 1988, the Respondent has demanded, as a condition of conducting second-step grievance meetings, that the Union agree to audiotape recording of the meetings. On May 17, 1988, the Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On June 6, 1988, the General Counsel filed with the Board a Motion for Summary Judgment asserting that the Respondent's answer does not place in issue any factual allegations and raises only a question of law.

On June 9, 1988, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed a response, and the Union filed a brief supporting the General Counsel's motion.

Ruling on Motion for Summary Judgment

The complaint alleges that the Union is the recognized exclusive collective-bargaining representative of an appropriate unit;¹ that the Respondent and the Union are parties to a collective-bargaining agreement that expires November 30, 1989; that since March 18, 1988, the Respondent has demanded, as a condition of conducting second-step grievance meetings, that the Union permit audiotape recording of the meetings; that this condition is a nonmandatory subject of bargaining; and that since March 18, 1988, the Respondent has insisted to impasse on this demand. The Respondent's answer to the complaint states that "the allegations as con-

tained in the Complaint are substantially true except that [the Respondent] denies that the activities as described therein is an unfair labor practice." Thus, the Respondent's answer admits the factual allegations in the complaint.

We have found that insisting to impasse on the use of a recording device during a grievance meeting constitutes an unlawful insistence on a nonmandatory subject of bargaining in violation of the duty to bargain in good faith.² Accordingly, the Respondent has admitted all the facts material to a resolution of the unfair labor practice issues raised by the complaint. There being no material facts in dispute, and in the absence of any cause to the contrary having been shown by the Respondent, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is engaged in the production and distribution of potable water at a facility in Butler County, Ohio, where it annually derives gross revenues in excess of \$250,000, and purchases and receives at its facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Ohio. We find that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since March 18, 1988, the Respondent has demanded, as a condition of conducting second-step grievance meetings, that the Union permit audiotape recording of the meetings, and since March 18, 1988, the Respondent has insisted to impasse on that demand. By their conduct, we find that the Respondent has violated Section 8(a)(5) and (1) of the Act. *Pennsylvania Telephone Guild*, supra; *Hutchinson Fruit*, supra.

¹ See *Pennsylvania Telephone Guild*, 277 NLRB 501 (1985), enf'd. 799 F.2d 84 (3d Cir. 1986), and *Hutchinson Fruit Co.*, 277 NLRB 497 (1985). We decline to follow the Respondent's suggestion that we overrule these cases.

² The Eighth Circuit's decision in *NLRB v. Southern Transport*, 355 F.2d 978 (8th Cir. 1966), relied on by the Respondent, is not controlling. As the Tenth Circuit stated in *NLRB v. Bartlett-Collins Co.*, 639 F.2d 652, 658 (10th Cir. 1981), cert. denied 454 U.S. 961 (1981), *Southern Transport* did speak favorably of stenographic recording of bargaining sessions, but this was in relation to the court's decision that the insisting party's demand had been made in good faith. The Eighth Circuit did not consider whether the matter constituted a mandatory subject of bargaining.

¹ The appropriate unit is:

All full-time and part-time employees including, but not limited to, equipment operators, maintenance employees, water treatment plant employees, meter readers, janitorial employees, warehousemen, and all other production and maintenance employees. Excluded from the bargaining unit are all office clerical employees, purchasing agents, staking engineers, managerial employees, professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

CONCLUSIONS OF LAW

By insisting to impasse on and after March 18, 1988, on the use of a recording device during grievance meetings, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by insisting to impasse on the use of a recording device during grievance meetings, we shall order the Respondent to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, The Water Association, Butler County, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the United Paperworkers International Union, Local 1967, AFL-CIO by insisting to impasse on the use of a recording device during grievance meetings.

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

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

(a) On request by the United Paperworkers International Union, Local 1967, AFL-CIO, as the exclusive representative of the employees in the appropriate unit set forth below, bargain in good faith by meeting, processing, and discussing with the Union grievances filed pursuant to the collective-bargaining agreement. The appropriate unit is:

All full-time and part-time employees including, but not limited to, equipment operators, maintenance employees, water treatment plant employees, meter readers, janitorial employees, warehousemen, and all other production and maintenance employees. Excluded from the bargaining unit are all office clerical employees, purchasing agents, staking engineers, managerial employees, professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

(b) Post at its place of business in Butler County, Ohio, copies of the attached notice marked "Ap-

pendix."³ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

³ If 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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain in good faith with the United Paperworkers International Union, Local 1967, AFL-CIO by insisting to impasse on the use of a recording device during grievance meetings.

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

WE WILL, on request by the Union, as the exclusive representative of the employees in the appropriate unit set forth below, bargain in good faith by meeting, processing, and discussing with the Union grievances filed pursuant to the terms of the collective-bargaining agreement in effect between ourselves and the Union. The appropriate unit is:

All full-time and part-time employees including, but not limited to, equipment operators, maintenance employees, water treatment plant employees, meter readers, janitorial employees, warehousemen, and all other production and maintenance employees. Excluded from the bargaining unit are all office clerical employees, purchasing agents, staking engineers, managerial employees, professional employees,

guards and supervisors as defined in the National Labor Relations Act, as amended.

THE WATER ASSOCIATION