

Yates Industries, Inc. and Aluminum Workers International Union, AFL-CIO. Case 21-CA-16178

September 15, 1978

DECISION AND ORDER

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On July 25, 1978, Administrative Law Judge Russell L. Stevens issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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 brief and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.²

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Yates Industries, Inc., Beaumont, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

“(a) Refusing to reduce to writing, and signing, an agreement embodying the terms and provisions orally agreed upon by Respondent and the Union by July 13, 1977, as well as those set forth in the parties’ memorandum of July 13, 1977, and inserting in a proposed agreement reduced hiring-in rates not agreed upon.”

2. Substitute the following for paragraph 2(b):

“(b) Upon request, reduce to writing, sign, and put into effect an agreement embodying the terms and

¹ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board’s established policy not to overrule an Administrative Law Judge’s resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

² In his Conclusion of Law 4, and in his recommended Order and notice, the Administrative Law Judge inadvertently referred to the parties’ July 13, 1977, agreement solely as an “oral agreement.” However, the record clearly shows, and the Administrative Law Judge found earlier in his Decision, that the parties by July 13, 1977, had orally agreed with respect to the non-economic terms, and had signed a memorandum on July 13, 1977, with respect to the economic terms to be included in a new contract. We shall modify the Administrative Law Judge’s recommended Order and notice accordingly.

provisions orally agreed upon by Respondent and the Union by July 13, 1977, as well as those set forth in the parties’ memorandum of July 13, 1977, omitting therefrom reduced hiring-in rates not agreed upon.”

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

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

After a hearing at which all sides had the opportunity to present their evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act, as amended, and has ordered us to post this notice. We intend to abide by the following:

WE WILL NOT refuse to reduce to writing, and sign, an agreement embodying terms and provisions orally agreed upon by us and the Union by July 13, 1977, as well as those set forth in our memorandum of July 13, 1977, or insert in a proposed agreement reduced hiring-in rates not agreed upon.

WE WILL NOT unilaterally, and without bargaining with Aluminum Workers International Union, AFL-CIO (herein the Union), since on or about August 6, 1977, change terms and conditions of employment of our employees in the above-described unit, by paying wage rates to new employees not agreed to by the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights to organize, form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

WE WILL, upon request, bargain collectively with the Union and its Local 318, as the exclusive representative of all employees in the appropriate unit, concerning rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL, upon request, reduce to writing and sign an agreement embodying terms and provisions orally agreed upon by us and the Union by July 13, 1977, as well as those set forth in our memorandum of July 13, 1977, omitting therefrom reduced hiring-in rates not agreed upon.

WE WILL make whole all employees newly hired since August 6, 1977, for any loss of pay they suffered as a result of our unfair labor practices, with interest.

YATES INDUSTRIES, INC.

DECISION

STATEMENT OF THE CASE

RUSSELL L. STEVENS, Administrative Law Judge: This matter was heard in Los Angeles, California, on May 23, 1978.¹ The complaint, issued February 2, is based upon a charge filed November 15 by Aluminum Workers International Union, AFL-CIO (Union herein). The complaint alleges that Yates Industries, Inc. (Respondent herein), violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of General Counsel and Respondent.

Upon the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

At all times material herein, Respondent has been engaged in the manufacture of copper foil for printed circuits at its facility located at 1060 East Third Street, Beaumont, California. In the normal course and conduct of its business operations Respondent, during the past 12-month period, purchased and received products valued in excess of \$50,000 directly from suppliers located outside the State of California.

I find that Respondent is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Aluminum Workers International Union, AFL-CIO, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Union has had a long bargaining relationship with Respondent. The first contract between the two was for a term of 2 years, and the second,² which expired August 6, was for 3 years.

¹ All dates hereinafter are within 1977 unless stated to be otherwise.

² G.C. Exh. 2.

In the past, contracts between the parties have been negotiated by, among others, Richard Critelli,³ the Union's director for the region encompassing southern California, and Howard Oshry, Respondent's manager of industrial relations.

When the second increment of the contract for the term August 6, 1974, to August 6, 1977, was being considered in 1976, Respondent wanted to hold starting rates under the contract to \$3.50 per hour, rather than to apply the across-the-board increase under the contract, which would have raised starting pay to \$3.70 per hour. Respondent felt that \$3.70 was in excess of starting rates of other businesses in the area. On March 11, 1976, Oshry addressed a letter to the Union's Richard Mohr, reading as follows:

Enclosed are copies of a wage schedule which I propose as a modification to our contract to become effective on August 6, 1976.

As you can see, no one currently on the payroll will be affected by this modification. The only change is in the hiring rate and in the increments during the first five months. The rates at six months are identical with what is called for in the present schedule.

I believe that the modification gives us a better base from which to negotiate in the future.

The matter was discussed by Oshry, Mohr and Critelli, but no agreement was reached, and the matter was dropped. Starting rates of pay then went to \$3.70 per hour, as provided by the contract.

On September 17, 1976, Critelli addressed a letter to Oshry reading as follows:

I am writing you this letter to formally request an early opening of contract negotiations between Yates Industries and its Beaumont, California facility and the Aluminum Workers International Union.

In reviewing our calendar [sic] and work load for 1977 regarding up-coming negotiations on expiring contracts in Region 3, and in the light of our past bargaining experience, I am of the opinion that it would be in the best interest of both parties that we commence negotiations at least six months prior to the expiration [sic] of the present agreement. (Aug. 6, 1977).

Should you have any questions or thoughts on this most important matter, please don't hesitate to contact me.

I will be looking forward to your response to this request in the very near future.

On September 22, 1976, Oshry replied to Critelli as follows:

We are in agreement with your suggestion that contract negotiations between us should begin early.

As a place to start, we would be available to consider an agenda and the union's proposals as soon after the first of the year as you can have them ready.

The parties agreed to early negotiations to avoid difficulties experienced during the 1974 negotiations, and the first meeting was held December 10, 1976. Several items were

³ Individuals are referred to herein by their last names.

discussed, including Respondent's desire to "freeze" the starting wage rate at \$3.70 per hour, as it then was being paid under the 1974-77 contract. Critelli agreed in principle to "give them relief in the starting rate, if all the other things were acceptable, also." No specific agreement was reached relative to the starting rate.

The next negotiation session was held on January 28, at which several matters were discussed. The hiring rate was not discussed, however. At this meeting, as at the meeting of December 10, the parties discussed the Union's desire to eliminate the wage differential between Respondent's Beaumont, California, and its Bordentown, New Jersey, plants. The Union proposed a 4-year agreement to replace the 1974-77 3-year agreement, with a raise of \$1.60 per hour in yearly increments, starting in April 1977, prior to the then current contract's expiration on August 6. The parties set up a series of meetings to be held in March, for discussion of noneconomic contractual proposals only. No definite agreements were reached at the meeting of January 28.

Meetings were held in March relative to noneconomic portions of the new contract, and agreement was reached on nearly all substantive provisions. Nothing was said in these meetings about starting pay.

The negotiating teams met on April 13. Respondent had not agreed to the Union's proposal for a wage increase to be effective April 1, and no agreements were reached on, or prior to, the meeting of April 13. As of that date, the parties were "back to scratch." Nothing was said at this meeting about starting rates.

The parties met on June 9, but no agreements were reached. They met again on June 28, at which time the Union handed Respondent its contract proposals.⁴ The proposals contained no reference to starting pay. The proposals, as well as a few noneconomic matters not previously agreed upon, were discussed. Agreement was not reached on any material issues.

The parties met on July 10, but only to establish an artificial deadline for negotiations, necessitated by conflicting commitments of some of the negotiators. The negotiators agreed to meet on July 12, with a state mediator to meet with them during the evening of the 12th, and to meet on July 13 for a final session. The employee ratification vote was scheduled for the evening of July 13.

The negotiators met as scheduled on July 12, and completed all negotiations on noneconomic matters. They reached agreement on most of the remaining economic items, and met again on July 13. By noon of that day the parties had come to agreement on all economic items, as shown by the memorandum prepared by the state mediator and dated July 13.⁵ The employees ratified the agreement and Oshry reduced it to final written form.

The parties met in September to sign the final form of agreement prepared by Oshry, and union representatives noticed that it provided for starting wage rates of \$3.70 per hour, which, they contended, had not been agreed to. Critelli refused to sign the agreement and told Oshry that he would exchange the starting wage rates Oshry proposed, for Oshry's agreement to the Union's request for increased

Sunday premium pay, increased shift premium pay, and an additional holiday. Oshry refused Critelli's offer. The parties have not negotiated since the September meeting, and the agreement remains unsigned.

B. Nature of the Dispute

Counsel agreed at the hearing that the only issue is whether or not the across-the-board increases negotiated by the parties, as shown in General Counsel's Exhibit 6, are applicable to starting wage rates of new employees. General Counsel contends that the parties agreed to such applicability. Respondent contends that Critelli orally agreed with Oshry that the increases are not so applicable, and that Respondent may start employees at the rate set forth in the last increment of the 1974-77 contract.

There is no dispute about the fact that General Counsel's Exhibit 6 does not exempt starting rates from the increases. Starting rates are not mentioned.

Further, there is no dispute about the fact that the 1974-77 contract specifically provides starting rates for employees.

Oshry explained the reason for Respondent's desire to keep starting rates in line with other employers in the area, and stated that the across-the-board increases set forth in General Counsel's Exhibit 6, if applied to new employees, would disrupt the area labor market and interfere with Respondent's hiring practices. No contradictory testimony is in the record. Oshry's explanation is logical and is credited.

Critelli testified that there is a distinction between hiring rates and starting rates for each classification of work. He said hiring rates only refer to individuals not covered by specific work classifications. Oshry disputed that testimony and testified that the hiring rate applies to all new employees. Oshry stated that Respondent desires to hire employees at rates generally competitive in the area, and, within the ensuing 6-month period, bring the employees to the level called for by the contract rates. He said Respondent does not want to start employees at a high rate, then limit them to small increases later. Gilbert Wolf, a union representative, testified that, in his own mind, he differentiates between a starting rate and a hiring rate, but that he never discussed that matter with Respondent, nor does he know of any instance wherein Critelli did. Larry Higgins, now a maintenance foreman but formerly a member of the union negotiating committee who participated in the 1977 negotiations, testified that hiring rates and starting rates are "one and the same." In view of the fact that the 1974-77 contract makes no distinction between classification hiring rates and starting rates, the testimony of Oshry and Higgins appears to be well founded and logical. The testimony of Critelli on this point is given no credence.

C. The Alleged Oral Agreement

The issue of hiring rates was raised by Oshry on March 11, 1976, when he wrote to Mohr. The issue next was raised at the preliminary meeting of December 10, 1976. Oshry and Critelli agree that they discussed the issue then, but they decided to defer negotiation on the matter until a later date. It is clear that, by December 10, 1976, Critelli was aware that the subject was of more than casual concern to

⁴G.C. Exh. 4.

⁵G.C. Exh. 6.

Respondent. There were several interim, informal meetings of negotiators after December 10, 1976, and at least three meetings during March devoted to noneconomic matters. Oshry testified that he met at Respondent's conference room on March 9 with several representatives of Respondent's and of the Union, including Critelli and Higgins. Oshry testified:

And at that meeting again I made clear the company's position on starting rates and emphasized that this was a very important point that the company stressed, and that the company would bargain with the Union but that we wished to maintain control of the starting rates.

At that time Mr. Critelli suggested that we separate the negotiations into sessions on economic issues as separate from those on the contract language, and that the starting rates be deferred as one of those issues, which was financial.

Q. And did you agree on behalf of the company to defer that situation?

A. Yes.

Higgins corroborated Oshry and testified that, during the meeting, Critelli stated, "I see no problem with freezing the rates."

Critelli testified on rebuttal, but did not deny the testimony of Oshry and Higgins on this point. Oshry and Higgins are credited.

Oshry was vague and uncertain in his testimony relative to Critelli's alleged oral agreement. Oshry testified that the agreement was given in "either the June or July meeting. I'm not sure which." Oshry stated:

A. As I recall, it was as we were leaving the table, and I'm not sure exactly who was present at the time.

Q. What did Mr. Critelli say to you at that time, sir, and what did you say to Mr. Critelli in regard to the starting rates or the hiring-in rates situation?

A. I said nothing. It was simply that Critelli said, "Okay, Doc, you have your starting rates." Essentially, he was agreeing to what I had said at the very inception of the negotiations, that the company would insist on having control of starting rates.

No witness testified in support of Oshry on this point.

Critelli denied the statement attributed to him by Oshry, and said starting rates were not discussed at the June 28 meeting, or at the meeting of July 12.

Wolf testified that hiring rates were not discussed at the meetings of June 28, July 12, or July 13, but that it was possible Critelli and Oshry discussed them while Wolf was away from the bargaining table.

D. Discussion

Oshry gave the impression of a sincere, but somewhat confused, witness. His recollection of dates and events was uncertain and unreliable. On matters of clear recall, he is credited over Critelli, who seemed somewhat evasive and less than candid. However, the statement of agreement alleged by Oshry was not a model of recall ability. The date assigned to the statement is ambiguous. There is no other testimony to assist in determining the date. Oshry's testi-

mony has an unrealistic ring to it. It seems unlikely that Critelli would make such a statement without preliminary or supplementary remarks. The remark, if made, would be a bolt from the blue, referring to discussions several months prior to June or July.

When asked about the fact that the wage schedule prepared by the mediator and used by Oshry, General Counsel's Exhibit 6, states nothing about hiring rates, Oshry replied that it was an oversight on his part.

This testimony by Oshry cannot be the basis of a finding, because of its ambiguity, uncertainty and lack of support. It is possible that, during negotiations in June or July, Critelli made some remark to Oshry that led Oshry to believe that he had an agreement, but to arrive at such a conclusion would require speculation that has no support. This testimony by Oshry is given no weight.

E. Post-Agreement Events

Higgins testified that, after the document of agreement, General Counsel's Exhibit 6, was signed on July 13, and Respondent's representatives left the room, Critelli stated "Well, it looks like Doc [note: Oshry] forgot his hiring rate."

Higgins further testified that, in the evening of July 13 when the employees were discussing ratification, Critelli explained the proposed contract:

Well, we went through the contract and explained the higher points, such as this Number 6, and across-the-board raises, and there was a little bit of squabble about extra premium for Sunday for the shift workers, extra holidays, and the statement was made, "Well, there's something in the mill; we still have our foot in the door." Or something to that nature.

Higgins continued:

I believe after our ratification there was—we had to go back to the motel to catch the shift workers that were coming off shift, and there was something said to some of those.

Q. And what was said by Critelli to some of those people, if you remember?

A. That we still had something that we could swap for to get the extra holiday or premium pay, or something.

Critelli testified that he talked with the Union's bargaining committee members on July 13:

In that particular case, and it had been the case through that evening, we had discussed the other economics that we were unable to get at that session or that set of negotiations. I told them that the company—not necessarily Doc, but the company—needed and wanted relief in the hiring-in rate; that if an [sic] when they needed it bad enough that they could—that it was worth the amount of money that we could request for that relief, which namely was the three major items that affected the shift workers. And that's a 24-hour shift. And that was the main point of contention for those shift workers that worked Sunday and so on like that. Shift premium and the Sunday work and the

additional holiday. It was available to the company anytime they would agree to those three items.

Critelli said he did not "specifically" state "I guess Doc forgot about the hiring-in rates." Critelli said he explained to the committee members, and to the employees while discussing ratification, that they still had an opportunity to get the remaining items they wanted, i.e., Sunday and shift premiums, and an additional holiday.

Critelli said it was common practice for the Union and Respondent to have interim bargaining during a contract period relative to specific matters.

F. Discussion

Higgins was a convincing witness. He is credited in his testimony, and his version of events is credited over Critelli to the extent that the versions are not consistent. Based upon Higgins' testimony, it is found that Critelli knew, when the agreement was reached and signed on July 13, that Oshry had neglected or forgotten to include any reference to, or completely to bargain concerning, the hiring rate. It is clear that, having watched Oshry place himself in an untenable position, Critelli planned to take advantage of the situation and wring more concessions from Oshry. This situation is not the same as those referred to by Critelli, involving interim negotiations during pendency of a contract. Past practice of the parties involved normal situations and events arising after a contract was signed. Such practice does not control the issue herein, which involves taking advantage of an obvious error.

G. Analysis

Oshry contends that the hiring rate matter was of considerable importance to Respondent. The record shows that Oshry related that importance to the Union by letter on March 11, 1976, and orally during discussions on December 10, 1976 and March 9, 1977. There is no indication that anything further was said on the subject to the time of, and through, final negotiations and signing of General Counsel's Exhibit 6, other than the agreement of Critelli, alleged by Oshry to have occurred in June or July. As discussed *supra*, that alleged agreement is too isolated, too fragmentary, and too unlikely to be credited. Without that credit, Oshry said nothing for approximately 4 months, relative to a matter he considered to be of considerable importance, even though the parties met in formal negotiation sessions on five occasions, and had several informal conversations, within that 4-month interval.

It is clear that, when the parties met on December 10, 1976, Critelli agreed in principle to the frozen hiring rate, provided he was able to receive something in return. Sunday and shift premium pay, and an additional holiday, later developed as items Critelli sought, but those items were not obtained during regular negotiations. It does not seem likely that Critelli would have agreed to Oshry's hiring rate proposal without some *quid pro quo*, and it is apparent that, as of July 13, that *quid pro quo* was not obtained.

In view of the foregoing, Oshry's silence for 4 months is difficult to explain. Possibly it was because of forgetfulness, but that is not likely unless the matter was of considerably

less importance than Oshry contends. In any event, Oshry's inaction of July 13 makes it quite clear that the agreement of that date was the one and only agreement of the parties. By then, all noneconomic matters were agreed upon, and the economic matters were bargained to settlement in long, laborious sessions. Oshry's contention that he did not require a notation on General Counsel's Exhibit 6 relative to hiring rates because of oversight, is not convincing. In the first place, that contention is inconsistent with Oshry's claim that the matter was of great importance to Respondent. In the second place, hiring rates were separately and specifically set out in the 1974-77 contract. In essence, General Counsel's Exhibit 6 is an agreement to a wage increase, the figures of which later were to be incorporated in the final, overall agreement to be prepared by Oshry. Clearly, those increases were to apply across-the-board to the 1974-77 contract figures. There is nothing to indicate otherwise, unless Oshry's allegation that Critelli said, "Okay, Doc, you have your starting rates," is accepted as factual. As discussed *supra*, that acceptance is not made.

The only remaining question concerns Critelli's post-signature comments about Oshry forgetting the hiring rate. At their worst, such comments indicate that the Union knew Oshry wanted the frozen hiring rate; that the Union knew Oshry forgot to negotiate on the item; and that the Union intended to take advantage of the situation. If there were no more to the question than that, possibly there would have been no agreement, and no 8(a)(5) violation.⁶ However, the picture is not that clear. (1) Critelli's statement is ambiguous, and does not indicate on its face, an intention unfairly to take advantage of Oshry. (2) Oshry had not, even by his own testimony, raised the issue of hiring rate since March 9. (3) Critelli was not required to remind Oshry about Oshry's own proposals, nor was it incumbent upon Critelli to attempt an analysis of Oshry's reasons for not bargaining relative to the hiring rate. Had the issue been a heated one up to the time of agreement on July 13, or had Oshry obviously bargained on July 2 but forgot on July 13 to see that General Counsel's Exhibit 6 referred to the hiring rate, possibly a different conclusion would be indicated. However, that is not this case. (4) The record does not show why Oshry did not bargain for a hiring rate after March 9, but he did not bargain, and acceptance of Oshry's explanation of forgetfulness would open the door to endless reliance upon subjective reasons for changing agreements previously made. (5) Oshry says he assumed that the matter was settled when Critelli told him he had his hiring rate, but assuming, arguendo, that he made such assumption, it still was incumbent upon Oshry to see that the agreement on wages referred to the hiring rate. Oshry's explanation that he overlooked the matter simply is not credible, in view of the long history of the subject, and Oshry's allegation of its importance.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section IV, above, occurring in connection with the operations of Re-

⁶ *Apache Powder Company*, 223 NLRB 191 (1976).

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

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative actions designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record, I hereby make the following:

CONCLUSIONS OF LAW

1. Respondent, Yates Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Aluminum Workers International Union, AFL-CIO, and its Local 318, are labor organizations within the meaning of Section 2(5) of the Act.

3. At all times since 1972 the Union and its Local 318 have been the exclusive representative of all employees in the following unit, appropriate for the purposes of collective bargaining, with respect to rates of pay, wages, hours of employment and other terms and conditions of employment:

All production and maintenance employees, including inspectors, timekeepers, plant clerical employees, shipping and receiving employees, truckdrivers and leadmen employed by Respondent at its facility located at 1060 East Third Street, Beaumont, California, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

4. By refusing to reduce to writing, sign, and put into effect an agreement embodying terms and provisions orally agreed upon July 13, 1977, and by inserting, in a proposed contract, reduced hiring-in rates not agreed upon, Respondent violated Section 8(a)(5) and (1) of the Act.

5. Unilaterally, and without bargaining with the Union since August 6, 1977, Respondent has changed terms and conditions of employment of employees in the above-described unit by paying wage rates to new employees, not agreed to by the Union, in violation of Section 8(a)(5) and (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.

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

ORDER⁷

Respondent Yates Industries, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to reduce to writing, and signing, an agreement embodying terms and provisions orally agreed upon July 13, 1977, and inserting in a proposed agreement, reduced hiring-in rates not agreed upon.

(b) Unilaterally, and without bargaining with the Union, since on or about August 6, 1977, changing terms and conditions of employment of employees in the above-described unit, by paying wage rates to new employees not agreed to by the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to organize, form, join, or assist labor organizations, including the above-named organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities.

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

(a) Upon request, bargain collectively with the Union and its Local 318, as the exclusive representative of all employees in the above-described unit, concerning rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, reduce to writing, sign and put into effect an agreement embodying terms and provisions orally agreed upon July 13, 1977, omitting therefrom reduced hiring-in rates not agreed upon.

(c) Make whole all employees newly hired since August 6, 1977, for any loss of pay they suffered as a result of the unfair labor practices found herein, with interest compounded thereon in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).⁸

(d) 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.

(e) Post at its Beaumont, California operations, copies of the attached notice marked "Appendix."⁹ Copies of the attached notice, on forms provided by the Regional Director for Region 21, after being duly signed by an authorized

⁷ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

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

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."

representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by

Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.