

**J. R. Simplot Company and Oil, Chemical and Atomic Workers International Union, Local 2-632. Case 19-CA-9398**

September 26, 1978

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

On April 7, 1978, Administrative Law Judge David G. Heilbrun issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering 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 briefs and has decided to affirm the rulings, findings, and conclusions<sup>1</sup> of the Administrative Law Judge and to adopt his recommended Order.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board; adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

<sup>1</sup> We note that the locker issue was, in effect, the subject of bargaining at a March meeting after which Respondent made what appears to have been reasonable accommodation to the problem. Accordingly, we do not reach or pass on the Administrative Law Judge's conclusions concerning the issue of the management-rights clause.

**DECISION**

**STATEMENT OF THE CASE**

DAVID G. HEILBRUN, Administrative Law Judge: This case was heard at Pocatello, Idaho, on February 7, 1978, based on a complaint alleging that J. R. Simplot Company, called Respondent, violated Section 8(a)(1) and (5) of the Act by unilaterally changing certain terms and conditions of employment of hourly paid employees in a bargaining unit represented by Oil, Chemical and Atomic Workers International Union, Local 2-632, called the Union, without providing the Union notice or opportunity to meet and bargain concerning the change despite demand to do so.

Upon the entire record, my observation of the witnesses, and consideration of briefs filed by General Counsel and Respondent, I make the following:

**FINDINGS OF FACT AND RESULTANT CONCLUSIONS OF LAW**

A collective-bargaining relationship between these parties has existed for over 20 years.<sup>1</sup> On January 17, 1977, a 67-day strike of union-represented employees over new contract terms ended. The prior agreement, to the extent it was printed in booklet form, contained general rules applicable to employee conduct while at work. These were silent on the longstanding practice of playing personal radios in the plant. A new 3-year contract resulting in conclusion of the strike was refined for signature by January 25, 1977, and presented at that time to Union President Gary Cummings, along with 11 letters of agreement having continued effectiveness. All documentation was duly executed and printed several months later by Respondent at shared expense.<sup>2</sup> The comparable series of general rules then available in booklet form included one stating, "Personal radios . . . are not allowed in the plant."

As employees had appeared to resume normal shift work on January 17, they were called together in small groups by various foremen, told the prior privilege of playing radios was totally revoked, and given a memorandum on locker policy with accompanying verbal explanation.<sup>3</sup> In pertinent part, this memorandum reads:

Personal lockers will be assigned thru the Plant Personnel Office to both Production and Maintenance employees. Only one personal locker will be allowed per employee.

Basket type lockers will be provided Maintenance, Electricians, and Stores employees. These are located in the Maintenance Change Room. These will be the only personal lockers available to Maintenance, Electricians, and Store employees. They are provided primarily for storage of work clothing and safety gear while off the job, street clothing while on the job, or towels and other items needed to facilitate showering. They are not for tool storage. They are to be locked with the employee's personal lock.

Instrument men will be provided personal lockers in the Instrument Shop or in the Maintenance Change Room, but not both. If an individual feels he needs shower facilities he will be assigned a basket locker, but not a locker in the Instrument Shop. If he is as-

<sup>1</sup> Respondent Corporation is engaged at Don, Idaho, in the manufacture of phosphate fertilizers, annually selling and shipping from this plant finished products valued in excess of \$50,000 to points outside Idaho, while purchasing and receiving goods and materials valued in excess of \$50,000 and used in such manufacture directly from outside Idaho. I find Respondent is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Sec. 2(5).

<sup>2</sup> All dates and named months hereafter are in 1977, unless indicated otherwise.

<sup>3</sup> Primarily, the basic use of lockers had included crew or shift lockers for large equipment, small tool lockers for hand tools (personally owned by maintenance employees and company owned for use by production classifications), and personal lockers at either the production change and shower area or the maintenance change and shower area, then located 50 and 250 yards distant from the plant's main gate, respectively. Lockers at the changing area had, in fact, been claimed by employees over the years as vacant ones would randomly appear.

signed a personal locker in the Instrument Office he will not be assigned a basket locker. These are provided primarily for storage of street clothing while on the job, and work clothing and safety gear while off the job. Towels and other items needed to facilitate showering can be stored in the basket lockers if the individual chooses a locker near shower facilities. These lockers are not for tool storage. They are to be locked with the employee's personal lock.

Production employees will be assigned a personal locker in the Production Change Room or the area where they are regularly assigned. There will be only one personal locker assigned each Production employee. Individuals requesting a locker in a work area will be provided a storage rack in the Production Change Room for his hard hat. These lockers are provided primarily for storage of work clothing and safety gear while off the job, street clothing while on the job, or towels and other items needed to facilitate showering. They are not for tool storage. They are to be locked only with the employee's personal lock.

Foremen and staff employees will be assigned personal lockers in the Foremen's Office.

Storage of personal lockers in both Maintenance and Production will make it necessary for those individuals not desiring lockers to let us know so that we can assure each individual desiring a locker an opportunity to obtain one.

When an individual is transferred from one department to another he will be required to clean out his locker and move any item stored there to an assigned locker in his new area or department.

In the time following January 17, employees requested lockers through the office of plant personnel superintendent, Milton Holmes. Initially, not all managerial employees of his office applied the policy uniformly; as Gary Hall testified without contradiction that he was first promptly assigned a changing area locker, but then had this withdrawn by the training coordinator on grounds he already had one out in his work area. At a time recalled by Holmes as around March, a joint meeting produced advice from union spokesmen that storage racks in the changing areas were inadequate. Upon this prompting, Respondent installed 82 half-lockers to accommodate all employees then requesting some personal locker privilege at a changing area. In the time following, and to date, not all such half-lockers have been claimed. In various areas around the plant complex, personal work lockers now supplant what were formerly tool lockers.<sup>4</sup>

For decisional purposes, this case is separable into the radio and locker facets, because prohibition of the former occurred abruptly, while such changes as affected locker use originated with mutual concern between the parties. In

<sup>4</sup> All tools, including those used by maintenance employees, are now company-supplied. At onset of the strike, Respondent's officials pointedly brought all tool locker users into the plant for mutually administered emptying out of these repositories.

order for the doctrine of unilateral change to apply, it is first necessary that a term or condition of employment be affected. Given uncontradicted testimony that the long-existing practice of enjoying personal radios during the workday had been increasingly abused to the point one individual installed stereo apparatus, the subject may be clearly focused upon in terms of whether even cognizable for statutory purposes or a mere cultural sidelight. The great variety of purposes and practice concerning the use of personally carried or controlled radios is such that an employer has intrinsic authority to regulate in a manufacturing complex. This, coupled with the broad management-rights clause of the collective-bargaining agreement here, leaves inadequate basis to say the prohibition was unlawful. Cf. *Irvington Motors, Inc.*, 147 NLRB 565, 570 (1964).

The subject of locker usage had been a festering problem at this plant, one that was compounded by multiple locker use of certain individuals and overall failure to ever successfully inventory the locker situation. The extended strike period provided opportunity to, first, purge all existing lockers and, second, allow a calmly planned system for rational usage. It is artificial to turn the case on whether a locker program description did or did not exist prior to end of the strike. Rather, a more appealing view is that Respondent properly sorted through the various locker needs of employees, suitably accommodated those of a personal and operational nature, and reordered the program only in the sense that different individuals had more favorable facilities based on predictable movement throughout the facility. While here an obvious term and condition of employment is present, the sweeping management-rights clause, which reserves all manner and means of implementing plant efficiency not specifically abridged in writing, again constitutes the sort of clear and unequivocal waiver contemplated by settled law in this area. At least this is so when coupled with the fact that desired showering facilities are now available to more union members than before, notwithstanding that some higher seniority ones would experience greater inconvenience than when formerly enjoying the fortuitously obtained facility. Furthermore, the evidence fails to show that protest against the practice was sufficient to trigger an obligation to negotiate. Cf. *National Biscuit Company*, 159 NLRB 1567 (1966); *Clarkwood Corporation*, 233 NLRB 1172 (1977).

Accordingly, I render a conclusion of law that Respondent has not, violated Section 8(a)(1) and (5) of the Act, as alleged, and issue the following recommended:

#### ORDER<sup>5</sup>

The complaint is dismissed in its entirety.

<sup>5</sup> 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.