

In the Matter of ST. JOSEPH STOCK YARDS COMPANY and AMALGAMATED
MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL
UNION No. 159

Case No. C-43.—Decided July 7, 1936

Stockyards—Unit Appropriate for Collective Bargaining: community of interest; no controversy as to—*Representatives:* proof of choice written authorizations, designation of not dependent upon membership in union—*Collective Bargaining:* adjustment of grievances or assent to particular demands, differentiated from; negotiation in good faith—failure or refusal to make counter proposals, adherence to existing wage scales and working conditions—broad purposes of; meaning of; duty of employer to embody understanding reached with representatives of employees in binding agreement for definite term.

Mr. George O. Pratt for the Board.

Mr. James B. Nugent, of Kansas City, Mo., for respondent.

Mr. Luther P. Davis, of St. Joseph, Mo., for the Union.

Mr. Warren S. Welsh, of St. Joseph, Mo., for the Central Labor Council of St. Joseph, Mo.

Mr. Stanley S. Surrey, of counsel to the Board.

DECISION

STATEMENT OF CASE

On November 15, 1935, the Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 159, hereinafter called the Union, filed with the Regional Director for the Seventeenth Region a charge that the St. Joseph Stock Yards Company, St. Joseph, Missouri, hereinafter called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act. By order of the Board, dated January 20, 1936, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 35 of National Labor Relations Board Rules and Regulations—Series 1. On May 5, 1936, the Board issued its complaint against the respondent, said complaint alleging that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (5), and Section 2, subdivisions (6) and (7) of the Act, in that on and after September 11, 1935, the respondent had

refused to bargain collectively with the union as the exclusive representative of the respondent's employees in a unit appropriate for the purposes of collective bargaining. The complaint and accompanying notice of hearing were duly served upon the parties in accordance with Article V of the Rules and Regulations—Series 1, as amended. The respondent filed its answer on May 11, 1936. The answer contained both a special appearance, in which the respondent objected to the jurisdiction of the Board on stated constitutional grounds, and a denial of the commission of unfair labor practices. Pursuant to the notice a hearing was held at St. Louis, Missouri, on May 18, 1936, before Emmett P. Delaney, the Trial Examiner duly designated by the Board, and testimony was taken. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded both parties. The Trial Examiner overruled all of the objections to the Board's jurisdiction; these rulings, and all others made during the hearing, are hereby affirmed.

Upon the entire record of the case, including the stenographic report of the hearing and the documentary and other evidence received at the hearing, the Board makes the following:

FINDINGS OF FACT

I. THE RESPONDENT

The St. Joseph Stock Yards Company owns and operates a stockyard located in South St. Joseph, Missouri known as the "St. Joseph Stock Yards". Its stockyard has been ascertained by the Secretary of Agriculture to come within the definition of the term "stockyard" in the Packers and Stockyards Act, which reads as follows: "the term 'stockyard' means any place, establishment, or facility commonly known as stockyards, conducted or operated for compensation or profit as a public market, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules or goats are received, held, or kept for sale or shipment in commerce."¹ This definition adequately describes the general nature of respondent's business. In its answer the respondent states that it "furnishes . . . services and facilities to be used or employed by others for compensation in connection with the buying, selling, marketing, feeding, watering, holding, delivery, shipment, weighing and handling of livestock". The record shows that livestock—cattle, calves, hogs, sheep, horses and mules—arrive regularly from points of origin mainly outside Missouri. The majority of the livestock

¹ 42 Stat. 163, 7 U. S. C. A. § 202.

are transported to the stockyard by truck, the remainder in the main by rail, and a few are driven on foot to the stockward. The livestock are received at the "cattle dock" and there unloaded by the respondent's employees and yarded in pens consigned to various commission firms. Employees of the respondent then feed and water them. After sale, which transaction is handled entirely by commission men, the livestock are taken to scales and weighed by respondent's employees. They are then led back to pens and there held until demanded by the purchaser. If any of the livestock are to be shipped by rail or truck to other markets or areas, employees of the respondent load them on the carrier; if they are sold to packers located in St. Joseph the respondent's employees deliver them when they are called for by the purchaser. The respondent does not own any of the livestock handled by it. Its function is to service the livestock—receive them, water and feed them, hold them in pens pending sale and finally dispose of them by delivery to the purchaser or carrier.

The respondent operates the only public stockyard in the City of St. Joseph. For the year 1935 the respondent received about 2,200,000 head of livestock. These originated from over 19 different states, including Missouri, which accounted for about 800,000 of the total. The receipts were classified as follows: cattle and calves—474,295; hogs—662,997; sheep—1,068,445; horses and mules—7,909. About 900,000 of the livestock received by rail were consigned for sale in the St. Joseph Market; about 38,000 were shipped directly to packers in St. Joseph; and the remainder were transported on through shipments to other markets, the journey being interrupted for a short interval at St. Joseph for feeding, watering and rest. Of the total number of livestock received by the respondent that were consigned for sale, about 1,800,000 head were sold to local packers and butchers; 200,000 head were sold to farmers as stockers and feeders for fattening; and about 160,000 were shipped to other markets and packers. In 1934 the respondent received and disposed of about 3,500,000 head of livestock; 23 states contributed to the supply and a portion of the livestock was shipped to more than 20 states for immediate slaughter.

The general character of services rendered by stockyards and their relation to the commerce in livestock and meat products were described by the Supreme Court in *Stafford v. Wallace*, 258 U. S. 495. The Court there said in sustaining the Packers and Stockyards Act:

"The stockyards are not a place of rest or final destination. Thousands of head of live stock arrive daily by carload and trainload lots, and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that

presses behind. The stockyards are but a throat through which that current flows, and the transactions which occur therein are only incident to this current from the West to the East, and from one State to another. Such transactions cannot be separated from the movement to which they contribute and necessarily take on its character . . . The origin of the live stock is in the West, its ultimate destination known to, and intended by, all engaged in the business is in the Middle West and East either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. The stockyards and the sales are necessary factors in the middle of this current of commerce.

"The act, therefore, treats the various stockyards of the country as great national public utilities to promote the flow of commerce from the ranges and farms of the West to the consumers in the East." (515-6)

On the basis of both authority² and present-day economics we find that the respondent is engaged in transactions that are an integral part of the current or flow of interstate commerce in the livestock and meat-packing industries. The services it renders are indispensable to a continuation of that flow and its employees are directly engaged in acts designed solely to make possible the steady movement of the stream.

II. THE BARGAINING UNIT

The complaint alleges that the day yardmen, moonlight yardmen, hay helpers, hay drivers, cleaning laborers, tractor drivers, counters, deliverymen, weighmasters, night yardmen, the grain elevator man, crib and bar men, hog yardmen, waterman, carpenters, mechanics, construction laborers and construction teamsters employed by the respondent at its stockyard constitute a unit appropriate for the purposes of collective bargaining. The duties of these employees are briefly: the yardmen load and unload livestock; the hay helpers act as assistants to the hay drivers, who load, drive and unload the feed wagons; the tractor drivers work the tractors that pull the cleaning carts; the counters tally the livestock when they are being weighed; the deliverymen assist in the delivery of the livestock to purchasers; the weighmasters weigh the livestock; the grain elevator man is engaged in tasks connected with the grain elevator at the

²As indicated above, the respondent's stockyard falls within the definition of that term in the Packers and Stockyards Act, and consequently is subject to regulation by the Secretary of Agriculture under that Act. Recently, pursuant to the powers conferred upon him, the Secretary of Agriculture prescribed maximum rates to be charged by the respondent for its services at its stockyard. His action was upheld by the Supreme Court in *St. Joseph Stock Yards Company v. United States*, 298 U. S. 38.

stockyard; the cripp and bar men open the doors on freight cars and check the crippled livestock; the waterman watches the flow of water at the stockyard. The tasks of the others are apparent from the above designations. On May 18, 1936, 100 employees, exclusive of the supervisory force, were engaged in the above tasks; on December 15, 1935, the figure was 105. We include in the supervisory force employees regularly engaged as sub-foremen, such as the hay, cleaning, carpenter and hog yard sub-foremen, in addition to the foremen. The remaining employees are the yard clerks, watchmen, janitors, elevator operators and corn testers.

The unit alleged in the complaint includes all of the employees engaged in the servicing of the livestock. Those excluded do not participate in that servicing so that their exclusion is justifiable. The extent of the bargaining unit is in effect undisputed. We find that the employees enumerated in paragraph 4 of the complaint and described above constitute a unit appropriate for the purposes of collective bargaining.

III. THE UNION

The Amalgamated Meat Cutters and Butcher Workmen of North America is a labor organization affiliated with the American Federation of Labor. Its membership is confined to employees engaged in packing plants, stockyards and meat markets. Local No. 189 is chartered by it and in view of its membership and purposes is a labor organization.

The record contains 61 authorizations signed in the period between July 5, 1935, and the end of August, 1935, by persons then, and now, employees of the respondent. These authorizations read as follows:

"I, of my own free will, and without any coercion whatsoever, do hereby authorize The Amalgamated Meatcutters and Butcher-workmen of North America, Local Union No. 159, of St. Joseph, Missouri, and its officers and representatives, to bargain collectively for me in all matters pertaining to wages, hours and working conditions, with full power to act for a period of eighteen months from the date affixed hereto."

Each authorization contains the name, address, occupation and length of employment of the signatory and is attested by two witnesses. There is no reason to doubt the genuineness of these authorizations and the respondent has not disputed it. Previous to the hearing the respondent did not question the fact that the Union represented a majority of its employees. At the hearing it suggested that a large number of the signatories were either non-members of the Union or members not in good standing because of non-payment

of dues. However, Section 9 (a) of the Act requires only that the representatives be "designated or selected" by the employees, and here such designation or selection is not dependent upon membership in the Union but rests upon an express authorization for the specific purpose. We find that the Union on August 19, 1935,³ and thereafter, represented a majority of the employees in the appropriate bargaining unit described above.

IV. THE UNFAIR LABOR PRACTICES

A brief description of the previous relationships between the Union and the respondent will assist in an understanding of the present controversy. On June 25, 1934, the Union filed a complaint with a Regional Board of the old National Labor Relations Board alleging that the respondent had refused to bargain collectively with it, and that a strike was imminent. Various negotiations followed. On July 5, 1934, there was a meeting between the Union committee and the respondent at which the respondent rejected all the Union's demands. C. F. Topping, the respondent's president, after discussing in general terms such matters as wages, unemployment, etc., stated that the Union's requests were not justified and could not be granted. When pressed as to particular items he said that, "We are turning down the whole list of requests, so I can't say there are any particular ones. As far as we are concerned conditions will remain as they are now." He concluded with the statement that, "My understanding is that we would not enter into any agreement." On July 9th officers of the respondent and of the Union met with the secretary of the Regional Board and participated in the formulation of a "declaration of intention", to be signed by the respondent, which made no reference to the Union but granted some of its demands. However, the directors of the respondent refused to ratify the document and, instead, caused to be posted an announcement entitled, "declaration of intention", in which the respondent made some minor concessions. On August 21, the respondent's officials and the Union committee again met and considered in detail the various points in the original "declaration of intention", the respondent's president stating that until an understanding on those items had been reached it was useless to consider the questions of Union recognition and an agreement. After several hours' discussion, the respondent refused to make any concessions that went beyond its prevailing practice. The Union then again brought up the question of recognition and the signing of an agreement. The attorney for the respondent "contended that it was not necessary or obligatory on the part of the

³ Fifty-eight authorizations had been secured by that date.

company to sign an agreement with anyone, nor was it obligatory to recognize the Union as such". The president of the respondent reiterated that "the company's position generally was that no agreement or contract would be signed with any organization, but that requests would be discussed and the company was always willing to go into matters brought to them" by its employees. The meeting then adjourned.

The old National Labor Relations Board held that the respondent, in declining to bargain with the object of reaching a collective agreement embodying the terms and conditions eventually to be agreed upon, had refused to bargain collectively and thereby violated Section 7 (a) of the National Industrial Recovery Act as embodied in the President's Reemployment Agreement, to which the respondent was then a party.⁴ After that decision the respondent raised the question whether the Union represented a majority of its employees. After a hearing on that question, the old Board held that through the period from June, 1934, to the date of the hearing, March 9, 1935, a majority of employees eligible for membership in the Union had designated the Union as their representative and that the Union had therefore been entitled to act as the exclusive bargaining agency of all employees eligible to membership therein.⁵

The present case is concerned with further attempts by the Union to bargain collectively with the respondent. On September 13, 1935, Warren Welsh, acting president of the Union, and seven employees of the respondent, representing the respondent's employees, met with Topping, respondent's president and F. C. Black, the superintendent. The Union had previously submitted an agreement for the respondent's signature. At the beginning of the conference Topping said that while he had been advised by counsel that the National Labor Relations Act did not apply to the respondent, he was always willing to hear and discuss requests from employees. He further stated that in view of respondent's present financial condition he would have to refer to the directors of the respondent any request that involved an additional expense. They then proceeded to a discussion of the terms of the proposed agreement. Article I related to the adoption of the closed shop. Welsh argued that since the Union represented a majority of employees, all employees should be required to join the Union. Topping replied that the argument was not persuasive and, further, that the respondent would not agree to such a condition of employment, especially since many employees did not belong to the Union. Article II related to the principle of

⁴In the *Matter of St Joseph Stockyards Company*, 2 N. L. R. B. (Old) 112 (Jan. 25, 1935). The facts stated in the text are taken from the decision.

⁵In the *Matter of St. Joseph Stockyards Company*, 2 N. L. R. B. (Old) 116 (May 2, 1935).

seniority. The Union requested that the principle of seniority should be followed in any reduction or increase in the working force and in the promotion of employees. Topping stated that while decreases in force had been and would continue to be made on the basis of seniority, that principle could not be adopted when the force was being increased. Moreover, the respondent would continue to follow the policy that the best qualified employee with the longest service would be given promotion. These questions were discussed at length but without any change in the positions taken by the parties. Article III stated that employees with more than five years' service should be given a week's vacation with pay. To this request Topping replied that while the vacation plan had merit and might be made effective in the future, the respondent could not afford the increase in expenditures that would be involved if it were presently adopted. Article IV referred to the policy of giving the lighter work to employees of long and faithful service if they were unable to do heavier work. Topping stated that inasmuch as the Article merely reiterated the present policy of the respondent he had no objection to it. Article V involved the institution of the check-off and was not acceded to by Topping, who felt that the Union should collect its own dues. Article VI provided for time and a half on certain holidays. Topping thought that since such holidays, on which the respondent remained open because of the nature of its business, were few in number and the men given their choice of working or not, the respondent should not be required to pay extra for their services. Article VII provided that employees temporarily filling a position paying a higher rate should receive that rate, whereas those employees temporarily working on tasks paying a lower rate should receive their regular rate. Topping stated he had no objection to this Article, since it represented the respondent's present policy. Article VIII limited the hours of work per day, any excess to be considered as overtime to be compensated for at time and one half. Considerable discussion ensued on the point and on related matters. Topping maintained that the irregular nature of the respondent's business made a fixed schedule of hours inadvisable. Article IX prescribed an increase in hourly rates of pay. Topping stated that the financial condition of the respondent would not permit an increase. Article X stated that employees would faithfully discharge their duties and was not discussed. Article XI provided for arbitration in the case of a dispute between the respondent and its employees. Topping said he would not commit the respondent to a blanket adoption of the principle of arbitration and that a reference to arbitration should be considered only in connection with the particular dispute after it had arisen. After further discussion of a general nature, Topping suggested that they

meet again in two or three weeks after he had an opportunity to discuss the various items with the directors. The meeting had lasted for a little over two hours.

Representatives of the Union, accompanied by a representative from the parent organization, met again with Topping and Black on October 8th. Topping stated that the directors had agreed with the position he had taken at the previous meeting and emphasized their feeling that the respondent was not in a position to incur additional expenditures. Some of the various items in the proposed agreement were again discussed at length. The weight to be given to seniority in promotions and increases in the force was considered for some time but Topping did not recede from the views he had expressed at the first meeting. Welsh proposed that Article III, modified to provide for a vacation of three days instead of a week, should be adopted. Topping replied that he would present the point to the directors. The length of the work day and overtime pay were also considered, but again Topping felt that it was neither necessary nor practicable to prescribe a maximum number of hours per day. Following a general discussion, it was suggested that they meet again after Topping had discussed the matters of a vacation and a standard work week with the directors.

On November 8th, the two groups met for the third time. Topping asked Welsh and the other employee representatives if they had any new requests to present or any modifications of previous requests. Welsh inquired about the proposal for a three-day vacation and was informed that the respondent would not grant vacations at that time since it would involve an increase in expenses. Topping gave a similar answer to a request for six days of sick leave per year. There was a short discussion of the principle of seniority and of overtime pay for hours in excess of ten per day.

Welsh then presented a new agreement which he stated contained only provisions to which the respondent's representatives had previously agreed. He asked Topping to read it and, if he found that only such matters were covered, to sign it. Topping stated that he would not read the agreement since the respondent would not sign it, or any other agreement. He said he thought he had made the respondent's position clear to them—that he had been advised by counsel that the respondent was not subject to the National Labor Relations Act; that he was always willing to meet with the employees to discuss matters of mutual interest and to explain the respondent's position; but that the respondent saw no need for an agreement and would not sign any. The meeting then adjourned. At no time in the three conferences had the respondent offered a counter-proposal; the discussion was confined to the proposals of the Union.

The new agreement was to be between the respondent and the Union, both of the parties to be signatories. It was to run for a year from November 8, 1935, and thereafter until 30 days written notice of termination was given by either party. It contained four Articles: the first referred to the principle of seniority and in effect stated that the principle should be followed whenever the force was decreased; the second stated that employees of long standing unable to handle heavy work should be given preference in the assignment of light work; the third stated that employees required temporarily to do work paying a higher rate than their regular rate should receive the higher rate but in case of temporary assignment to work paying a lower rate should receive their regular rate; and the fourth stated that eight hours should be considered a work day, and six days a work week, but made no provision for overtime pay at a higher rate. A comparison with the minutes of the three conferences indicates that all of the above provisions merely embodied in an agreement the existing practice of the respondent and were thus in effect matters upon which both parties had reached an understanding. The counsel for the respondent at the hearing carefully emphasized this point, his cross-examination of Welsh being in part directed toward proving that the provisions in the proposed agreement merely stated what had been the respondent's policy for some time.

Summarizing the facts we find that the respondent is willing at all times to meet with representatives of its employees, to discuss fully their requests and to state the respondent's views on each request. The discussion at such conferences is confined to the proposals of the Union, since the respondent does not offer counter-proposals. At the present time, it is plainly unwilling to make any changes in the conduct of its business and states that such unwillingness is based upon its inability to incur any increase in expenses. Where a Union proposal is no more than a statement of existing policy, the respondent verbally acknowledges the identity and states its belief that the policy will continue. But the respondent refuses to enter into any agreement, oral or written, with representatives of its employees, even when the proposed agreement only covers existing policy. On this issue the respondent is adamant. It bases its stand on the following considerations: the National Labor Relations Act does not extend to the respondent, and moreover, it does not require that an employer enter into an agreement with the representatives of his employees; it is not the policy of the respondent to enter into agreements; since the agreement proposed to it merely referred to existing practices, there was no need for its adoption.

While on these facts it cannot be claimed that the respondent has refused unqualifiedly to deal with an organization of its employees, it does not follow that its apparent willingness at all times to meet with representatives of its employees and to discuss all aspects of working conditions with them may be termed genuine collective bargaining. There is much to indicate that the respondent conceives of its function in "collective bargaining" as the mere stating of "yes" or "no" after discussion, to any requests presented to it by representatives of its employees. It does not feel required to work toward a solution satisfactory to both sides of the various problems under discussion by the presentation of counter-proposals or other affirmative conduct. The respondent's whole attitude is colored with the belief that agreement or concession comes as a matter of grace on its part. But in view of the history of the dealing between the Union and the respondent, we deem it advisable not to reach a decision on such a ground but rather to consider the case as presenting solely the issue framed at the hearing.

That issue is precise: is the refusal by an employer to enter into an agreement, oral or written, with the proper representatives of his employees after an understanding has been reached on the terms of the agreement by discussion and negotiation, an unfair labor practice within the meaning of Section 8? The two subdivisions of that Section pertinent in a consideration of this issue are subdivision (1)—it shall be an unfair labor practice for an employer to interfere with or restrain his employees in the exercise of the rights guaranteed in Section 7, among which is the right to bargain collectively—and subdivision (5)—it shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees.

The issue presented is not novel. The old National Labor Relations Board, in a series of decisions that gave substance to the "right to bargain collectively" in Section 7 (a) of the National Industrial Recovery Act,⁶ dealt with the problem. In *In the Matter of Houde Engineering Corporation* that Board said:

"Collective bargaining, then, is simply, a means to an end. The end is an agreement. And, customarily, such an agreement will have to do with wages, hours and working conditions, and

⁶ "Sec 7 (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, . . ."

will have a fixed duration. The purpose of every such agreement has been to stabilize, for a certain period, the terms of employment, for the protection alike of employer and employee. By contrast, where all that transpires is a demand by employees for better terms and an assent by the employer, but without any understanding as to duration, there has been no collective agreement, because neither side has been bound to anything.

“Section 7 (a) must be construed in the light of the traditional practices with which it deals, and the traditional meanings of the words which it uses. When it speaks of ‘collective bargaining’ it can only be taken to mean that long-observed process whereby negotiations are conducted for the purpose of arriving at collective agreements governing terms of employment for some specified period. And in prohibiting any interference with this process, it must have intended that the process should be encouraged, and that there was a definite good to be obtained by promoting the stabilization of employment relations through collective agreements.”⁷

The exact point was passed upon in *In the Matter of National Aniline & Chemical Company*. As a result of conferences between the employer and representatives of its employees, tentative understandings were reached with respect to certain proposals submitted by the latter. However, instead of embodying those understandings in a written memorandum, the employer simply posted a plant notice which purported to contain the terms agreed upon. It later refused to sign an agreement containing those terms. Relying upon the *Houde* decision, the old Board held that the employer’s conduct was at variance with the statute:

“Section 7 (a) . . . requires employers to go further than merely to receive the duly constituted representatives of their employees, to give ear to their demands, and to assent to such demands if they are satisfactory. The statute imposes duties consistent with its purpose. It contemplates that the demands, or modifications of such demands, if acceptable to the employer, be embodied in an agreement, and that such an agreement bind both parties for a certain period of time. If such an agreement did not run for a definite period of time it would be without legal validity as an agreement. The collective bargaining

⁷ *In the Matter of Houde Engineering Corporation*, 1 N. L. R. B. (Old) 35, 35-36. The Board cited numerous decisions of the National Labor Board and the Petroleum Board that held the same view of collective bargaining.

requirement in Section 7 (a), if it did not contemplate the embodiment of mutually satisfactory terms in a legally valid agreement, would be empty of significance.”⁸

The *National Aniline* and *Houde* decisions were followed in numerous cases, all of which affirmed the proposition that the duty to bargain collectively demanded of the employer that he negotiate with a sincere desire to reach an understanding and that he enter into an agreement embodying the understanding if one is achieved.⁹ As pointed out previously in this decision, the doctrine was applied in a case involving the employer now before us where, as here, it had refused to enter into any agreement with the Union.¹⁰

Coming to the present Act, we find that its terminology in Section 7 with respect to the right to bargain collectively is practically identical with that of Section 7 (a) of the National Industrial Recovery Act. In addition, the present Act in Section 8, subdivision (5) makes express what was implied in the former statute—it is an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees. In view of the numerous decisions of the old Board interpreting the duty to bargain collectively as demanding of the employer that he make every reasonable effort to arrive at an understanding which, if reached, must be embodied in an agreement, it is only reasonable to assert that the Congress in Section 7 and Section 8, subdivision (5) of the Act intended its language to carry the same obligation. Similarly, since that interpretation formed the basis for the old Board’s declaration of the majority rule principle, the adoption of that principle in Section 9 (a) of the Act may likewise be regarded as an acceptance of the underlying reasoning.

⁸ *In the Matter of National Aniline & Chemical Company*, 1 N. L. R. B. (Old) 114, 116. The decision further stated: “In view of the argument of the Union that a collective agreement, under Section 7 (a), must necessarily be reduced to writing, we desire to state, without touching on the applicability of the Statutes of Frauds of the several States, that a collective oral agreement is not necessarily invalid. However, the proposals originally submitted by the Union in this case included detailed provisions covering wages, hours and a variety of working conditions. If an employer assents to most or all of such proposals, the resulting agreement, unless reduced to writing, will be so impractical of enforcement and so fruitful of disputes concerning terms that an insistence by an employer that he will go no further than to enter into an oral agreement may be evidence, in the light of other circumstances in the case, of a denial of the right of collective bargaining.” (At p. 116.)

⁹ *In the Matter of Atlanta Hosiery Mills*, 1 N. L. R. B. (Old) 144; *In the Matter of Colt’s Patent Fire Arms Manufacturing Co.*, 2 N. L. R. B. (Old) 155; *In the Matter of Denver Towel Supply Company*, 2 N. L. R. B. (Old) 221; *In the Matter of Federal Mining and Smelting Company*, 2 N. L. R. B. (Old) 481; *In the Matter of Square D Company*, 2 N. L. R. B. (Old) 430.

¹⁰ *In the Matter of St. Joseph Stockyards Co.*, 2 N. L. R. B. (Old) 112.

The Reports of the Congressional Committees on the Act confirm our view. The House Report states with respect to Section 8, subdivision (5):

"The fifth unfair labor practice, regarding the refusal to bargain collectively, rounds out the essential purpose of the bill to encourage collective bargaining and the making of agreements."¹¹

In the discussion of the majority rule principle, we find these words:

"As has frequently been stated, collective bargaining is not an end in itself; it is a means to an end, and that end is the making of collective agreements stabilizing employment relations for a period of time, with results advantageous both to the worker and the employer."¹²

The decision of the old Board in the *Houde* case was relied upon to support the principle. The Senate Report in connection with Section 8, subdivision (5) states:

"It seems clear that a guarantee of the right of employees to bargain collectively through representatives of their own choosing is a mere delusion if it is not accompanied by the correlative duty on the part of the other party to recognize such representatives as they have been designated (whether as individuals or labor organizations) and to negotiate with them in a *bona fide* effort to arrive at a collective bargaining agreement."¹³

And again, in the section dealing with the majority rule, we find language similar to that in the old Board decisions:

"The object of collective bargaining is the making of agreements that will stabilize business conditions and fix fair standards of working conditions."¹⁴

In the light of the above, we can only conclude that the issue raised by the respondent must be determined against it on the basis of authority and precedent. But even if the issue be regarded as a *de novo* matter, we feel a similar conclusion is inescapable. An assertion that collective bargaining connotes no more than discussions designed to clarify employer policy and does not include negotiation looking toward the adoption of a binding agreement between employer and employees is contrary to any realistic view of labor relations. The development of those relations had progressed too far

¹¹ House of Representatives, Report of the Committee on Labor, 74th Congress, 1st Session, Report No. 1147, at p. 20.

¹² *Ibid.* at p. 20.

¹³ Senate, Report of the Committee on Education and Labor, 74th Congress, 1st Session, Report No. 573, at p. 12.

¹⁴ Senate, Report of the Committee on Education and Labor, 74th Congress, 1st Session, Report No. 573, at p. 13.

when the Act was adopted to permit the conclusion that the Congress intended to safeguard only the barren right of discussion. The protection to organization of employees afforded by the first four subdivisions of Section 8 can have meaning only when the ultimate goal is viewed as the stabilization of working conditions through genuine bargaining and agreements between equals. That such is the goal is made clear in Section 1 of the Act, wherein the policy of the United States is stated to be the protection of self-organization of workers and the designation of their representatives for the purpose of negotiating the terms and conditions of their employment.

The same conclusion is reached by another approach. The respondent presses upon us its willingness at all times to receive and discuss the collective demands presented to it and to state its decision on those demands. But it asserts that it is enough that any acquiescence in those demands be made tangible by their adoption as part of its business policy and argues that it is not required to enter into an agreement embodying the understanding reached. Such confirmation through agreement is said to be unnecessary, for its employees have been informed that the respondent intends to continue the business policy thus inaugurated or already in existence. But in asking protection against unforeseen changes in the respondent's personnel and other uncertainties of the future, the employees are only acting as would any reasonable and prudent business man. To this the respondent replies that its policy is not to sign agreements or make agreements. Certainly we cannot take such a statement literally. It would be preposterous to claim that all of respondent's multifarious activities are based, not upon the customary contracts of commerce, but solely upon the hope that the policies of the concerns and individuals participating in those activities will continue unaltered. The respondent's statement simply means that its policy is not to enter into agreements with labor organizations representing its employees.

The solution of the problem lies in the recognition of that attitude. Such an attitude grows out of an antipathy toward organization of workers and a refusal to concede that the policy of the United States shall be the policy of the respondent. It is designed to thwart and slowly stifle the Union by denying to it the fruits of achievement. It is based upon the knowledge that in time employees will grow weary of an organization which cannot point to benefits that are openly credited to its aggressiveness and vigilance and not to an employer's benevolence that on the surface may appear genuine but in truth is forced upon the employer by the organization. To many his unwillingness to enter into an agreement with a labor organization may seem no more than a harmless palliative for the employer's pride and to amount only to a petty refusal to concede an unim-

portant point purely as a face-saving device. But the frequency with which the old Board was compelled to denounce such a policy on the part of employers indicates its potency as a device subtly calculated to lead to disintegration of an employee organization. Viewed from the other side, the main objective of organized labor for long has been the collective agreement and the history of organization and collective bargaining may be written in terms of the constant striving for union recognition through agreement. In many cases employees have left their employment and struck solely because of the employer's refusal to enter into a collective agreement. An objective that has been so bitterly contested by employer and employee, that has been the cause of many long and costly strikes, must be evaluated in the light of the conflict it has produced. The respondent's persistent adherence to the policy of not entering into agreements with labor organizations representing its employees must be regarded as an intentional and effective interference with the employees' exercise of the rights guaranteed in Section 7 of the Act.

We therefore conclude that the Act imposes upon employers the duty to meet with the duly designated representatives of their employees, to bargain in good faith with them in a genuine attempt to achieve an understanding on the proposals and counter-proposals advanced, and, finally, if an understanding is reached, to embody that understanding in a binding agreement for a definite term. Here the respondent and the Union had in the course of their negotiations achieved a meeting of the minds upon four points. The Union then requested that the respondent enter into an agreement containing these four points. In our view of the Act, the minds of the parties having met, it imposed upon the respondent a definite obligation to embody the understanding in an agreement. The respondent's failure to do so constituted an unfair labor practice, within the meaning of Section 8, subdivisions (1) and (5).

We must not be considered as holding that an employer is obligated by the Act to accede without more to the terms of a contract presented to him by the representatives of his employees. The Act does not so provide and we make no such interpretation. The Senate Report is clear on this point:

"The committee wishes to dispel any possible false impression that this bill is designed to compel the making of agreements or to permit governmental supervision of their terms. It must be stressed that the duty to bargain collectively does not carry with it the duty to reach an agreement, because the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory."¹⁵

¹⁵ Senate, Committee on Education and Labor, 74th Congress, 1st Session, Report No. 573, at p. 12.

Thus, an employer is not required to sign the specific agreement presented to him by representatives of his employees. Nor is he obligated to agree to any of their demands solely for the sake of reaching some agreement when genuine accord is impossible although both sides are acting in good faith. But the line between these privileged areas and the duty imposed by the Act is distinct; the employer must negotiate in good faith in an endeavor to reach an understanding, and that understanding if eventually achieved must be incorporated into an agreement if the representatives of the employees so request. Even that duty does not require that the employer enter into an unalterable obligation for an extended period of time, since many collective agreements contain a clause permitting termination or modification by either party upon prescribed notice. The duration of the agreement, like any of its substantive terms, is a matter for negotiation between the parties.

We find that the aforesaid acts of the respondent tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 159 (the Union) is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The day yardmen, moonlight yardmen, hay helpers, hay drivers, cleaning laborers, tractor drivers, counters, deliverymen, weighmasters, night yardmen, grain elevator man, crib and bar men, hog yardmen, watermen, carpenters, mechanics, construction laborers and construction teamsters employed by the respondent in its St. Joseph, Missouri stockyard constitute a unit appropriate for the purpose of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. By virtue of Section 9 (a) of the Act, the Union, having been designated on or before August 19, 1935, by a majority of the employees in said unit as their representative for the purposes of collective bargaining, has been at all times since said date the exclusive representative of all said employees for the purposes of collective bargaining.

4. By refusing and continuing to refuse to bargain collectively with the Union as the exclusive representative of the employees in said unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

5. By refusing and continuing to refuse to bargain collectively with the Union as aforesaid and thereby interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

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

ORDER

On the basis of the foregoing findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent St. Joseph Stock Yards Company, and its officers and agents, shall:

1. Cease and desist from refusing to bargain collectively with Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 159, as the exclusive representatives of the day yardmen, moonlight yardmen, hay helpers, hay drivers, cleaning laborers, tractor drivers, counters, deliverymen, weighmasters, night yardmen, grain elevator man, crib and bar men, hog yardmen, waterman, carpenters, mechanics, construction laborers and construction teamsters employed by the respondent in its St. Joseph, Missouri stockyard;

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act: Upon request, bargain collectively with Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 159, as the exclusive representative of the above-mentioned employees with respect to rates of pay, wages, hours of employment and other conditions of employment, and, if an understanding is reached on any of such matters, embody said understanding in an agreement for a definite term, to be agreed upon, if requested to do so by said Union.