

APPENDIX

NOTICE TO ALL EMPLOYEES, MEMBERS, AND NONMEMBERS

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor-Management Relations Act, we hereby notify our employees that:

WE WILL NOT cause or attempt to cause Valletta Motor Trucking Co., Inc., to discriminate against any employee by denial of work assignments.

WE WILL NOT in any other manner cause or attempt to cause Valletta Motor Trucking Co., Inc., to discriminate against any employee in violation of Section 8(a)(3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees in the exercise of rights guaranteed in Section 7 of the Act.

WE WILL make George Monty whole for the loss of pay suffered by him as the result of the discrimination against him.

LOCAL 294, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, INDEPENDENT,

Labor Organization.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

The Bedford-Nugent Corp. and Chauffeurs, Teamsters and Helpers, Local Union 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case No. 25-CA-1467. June 28, 1962

DECISION AND ORDER

On April 6, 1962, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and briefs in support thereof.

The Board¹ has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as modified below.²

¹ Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

² The Respondent's request for oral argument is hereby denied as the record, including the exceptions and briefs, in our opinion adequately presents the issues and the positions of the parties.

A. Summary of the facts³

The Respondent, which is engaged in the extraction and preparation of river sand and gravel, has its principal place of business in Evansville, Indiana, and operates plants in Evansville and Rockport, Indiana, and in Henderson, Kentucky.

The Union began organizing the Respondent's employees on or about September 19, 1961. Some time prior to September 25, James L. Nugent, Jr., vice president of the Respondent, testified that several employees informed him about the Union's organizing activity. He requested some of them to telephone him "collect" at any time they heard anything about union activities because, as he testified, he "had to ascertain who had not signed a card and who had." Thereafter, several employees did report to him by telephone or direct conversation concerning union activities.

As the Trial Examiner found, on September 25 the Union sent the Respondent a telegram in which it claimed majority status, set forth the unit it claimed to be appropriate, and demanded recognition and a meeting to negotiate a contract. On the same day, the Respondent replied by telegram as follows:

We accept your invitation to have the National Labor Relations Board conduct an election so it can be determined whether or not your union represents majority of the employees in a collective bargaining unit.

On that same day, September 25, the Respondent granted a 5-percent wage increase to those employees who had not participated in an increase granted a few weeks earlier to comply with the minimum wage law. Also on September 25, the Respondent's superintendent, Jack Land, interrogated a group of employees, first at the Evansville plant, and, later that day, on one of the derricks operating on the river. He questioned the employees concerning the extent of union organization, who brought the Union in, who was involved in getting cards signed, if there was any way "we" could get around it, and how much of an increase the employees had in mind.

On September 26, Clifford Arden, president of the Union, telephoned Arthur Donovan, attorney for the Respondent, and stated that the Union represented a majority of the Respondent's employees and was seeking recognition. Donovan replied that he had no authority to recognize the Union, and advised Arden to call Kahn, his associate. Arden did so and repeated the claim of majority and demand for recognition. Kahn replied that he did not know much about the matter, but would have a company official call Arden back.

³All the findings of fact summarized herein are based upon uncontradicted testimony or upon the Trial Examiner's credibility resolutions, with which we agree

Later that morning, about 11 o'clock, James L. Nugent, Sr., president of the Respondent,⁴ telephoned Arden and asked what a union representative was doing near the Evansville plant. Arden replied that he did not know but would be right down to talk further with Nugent. A little later, Arden met Nugent on the street outside the plant, and asked Arden, according to Arden's testimony, "Who was starting all this Hitler stuff around his place." Arden replied that he did not know about "any Hitler stuff." He went on to state that the Union had the majority of employees signed up, and requested recognition. Nugent thereupon asserted, according to Arden's uncontradicted testimony, that "I will never recognize the Union until I call each and every one of these employees in my office and they personally tell me they signed that card and why they belong to a union." Arden replied that he could not agree to Nugent's doing so, and that it was his understanding that Nugent had already been interrogating employees. Arden also stated that, as the employees would be coming out to lunch shortly, he would report to them what had taken place. When Arden reported to the employees that Nugent refused to recognize the Union, they voted not to return to work. The strike, which started at the Evansville plant that day, expanded the following morning to the other locations of the Respondent. That afternoon, shortly after the strike began, the Union sent the following telegram to the Respondent:

Upon receipt of this telegram please let us know when and where you can meet with us for purpose of negotiating labor agreement^t in re wages and working conditions.

On September 27, Nugent, Junior, called together a group of the pickets at the Rockport plant. Several witnesses testified that Nugent told the assembled employees that he owned 51 percent of the Respondent, that there would not be any union there, and that he would sell it first or close it down. When Glenn Wilkinson, the Union's business agent, who was present, told Nugent that he was violating the law by such remarks, Nugent left the scene.⁵

During the strike, Superintendent Land approached Clay Damrath, one of the picketers, and asked him to return to work. Damrath replied that he would "when this thing was settled," to which Land responded, according to Damrath's uncontradicted testimony,⁶ that Damrath would not thereafter be taken back by the Respondent.

On October 2, the Union, having received no response from the Respondent to its September 26 telegram, filed a petition with the

⁴ Nugent, Senior, did not testify.

⁵ The record does not support the Trial Examiner's finding that Nugent retracted this statement after being told by Wilkinson that it was a violation of the law. According to his own testimony, Nugent "shut up" and left.

⁶ Land did not testify.

Board.⁷ On October 6, Donovan wrote a letter to the Union referring to the filing of the petition, acknowledging receipt of the Union's September 26 telegram, and asserting that the Respondent "has a good faith doubt as to the majority status of your union . . . [and] as to the appropriateness of the unit described by you."

The Union replied by a letter to the Respondent on October 10, referring to Donovan's letter, asserting that Donovan's claim of a good-faith doubt regarding the appropriate unit seemed to be only "a delaying tactic" as Donovan had previously filed an employer petition for a similar unit, and stating that the union representatives were "interested in settling this dispute and will meet with you, or your representative, at any time."

On October 11, Donovan again wrote to the Union indicating agreement with the unit described in the Union's petition.

The strike continued until October 30, when, through the intervention of one of the Respondent's customers, the employees returned to work.

On November 3, a registered letter was sent by the Union to the Respondent, with a copy to Donovan, stating:

We would like to meet with your company representative for the purpose of negotiating wages, working conditions, etc. for the unit of all employees, including river crews, employed at your Rockport, Indiana, Evansville, Indiana, and Henderson, Kentucky establishments.

Upon receipt of this letter, will you please let us know just when you will be able to meet with us and where.

Donovan replied, in a letter dated November 7, that he had talked to the Respondent's officials; that "it is their opinion and I now report that opinion to you, that at the present time they have a good faith doubt as to the majority status of your union"; and that the Respondent would be willing to consent to a Board election. Subsequent requests for recognition by the Union were met with similar responses.

B. Interference, restraint, and coercion

The facts summarized above establish that the Respondent's vice president, beginning about September 19, requested employees to keep him informed about union activities because, as he testified, he had to ascertain who had and who had not signed union cards. The Respondent's superintendent, on September 25, also interrogated employees about union activities, inquiring as to which employees were instrumental in getting the Union in, who was getting cards signed, how the Respondent could get around the Union, and how much of a wage increase the employees expected to obtain. Such requests by

⁷ The petition was dismissed by the Regional Director on March 16, 1962

the Respondent that employees act as informers about the union activities of their fellow employees were clearly violative of Section 8(a) (1) of the Act,⁸ as were the inquiries about how the Respondent could get around the Union.

These inquiries and requests for information, moreover, occurred in a context of other conduct by the Respondent interfering with its employees' rights under the Act. Thus, Nugent, Senior, asserted in response to a request for recognition, that he would not recognize the Union until he called every employee into his office and they personally told him that they had signed union cards and why they belonged to a union. Also during this period, Nugent, Junior, told employees that he would sell out or close the business before recognizing a union. In addition, the Respondent's superintendent, during the strike, threatened one of the pickets that, unless he abandoned the strike, he would not be taken back after the strike was over.⁹

Moreover, the Respondent, on September 25, the same day it received the Union's first telegram seeking recognition, granted and announced a 5-percent wage increase for a number of employees. We do not agree with the Trial Examiner's finding that this was done to maintain relative pay levels after some of the employees, a few weeks earlier, received an increase under the new minimum wage requirements. On the contrary, in view of the precipitateness of the Respondent's announcement of the 5-percent wage increase and its timing in relation to the Union's attempt to achieve recognition, we are convinced, and find, that this increase, like the Respondent's interrogation and threats set forth above, and the refusal to bargain described hereinafter, were designed to thwart the Union's attempt to achieve representative status. Accordingly, we find that by the foregoing conduct the Respondent engaged in interference, restraint, and coercion in violation of Section 8(a) (1) of the Act.

C. *The refusal to bargain*

1. The appropriate unit

The parties stipulated, and we find, that the appropriate unit for collective bargaining consists of all the employees of the Respondent, including river crews, employed at its Rockport and Evansville, Indiana, and Henderson, Kentucky, establishments, excluding all

⁸ See *Southern Coach & Body Co., Inc.*, 135 NLRB 1240. For the reasons set forth in that case, we find no merit in the Respondent's contention that this was noncoercive interrogation within the principle laid down in *Blue Flash Express, Inc.*, 109 NLRB 591.

⁹ The Trial Examiner found that Land did not unlawfully solicit a striker to return to work because he made no promise of benefit. The uncontradicted testimony shows, however, that Land accompanied such solicitation with a threat of reprisal if the employee did not abandon the strike. See *William S. Shurett, d/b/a Greyhound Terminal*, 137 NLRB 87 (IR).

office clerical employees, professional employees, guards, and supervisors as defined in the Act.

2. The Union's representation of a majority

There was considerable confusion at the hearing as to the exact number of employees eligible to be included in the unit. At the conclusion of the hearing, therefore, the Trial Examiner suggested that the General Counsel and the Respondent submit, with their briefs, their respective tabulations of the Respondent's eligible employees, designating those who had signed union cards. The lists submitted by the General Counsel and the Respondent are not in complete accord. Accepting the Respondent's figures, we find that it lists 73 names designated as employees as of September 25, including the names of five individuals stipulated at the hearing to be guards or supervisors who were not to be included in the unit.¹⁰ The Respondent's list also includes the names of Robert Chapman, William Furnan,¹¹ and Paul Pereira, who the Union contends should be excluded as supervisors, while the Respondent denies that they are supervisors within the meaning of the Act. We find, as did the Trial Examiner, that Chapman, who is the captain and pilot of one of the Respondent's boats, and Furnan, a pilot, who relieves the captain on his boat on a 6-hour watch basis, responsibly direct employees and are supervisors within the meaning of the Act.¹²

The record is not clear as to whether or not Pereira is a supervisor within the meaning of the Act. It is unnecessary, however, to determine Pereira's unit placement at this time as the Union represented a majority on the critical date, as set forth below, whether or not Pereira is included in the unit.

The Respondent contended at the hearing that five employees should be excluded from the unit as casuals. In its brief, it withdrew this contention as to four but maintained that the fifth, Roger Rust, should be excluded. The record shows that Rust has been regularly employed by the Respondent since 1958, and that while it was customary for him to take a 2-month vacation without pay each year, he resumed employment with the Respondent at the end of these periods. Accordingly, we agree with the Trial Examiner that Rust should be included in the unit.

Therefore, deducting from the Respondent's list of 73 the 5 conceded to be guards or supervisors, as well as Chapman and Furnan, whom we have found to be supervisors, and without determining Pereira's status, we find that on September 25, 1961, there were at

¹⁰ Roy Chapman and Clayton Westbrook (supervisors), and Charles Damrath, Ivan Gross, and Hilbert Lloyd (guards).

¹¹ Inadvertently referred to in the Intermediate Report as Robert Furnan.

¹² *Local 28, International Organization of Masters, Mates and Pilots, et al. (Ingram Barge Company)*, 136 NLRB 1175

most 66 employees in the unit. There is no evidence that this number changed on September 26.

The General Counsel placed in evidence 33 union authorization cards which had been signed by employees in the unit on or before September 25. Immediately after Arden's oral request for recognition on the morning of September 26, two more employees signed cards which are also in evidence. When the strike was called, 45 employees participated in it,¹³ and the record shows that the Union, after September 26, obtained a number of additional signed authorizations.¹⁴ Accordingly, we find that the Union, on September 26, 1961, and at all times thereafter, represented a majority of the Respondent's employees in an appropriate unit.

3. The refusal to bargain

As shown above, the Union represented a majority of employees in the appropriate unit on September 26 and thereafter. Nevertheless, when the Union requested recognition in its telegram of September 26, the Respondent did not reply until a week later, and then asserted for the first time a doubt regarding the Union's majority status. The Respondent contends that it had a good-faith doubt that the Union represented a majority of the employees in an appropriate unit, that it responded to the Union's first telegraphic request for recognition on September 25 with an indication that the Union should seek a Board election, and that it had a right to await the outcome of such an election.

Failure to respond to a union's bargaining request may be justified by an employer on the ground that it had a good-faith doubt as to the union's majority and needed time to determine whether the union represented a majority of the employees. In order to determine the validity of a claim of good faith, the Board looks to the employer's entire course of conduct. The record shows, in this connection, that the Respondent, from the time it first learned that the Union was organizing its employees, resorted to conduct calculated to undermine the status of the Union, and to interfere with the rights of its employees to select a bargaining representative of their own choosing. As set forth above, the Respondent, during this period, engaged in interrogation, threats, requests that employees engage in surveillance of union activities and report them to the Respondent, and solicitation of an employee to abandon the strike or risk not being reinstated after

¹³ See *William S. Shurett, d/b/a Greyhound Terminal, supra*

¹⁴ The genuineness of the signatures on the cards was established by the testimony of the signers, or by witnesses to the signing. We find no merit in the Respondent's contention that some cards were obtained by duress. The employees who testified stated that they signed voluntarily and were not threatened or coerced by the Union. Nor are we convinced by the record that the Respondent had information showing that the Union obtained its majority by threats and coercion. See *The Gem City Mattress Manufacturing Co.*, 136 NLRB 1317.

the strike was over, and further, granted a 5-percent wage increase to a number of employees. We note, moreover, that when the Union's president, on September 26, orally requested recognition, the Respondent's president did not assert any doubt regarding the Union's majority status or the appropriateness of the unit, but stated that "I will never recognize the Union until I call each and every one of these employees in my office and they personally tell me they signed that card and why they belong to a union." This position of the Respondent, when reported to the employees, caused the strike in which 45 employees participated.

Accordingly, we find, on the entire record, that the Respondent refused the Union's requests for recognition not because it doubted the Union's majority or the appropriateness of the unit, nor because it was awaiting a Board election,¹⁵ but because it was seeking to forestall collective bargaining with a majority union in an appropriate unit in violation of its obligation under the Act.¹⁶ We therefore find that the Respondent, on and after September 26, 1961, refused to bargain in good faith with the Union as the representative of its employees in an appropriate unit, and thereby violated Section 8(a) (5) and (1) of the Act.

ORDER

The Board adopts the Recommended Order of the Trial Examiner with the following modifications:

After paragraph 1(c) add the following, and change the paragraph in the Recommended Order numbered 1(d) to 1(e):

(d) Announcing and granting wage increases to employees in order to discourage their selection of a collective-bargaining representative.¹⁷

¹⁵ The fact that the Union itself filed a petition for an election on October 2 does not, in view of the facts found herein, alter our conclusion that it claimed and actually had a majority on September 26. See *N.L.R.B. v. Whiteflight Products Division of White Rolling & Stamping Corporation*, 298 F. 2d 12 (C.A. 1), *N.L.R.B. v. Sunrise Lumber & Trim Corp.*, 241 F. 2d 620 (C.A. 2), cert denied 355 US 818

¹⁶ *Joy Silk Mills, Inc.*, 85 NLRB 1263, enfd. 185 F. 2d 732, cert denied 341 US 914.

¹⁷ The "Notice to All Employees" appended to the Intermediate Report is amended by substituting a comma for the period at the end of the first paragraph and adding the following after the words "fellow employees": "or announce and grant wage increases to employees in order to discourage their selection of a collective-bargaining representative"

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge filed by Chauffeurs, Teamsters and Helpers, Local Union 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, on October 19, 1961, the General Counsel of the National Labor Relations Board on December 27, 1961, issued a complaint and notice of hearing in the above-entitled case. The Respondent, The Bedford-Nugent Corp., filed an answer dated January 2, 1962. The complaint alleges and the answer denies that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended. Pursuant to

notice, a hearing was held in Evansville, Indiana, on February 12 and 13, 1962, before Trial Examiner C. W. Whittemore.

At the hearing all parties were represented by counsel and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. Argument was waived. Briefs have been received from the Respondent and General Counsel.

Disposition of the Respondent's motion to dismiss the complaint, upon which ruling was reserved at the conclusion of the hearing, is made by the following findings, conclusions, and recommendations.

Upon the record thus made, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The complaint alleges, the answer admits, and it is here found that:

(1) The Bedford-Nugent Corp. is an Indiana corporation with places of business in Indiana and Kentucky and its principal place of business in Evansville, Indiana. It is engaged in the extraction and preparation of river sand and gravel.

(2) During the 12 months before issuance of the complaint it sold from its Indiana facilities to points outside Indiana sand and gravel valued at more than \$50,000.

(3) During the same period it sold from its Kentucky facilities sand and gravel valued at more than \$50,000 and shipped to points outside Kentucky.

(4) During the same period it purchased and caused to be delivered to its facilities in each of these States and from points outside the respective States, materials valued at more than \$50,000.

(5) The Respondent is engaged in commerce within the meaning of the Act.

II. THE CHARGING UNION

Chauffeurs, Teamsters and Helpers, Local Union 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and major issue*

The chief issue in this case—alleged refusal to bargain—arose in late September 1961, when it is undisputed that the Respondent failed to accede to the Union's demand for immediate recognition and negotiations for a contract.

B. *The refusal to bargain*

1. The appropriate unit

The complaint alleges, during the hearing the Respondent conceded, and it is here found that:

All employees of the Respondent, including river crews, employed at its Rockport and Evansville, Indiana, and Henderson, Kentucky, establishments, exclusive of all office clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

2. Majority representation status

Credible documentary and oral evidence establishes that within a period of about a week before September 25, 1961, 32 of a total of 62 employees within the above-found appropriate unit and on the Respondents payroll of September 26 had signed cards authorizing Teamsters Local 215 to act as their collective-bargaining agent.¹

The Trial Examiner therefore concludes and finds that on September 25, 1961, the Union, by virtue of Section 9(a) of the Act, was the exclusive representative of all

¹ This conclusion of fact has been reached by using the payroll list in evidence as General Counsel's Exhibit No. 4, proffered and received without objection as a revised list of employees as of September 26. It contains 70 names. In determining that only 62 of the 70 employees thus listed should be considered as within the appropriate unit, the Trial Examiner excludes the following, conceded during the hearing by the Respondent as being supervisors or watchmen. Charles Damrath, Ivan Grose, and H B Lloyd, watchmen; and Roy Chapman and C B. Westbrook, diesel engineers. Contrary to the contention of

employees in the said appropriate unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.²

3. The request for and refusal of recognition

On September 25 the Union sent a telegram to the Respondent, claiming to represent a majority of the employees in a unit identical with that found above to be appropriate, asking for immediate recognition and a meeting to negotiate a contract, and offering to prove at such meeting its majority status "by any means which may be mutually agreeable."

The same day the Respondent replied by sending the following wire

We accept your invitation to have the National Labor Relations Board conduct an election so it can be determined whether or not your union does represent majority of the employees in a collective bargaining unit.

It is noted, in passing, that the Respondent's wire not only failed to respond to the request for a meeting where a method of majority proof could be "mutually" agreed upon, but it also accepted a specific "invitation" which had not been proffered by the Union.

The next day, shortly before noon, James L. Nugent, Sr., president of the Respondent, telephoned Business Agent Arden of the Union and demanded to know what his "man" was "doing down here on the corner." Arden said he did not know, but that he wanted to talk to Nugent, and would be right down.

Arden proceeded to the place of business. Nugent met him outside and asked, "Who was starting all this Hitler stuff" around his place. Arden answered that he knew nothing about this but said he was there to ask for recognition of the Union since a majority of the employees had "signed up."

Nugent replied: "I will never recognize the Union until I call each and every one of these employees in my office and they personally tell me they signed that card and why they belong to a union."³

4. The strike

About the time Nugent voiced the above-quoted requisite to his recognition of the Union, employees were coming out of the property for lunch. Arden approached them and informed them concerning Nugent's statement. They promptly voted to, and did, strike, putting up a picket line.

It is undisputed that Arden then telephoned the Respondent's attorney and told him that Nugent "wanted to bring the people into his office and talk to each one of them," and that they had "voted not to agree to it," and so had "stopped work."

The strike continued until October 30 when, through the mediation efforts of one of the Respondent's customers, the employees returned to work.

the Respondent, voiced during the course of the hearing, the Trial Examiner also finds that of the individuals on the same list the following are in fact supervisors within the meaning of the Act and are to be excluded: Paul Pereira, Robert Chapman, and Robert Furnan. Pereira is chief engineer of the towboat *J W. Bedford*, responsible for the operation of all engines and diesels and machinery, and directly in charge of one employee who assists him. He receives \$10 a week more than his helper. Furnan, who holds the title of pilot, relieves the captain of the *Bedford*, admittedly a supervisor, of his responsibilities every 6 hours, and when in charge of the watch gives orders and directs the crew as does the captain. Robert Chapman, who has the title of pilot, is also the captain of *Graco* and according to his own testimony has "supreme authority" over the crew of two men when the boat is being operated. Also contrary to the Respondent's contention, which is without support of any credible evidence, the Trial Examiner finds that the following named, appearing on the list, are not "part-time" employees to a degree warranting their exclusion from the compilation: James Hoosier, William Hoosier, D R Lancaster, C O. Burke, and R. L. Rust. Their undisputed testimony establishes that they may not reasonably be classified as "casual" employees.

² The Respondent's claim that employees designating the Union as their collective-bargaining agent were coerced into signing the cards is without merit. No credible evidence was adduced that any individual in the unit who signed an authorization card did so under compulsion, threat, or duress, or otherwise than of his own free choice.

³ Nugent, Senior, was not called as a witness. The Trial Examiner does not consider that a stipulation between counsel for the Respondent and General Counsel to the effect that had Nugent appeared he would have denied the statement attributed to him by Arden, to be a convincing denial. The events which immediately followed this incident, as to which there is no dispute, fully support Arden's account.

5. Later events

After the strike began at noon on September 26 a number of other employees signed authorization cards, increasing the majority status of the Union. During the same afternoon the Union wired the Respondent, requesting that upon receipt of the telegram it be informed when and where a meeting could be held to negotiate an agreement. The Respondent did not reply. The Union then filed a representation petition with the Board, submitting authorization cards in support of its petition.

Thereafter, on October 6, counsel for the Respondent sent a letter to the Union, in which it "acknowledged" the filing of the petition, and for the first time asked the Union to "please be advised that the company has a good faith doubt as to the majority status of your union."

In the meantime, and after the demand for recognition on September 25, other events occurred which the complaint alleges as additional factors of refusal to bargain. A summary follows:

(1) It is undisputed that at Evansville Superintendent Land, the day before the strike, interrogated employees Carter and Moore concerning the extent of union organization, accused Moore of "passing the cards out" and asked him who "helped him," and asked what could be done to "get around it."

(2) At the Rockport works, the day after the strike began, Vice President James L. Nugent, Jr., told a group of pickets and employees that he owned 51 percent of the Company, and that he would sell or close down before having a union. Union Representative Wilkinson was present, and promptly accused Nugent of violating the law by making this threat, whereupon Nugent retracted his statement.⁴

(3) Nugent, Junior, as a witness admitted that he had asked employee Gordon, at Rockport, if he "knew anything about any union activities" at that plant, and that when the employee said he did not, he asked him to call him "collect" in case "he heard anything of activities."

(4) On September 25 the Respondent gave a 5-percent increase to all employees who had not received a mandatory raise on September 3 to meet the minimum wage requirements.

6. Conclusions

The Trial Examiner concludes and finds that the refusal on September 26 of Nugent, Senior, to recognize the Union unless and until he had questioned each employee regarding their cards and their joining the Union, constituted a clear refusal to bargain in good faith as required by the Act. There is no credible evidence in the record that either Nugent or his counsel have since that date repudiated or disavowed this plainly unlawful condition to recognition.

As factors sustaining the allegation of continuing refusal to bargain, the Trial Examiner finds also unlawful the remarks of Nugent, Junior, at Rockport, concerning closing of the plant and his solicitation of Gordon to report union activities to him. While under other circumstances a prompt retraction of an angry remark might well nullify its effect, the Trial Examiner does not believe such circumstances existed here. Retraction was not made voluntarily, but only when the union representative pointed out its unlawful nature.

The Trial Examiner is not persuaded, however, that the granting of the 5-percent increase should be considered either as an independent violation of Section 8(a)(1) or as refusal to bargain. Nugent's explanation appears reasonable. In substance, he said that when the law required raising the wages to meet the minimum wage which went into effect on September 3, he decided to maintain the relative pay levels by granting an increase to those who did not benefit by the required raise.⁵

In short, the Trial Examiner concludes and finds that on September 26, 1961, and thereafter, the Respondent refused and continues to refuse to bargain collectively with the Union in good faith as the exclusive representative of all employees in an appropriate unit, and that by such conduct the Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

⁴ The Trial Examiner does not credit Nugent's denial that he made this statement, nor his version of the incident, which he admitted occurred, to the effect that he merely told the men he would not recognize the Union without a secret election.

⁵ Nor is the Trial Examiner convinced that during the strike Superintendent Land or office worker Laura Fetscher unlawfully solicited strikers to return to work. Fetscher was not shown as a supervisor or as a spokesman for management. While it is undisputed that Land asked employee Damrath to return to work, the latter made no claim that the superintendent promised him benefits if he did.

It is also concluded and found that, under the circumstances above described, the following conduct constituted independent violations of Section 8(a)(1) of the Act: (1) Land's interrogation of employees on September 25; (2) Nugent's threat to close or sell the business; and (3) the latter's solicitation of an employee to report union activities to him.

Finally, it is concluded and found that the strike of September 26 was caused by the Respondent's unfair labor practices.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Certain of the activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent 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 the Respondent has engaged in certain unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom, and take affirmative action to effectuate the policies of the Act.

It will be recommended that the Respondent, upon request, bargain collectively with the Charging Union as the exclusive bargaining representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Chauffeurs, Teamsters and Helpers, Local Union 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

2. All employees of the Respondent, including river crews, employed at its Rockport and Evansville, Indiana, and Henderson, Kentucky, establishments, exclusive of all office clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

3. At all times since September 25, 1961, the above-named labor organization has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment, by virtue of Section 9(a) of the Act.

4. By refusing, on September 26, 1961, and thereafter, to bargain collectively with the aforesaid labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By interfering with, restraining, and coercing 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(a)(1) of the Act.

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

RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that the Respondent, The Bedford-Nugent Corp., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Interrogating employees as to their unions activities in a manner violative of Section 8(a)(1) of the Act.
 - (b) Threatening employees with economic reprisals to discourage union membership or activities.
 - (c) Soliciting employees to report to management union activities of fellow employees.
 - (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Chauffeurs, Teamsters and Helpers, Local Union 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of

their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

2. Take the following affirmative action which the Trial Examiner finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Charging Union as the exclusive representative of the Respondent's employees in the unit found appropriate, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Indiana and Kentucky establishments, copies of the notice attached hereto marked "Appendix."⁶ Copies of said notice, to be furnished by the Regional Director for the Twenty-Fifth Region, shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director, in writing, within 20 days from the date of the service of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply herewith.⁷

⁶ In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The recommendations of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Circuit Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

⁷ In the event that these recommendations be adopted by the Board, this provision shall be modified to read: "Notify the Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT interrogate employees regarding their union activities in a manner violative of Section 8(a)(1) of the Act, threaten employees with economic reprisals to discourage union membership and activities, or solicit employees to report to management union activities of their fellow employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Chauffeurs, Teamsters and Helpers, Local Union 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL, upon request, bargain collectively with the above-named labor organization as the exclusive representative of our employees in the appropriate unit described below, and, if an understanding is reached, embody such understanding in a signed agreement. The appropriate unit is:

All employees, including river crews, employed at our Rockport and Evansville, Indiana, and Henderson, Kentucky, establishments, exclusive of all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

THE BEDFORD-NUGENT CORP.,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 W. Market Street, Indianapolis, Indiana, Telephone Number, Melrose 2-1551, if they have any question concerning this notice or compliance with its provisions.