

W. R. Hall Distributor, W. R. Hall Transportation and Storage Company, W. R. Hall Moving and Storage *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 16. *Case No. 27-CA-1219.*
October 30, 1963

DECISION AND ORDER

On July 17, 1963, Trial Examiner David Karasick issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent¹ 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 attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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

The Board 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 Respondent's exceptions and brief, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions.

The Trial Examiner found that the Respondent violated Section 8(a)(5) and (1) of the Act. We agree. We likewise agree with the Trial Examiner's finding that Thomas Hall is a supervisor within the meaning of the Act. Contrary to the Intermediate Report, the Respondent did not admit his supervisory status. W. R. Hall, the Respondent's owner, admitted, however, that when he is absent his three sons, including Thomas Hall, are in charge of the operations with which they are familiar, and that Thomas Hall is "in charge of the heavy hauling phase of the W. R. Hall Transportation and Storage Company." The Respondent admitted, moreover, that Thomas Hall has hired an employee. Accordingly, we agree with the Trial Examiner's finding that by Thomas Hall's proposing that employee McCurdy circulate a decertification petition among the employees, suggesting the wording of the petition, and questioning McCurdy as to his success in getting signatures on the petition, the Respondent violated Section 8(a)(1) of the Act.

¹ W. R. Hall is the sole owner of W. R. Hall Distributor and the principal owner of W. R. Hall Transportation and Storage Company and its subsidiary, W. R. Hall Moving and Storage. The Respondent admits that all three companies constitute a single employer within the meaning of the Act.

We likewise agree with the Trial Examiner's finding that the Respondent further violated Section 8(a)(1) of the Act by Thomas Hall's request of employee Henderson to "go amongst the fellows that worked for Hall and tell them that they had a deal figured out where they could pay us \$2.25 an hour and time and a half for over forty hours, if we would take a re-vote and throw the Union out." It is clear, from the context of the conversation, that Thomas Hall intended this as an offer of benefit if the employees would get rid of the Union. The Respondent urges in its brief that this offer could not constitute an offer of benefit because the record establishes that the employees involved earned a minimum base pay of \$400 a month, and the Trial Examiner foreclosed the General Counsel from taking testimony as to whether the employees would have earned more at the rate of \$2.25 an hour plus time and a half for overtime. Without regard to the mathematics of the situation, however, we think it sufficient that the statement was reasonably calculated to indicate that the Respondent was making a promise of benefit if the employees would get rid of the Union.²

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner.³

² *Frank's, Inc.*, 142 NLRB 551, I.R., p. 21.

³ The Recommended Order is hereby amended by substituting for the first paragraph therein, the following paragraph:

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, its officers, agents, successors, and assigns, shall:

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding involves allegations that W. R. Hall, an individual, doing business as W. R. Hall Distributor, W. R. Hall Transportation and Storage Company, and W. R. Hall Moving and Storage, violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 159, herein called the Act, and is based upon a complaint issued by the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, on June 29, 1962, and a charge and a first amended charge filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 16, herein called the Union, on May 15 and June 25, 1962, respectively. A hearing, at which the General Counsel and the Respondent were represented, was held before Trial Examiner David Karasick on August 21 and 22, 1962, at Grand Junction, Colorado. Following the close of the hearing, briefs, which have been fully considered, were filed on behalf of the General Counsel and the Respondent.¹

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

¹ The transcript of the hearing, at page 44, line 14, erroneously states that I sustained, rather than overruled, an objection to a question. Since the context and the examination which follows clearly show that the objection in question was overruled, I deem it unnecessary to correct the transcript in this regard.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

W. R. Hall, an individual, doing business as W. R. Hall Distributor, is engaged in the wholesale distribution of petroleum products. W. R. Hall Transportation and Storage Company, a Colorado corporation, is engaged as a common carrier in the business of transporting and storing household goods and heavy equipment. W. R. Hall Moving and Storage is a wholly owned subsidiary of W. R. Hall Transportation and Storage Company and is engaged in the business of transporting and storing household goods. W. R. Hall Distributor, W. R. Hall Transportation and Storage Company, and W. R. Hall Moving and Storage are all located in Grand Junction, Colorado. W. R. Hall is the sole owner of W. R. Hall Distributor and is the principal owner of the two other business enterprises, is in absolute control of management and formulates and controls all labor relations policies which are uniform for all employees of the three enterprises. In the course and conduct of its business, W. R. Hall Transportation and Storage Company annually receives in excess of \$50,000 in gross revenues from the interstate transportation of goods and materials. The answer admits and I find that W. R. Hall, herein called Hall,² an individual, doing business as W. R. Hall Distributor, W. R. Hall Storage and Transportation Company, and W. R. Hall Moving and Storage, herein collectively called the Respondent, constitute a single employer engaged in commerce and in operations affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 16 is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The facts*

The evidence is substantially undisputed. On October 9, 1961, following an election conducted under his supervision on September 29, 1961, the Regional Director for the Twenty-seventh Region of the Board certified the Union as the exclusive representative for the purposes of collective bargaining in a unit comprising all truck-drivers and helpers employed by the Respondent, excluding all office clerical employees, watchmen, guards, and supervisors, as defined in the Act. I find such unit to be an appropriate one for the purposes of collective bargaining, within the meaning of Section 9(b) of the Act, and I further find that the Union was, since the date it was so certified, and now is, the exclusive representative of the employees in said unit, within the meaning of Section 9(a) of the Act.

On September 30, 1961, the day after the election had been held, Thomas Hall, one of Hall's three sons who are associated with him in his business enterprises and supervisor in charge of heavy hauling, asked Leon Bursen, an employee, if he had heard about the election, stated that it made him sick, and asked Bursen whether he had voted for the Union.

On October 27, A. J. Stucker, secretary-treasurer of the Union, wrote to Hall, requesting a meeting on November 1, for the purpose of negotiating a contract covering the employees in the certified unit. Later Hall called Stucker and the date of the meeting was changed to November 7. On November 5, Hall again called Stucker, canceled the meeting scheduled for November 7 and advised Stucker that he would be in touch with him at a later date for the purpose of arranging another meeting. Having received no word from Hall by November 13, Stucker called him but was informed that Hall was out of town. Stucker left word requesting that Hall return his call. On November 15, Stucker again called Hall. On this occasion, Hall informed Stucker that he was very busy but would call Stucker in a couple of days. By November 22 Stucker had not heard from Hall and sent him a letter requesting a meeting for December 1. On November 27, Hall sent a letter to Stucker agreeing to meet on December 8.

On December 6 or 7, Stucker received a letter from Hall, stating that because of a recent illness in his family, the meeting scheduled for December 8 could not be held and suggesting a meeting for December 15, a date which the two men agreed to change to December 13 in a subsequent telephone call.

² Thomas Hall and Jack Hall, to whom reference is hereinafter made, are at all times identified by their full names.

On December 13, the parties met for the first time, with Hall representing the Employer and Stucker representing the Union. Stucker presented Hall with the Union's proposal which consisted of copies of three Western States area agreements which the Union had negotiated with other employers. One of these was a master contract dealing with freight, the second a supplemental agreement relating to over-the-road operations and the third a supplemental contract covering local pick-up and delivery. Stucker stated that the proposed master contract contained all of the provisions that the Union felt were common to all employees and that a few variations would be needed to eliminate reference to the association of employers and to the Western Conference of Teamsters which appeared in that agreement. He also suggested that Hall study the contract so that he would be in a position to give some answers in final negotiations on the various items that appeared in the agreement. Hall stated that he would probably seek the assistance of a lawyer in conducting further negotiations. He referred to the fact that his wife was ill and agreed that, when he was available, he would call Stucker.

On an undisclosed date between December 1 and 15, 1961, Charles McCurdy, an employee who worked for the Respondent, was engaged in a conversation with Thomas Hall during the course of which the matter of a petition asking for a revote "to get the Union out" was discussed. Such a petition was drafted after Thomas Hall had suggested the major part of the wording which appeared in the document. McCurdy thereafter circulated the petition among the employees. A few days later, Thomas Hall asked him if he had any names on it, and McCurdy replied that he had a few "but not enough to do any good."

On December 16, 1961, Thomas Hall asked employee George Henderson to circulate among his fellow employees and tell them that the Respondent had figured out a deal to pay them \$2.25 per hour and time and a half for work in excess of 40 hours per week, if they would take a revote and "throw out" the Union.³

On December 27, Mrs. Hall died. Thereafter, Hall did not call Stucker and, as a matter of respect, Stucker waited until January 19, when he wrote to Hall, requesting that the parties meet on January 24.

On that date, Stucker, accompanied by Edward R. Toliver, a union organizer for Joint Council 54 of the Teamsters, met with Hall and his son, Jack Hall. Hall opened the meeting by saying he was not prepared to negotiate a contract since he had never done anything of that nature. Stucker and Toliver suggested employer representatives with whom they were familiar and whom Hall might retain. Hall stated that he was going to Denver and seek the assistance of someone there. Stucker suggested that, since Toliver lived in Denver, the Union would consider meeting there for the purpose of expediting negotiations.⁴ A few days later, Hall telephoned Stucker, informed him that he had retained Harold B. Wagner, an attorney in Denver, to represent him, and arranged for a meeting in Wagner's office on February 7, 1962.

On January 31,⁵ the Union called a meeting of the Respondent's employees for the purpose of discussing the negotiations. The meeting lasted approximately an hour and a half. Jack Hall, one of Hall's sons who was associated with him in the business and who had participated in the meeting with the Union on January 24, attended and remained throughout the meeting.

On February 7, Stucker and Toliver met with Hall and Wagner. Wagner stated that he had not seen or received the written proposals which the Union had submitted to Hall on December 13. At Stucker's request, the parties then began to discuss the master agreement. It was agreed that a number of the clauses in the proposed contract did not apply to the Respondent's operations and therefore could be eliminated. Agreement was reached as to a number of other clauses, dealing with minor matters. Other items of more substantial importance, including check-off of union dues, shop stewards, leaves of absence, seniority, vacations and holidays, and health and welfare payments, were left open subject to further check by the Respondent. The parties agreed that the provisions relating to grievance procedures were inapplicable and that the Union would draft new language adapting the procedures to the operations of the Respondent. Wagner advised Hall not to agree to the

³ Henderson was earning \$400 per month. Hall testified that this was the base pay for truckdrivers, that premiums were paid for some types of work and a driver could earn more than \$800 per month. There is no showing how many of the truckdrivers enjoyed average earnings in excess of \$400 per month.

⁴ Denver is approximately 260 miles from Grand Junction.

⁵ Employee Leon Bursen testified that he was not certain but believed that this meeting occurred "around the 29th of February." Stucker established the date as January 31 and testified that he was certain of that date because he had noted it on his calendar to which he had referred for the purpose of refreshing his recollection prior to the hearing.

union-security clause in the proposed contract and also stated opposition to the seniority clause but stated further that he would make a check and see if the Respondent could absolutely refuse to negotiate with respect to seniority. At this meeting, Wagner further advised Hall that any contract negotiated should terminate the last of September or the first of October to coincide with the certification year. When the union representatives took the position that any contract negotiated should run for at least a year, Wagner said that it was doubtful whether the Union then represented a majority of the employees. Stucker asked Wagner upon what he based such a statement but Wagner did not reply.

The meeting lasted from 11 in the morning until about 4.30 in the afternoon. Stucker pointed out that he had expended both time and money to come to Denver from Grand Junction and requested that the parties continue to negotiate, declaring that he was available to continue day and night in order to complete the contract. However, Hall and Wagner were not willing to continue further and it was agreed that another meeting would be held on February 13.

On February 13, Wagner, Stucker, and Toliver met. Hall had appeared at the beginning of the meeting, but became ill and returned to his hotel room. The provisions of the over-the-road driver contract which had previously been submitted to Hall were discussed. Wagner stated that he was acting in an advisory capacity and could not give the union representatives any definite answers. For the purpose of covering the different wage rates which the Union felt were applicable to Hall's varied operations, Toliver submitted form contracts reciting such wage rates as they referred to tank drivers and a transfer and storage agreement in effect with the local union in Denver. At this meeting again, Wagner said that in his opinion the Union did not represent a majority of the employees but again stated no reason for harboring such an opinion. He stated that he would send Hall a letter advising him of the various items which the parties had discussed, and that Hall would then contact Stucker for another meeting.

Not having heard from Hall by February 21, Stucker called him on that date. Hall said that he had not yet received the report from Wagner. Later that afternoon, Hall called Stucker and told him that he had received a letter from Wagner, saying that he was getting out a report of the prior meeting but that Hall had not yet received it. It was agreed that he would communicate with Wagner and then inform Stucker as to the result. Hall did not get in touch with Stucker, however, and the latter waited until March 14 before he again communicated with Hall because he wanted to give him time to go over the items which had been discussed at the meeting with Wagner on February 13.

On March 14, Stucker called Hall and told him that he would be out of town on March 22, but requested a meeting in the earlier part of that week. On March 20, Hall called Stucker and said that he made arrangements with Wagner to meet with Stucker on the morning of March 23. Stucker reminded Hall that Stucker had an engagement in Salt Lake City on March 22 and could not be sure he would return by the next day. A meeting was finally agreed upon for March 28.

On that date, Stucker and Toliver met with Hall and Wagner in Grand Junction. Wagner again stated that he was acting only in an advisory capacity. The parties again began to discuss the contract. Toliver finally said that he thought they were not getting anywhere and asked the Respondent to submit a counterproposal. Wagner agreed that it was a waste of time to continue, saying that he and Hall had met with the union representatives only to prevent the latter from saying that the Respondent had refused to do so. It was agreed that a counterproposal would be submitted within the next few days at which time the Respondent would then inform the Union when the next meeting could be held. As Stucker and Toliver were about to leave, Hall asked if the submission of a counterproposal by the Respondent would mean that the parties would then have a contract. The union representatives replied that a contract could result, if the Respondent submitted a counterproposal which was suitable to the Union and the employees.

More than a month having passed and having received no word from either Hall or Wagner, Stucker wrote to Hall on April 30, protesting the delays on the part of the Respondent. A copy of this letter had been sent to Wagner, who, on May 1, wrote to Stucker saying that the delay had been his fault, that Hall had a draft of a proposed contract which Wagner had prepared and that Wagner was writing to him on that day, asking for his comments as promptly as possible. On May 2, Hall wrote to Stucker saying he had received a draft of a proposal from Wagner 10 or 12 days before, but that he had been out of the city when it arrived, and, since that time, he had sent his comments to Wagner. Hall further stated in this letter that the Respondent's proposal to the Union would be presented shortly.

On May 9, Stucker received the Respondent's counterproposal from Wagner. With minor changes, it consisted primarily of a verbatim copy of those provisions of the master agreement which the Union had submitted and to which the parties had agreed on February 7.⁶ The counterproposal provided that its terms be voted upon at a meeting to be called by the Union and open to all employees in the bargaining unit; that if a majority of the employees in the unit voted to accept, the counterproposal would become a contract; but if a majority voted against it, the counterproposal would be regarded as withdrawn.

On May 18, Stucker wrote to Hall, stating that the counterproposal had been considered by representatives of the Union and discussed with some of the employees, that "no self-respecting Labor Organization could recommend such a document to its members," and that the Union declined to call a meeting for the purpose of submitting the matter to a vote of the employees. In the meantime, on May 15, Toliver had filed charges with the Regional Office of the Board, alleging that the Respondent had violated the Act by refusing to bargain and by discriminatorily discharging certain named employees.⁷

On June 7 Wagner visited the Regional Office of the Board and spoke to Raymond Jacobson, a field examiner, regarding the charges which had been filed. Jacobson and Wagner both spoke by telephone to Toliver. Jacobson suggested that the parties get together and try to resolve the matter. Toliver replied that he thought it was futile to continue negotiations but the Union was willing to do so. Wagner then asked Toliver for a reply to the Respondent's counterproposal, and told Toliver that the Union could have 6 weeks to prepare a reply since the Respondent had taken 6 weeks to prepare the counterproposal. Toliver answered that negotiations had already dragged on too long and that he would seek legal advice.

On June 7, Toliver sent a letter to Wagner, stating that the Union was willing to bargain further but felt that its original proposals were adequate and that therefore there was no necessity for submitting new proposals, and Toliver suggested a meeting on June 14. Wagner did not reply to this letter and no meeting occurred.

On June 15 Wagner called Toliver and told him that Hall would meet with the Union in a few weeks and that Toliver should call back in a few days to arrange a meeting date. On June 19 Toliver called Wagner and a meeting was agreed upon for June 28 at the latter's office. Stucker was not certain he could appear on that date and arranged to have Toliver represent him should he not be free to attend. On June 26 Hall called Stucker and informed him that he would not be available on June 28. Hall offered no explanation for his unavailability. Stucker told Hall that a meeting in the latter's absence was of little value since Wagner took the position that he was merely acting in an advisory capacity.

On June 28 Toliver appeared at Wagner's office for the meeting. When he arrived, Wagner told him that he had unsuccessfully tried to reach him on the prior day, that Hall could not attend the meeting and it had therefore been canceled. He also told Toliver that he would call him in a few days and arrange another meeting place.

Thereafter a meeting was arranged for July 20 in Wagner's office in Denver. On that date, Stucker, Toliver, Hall, and Wagner again met. Stucker voiced the Union's dissatisfaction with the counterproposal which had been submitted by the Respondent, stating that it lacked many of the items which the Union had proposed and which it felt were necessary in any contract. Wagner asked what these items were. Stucker stated that, for one thing, there was nothing in the counterproposal for settling grievances. Wagner, after referring to his notes of former meetings, stated that Toliver had previously said that he would resubmit provisions dealing with grievances because the Union wished to make some changes in its original proposal. Toliver and Stucker thereupon prepared a draft, revising the Union's proposal for

⁶Not all such items were included in the counterproposal, however. Among those omitted were clauses providing for limitations upon the employer's right to enter into conflicting contracts with the employees; reopening of the contract for wage negotiations only in the event of a reduction of the workweek by legislative act; negotiations of rates of pay for operation of equipment not provided for in the agreement; determination of mileage in case of dispute; posting and bulletin board privileges; a separability and savings clause; and emergency reopening of the agreement.

⁷On June 25 a first amended charge was filed, omitting the allegations relating to the discriminatory discharge of the employees. A prior charge and first amended charge, alleging violations of Section 8(a)(1) and (3) of the Act, had been filed by the Union on February 23 and 28, 1962, and withdrawn on March 29, 1962. The Respondent contends that the charges were not filed by the Union in good faith but were "an improper attempt to bring pressure on the employer." I find this contention to be without merit.

a grievance procedure, and Wagner supplied the services of his stenographer to assist them. After it was prepared, Wagner read it and said that it looked pretty good, that he was not so sure that he would not recommend that Hall accept it, but that he wanted a little more time to look it over. Wagner then asked what other things were needed in the counterproposal which the Respondent had submitted. Toliver enumerated the various provisions which the Union had originally submitted and which, during the meeting of February 7, Wagner had stated that the Respondent wished to give further consideration. The parties came to no agreement but arranged to meet again on July 27 and take whatever time was required to conclude the matter with the understanding that this might involve 2 days.

When the parties met on July 27, Wagner opened the meeting with the statement that the Respondent was willing to discuss the items in the proposed contract but before doing so suggested that the Union consider another method of proceeding; that he had conferred with the Regional attorney of the Board in Denver who had indicated that the charges against the Respondent were weak and might be dismissed; that the remaining time in the certification year was so short that there was not much reason to continue as they were; that in the event of a hearing, the time consumed in reaching an answer to the problem would run beyond the certification year; that at that time, the Respondent intended to file a petition for a decertification election; that if the Union lost such election, the ball game would be over, but if it won by a substantial majority the Respondent would be required to sit down and negotiate a contract; and that he therefore suggested that the Union withdraw its charges and agree to such an election. Wagner also said that if the Union was not willing to follow his suggestion, there were other procedures legally open to the Respondent; that if a hearing were held and a ruling went against the Respondent, it would appeal to the Board and then carry the matter to the court of appeals, which would be time consuming and expensive. Toliver responded by saying that this was a farce which he would not dignify by continuing any longer, that the Respondent was not negotiating and that Toliver would seek the advice of the Union's attorney.⁸

On August 3 Toliver sent Wagner a letter in which he rejected the suggestion which had been made by the Respondent on July 27, but stated that the Union was still available for further bargaining.

B. Concluding findings

The General Counsel contends, and the Respondent denies, that the Respondent failed and refused to bargain in good faith on November 15, 1961, and thereafter;⁹ and that the Respondent interfered with, restrained, and coerced its employees, by reason of the conduct, above related, of Thomas Hall on an undisclosed date between December 1 and 15, 1961, and on December 16, 1961, and by the activities of Jack Hall¹⁰ on January 31, 1962.¹¹

⁸ The foregoing is based upon a composite of the substantially similar testimony of Stucker, Toliver, and Hall.

⁹ While conduct of the Respondent antedating November 15, 1961, is not alleged and could not be found violative of the Act, by virtue of the provisions of Section 10(b), nevertheless, such conduct may, and has been, considered as background evidence for the purpose of throwing light upon the activities of the Respondent which occurred on and after November 15, 1961. *Local Lodge No 1424, International Association of Machinists, et al (Bryan Manufacturing Co.) v. N.L.R.B.*, 362 U.S. 411; *Awelson Manufacturing Company*, 88 NLRB 761.

¹⁰ Jack and Thomas Hall were both present throughout the hearing but neither was called as a witness by the Respondent. Although the Respondent admits that Thomas Hall, who is in charge of heavy hauling, is a supervisor, it contends that "he is without authority to formulate or express any policies or views as to the employer's labor relations." It further contends that Jack Hall, who is in charge of petroleum products, is not a supervisor and that neither his activities nor those of his brother, Thomas, are binding upon the Respondent. There is no showing that the employees were ever informed that the Respondent did not regard these two men as its agents. It is conceded that Hall himself is the principal or sole owner of the various enterprises which constitute the Respondent, that he is in absolute control of management and formulates and controls all labor relations policies which are uniformly applied to all employees of the several enterprises. Hall testified that Thomas is one of his three sons who are associated with him in his business to which they will ultimately succeed, and that they are key men who, among other supervisors, take over during Hall's absence. Employee Leon Burson testified, without contradiction, that he had received orders in carrying out his duties

The Union originally requested that the Respondent meet on November 1 for the purpose of bargaining, but the first meeting did not occur until 6 weeks later, on December 13, after Hall had twice delayed other meeting dates requested by the Union, canceled another meeting which had been agreed upon,¹² and twice failed to call Stucker as he had promised to do for the purpose of arranging a mutually agreeable date upon which the parties could meet.

When the first meeting did occur, 6 weeks after the date the Union had first requested, and the Union presented its proposals, no bargaining took place because Hall stated that he intended to secure legal advice. Another 6 weeks passed before the parties met for a second time on January 24, after Thomas Hall had, in the interim, attempted and failed to induce the employees to repudiate the Union as their bargaining representative. Again no negotiations took place for Hall had done nothing to implement his announced intention of seeking the assistance of an attorney. He then declared that, without such assistance, he was not prepared to negotiate.

Subsequent to the meeting of January 24, Hall secured the services of Wagner, an attorney, and the parties next met on February 7. But in the interim, Hall had done nothing to acquaint Wagner with the proposals which the Union had presented on December 13, some 8 weeks before. Wagner took the position that he was only acting as legal adviser to Hall. The master contract which the Union had originally proposed was discussed clause by clause and agreement was reached on a number of minor matters. Wagner advised Hall against agreeing to a union-security clause, expressed opposition to a seniority clause and stated that any contract entered into should terminate on the anniversary date of the certification year because the Respondent doubted that the Union represented a majority of the employees. When questioned by Stucker, neither Wagner nor Hall explained why the Respondent entertained such a doubt.

Another meeting, leading to no agreement, was held on February 13. Again a period of 6 weeks passed before the parties next met, on March 28, after Hall had twice failed to call Stucker for the purpose of arranging a meeting date after having promised to do so. At this meeting, the Union requested a counterproposal. The Respondent promised to furnish it within a few days. Six weeks passed, however, before it was submitted on May 9, and only then after Stucker, on April 30, had written to Hall and Wagner, protesting the delay.

Other than proposed wage rates, vacations, and a provision requiring the Union to submit its contents to all employees in the unit, the counterproposal consisted virtually of a verbatim copy of some of the provisions of the Union's proposal which

from Jack Hall who had also reprimanded another employee in Bursen's presence. To the extent that their father is sole owner of the business enterprise known as W R Hall Distributor, Thomas and Jack Hall could not be considered employees, by virtue of the provisions of Section 2(3) of the Act. To the extent that their father occupies an official position as a corporate officer and principal owner of the two remaining business enterprises comprising the Respondent in this proceeding, Thomas and Jack Hall's interests, in the eyes of the employees, are allied with those of management. *Adam D Goettl, et al, d/b/a International Metal Products Company*, 107 NLRB 65. Beyond these considerations, the record shows, and I find, that both Thomas and Jack Hall are supervisors within the meaning of the Act and that their conduct in each instance is attributable to the Respondent.

¹² Jack Hall's attendance at the union meeting is undenied. The record fails to show where the meeting was held, whether it was held during the course of the working day or in the evening, whether it was presided over by one of the employees or a union representative, whether Jack Hall had been invited, and whether his presence was protested or he was requested to leave. Normally, the presence of a representative of management at a union meeting has been held to be coercive. *R. & J. Underwear Co., Inc*, 101 NLRB 299. But the attendance of such a person upon invitation and without protest has been held not to constitute unlawful surveillance. *Rovanna of Texas, Inc*, 98 NLRB 1151. *Cullman Electric Cooperative*, 99 NLRB 753. Here the incident lacks that degree of sufficiency in detail and in context which I regard as necessary to warrant drawing the inference sought by the General Counsel. In this connection, I have considered the fact that the incident occurred not during the period of the Union's organizing efforts but after it had already won the election and been certified. Accordingly, I find that Jack Hall's attendance at the union meeting on January 31 did not constitute unlawful surveillance.

¹³ I am referring to the meeting scheduled for November 7 which Hall canceled on November 5. I have not considered in this connection the meeting arranged for December 8 but called off by Hall on December 6 or 7 because of his wife's serious illness.

the parties had agreed upon on February 7. A number of such provisions, however, were omitted. Although Hall testified that he had always recognized seniority and denied that the Respondent had refused to include such a clause in any contract which might be negotiated, no provision for seniority rights appeared in the counterproposal.¹³

When the Union, on May 18, refused to submit the counteroffer to the employees, Wagner told Toliver that the Union could have 6 weeks to prepare its reply, since the Respondent had taken a like amount of time to draft its counterproposal.

After an attempt by the Union to arrange a meeting through Wagner on June 14 went unanswered, and Hall, without explanation, canceled a meeting arranged for June 28, the parties next met on July 20, over ten weeks after receipt of the counterproposal by the Union. On this occasion, the Union submitted a modification of its proposal for handling grievances. Although Wagner indicated approval for recommendation to Hall, he stated that he wanted more time to look it over.

When the parties last met on July 27, after agreeing to take whatever time was necessary, Wagner then proposed that the Union withdraw the charges which it had previously filed and submit to a new election. He stated that it was now close to the end of the certification year, that the Respondent at that time intended to file a petition for a decertification election and again expressed doubt as to the Union's majority but again failed to state the grounds upon which such doubt was based. Thus, 9 months after the Union had first requested a meeting, it had secured no substantial agreement, was challenged as to its representative status and was confronted with the proposal that it submit to a new election and commence the entire process anew. What had occurred had been a series of meaningless discussions.

As the Supreme Court has stated, however: "Enforcement of the obligation to bargain collectively is crucial to the statutory scheme. And, as has long been recognized, performance of the duty to bargain requires more than a willingness to enter upon a sterile discussion of union-management differences." *N.L.R.B. v. American National Insurance Company*, 343 U.S. 395. The evidence shows that the Respondent did not approach negotiations with an open mind in a sincere effort to reach an agreement. *Globe Cotton Mills v. N.L.R.B.*, 103 F. 2d 91, 94 (C.A. 5). Instead, the facts show that from the very beginning it sought to evade its responsibility of dealing with the Union by seeking to induce its employees to repudiate it, shortly after it had proven its majority in an election, and, that having failed, to circumscribe the Union's efforts to bargain by delaying negotiations until the end of the certification year, after which the Respondent intended to confront the Union with the necessity of again testing the strength of its adherence among the employees.

The Respondent's entire course of conduct, including the conduct of Thomas Hall in suggesting to employee Charles McCurdy the major portion of the wording of a petition seeking another election for the purpose of repudiating the Union; his later questioning of McCurdy as to the success of his efforts in securing the signatures of his fellow employees; and his promise to employee George Henderson that the Respondent would pay the employees \$2.25 per hour and time and a half for overtime work, if they would seek another election and vote against the Union; Hall's repeated failures to call the Union's negotiators for the purpose of arranging meetings after promising to do so; his cancellation of meetings already arranged; his requests that meetings already scheduled be postponed to later dates; his delay in securing the services of an attorney after professing an intention to do so; Wagner's expressions of doubts as to the Union's majority,¹⁴ without explanation of the basis for such doubts, and his insistence that any final agreement reached should end with the certification year; the long delay in submitting a counterproposal which consisted primarily of those items which had previously been agreed upon and not even all of those; the expressed intention of filing a decertification petition, unsupported by any showing that a reasonable basis existed for doubting the Union's majority; and the proposal, after seven meetings stretching over a period of 7 months, that the Union submit to a new election as a precondition to securing a binding agreement with the Respondent, convinces me, and I find, that it has failed and refused to

¹³ A provision in the counteroffer that employees with 1 to 3 years' consecutive service would receive 1 week's vacation with pay while those with greater service would receive 2 weeks' vacation did not constitute recognition by the Respondent of the principle of seniority governing the employment relationship in general, which had been proposed by the Union, and to which Hall referred in his testimony.

¹⁴ In this and in other respects, Wagner was expressing the Respondent's position, notwithstanding his claim that he was not representing it but only rendering legal advice.

bargain in good faith on and after November 15, 1961, thereby violating Section 8(a)(5) and 8(a)(1) of the Act.¹⁵

I further find that the Respondent interfered with, restrained, and coerced its employees in the exercise of their right to self-organization, thereby violating Section 8(1) of the Act, by the conduct of Thomas Hall, on an undisclosed date between December 1 and 15, 1961, in suggesting to employee Charles McCurdy the major portion of the wording which appeared on the decertification petition thereafter circulated among the employees and later questioning McCurdy as to the success he had achieved in its circulation,¹⁶ and in requesting employee George Henderson on December 16, 1961, to tell his fellow employees that the Respondent would pay them \$2.25 per hour and time and a half for overtime work if they would seek another election and vote against the Union.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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 unfair labor practices violative of Section 8(a)(5) and (1) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All truckdrivers and helpers at the Grand Junction, Colorado, enterprises of the Respondent, excluding all office clerical employees, watchmen, guards, 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.

4. The Union is the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to bargain collectively with the Union as the exclusive representative of the employees in the aforesaid appropriate unit, as found above, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, as found above, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

¹⁵ In view of this finding that the Respondent displayed a predetermined attitude not to enter into any agreement with the Union, I regard it as unnecessary to further find, as the General Counsel contends, that the Respondent additionally violated Section 8(a)(5) of the Act on February 7 by refusing to bargain with respect to a union-security clause and a seniority clause, as well as insisting that any agreement reached end with the certification year.

¹⁶ The General Counsel, in his brief, concedes that the conduct in question was not specifically alleged in the complaint. The Respondent was apprised of the issue; however, he raised no objection when testimony relating to such issue was elicited, and was accorded full opportunity to be heard, conduct examination, and introduce evidence with respect to it. Under such circumstances, a finding is justified that the conduct in question constituted a violation of the Act. *Rocky Mountain Natural Gas Company, Inc.*, 140 NLRB 1191.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, it is hereby recommended that W. R. Hall, an individual, doing business as W. R. Hall Distributor; W. R. Hall Transportation and Storage Company, its officers, agents, successors, and assigns; and W. R. Hall Moving and Storage, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 16, as the exclusive representative in an appropriate unit comprising all truckdrivers and helpers, but excluding all office clerical employees, watchmen, guards, and supervisors, as defined in the Act.

(b) Assisting, inducing or attempting to induce the employees to repudiate International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 16 as their collective-bargaining representative.

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

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

(a) Upon request, bargain collectively with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 16, as the exclusive representative of all employees in the appropriate unit, described above, with respect to their rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post in conspicuous places, including all places where notices to employees are customarily posted, copies of the attached notice¹⁷ marked "Appendix."¹⁸ Copies of said notice, to be furnished by the Regional Director for the Twenty-seventh Region of the National Labor Relations Board, shall, after being signed by the Respondent, be posted immediately upon receipt thereof and be maintained for 60 consecutive days thereafter in such conspicuous places. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director for the Twenty-seventh Region in writing within 20 days from the receipt by the Respondent of a copy of this Intermediate Report and Recommended Order what steps the Respondent has taken to comply therewith.¹⁹ It is further recommended that, unless on or before 20 days from the date of the receipt of this Intermediate Report and Recommended Order the Respondent notify the Regional Director that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

¹⁷ In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "as Recommended by a Trial Examiner" in the notice. In the additional event that the Board's Order is enforced by a decree of the United States Court of Appeals, the words "A Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "A Decision and Order."

¹⁸ Since notices are customarily framed in the language of the statute and because of their technical nature are often difficult for employees to understand, I am recommending that the notice in this case embody the simplified form which appears in the Appendix.

¹⁹ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply therewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, we are posting this notice to inform our employees of the rights guaranteed them in the National Labor Relations Act:

WE WILL bargain collectively upon request with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union

No. 16, as the law requires. The employees about whom we will bargain are employed in the following jobs:

All truckdrivers and helpers. This does not include office clerical employees, watchmen, guards, and supervisors as defined in the Act.

WE WILL NOT interfere with the rights of our employees guaranteed them in the National Labor Relations Act by refusing to bargain with the above-named Union or in any related manner.

All our employees are free to become members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 16, or any other union, and they are also free not to become members of any union unless in the future we shall enter into a valid union-shop contract with a Union which represents our employees.

W. R. HALL DISTRIBUTOR,
 W. R. HALL TRANSPORTATION AND STORAGE
 COMPANY,
 W. R. HALL MOVING AND STORAGE,

Employer.

Dated _____ By _____
 (Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 609 Railway Exchange Building, Denver, Colorado, Telephone No. Keystone 4-4151, extension 513, if they have any questions concerning this notice or compliance with its provisions.

Westinghouse Electric Corporation and Buffalo Section, Westinghouse Engineers Association, Petitioner. Case No. 3-RC-1634. October 30, 1963

DECISION AND ORDER DENYING MOTION TO CLARIFY AND/OR AMEND CERTIFICATION

On April 17, 1959, the Regional Director for the Third Region issued a Certification of Representative in the above-entitled proceeding to the Buffalo Section, Westinghouse Engineers Association, Engineers and Scientists of America, herein called the Union,¹ for a unit of professional engineering employees at the Employer's Cheektowaga, New York, plant.

Thereafter, on March 22, 1963, the Union filed a motion for clarification and/or amendment of unit, and on April 29, 1963, the Employer filed an answer in opposition to this motion.

On July 9, 1963, pursuant to an order of the Board, a hearing was held before Hearing Officer Henry J. Winters on the issues raised by the motion. Both parties appeared and participated in the hearing. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with

¹ The Union has dropped Engineers and Scientists of America from its name.