Latrobe Steel Company *and* United Steelworkers of America, AFL-CIO. Case 6-CA-10333

August 22, 1979

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On March 8, 1979, Administrative Law Judge Sidney J. Barban issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed cross-exceptions and a supporting brief, to which Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge, to modify his remedy,[2] and to adopt his recommended Order.

[1] The Administrative Law Judge's finding that Respondent violated Sec. 8(a)(5) of the Act by preconditioning bargaining upon the presence of a court reporter is fully consistent with our recent decision in *Bartlett-Collins Company*, 237 NLRB 770 (1978). In passing, we note that impasse on this issue can preclude collective bargaining on any topic whatsoever. Thus, although other procedural matters such as the location, date, and time of bargaining sessions may be agreed to by means other than through formal negotiation, insistence on the presence of a court reporter in effect reduces the options of the parties to the exchange of written communiques. We find such insistence at odds with the concept of meaningful bargaining and hence a violation of the duty to bargain in good faith imposed by the Act.

[2] Having found that the strike which commenced August 1, 1977, was an unfair labor practice strike, the Administrative Law Judge found that the strikers were unfair labor practice strikers and he ordered that Respondent offer to each of them upon their unconditional application for reinstatement immediate and full reinstatement to his former position or, if such position no longer existed, to a substantially equivalent position, without prejudice to his seniority or other rights and benefits, dismissing, if necessary, persons hired on or after August 1, 1977. The Administrative Law Judge further recommended that Respondent make such strikers whole for any loss of pay or benefits suffered by reason of Respondent's failure or refusal to reinstate such striker within 5 days after his unconditional application for reinstatement by payment to him of a sum of money equal to that he would have earned as wages and other benefits from 5 days after his unconditional application for reinstatement until the date of reinstatement, less his net earnings during such period, said backpay to be computed in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). We agree that this remedy is appropriate. In so doing, we note that the Board has found the 5-day period is a reasonable accommodation between the interests of the employees in returning to work as quickly as possible and the employer's need to effectuate that return in an orderly manner. Accordingly, if Respondent herein has already rejected, or hereafter rejects, unduly delays, or ignores any unconditional offer to return to work, or attaches unlawful conditions to its offer of reinstatement, the 5-day period serves no useful purpose and backpay will commence as of the unconditional offer to return to work. *Newport News Shipbuilding and Dry Dock Company*, 236 NLRB 1637 (1978). Member Jenkins, for the reasons set forth in his partial dissent in *Drug Package Company, Inc.*, 228 NLRB 108 (1977), would begin Respondent's backpay obligation from the date of each striker's unconditional offer to return to work.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Latrobe Steel Company, Latrobe, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

SIDNEY J. BARBAN, Administrative Law Judge: This matter was heard in Pittsburgh, Pennsylvania, on March 14, 15, 16, and 17, 1978, upon a complaint issued on December 30, 1977, based on charges filed by the Charging Party, United Steelworkers of America, AFL-CIO, herein the Union, on June 21 and December 20, 1977 (all dates hereinafter, unless otherwise noted, are in 1977). The complaint alleges that the Respondent, Latrobe Steel Company violated Section 8(a)(5) and (1) of the Act by (a) insisting on the presence of a professional stenographer to make verbatim transcripts of collective-bargaining negotiations between the Union and Respondent for a new bargaining agreement; (b) insisting to the point of impasse on the exclusion of the Union from the right to initiate grievances on behalf of employees in the unit represented by the Union; (c) insisting to the point of impasse on Respondent's right to settle grievances with employees in the unit, without affording the Union the opportunity to be present; (d) insisting to the point of impasse that Local 1537, affiliated with the Union, herein the local, be made a party to any new collective-bargaining agreement between Respondent and the Union. It is also alleged that the strike of Respondent's employees in the unit, which began on August 1, was caused and prolonged by Respondent's alleged unfair labor practices.

Respondent's answer denies the commission of the unfair labor practices alleged, and also denies that the strike of the employees was an unfair labor practice strike, but admits allegations of the complaint justifying the assertion of jurisdiction under current standards of the Board. Respondent, engaged at Latrobe, Pennsylvania, in the manufacture and distribution of steel products, during a recent annual period received directly from outside the State of Pennsylvania goods and materials valued in excess of $50,000, and shipped directly to points outside the State of Pennsylvania, goods and materials valued in excess of $50,000, and to support a finding that the Union is a labor organization within the meaning of the Act.

Upon the entire record in this case, from observation of the witnesses and their demeanor, and after consideration of the briefs filed by the General Counsel and Respondent, I make the following:

FINDINGS AND CONCLUSIONS

A. *The Facts*

Background

In 1937 Respondent recognized the Steel Workers Organizing Committee, the predecessor of the Union, as the bar-

gaining representative of employees in its steel manufacturing and by-products coke plants, and entered into a collective-bargaining agreement with that labor organization. Since that time, Respondent appears to have had continuous bargaining relations with the Union or its predecessors. However, none of the bargaining agreements between them have included the local as a party to the agreement, although in recent years, at least, elected officers of the local participated on the bargaining committee which has negotiated those agreements and, together with other representatives of the Union, have signed such contracts.

Representation

It is agreed, and I find, that the Union at all times material has been and is now the representative for the purposes of collective-bargaining, within the meaning of Section 9(a) of the National Labor Relations Act, as amended, herein the Act, in the following unit which is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: "All production and maintenance employees employed by Respondent at is Latrobe, Pennsylvania, facility, excluding office clerical employees, mechanics, confidential employees, managerial employees and guards, professional employees and supervisors as defined in the Act."

Negotiations

1. Generally

The most recent bargaining agreement between Respondent and the Union covering the above-stated unit, effective August 1, 1974, had a termination date of August 1, 1977. Representatives of Respondent and the Union met beginning June 7, on 27 occasions in negotiations prior to August 1, the date that employees in the unit went on strike, and on 20 occasions since then, up until the time of the hearing in this matter, in an effort to arrive at an agreement on a new bargaining contract. At these negotiations, Respondent's director of industrial relations, Joseph W. Pischke, insisted upon a number of procedures which had not previously been required in bargaining for an agreement for this unit. Thus, at the outset, Pischke advised the union negotiators that though they were accustomed to addressing him informally by his first name, in this bargaining they would be required to address him formally, as Mr. Pischke, or he would not respond. He also advised the Union that Respondent insisted on having the negotiations recorded by professional reporters, who were present at the initial meeting, and that no off-the-record discussions between the Union and Respondent would be permitted. The Union was also informed that Respondent intended to make the transcripts of the negotiations available to members of the bargaining unit during their nonwork time in Respondent's personnel office. With minor variation, noted hereafter, Pischke rigidly adhered to these requirements and limitations during the negotiations. In addition, after a number of the negotiation sessions, Respondent issued letters to the employees entitled "Straight Talk," and referred to generally at the hearing as "Straight Talk letters," which Respondent used to advise the employees of the availability of transcripts of the negotiations in the personnel office, and to comment on the negotiations generally and the conduct of the union negotiators in particular. Respondent had not employed these tactics in previous negotiations.[1] The record indicates that these new procedures may have been adopted at the instance of the Timkin Company, which had acquired Respondent since the time of the previous negotiations (for the 1974–77 contract) covering the appropriate unit here involved.

From the outset of the negotiations, the Union sought to obtain Respondent's agreement of the terms of the 1977 basic steel argeement which had been negotiated with the major employers in the industry (Respondent traditionally had accepted the basic steel agreement in the past), and to the continuation of the terms of the 1974 agreement between the Union and Respondent except as changed by the basic steel agreement and by 21 "local proposals" made by the Union. On its part, Respondent submitted 22 proposals to change the terms of the 1974 bargaining contract (according to one witness these would result in about 400 changes in the contract), including demands that the local be made a party to the contract, and to change the operation of the grievance procedure, as dicussed hereinafter. Respondent dropped none of its proposals prior to August 1, the inception of the strike, although it made certain economic proposals prior to that date which the Union rejected.[2] It does not appear that Respondent has accepted any of the Union's proposals. On its part, the Union seems to have first reduced its demands after the inception of the strike, dropping its 21 local proposals, and agreeing to 2 issues raised by Respondent (which the latter characterized as an insignificant movement).[3]

2. The transcripts

At the first bargaining session, Pischke introduced two professional reporters present who he stated would record all of the negotiations on Respondent's behalf. It was made clear that Respondent would negotiate only on that basis, and that no discussion of negotiable issues would be permitted off-the-record.[4] As previously noted, the Union was in-

[1] Respondent's actions in making the transcripts available to the employees and in issuing Straight Talk letters to the employees were not alleged as violations of the Act in and of themselves, but litigation of these matters was permitted in order to show the context in which Respondent insisted on requiring a professional transcript of the negotiations, and to shed whatever light possible on Respondent's purpose.

[2] It appears that at all times during the negotiations, Respondent took the position that it would not "segment-bargain," that is, Respondent considered all of its proposals to be of equal value and not severable one from the other.

[3] There is some confusion in the record as to when the Union dropped its 21 local issues. One witness for the General Counsel, William Ehman, testified that the Union dropped its 21 local proposals in early July. Pischke asserted that the Union had withdrawn none of its proposals before August 18, but then testified that the 21 proposals were withdrawn on August 5. A publication issued by the local on October 10 indicates that the 21 issues were withdrawn on October 5.

[4] Pischke testified to two occasions after the beginning of the strike in which he had informal discussions with union negotiators, initiated by the latter, with respect to facts which might assist in reaching agreement and ending the strike. The only other deviation from Respondent's fixed policy also occurred during the strike when Respondent met with the Union to discuss continuation of employee insurance coverage during the strike. No reporters were present at that meeting, which apparently did not involve bargaining issues.

formed that the transcripts would be made available to unit employees in Respondent's personnel office. In addition to making the transcripts available to the employees, Respondent also commented on the negotiations in the Straight Talk letters issued to employees after a number of the bargaining sessions, some of which were derogatory of the union negotiators and their conduct of the negotiations. These actions caused the negotiators on both sides to be overly conscious of the record, led to confrontations between Respondent and the Union with respect to the making and use of these transcripts, and otherwise impeded the course of the negotiations. Thus, there were frequent accusations during the negotiations that one side or the other was speaking "for the record," or acting in an abnormal way because of the record, or was speaking to an "invisible" audience which was not participating in the bargaining. Since the Union had no way of going "off-the-record," and had no control over the actions of the reporters, on one occasion a rather stormy confrontation occurred when the reporter continued to record comments of the union negotiators remaining in the room after the session was concluded. The union negotiators also felt forced to restrain themselves in the manner of their proposals and the vigor of their arguments lest the transcripts or the Straight Talk letters be used by Respondent to make them appear in a bad light to the employees. On one occasion in which the union negotiators accused management in profane terms of being insensitive to the welfare of the employees, this was reported to the employees in a Straight Talk letter in a manner that caused criticism of the union negotiators. The Union further complained that the manner in which the negotiations were being reported to the employees caused misunderstandings that made it difficult for the Union to make or withdraw contract proposals.[5]

The record is persuasive, and I find that the Union objected to Respondent's insistence on a transcript of the negotiations taken by professional reporters, and to the uses made of the transcripts, as set forth above, from the outset of the negotiations and thereafter. To the extent that Pischke testified that the Union did not object to the "presence of the stenographer" at the first negotiations, on June 7, I do not credit his testimony. He elsewhere testified that there were long discussions concerning the transcripts at this opening session, although he asserts this related only to the use of the transcripts. He agrees that the Union objected to "the use of a stenographer" at the second session, on June 13, and thereafter.[6]

Respondent adduced a number of reasons in support of its decision to insist upon a professional transcript of the negotiations. In essence, they are the following:

1. Respondent's parent company, The Timkin Company, has had similar transcripts made of its negotiations with the Union over several years. It appears, however, that in those cases there has been agreement by the Union to that procedure. There is no indication that Timkin has used the transcripts as Respondent has in the present case.

2. Although Respondent has never insisted on professional transcripts of negotiations for the unit involved here, it is asserted that such transcripts were made in two instances involving dealings between Respondent and the Union. In one case, in 1975, when Respondent was negotiating for the first time with the Union for a unit of office and technical employees, and the Union accused Respondent of bargaining in bad faith, Respondent assertedly had difficulty in putting its notes together in response, and thereafter brought a professional stenographer into the negotiations. The Union does not seem to have objected. The transcripts were not used in communications with employees, so far as is shown. Though the Union withdrew its charges against Respondent in that case, it appears from Pischke's testimony that the parties have never come to agreement on a bargaining agreement for that unit.

In a second instance, Respondent brought professional reporters into meetings called for the purpose of bringing the pension plan covering unit employees into conformity with the Employee Retirement Income Security Act (ERISA). Though the Union objected, the meetings continued. As Pischke testified, the parties there, in fact, "were not negotiating" in the sense involved in the present proceeding.

3. Respondent indicates that both parties found the transcripts somewhat useful, Respondent using them at the end of each session to review the events of the day, and both sides finding it convenient on occasion to ask the reporter to repeat a comment made during the bargaining which had been missed. One union negotiator who missed a session of the negotiations read the transcript of that day in Respondent's personnel office. There was also some indication that Respondent found this a convenient way to keep its parent company informed as to the negotiations.

4. Respondent argues that in the event of a charge that Respondent had engaged in bad faith bargaining in violation of the Act, such transcripts would be very useful in meeting the charge.

3. The contract clauses

In his complaint, the General Counsel attacks Respondent's alleged insistence to the point of impasse on three contract proposals during the negotiations involved here. The first of these proposals required that the local be made a party to the contract, which had never been the prior practice. Respondent argued that this would make the elected officials of the local, with whom Respondent dealt in the day-to-day administration of the contract, more responsible. During discussion of this argument, Respondent indicated that it hoped thereby to restrain work stoppages in violation of the contract, but seems to have finally conceded that, notwithstanding the proposed change, it would continue to deal with such occurences in the future as it had in the past. The Union asserted that it could not agree to this proposal inasmuch as the Union's constitution prohib-

[5] In one instance, the Union was inhibited in pursuing a proposal that Respondent provide certain benefits for employees suffering from alcoholism because, when Respondent denied that there was a problem, the union negotiators were unwilling to discuss individuals "on the record."

[6] At the June 13 session, one of the union negotiators brought, and was permitted to use, a tape recorder, ostensibly to check on the accuracy of the professional reporters. Shortly thereafter the union negotiator announced that he was discontinuing use of the tape recorder, stating that he had demonstrated that there were a number of errors in the transcript.

ited such a practice. On August 29, during intensive negotiations immediately prior to the strike on August 1, as Pischke testified, the Union informed Respondent that there was no chance of the parties reaching an agreement if Respondent insisted on this term. However, Respondent did not withdraw its insistence on this proposal until February 6, 1978, at which time it also withdrew the proposals to change the grievance procedure discussed below.

The two remaining contract proposals by Respondent with which we are concerned here are part of Respondent's attempt to substantially rewrite and restructure the grievance procedure in the bargaining agreement. One result of this would withdraw from the Union the right to file grievances on its own initiative on behalf of employees or in protection of the rights of the Union as a whole. (Among other changes, Respondent's proposal would delete that part of the prior contract providing that the "grievance procedure may be utilized by the Union in processing grievances which allege a violation of the obligations of the Company to the Union as such." See G.C. Exh. 8, p. 53, marginal number 300) Thus, only grievances signed by individual aggrieved employees could be processed under the grievance procedure.

Respondent does not seem to dispute these findings, stating in its brief that "one of [Respondent's] requests eliminated the Union from filing a grievance under the grievance procedure of the contract," but asserting that "the Union was not excluded from representing employees in the subsequent steps of the Grievance Procedure." (Br., p. 29)

The General Counsel further contends that Respondent's proposed grievance procedure provided that "the aggrieved employee could settle his grievance or complaint with or without the Union's presence 'as the employee may elect . . . 'in the *first two steps* of the grievance procedure." (Br., p. 12, emphasis supplied). At the same time, the General Counsel admits that under the grievance procedure provisions of the 1974-77 contract which the Union wished continued, "the aggrieved employee could seek to settle the grievance with or without the Union present, at the employee's own election," "during the *first* step of the grievance procedure." (Br., p. 12, emphasis in the original) Thus, the issue really concerns the changes proposed by Respondent in step 2 of the grievance procedure. Paragraph 1 of step 2, as proposed by Respondent is set forth below (regular type is the language of the prior agreement; bracketed matter is language of the prior agreement deleted by Respondent's proposal; underlined material is new matter inserted in Respondent's proposal):

> Step 2
>
> 1. A grievance, to be considered further must be filed in writing . . . [promptly] *within five calendar days* after the conclusion of the Step 1 discussions. It shall be dated and signed by [the grievance committeeman or] the employee (or other employees affected) *and a member of the grievance committee* and should include such information and facts as may be of aid to the Company [and the Union] in arriving at a fair, prompt and informed decision. *A step 2 meeting will be scheduled by the Company within 10 calendar days following receipt of appeal to step 2. The meeting will be between the employee, a member of the grievance committee, as the employee may elect, the General Foreman or his designated representative.* The answer to the grievance shall be given *by the General Foreman or his designated representative* [within 72 hours from the time of presentation. . . . Such answer . . . shall be signed and delivered to the grievance committeeman] *within five calendar days following the Step 2 meeting and shall be signed and delivered to the employee and a member of the grievance committee.*

B. *Analysis and Conclusions*

1. Respondent's insistence on verbatim transcripts

From the outset of negotiations for a new contract, Respondent made clear that it would not bargain with the Union unless all of the bargaining discussions were recorded by professional reporters. Though the Union protested Respondent's demand and continued to object to this procedure and the uses made of the transcripts of bargaining by Respondent, it nevertheless continued to bargain with Respondent. During the negotiations Respondent not only took particular effort to make the transcripts available to the unit employees, but used them as a basis for denigrating the union negotiators and their conduct of the negotiations. By this conduct Respondent clearly inhibited free and full discussion of bargainable issues and impeded the course of bargaining for a new collective-bargaining agreement, contrary to the purposes and policies of the Act.

The General Counsel called as a witness an attorney of wide experience in labor relations and collective bargaining who testified to the effect that the use of professional reporters to record collective-bargaining negotiations is unusual and is considered generally to impede and obstruct such bargaining. In his brief, the General Counsel cites various experts in the field as having written to this effect. Respondent, on its part, at the hearing called as a witness as attorney for Respondent's parent, The Timkin Company, who testified that his experience has been generally to the contrary. However, our experience, and I believe the weight of authority of experts in the field of labor relations, tend to support the witness called by the General Counsel rather than Respondent's witness on the issue. See also *Bartlett-Collins Company*, 237 NLRB 770 (1978).

Respondent's reasons for insisting upon such transcripts, noted hereinabove, amount generally to claims of personal preference and convenience. Respondent also places particular stress on the usefulness of such transcripts in the event of unfair labor practice charges, citing *N.L.R.B.* v. *Southern Transport, Inc.*, 355 F.2d 978 (8th Cir. 1966). These reasons cannot prevail, however, over the overwhelming weight of evidence of those who know this field that insistence upon such transcripts, over the objections of other parties to the negotiations, tends to stulify bargaining and obstruct the policies and purposes of the Act to foster and encourage free collective bargaining. Experience has shown that careful notetaking by the negotiating team does serve well all of the needs of the parties, including defenses to unfair labor practice charges. Indeed, insistence on intro-

ducing strange reporters in the negotiators tends to create tension and suspicion, as in the instant case, which leads to the very litigation that Respondent says it seeks to avoid. Insistence upon unilaterally imposed conditions is not conducive to peaceful settlement of difficult labor relations problems.

Since the close of the hearing in this matter, the Board has decided, in *Bartlett-Collins, supra*, that insistence by one party to bargaining negotiations upon verbatim transcripts of the negotiations taken by professional reporters as a condition precedent to the bargaining over the objection of other parties constitutes unlawful insistence upon a nonmandatory bargaining issue in violation of Section 8(a)(5) and (1) of the Act. Respondent's counsel, by letter supplementing his brief, contends that decision is not applicable to this case because (1) "the impasse and ensuing strike [in this matter] was caused by the intransigent position taken and maintained by the Union throughout the bargaining negotiation," and (2) "in all equity and judicial fairness a retroactive or *ex post facto* application of the holding in the *Bartlett* case would not be justified in these proceeding," citing *Drug Package, Inc.* v. *N.L.R.B.*, 570 F.2d 1340 (8th Cir. 1978).

I find, however, contrary to Respondent, that the impasse with respect to the taking of the transcripts of negotiations took place at the outset of the negotiations when Respondent insisted that the negotiations could not proceed except upon that condition, and the Union objected and continued to maintain its opposition to such procedure. The fact that the Union nevertheless continued to bargain does not change the result. To hold that the Union was compelled to break off bargaining in order to make its point would be destructive of the bargaining process and run counter to the purposes of the Act. Moreover, even if it were considered that impasse occurred as to this issue when the strike began on August 1, 1977, I find that Respondent's insistence on the taking of verbatim transcripts of the negotiations contributed substantially to that impasse, as discussed further hereinafter.

Drug Package, supra, considered whether the Board's recent policy of issuing bargaining orders retroactive in effect, rather than merely prospective, where a refusal to bargain was found, was appropriate in that case. The court, after holding that the Board was in error in finding a refusal to bargain in the first instance, held the Board's order inappropriate there, though recognizing the authority of the Board to announce new rules in adjudicatory proceedings such as the present case. In this case, where the insistence on verbatim transcripts, and the uses made of them are shown to have impeded and obstructed collective bargaining contrary to the basic purposes of the Act, a finding that Respondent thereby violated the Act is particularly appropriate.

For the reasons stated, I find that by insisting to impasse upon professional reporters to make verbatim transcripts of the bargaining negotiations, Respondent violated Section 8(a)(5) and (1) of the Act.

2. Insistence on the Local as a party to the contract

Respondent, from the beginning of the negotiations until February 6, 1978 (about 7 months after the inception of the strike), insisted that the local be included as a party to the collective-bargaining agreement. Respondent's position was that this would make the local, some of whose officers participated in the bargaining negotiations, more responsible in the administration of the bargaining agreement.

However, it is admitted that at all times material the Union was the designated or selected representative of all the employees in the appropriate unit, and "by virtue of Section 9(a) of the Act has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining." (See par. 7 of the complaint and Respondent's answer) For approximately 40 years Respondent has bargained and signed bargaining agreements with the Union or its predecessors as the representative of such employees. It appears that during some part of that period officers of the local participated in that process as agents or representatives of the Union for that purpose. On this record it cannot be said that the unit employees desired the local to participate in the bargaining process on any other basis. Indeed, during the negotiations, the Union opposed this proposal of Respondent on the grounds that it was not only contrary to the settled policy of the Union, but was also contrary to the Union's constitution. In such case it is to be assumed that the unit employees had assented to the Union's practice that the local not be made a party to the contract.

In these circumstances, the Union being the exclusive bargaining representative of the unit employees within the meaning of the Act, Respondent was not justified in insisting to the point of impasse, as it did, that the Union relinquish that status and agree that the local be a corepresentative of the employees for the purposes of collective bargaining. As the Supreme Court held in *N.L.R.B.* v. *Wooster Division of Borg-Warner Corp., 356 U.S. 342 (1958)*, such proposals to change the representative status of the labor organization designated or selected by unit employees are not proposals which deal with "wages, hours and other terms and conditions of employment," and thus are nonmandatory bargaining issues which cannot be insisted upon in negotiations to the point of impasse.

For the reasons set forth, Respondent, by insisting to the point of impasse that as a condition to agreement upon a new contract that the local be made a party to the contract, violated Sections 8(a)(5) and (1) of the Act.

3. Insistence upon changes in the grievance procedure

a. *Waiver of the Union's right to be present at the adjustment of grievances*

Section 9(a) of the Act provides, insofar as pertinent to this issue, that employees shall have the right "to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative," provided that "the bargaining representative has been given opportunity to be present at such adjustment."

The General Counsel contends that Respondent insisted as a condition to entering into a new bargaining agreement with the Union that the latter agree that in the first two steps of the grievance procedure that "the aggrieved em-

ployee could settle his grievance or complaint with or without the Union's presence, 'as the employee may elect.' " (G.C. br., p. 12) This, indeed, seems to be the effect of Respondent's proposal as to the first step of the grievance procedure. However, Respondent's proposal to this extent was the same as the grievance procedure in prior contact between the Union and Respondent which the Union asserted it was willing to accept in the new agreement (though without other changes sought by Respondent). This being so, it can hardly be said that Respondent was insisting upon an impermissible change in the first step of the grievance procedure to the point of impasse.

However, Respondent's proposal for the second step of the grievance procedure presents a more difficult problem. In this step Respondent proposed, and insisted until long after the inception of the strike, that the step 2 meeting in the grievance procedure "will be between the employee, a member of the grievance committee, *as the employees may elect*, [and] the General Foreman or his designated representative" (Emphasis supplied.) This was a substantial change from the prior agreement, and was never agreed to. But Respondent's proposal further provided that Respondent's answer to the step 2 grievance presentation would be given in writing within 5 days after the meeting, with copies of such answer delivered to the employee and a member of the Union's grievance committee. Thus it is far from clear that Respondent's proposal envisioned a step 2 meeting at which the employees' grievances would be adjusted without affording the Union an opportunity to be present at the adjustment. Rather it appears that it was anticipated that the employees' grievances would be adjusted if they were adjusted--by written communication after the meeting, with a copy given to the Union and the employee. In these circumstances, I find that Respondent's proposal, on its face, did not exclude the Union from an opportunity to be present at the adjustment of the employees' grievances at step 2 of the grievance procedure. It may be that such would be the practice under such procedure, but I cannot here pass upon that.

For the reasons stated, it will recommend that the allegations of the complaint that Respondent violated the Act by insisting to the point of impasse on the right to settle grievances with unit employees without affording the Union an opportunity to be present be dismissed.

b. *Waiver of the Union's right to file grievances*

Under the prior agreement between the Union and Respondent, the Union had the right to file grievances on behalf of individual employees and groups of employees, and also to protect the rights of the Union under the bargaining agreement. Respondent's proposals with which we are concerned here withdrew the Union's right to file grievances on its own initiative and required that all such grievances be signed by individual employees. In its brief, Respondent argues that though its proposals would eliminate the union from filing grievances, the Union was not excluded from representing employees at later stages of the grievance procedure, and, further, that "it was the intransigence of the Union that eliminated any prospect of reaching an agreement," (p. 31) "so it is apparent that this particular proposal of the company was not the cause of the impasse" (p. 30).

The right of the Union, however, to represent the employees in the unit, both individually and collectively, at all stages of the grievance procedure, including the right to file grievances and process them, and to administer the collective-bargaining agreement, is a statutory right which Respondent may not insist to the point of impasse that the Union waive. The proposal that only grievances signed by individual employees could be considered under the contract was not a matter included within the term "wages, hours and other conditions of employment" that Respondent was privileged to make a condition precedent to agreement, as Respondent did here. See *Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO* v. *N.L.R.B.*, 320 F.2d 615 (3d Cir. 1963).

I find, on the record as a whole, and as discussed hereinbelow, that Respondent, by insisting to impasse upon the elimination of the Union from filing grievances under the contract and upon the requirement that all grievances be signed by individual employees, engaged in conduct violating Section 8(a)(5) and (1) of the Act.

4. The impasse issue; nature of the strike

Respondent does not dispute that the bargaining negotiations had reached an impasse by the time that the Union went on strike on August 1, 1977, or that Respondent continued to insist upon all of its proposals discussed above at that time and for a considerable period thereafter, but argues, nevertheless, that it cannot be held responsible for the impasse which occurred since the Union also adamantly refused to give up any of its demands prior to the strike, and, indeed, did not come to terms with Respondent even when Respondent dropped its proposals on February 6, 1978, for changes in the grievance procedure and that the local be made a party to the contract. Respondent misses the point. There is no showing that the Union was engaged in other than proper bargaining, or that it was not privileged to maintain the positions which it held. On the other hand, as has been shown, Respondent was not privileged to insist to impasse upon positions which have been discussed. In effect, Respondent argues that there would have been no agreement even if it had not taken the adamant positions with which we are here concerned. The problem is that we have no way of testing this argument because Respondent did not withdraw from these impermissible positions prior to impasse. It is impossible to know as a matter of hindsight what the Union might have done, prior to impasse, if Respondent had not exacerbated the negotiations with unilaterally imposed conditions (such as the insistence upon verbatim transcripts and the uses made of them), or had dropped the proposals discussed above prior to the strike. As an example: the record shows that there was no chance whatsoever of an agreement so long as Respondent insisted on making the local a party to the contract. Respondent was informed of this, but not only did not drop this proposal, but made it clear that its agreement to anything was

contingent on the Union's agreement to all of Respondent's proposals.[7]

On the record as a whole, I find that Respondent's adamant position with respect to making the local a party to the contract, its insistence upon a verbatim transcript of the negotiations by professional reporters, and its insistence on excluding the Union from filing grievances on its own initiative under the contract contributed substantially to the impasse which resulted in the strike and were causes of the impasse which occurred and of the strike which resulted. I therefore find, that the strike was an unfair labor strike, caused and prolonged in substantial part by Respondent's unfair labor practices.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Sections 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. At all times material herein the Union has been and continues to be the exclusive representative of Respondent's employees in the appropriate bargaining unit set forth immediately below for the purposes of collective bargaining within the meaning of Section 9(a) and (b) of the Act.
4. All production and maintenance employees employed by Respondent at its Latrobe, Pennsylvania, facility, excluding office clerical employees, mechanics, confidential employees, managerial employees and 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.
5. Respondent, by insisting to impasse on the presence of professional reporters to make verbatim transcripts of bargaining negotiations as a condition of bargaining, and by insisting to impasse, as a condition of agreement to a bargaining contract, upon making the local a party to the contract, and that all grievances filed under the contract be signed by individual employees in the unit, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, which unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
6. The strike of the unit employees which began on August 1, 1977, was caused and has been prolonged by Respondent's unfair labor practices.

THE REMEDY

It having been found that Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has engaged in unfair labor practices in violation of the Act by insisting to impasse as a condition of bargaining upon verbatim transcripts of the negotiations taken by professional reporters, and by insisting to impasse as a condition to agreement to a collective-bargaining contract upon making Local 1537, affiliated with the Union, a party to the contract, and that all grievances filed under the contract be signed by individual employees, I shall recommend that Respondent be ordered to cease and desist from engaging in such conduct, and, upon request, bargain collectively in good faith with United Steelworkers of America, AFL-CIO, and its designated agents at times and places mutually convenient concerning wages, rates of pay, hours of employment, and other terms and conditions of employment.

Having found that the strikers who went on strike on August 1, 1977, and thereafter, are unfair labor practice strikers, it will be recommended that Respondent be ordered to offer each of them, upon his unconditional application for reinstatement, immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and benefits, dismissing, if necessary, persons hired on or after August 1, 1977. Respondent shall make such strikers whole for any loss of pay or benefits suffered by reason of Respondent's failure to refusal to reinstate such striker within 5 days after his unconditional application for reinstatement by payment to him of a sum of money equal to that he would have earned as wages and other benefits from 5 days after his unconditional application for reinstatement until the date of his reinstatement, less his net earnings during such period, and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977). See generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

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

ORDER[8]

The Respondent, Latrobe Steel Company, Latrobe, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with the efforts of the United Steelworkers of America, AFL-CIO, to bargain on behalf of the employees in the unit described below by insisting to impasse upon any of the following:

(1) the presence of professional reporters to make a verbatim stenographic record of negotiations as a condition to negotiations with the Union.

[7] The fact that the Union still did not come to agreement with Respondent even after Respondent dropped its impermissible proposals during the strike has been carefully noted, but does not change the conclusions made above. The record is not clear as to the details of the negotiations. That the Union continued adamant on its demands, even after Respondent dropped its most objectionable proposals, may well be due to the state of the bargain at that time. It is not surprising that the union position might have hardened after 7 months of strike.

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

(2) making Local 1537, affiliated with the Union, a party to the contract, as a condition to agreement upon a bargaining contract.

(3) that the Union be excluded from filing grievances, or that all grievances be signed by individual employees.

(b) In any like or related manner interfering with the efforts of the Union to bargain collectively on behalf of the employees in the unit described below:

> The appropriate unit is: All production and maintenance employees employed by Respondent at its Latrobe, Pennsylvania, facility, excluding office clerical employees, mechanics, confidential employees, managerial employees and guards, professional employees and supervisors as defined in the National Labor Relations Act, as amended.

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

(a) Upon request, meet and bargain collectively in good faith with the Union and its designated agents at mutually convenient times and places with respect to wages, rates of pay, hours, and other terms and conditions of employment, and if agreement is reached, embody it in a signed contract.

(b) Offer full reinstatement to all strikers who went out on strike on August 1, 1977, or thereafter joined such strike, within 5 days after each such striker makes an unconditional offer to return to work, and make each striker whole for any loss of pay or benefits suffered by reason of Respondent's failure or refusal to reinstate such striker within the time limit required in the manner set forth in the portion of this Decision entitled "The Remedy."

(c) Post at its facility at Latrobe, Pennsylvania, copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by an authorized representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, inconspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered defaced, or covered by any other material.

(d) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed as to any alleged violation of the Act not found hereinabove in this Decision.

APPENDIX

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

WE WILL NOT interfere with the efforts of United Steelworkers of America, AFL-CIO, to bargain on behalf of the employees in the unit described below by insisting to impasse upon any of the following:

(1) that a professional reporter be present to make a stenographic record as a condition to bargaining with the Union.

(2) that Local 1537, affiliated with the Union, be a party to the contract, as a condition of the Company agreeing to a bargaining contract.

(3) that the Union not file grievances under the contract, or that employees must sign all grievances.

WE WILL NOT in any like or related manner interfere with the efforts of the Union to bargain collectively on behalf of the employees in the unit described below.

The appropriate unit is: All production and maintenance employees employed by the company at its Latrobe, Pennsylvania, facility, excluding office clerical employees, mechanics, confidential employees, managerial employees and guards, professional employees and supervisors as defined in the National Labor Relations Act, as amended.

WE WILL, upon request, meet and bargain collectively in good faith with the Union and its designated agents at mutually convenient times and places with respect to wages, rates of pay, hours, and other terms and conditions of employment, and if agreement is reached, embody it in a signed contract.

WE WILL offer full reinstatement to all strikers who went on strike on August 1, 1977, or thereafter joined such strike, within 5 days after each such striker makes an unconditional offer to return to work, and WE WILL make any such striker whole for losses of pay and benefits suffered by reason of your failure or refusal to reinstate such striker within 5 days of unconditional application, as required by the Order of the National Labor Relations Board.

LATROBE STEEL COMPANY