Axelson, Inc., subsidiary of U.S. Industries, Inc. *and* International Association of Machinists and Aerospace Workers, AFL–CIO. Case 16–CA–6423

January 25, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

On May 11, 1977, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, General Counsel and Respondent filed exceptions and supporting briefs; Respondent also filed a brief in response to the General Counsel's brief.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The complaint alleges that during the 1976 contract negotiations between Respondent and the International Association of Machinists and Aerospace Workers, AFL–CIO, hereafter the Union, Respondent refused the Union's request to bargain collectively with respect to wages, hours, and other terms and conditions of employment and "unilaterally changed working conditions by refusing to pay employee members of the Union negotiating committee for time spent in contract negotiations with Respondent" in violation of Section 8(a)(5) and (1) of the Act. The Administrative Law Judge found that the remuneration of employee members of the union negotiating committee was a nonmandatory subject of bargaining and therefore Respondent did not violate the Act by unilaterally refusing to make such payments, and he dismissed the complaint in its entirety. We disagree. We are of the view that the payment of wages for time spent in negotiations constitutes a mandatory subject of bargaining.

As set forth more fully in the Administrative Law Judge's Decision, the Union and Respondent have been party to a successive number of collective-bargaining agreements covering Respondent's production and maintenance employees. Over the years, the Union has been represented in contract negotiations by a shop committee composed of unit employees. In the past the members of the negotiating shop committee have been paid their regular hourly wages for time spent in bargaining sessions that otherwise would have been spent in production.[1]

The dispute involved herein arose in January 1976 when negotiations for the 1976–78 collective-bargaining agreement began. Early in the negotiations the shop committee, which was comprised of four employees, asked that one of its members, Harvey Cross, be reassigned from the night to the day shift so that Cross could receive production pay for negotiating time.[2] When Respondent's spokesman, Drew West, questioned the request, the shop committee explained that it would be inequitable to pay the other shop committee members who were on the first shift and had been excused from production to negotiate while not paying Cross who was on the second shift and was not scheduled to work during negotiation time. The shop committee further pointed out that during the 1974 negotiations Respondent had accommodated a second-shift negotiator by reassigning him to the first shift for the duration of the negotiations. West indicated he would confer with his superiors.

At the next negotiation session, West informed the shop committee that none of the committee members would receive pay for the 1976 negotiations but that Respondent was willing to meet for negotiations during nonwork time so that none of the employees would lose production wages.[3] The shop committee claimed that Respondent's past practice over the years and the then applicable 1974–76 contract entitled them to production pay during negotiations. The relevant provisions of the contract read:

> 6.4 A shop committeeman will, after notice and permission from his immediate supervisor, be allowed to leave his work, if necessary for the following reasons:
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> * * * * *
>
> (D) To attend negotiation sessions with Company representatives for the purpose of renewing this agreement.
>
> * * * * *
>
> 6.5 If it becomes necessary for a . . . committeeman to leave his work, after receiving permission from his immediate supervisor in accordance with Section . . . 6.4 of this article, he must clock-out

[1] The record establishes the Respondent paid shop committee members for the negotiations of the 1963, 1965, 1967, 1971, and 1974 contracts and for the 1973 midterm negotiations. The record is unclear, however, whether the negotiators were paid in 1969.

[2] Cross had been present at the earlier negotiation sessions.

[3] The record is unclear when the 1974–76 contract expired; however, it is uncontested that that contract was still current on January 21, 1976, when Respondent unilaterally refused to pay production wages lost due to negotiations.

on his job card and, on his return, clock-in on his job card.

* * * * *

(B) The . . . shop committeeman will receive pay for time so spent when authorized by his supervisor prior to, during, and after normal working hours at his regular straight time hourly rate except on scheduled overtime.

Respondent continued to refuse to pay the negotiators' loss production wages, whereupon the Union filed the unfair labor practice charges involved herein. The Union agreed to reimburse the shop committee for lost wages pending a determination of the unfair labor practices, and the negotiations resumed. On March 25, 1976, the parties reached agreement and signed the current collective-bargaining agreement.

We agree with the Administrative Law Judge that the touchstone issue involved herein is whether the remuneration of employee members of the shop committee for time spent in negotiations is or is not a mandatory subject of bargaining. We have defined mandatory subjects of bargaining as:

> those comprised in the phrase "wages, hours, and other terms and conditions of employment" as set forth in Section 8(d) of the Act. While the language is broad, parameters have been established, although not quantified. The touchstone is whether or not the proposed clause sets a term or condition of employment or regulates the relation between the employer and its employees.[4]

The Administrative Law Judge found that the remuneration of "employees for performing union functions goes more to the relationship between union and employer than to that between employee and employer," and that, therefore, the payments in question did not involve a mandatory subject of bargaining.[5] The Administrative Law Judge was in error. Such a matter concerns the relations between an employer and its employees[6] in that it is related to the representation of the members of the bargaining unit in negotiations with an employer over terms and conditions of employment.

We have previously found that the performance of similar union functions can vitally affect an employee's relationship with his or her employer. For instance, under circumstances similar to the instant case, we have found that wages paid to employees during the presentation of grievances constitutes a mandatory subject of bargaining and that the unilateral abrogation of such a contractual term[7] or past practice[8] violates Section 8(a)(5) and (1) of the Act. Similarly, we have found that union-related functions such as superseniority accorded to union representatives, union security, and checkoff provisions are also mandatory subjects of bargaining.[9] These union-related matters inure to the benefit of all of the members of the bargaining unit by contributing to more effective collective-bargaining representation and thus "vitally affect" the relations between an employer and employee.

We see no distinction between an employee's involvement in contract negotiations and involvement in the presentation of grievances. In one situation an employee is implementing a contractual term or condition of employment and in the other situation an employee is attempting to obtain or improve contractual terms or conditions of employment. In both situations the activity is for the benefit of all of the members of the bargaining unit. Accordingly, we find that the payment of wages to employees negotiating a collective-bargaining agreement "constitutes an aspect of a relationship between the employer and employees"[10] and is, therefore, a mandatory subject of bargaining.

Since the Administrative Law Judge found that the remuneration of employee negotiators' lost production was a nonmandatory subject of bargaining, he found it unnecessary to determine if, in fact, Respondent unilaterally ceased remunerating employee negotiators for lost wages and thereafter refused to bargain collectively regarding that matter. Accordingly, we must now consider whether, in fact, Respondent engaged in such activity in violation of Section 8(a)(5) and (1).

As indicated previously, on January 21, 1976, Respondent refused to pay employee negotiators for lost production wages and thereafter refused to bargain collectively with regard to that matter. Respondent contends that neither the contract nor

[4] *International Union of Operating Engineers, Local Union No. 12 (Associated General Contractors of America, Inc.)*, 187 NLRB 430, 432 (1970).

[5] See *N.L.R.B.* v. *Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 350 (1958).

[6] The Supreme Court has pointed out that a matter that "vitally affects" the relations between an employer and employees is a mandatory subject of bargaining, whereas a matter that bears a "speculative and insubstantial" impact on the relations between an employer and employees is a permissive subject of bargaining. *Allied Chemical & Alkali Workers of America, Local Union No. 1* v. *Pittsburgh Plate Glass Co., Chemical Division, et al.*, 404 U.S. 157, 178–180 (1971).

[7] *American Ship Building Company*, 226 NLRB 788 (1976). *Bethlehem Steel Company (Shipbuilding Division)*, 133 NLRB 1347 (1961); Supplemental Decision 136 NLRB 1500 (1962), enforcement denied and case remanded *sub nom. Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO* v. *N.L.R.B.*, 320 F.2d 615 (C.A. 3, 1963), cert. denied 375 U.S. 984 (1964); Second Supplemental Decision 147 NLRB 977 (1964).

[8] *Ibid.; The Hilton-Davis Chemical Company, Division of Sterling Drug, Inc.*, 185 NLRB 241, 242–243 (1970).

[9] See, for example, *Bethlehem Steel Co., supra*, fn. 7.

[10] *Allied Chemical & Alkali Workers of America, Local Union No. 1* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157, 178 (1971).

past practice requires it to pay employee negotiators for lost production wages. Respondent claims that the relevant provisions of the collective-bargaining agreement (art. 6.4 and 6.5, cited previously) were only intended to cover the payment of production time spent in handling grievances and were not intended to cover time spent in negotiations.

Our reading of the record and these contract articles does not support this contention. Article 6.5 (B) specifies that shop committeemen "will receive pay" for authorized excused time, and article 6.4 (D) clearly contemplates that shop committeemen will be "allowed" to attend negotiating sessions.[11] In the face of the plain meaning of these contractual terms, we can find no language in the contract or viable evidence in the record that supports Respondent's contention that the shop committeemen would only be paid for grievance handling.[12] The plain meaning of these contract articles clearly contemplates that shop committeemen will be paid for time spent in negotiations. We also note that previous contracts between the parties contained similar language and that in the past shop committeemen had received compensation for time spent in negotiations. Accordingly, we find that the payment of production wages lost during contract negotiations was a provision of the then current contract and had also become an established past practice.

In conclusion we find that the payment to the employees of production wages lost during negotiations is a mandatory subject of bargaining and that Respondent unilaterally ceased making such payments in violation of the then current contract and established past practice and refused to bargain with regard to that matter and thereby violated Section 8(a)(5) and (1).

THE REMEDY

Having found that Respondent has violated Section 8(a)(5) and (1) of the Act by unlawfully refusing to bargain with the Union, we shall order that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act. As we have found that Respondent violated Section 8(a)(5) and (1) by unilaterally changing the wages, hours, or working conditions of its employees, as established by contract and past practice, by refusing to pay the wages of employee members of the negotiating committee for time spent in bargaining sessions that would otherwise have been spent in production, we direct that Respondent pay the Union for all money spent in reimbursing employee members of the negotiating committee for production wages lost during negotiations by its refusal to do so, and pay any employee members of the negotiating committee for production wages lost during the negotiations that have not already been reimbursed by the Union: The reimbursement for the lost wages plus interest will be determined in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[13]

CONCLUSIONS OF LAW

1. Respondent is an Employer engaged in commerce within the meaning of Section 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 is the exclusive representative of all employees in the following appropriate unit within the meaning of Section 9(a) of the Act:

> All production and maintenance hourly rated employees at the Respondent's Longview, Texas, plants, excluding employees classified as experimental, guard, office, janitorial, and shop office employees, and all clerical, administrative, and technical office employees, and supervisors as defined in the Act.

4. By refusing, since on or about January 21, 1976, to bargain collectively with the Union as the exclusive representative of its employees in the aforesaid bargaining unit, by unilaterally refusing to pay the wages of employee members of the negotiating committee for time spent in bargaining sessions that would otherwise have been spent in production, and by refusing to bargain collectively with regard to that matter, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Axelson, Inc., subsidiary of U.S. Industries, Inc., Longview, Texas, its officers, agents, successors, and assigns, shall:

[11] It is not disputed that the shop committeemen in fact received permission to attend the negotiation sessions.

[12] The unsupported testimony of Respondent's witness, Drew West, that art. 6.4 and 6.5 only referred to grievance handling is unconvincing in the fact of the plain meaning of the contractual terms and Respondent's past practice.

[13] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

1. Cease and desist from:

(a) Refusing to bargain collectively with International Association of Machinists and Aerospace Workers, AFL–CIO, as the exclusive bargaining representative of its employees in the following appropriate unit by unilaterally changing the wages, hours, and working conditions of its employees as established by contract or past practices, by refusing to pay the wages of employee members of the negotiating committee for time spent in bargaining sessions that would otherwise would have been spent in production:

> All production and maintenance hourly rated employees at the Respondent's Longview, Texas, plants, excluding employees classified as experimental, guard, office, janitorial, and shop office employees, and all clerical, administrative, and technical office employees, and supervisors as defined in the Act.

(b) Refusing, upon request, to bargain with regard to pay for employee union members of the negotiating committee for time spent in bargaining session that otherwise would have been spent in production.

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

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

(a) Upon request bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to the payment to employee members of the negotiating committee for time spent in bargaining sessions that otherwise would have been spent in production.

(b) Reimburse the Union for all money, plus interest, spent in reimbursing employee members of the negotiating committee the production wages lost during negotiations by Respondent's unlawful refusal to do so, and pay any employee members of the negotiating committee for production wages lost during negotiations, plus interest, that have not already been reimbursed by the Union.

(c) Post at its facilities in Longview, Texas, copies of the attached notice marked "Appendix."[14] Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[14] 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."

APPENDIX

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

WE WILL NOT refuse to bargain collectively with the International Association of Machinists and Aerospace Workers, AFL–CIO, as the exclusive representative of all our employees in the bargaining unit described below with respect to pay for employee members of the negotiating committee for time spent in bargaining sessions which otherwise would have been spent in production.

> All production and maintenance hourly rated employees at Respondent's Longview, Texas, plants, excluding employees classified as experimental, guard, office, janitorial, and shop office employees, and all clerical, administrative, and technical office employees, and supervisors as defined in the Act.

WE WILL NOT unilaterally change the wages, hours, or working conditions of our employees as established by contract or past practices by refusing to pay the wages of employee members of the negotiating committee for time spent in bargaining sessions that would otherwise have been spent in production.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the Act.

WE WILL pay the Union for all money, plus interest spent in reimbursing employee members of the negotiating committee for production wages lost during negotiations by our refusal to do so.

WE WILL pay employee members of the negotiating committee for production wages lost during negotiations, plus interest that have not already been reimbursed by the Union.

WE WILL, upon request, bargain collectively with the above-named Union, as the exclusive

representative of all our employees in the aforesaid unit with respect to pay for employee members of the negotiating committee for time spent in bargaining sessions that would otherwise have been spent in production.

AXELSON, INC.,
SUBSIDIARY OF U. S.
INDUSTRIES, INC.

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This case was heard before me in Tyler, Texas, on March 24, 1977. The charge was filed January 30, 1976, by International Association of Machinists and Aerospace Workers, AFL–CIO (Union). The complaint issued December 29, 1976, alleging that Axelson, Inc., subsidiary of U.S. Industries, Inc., (Respondent) had violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended Act.

The parties were permitted at the hearing to introduce relevant evidence, examine and cross-examine witnesses, and argue orally. Posttrial briefs were filed for the General Counsel and for Respondent.

I. JURISDICTION

Respondent is a Delaware corporation engaged in the manufacture of oilfield equipment in Longview, Texas. It annually ships goods valued in excess of $50,000 from Texas directly to customers in other States.

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

II. LABOR ORGANIZATION

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

III. ISSUE

The complaint alleges that, during 1976 contract negotiations between Respondent and the Union, Respondent "unilaterally changed working conditions by refusing to pay employee members of the Union negotiating committee for time spent in contract negotiations," thereby violating Section 8(a)(5) and (1).

The answer denies any wrongdoing.

IV. THE ALLEGED UNFAIR LABOR PRACTICE

A. *Facts*

Since 1959, Respondent and the Union have been party to a succession of bargaining contracts covering the production and maintenance employees at Respondent's plants in and around Longview.[1] The current contract became effective on March 25, 1976, and runs until 1979. The Union has been represented in the negotiation of these contracts by a so-called shop committee comprised of bargaining unit employees. The shop committee has consisted of four people in recent years.

The dispute in question arose during the negotiation of the current contract. The evidence is uncontroverted that, in all negotiations from 1963 through 1974 with the possible exception of 1969, the members of the shop committee were paid by Respondent at their regular hourly rates for time spent in bargaining sessions that otherwise would have been spent in production. This included negotiations in 1963, 1965, 1967, 1971, and 1974, plus midterm pension negotiations in 1973. The record is silent concerning the practice in 1969 negotiations.

On January 14, 1976, during the first bargaining session leading to the current contract, the shop committee asked that one of its members, Harvey Cross, be reassigned from the night to the day shift for the duration of bargaining. When Drew West, Respondent's personnel manager and bargaining spokesman, asked why, it was explained that it would be inequitable to require Cross to work a full production shift to maintain his income level during negotiations while the day-shift committee members were excused from production to participate in negotiations without any income detriment. A similar shift change had been made during 1974 negotiations on behalf of one of the committee members, C. C. McKee. West replied that he was uncertain if any of the committee members would be paid for time spent in 1976 negotiations, but that he would confer with his superior, Jacob Harris, vice president of operations, and let the committee know.

At the next bargaining session, on January 21, West reported to the shop committee that Respondent would not pay the committee members for time in negotiations in 1976. West offered the alternative of negotiating on nonwork time, such as weekends, so that the members would suffer no economic detriment. The committee rejected that, citing the past practice and certain provisions of the 1974–76 contract.

Those provisions read:

> 6.4 A shop committeeman will, after notice and permission from his immediate supervisor, be allowed to leave his work, if necessary, for the following reasons:
>
> * * * * *
>
> (D) To attend negotiation sessions with Company representatives for the purpose of renewing this agreement.
>
> * * * * *
>
> 6.5 If it becomes necessary for a . . . committeeman to leave his work, after receiving permission from his immediate supervisor in accordance with Section . . . 6.4 of this article, he must clock out on his job card and, on his return, clock in on his job card.

[1] The complaint alleges, the answer admits, and it is found that this is an appropriate unit for purposes of the Act: All production and maintenance hourly rated employees at Respondent's Longview, Texas, plants, excluding employees classified as experimental, guard, office, janitorial, and shop office employees, and all clerical, administrative, and technical office employees, and supervisors as defined in the Act.

* * * * *

> (B) The . . . shop committeeman will receive pay for time so spent when authorized by his supervisor prior to, during, and after normal working hours at his regular straight time hourly rate except on scheduled overtime.

Article 6.4(D) had carried over from five preceding contracts verbatim. Article 6.5(B) in the contracts preceding the 1974–76 contract had read:

> (B) The . . . shop committeeman will receive pay for time so spent during his normal working hours only and only at his regular, straight time rate of pay . . . .

West testified that article 6.5(B) was amended during 1974 negotiations at the Union's request, and is intended to cover only grievance-handling, not contract negotiations. The General Counsel and the Union dispute that interpretation.

On January 27, 1976, the Union instituted action under the grievance-arbitration procedure of the 1974–76 contract, contending that Respondent's refusal to pay violated article 6.5(B); and, on January 30, it filed the charge herein. Disposition of the charge was deferred under the NLRB's *Collyer* doctrine[2] pending the outcome of the grievance proceeding. The charge was later reactivated when the grievance proceeding failed to reach the merits of the dispute.

Negotiations meanwhile continued unabated until the current contract was reached in March. The Union reimbursed the members of the shop committee for production wages lost during negotiations in the face of Respondent's refusal to do so.[3]

B. *Analysis*

In *Allied Chemical & Alkali Workers of America, Local Union No. 1* v. *Pittsburgh Plate Glass Co., Chemical Division,* 404 U.S. 157 (1971), the Supreme Court dealt with whether an employer's unilateral mid-term modification of a contract provision relating to a nonmandatory subject of bargaining—in that instance, pension benefits for retired employees—is an unfair labor practice. The Court stated, at 185–186:

> [W]e hold that . . . a "modification" is a prohibited unfair labor practice only when it changes a term that is a mandatory rather than a permissive subject of bargaining.
>
> [J]ust as §8(d) defines the obligation to bargain to be with respect to mandatory terms alone, so it prescribes the duty to maintain only mandatory terms without unilateral modification for the duration of the collective-bargaining agreement.

The Court continued, at 188:

> The remedy for a unilateral mid-term modification to a permissive term lies in an action for breach of contract, . . . not in an unfair-labor-practice proceeding.

The bedrock issue in the present case, then, is whether the matter of remunerating members of the shop committee for time in negotiations is or is not a mandatory subject of bargaining. If not, the case just cited precludes a finding of violation, based upon Respondent's refusal to pay during the 1976 negotiations, assuming but not deciding all other questions of fact and law adversely to Respondent.[4]

As defined by the Board in *International Union of Operating Engineers, Local Union No. 12* (Associated General Contractors of America, Inc.) 187 NLRB 430, 432 (1970), mandatory subjects of bargaining

> . . . are those comprised in the phrase "wages, hours, and other terms and conditions of employment" as set forth in Section 8(d) of the Act. While the language is broad, parameters have been established, although not quantified. *The touchstone is whether or not the proposed clause sets a term or condition of employment or regulates the relation between the employer and its employees.* [Emphasis supplied.]

Or, again adverting to *Pittsburgh Plate Glass Co., supra* at 179, the test in the present case is whether the matter of paying employees for performing union, as distinct from production, functions "vitally affects" the terms and conditions of employment of the bargaining unit employees. The Supreme Court previously had concluded, in *N.L.R.B.* v. *Wooster Division of Borg-Warner Corp.,* 356 U.S. 342, 350 (1958), that matters dealing "only with relations between the employees and their unions" do not qualify as mandatory; and the Board, adopting without qualification the decision and reasoning of an administrative law judge, has since reached the same conclusion regarding matters that "concern themselves with the relationship between union and employer," as opposed to employee and employer. *Hall Tank Company,* 214 NLRB 995, 1000 (1974).

There seemingly are no cases on the precise point at hand. It nevertheless is concluded that the matter of remunerating employees for performing union functions goes more to the relationship between union and employer than to that between employee and employer; and, far from having a vital affect on the *employment conditions* of the unit employees, bears a "speculative and insubstantial" impact at best. *Pittsburgh Plate Glass Co., supra* at 180. It follows that the payments in question did not involve a mandatory subject of bargaining.

This conclusion is not without ample policy justification. It would be in fundamental conflict with the arm's length if not adversary design of bargaining relationships under the Act to permit unions to condition entry into contracts upon employer willingness to contribute financial support to the unions in the form of payments to their negotiators for time spent negotiating. This, however, would be a

[2] *Collyer Insulated Wire, a Gulf and Western Systems Co.,* 192 NLRB 837 (1971).

[3] Transcript p. 26, l. 1, is corrected to read "1976" instead of "1972."

[4] Most notably, that art. 6.5(B) of the 1974–76 contract contemplated such remuneration.

necessary implication should such matters be deemed mandatory subjects of bargaining.[5]

The payment of the Union's negotiators not being a mandatory subject of bargaining, Respondent did not violate the Act by refusing to make such payments in 1976.

[5] This is not to suggest that such payments necessarily exceed the limits of "allowable cooperation" under the Act. *N.L.R.B.* v. *The Summers Fertilizer Company, et al.*, 251 F.2d 514, 518 (C.A. 1, 1958).

CONCLUSION OF LAW

Respondent did not violate the Act as alleged.

[Recommended Order for dismissal omitted from publication.]