Federal-Mogul Corporation, Bower Roller Bearing Division *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Case 7–CA–9092

March 4, 1974

DECISION AND ORDER

On November 9, 1972, Administrative Law Judge Maurice S. Bush issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in answer to Respondent's exceptions.[1]

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,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

The facts, as more fully set forth in that Decision, are as follows:

The Charging Party, hereinafter referred to as UAW or Union, has represented a unit composed of about 2,000 of Respondent's production and maintenance employees since 1941. Until the events occurring herein, the approximately 140 setup men who prepare and check machines for other employees to operate were never included in the production and maintenance unit. In fact, they were specifically excluded from the current collective-bargaining agreement between Respondent and the Union.

On April 29, 1971, an election was conducted among the setup men in which they voted to be represented for purposes of collective bargaining by the UAW and so, according to the Notice of Election, indicated "their desire to be included in the existing production and maintenance unit currently represented by" the UAW.

As a result of the election, the Regional Director for Region 7 issued an amended certification with an effective date of May 7, 1971, which certified that the UAW "may bargain for the employees in the above-named category as part of the group of employees which it currently represents." The Administrative Law Judge found, and we agree, that the result of the revised certification was to make the setup men part of the preexisting production and maintenance unit.

On May 12, 1971, Respondent's manager of industrial relations informed the Union that Respondent considered the setup men to be covered by the current production and maintenance unit agreement and that, effective June 1, 1971, Respondent would take action to implement the agreement with respect to the Globed employees. Despite the Union's objections Respondent on June 1 proceeded to apply the agreement to the setup men. As a result of Respondent's unilateral action the setup men lost certain benefits they had enjoyed prior to the certification and began receiving the same contractual benefits as the production and maintenance employees.

After Respondent implemented the contract, the parties conducted a total of five bargaining sessions between June 29 and September 15, 1971, to discuss the setup men. At all the meetings the Union continued to insist that the preelection benefits be restored to setup men, while Respondent consistently contended that the setup men were automatically covered by the existing production and maintenance contract and that their benefits were derived from it, exclusively. After the fifth and final meeting, at which Respondent declared it would agree only to those union proposals which were included in the existing contract, the Union filed unfair labor practice charges. A complaint issued on May 5, 1972, alleging that Respondent violated Section 8(a)(5) and (1) of the Act by (1) its unilateral announcement of the proposed change in benefits, (2) the unilateral implementation of the production and maintenance contract with respect to the setup men, and (3) bargaining in bad faith by maintaining a fixed and unalterable position in its subsequent negotiating sessions with the Union.

Although Respondent has admitted the unilateral announcement of and subsequent changes in the setup men's benefit structure, it denies having committed any violation of the Act, on the grounds that as a matter of law it had an obligation or at least a right to apply the terms of the production and maintenance agreement to the setup men. We do not agree.

In the instant case, the outstanding collective-bargaining agreement was executed March 1, 1971, to be effective through February 28, 1974. Though in some industries parties commonly provide for coverage of "after-acquired" plants, stores, or groups,[3] that was not the case here. On the contrary, as previously indicated, the applicable, current contract specifically excluded setup men, and no "bargain" can be said to have been consciously made by the parties for them. When the Union became certified

[1] Respondent's request for oral argument is hereby denied, since the record, exceptions, and briefs adequately present the positions of the parties

[2] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc*, 91 NLRB 544, enfd. 188 F.2d 362 (C.A 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] See, *e g. St Louis Coca Cola Bottling Company*, 188 NLRB 658, *Retail Clerks Union, Local 870, Retail Clerks International Association, AFL–CIO*, 192 NLRB 240, *Smith's Management Corporation d/b/a Frazier's Market*, 197 NLRB 1156

as their newly designated exclusive agent, the Administrative Law Judge found—and we agree—the Respondent became obligated to engage in good-faith bargaining as to the appropriate contractual terms to be applied to this new addition to the previous unit.

We do not perceive either legal or practical justification for permitting either party to escape its normal bargaining obligation upon the theory that this newly added group must somehow be automatically bound to terms of a contract which, by its very terms, excluded them. Such a determination would appear to be at odds with the Supreme Court's holding in *H. K. Porter Co., Inc.* v. *N.L.R.B.*[4] In *H. K. Porter,* the Supreme Court noted that "while the Board does have power . . . to require employers and employees to negotiate, it is without power to compel a company or a union to agree to any substantive contractual provision of a collective-bargaining agreement."[5] Were the Board to require unilateral application of the existing contract to the setup men we would, in effect, be compelling both parties to agree to specific contractual provisions in clear violation of the *H. K. Porter* doctrine. We understand the teaching of that case to be that we have no statutory authority here to force on these employees and their Union, as well as the Employer, contractual responsibilities which neither party has ever had the opportunity to negotiate.

Our decision promotes bargaining stability, since a major consequence of the opposite view would be that in contract negotiations both parties would be held to be making agreements for groups of persons whose identity and number would be totally unknown to, and unpredictable by, either party. Costs of wages and benefits under negotiation would thus become equally unpredictable, and informed negotiation of such benefits as health and pension plans would become well-nigh impossible. The unpredictable scope of the number, age groups, and other factors of coverage which are essential to develop cost data as to such items would leave negotiators in the dark as to how to make any reliable estimates of future costs. Bargaining under such conditions would be seriously handicapped.

This points to another element of unfairness inherent in Respondent's position. Though in this case it is the Employer which seeks to have the Globed-in employees automatically covered by the existing contract, if we were to adopt Respondent's —and our dissenting colleagues'—view, the same result would of course have to obtain in any case in which a union were to take the same position. That would create the only situation in law known to us in which individuals theretofore not a party to an agreement could, by their own unilateral action, vote themselves a share of the bargain which the other parties had agreed to between and for themselves.

Instances of this unfairness are not difficult to envisage. For example, an employer may have agreed with a union to a 2-week, paid sick leave benefit for all employees in a unit, based on his awareness that those employees were seldom sick in the past and would not be likely to abuse the benefit. Thereafter, a fringe group of employees, not previously included in the unit and with a history of substantial, theretofore unpaid absenteeism, decide to Globe themselves into the existing unit and to insist that the special provision for sick leave be immediately applicable to them, despite the employer's concern that such a benefit for the newly added group was never within his contemplation, and would be extraordinarily expensive when applied to them. Clearly, the employer would be entitled to a negotiated, rather than a unilaterally imposed, agreement for these newly added employees, and to an opportunity to achieve a *quid pro quo* for the sick leave benefit as it applies to the new group. A similar situation would prevail if a group of older employees, perhaps in a previously excluded plant clerical classification, were to vote themselves into a unit having a contract providing a life insurance or pension program which, when negotiated, was intended and possibly funded to cover only the then-included group of younger employees.

We believe the far better—and fairer—result is to adhere to the language of the amended certification, that the Union "may bargain" for the setup men "as part of the group of employees which it currently represents." To be sure, in 1974, when it comes time to negotiate a new contract, the Union and the Employer must bargain for a single contract to cover the entire unit, including the setup men. In the meantime, the Union must, of course, fairly represent all employees in the unit, including both setup men and those previously included in the unit. But we fail to perceive anything divisive, or even unusual, about requiring interim bargaining for this new group. If an agreement is reached, it will in all likelihood be an addendum to the existing production and maintenance contract. Insofar as it may contain terms peculiarly applicable to setup men, that seems to us a practical, acceptable, and not a divisive, result. Single contracts often have separate or special provisions for separate classifications, departments, or shifts, depending upon the extent to which the bargaining has developed agreement upon whether all-inclusive provisions are adequate—or

[4] 397 U S 99 (1970).
[5] *Id* at 102

inadequate—to deal with the problems of each such group. We believe this is what is needed to be bargained here, and that such bargaining is to be preferred, both legally and practically, over automatically fitting the new group, sans bargaining, into a fixed mold no matter how badly that mold may fit either the employees' or the employer's circumstances, needs, and desires at the time.[6]

The fairness of our election processes would also be adversely affected by the logical consequences of the views espoused by the dissent. While in this case only one union is involved, in other *Globe* situations there are, with some frequency, two unions, one of which seeks a separate unit while the other is an incumbent which has a collective-bargaining agreement covering a larger existing unit. In such cases the effect of the views expressed in the dissent would be to interfere with the employees' free choice by putting the competing unions in disparate positions, despite the fact that neither union consciously reached a bargain with the employer for the new group. If the employees were to vote for the incumbent they would know in advance the precise guarantees and limitations on their benefits and obligations, since the dissenters would by fiat deem the new group automatically covered by the existing contract; on the other hand, if they were to vote for the other union they would have no such assurances but, instead, would have whatever advantages or disadvantages would inhere in the bargaining which only a vote for the nonincumbent union would allow to occur. It is not for the Board to weight the scales in whatever way such disparate rules might affect any given election.

The dissent relies on *Lubbock Typographical Union No. 888, International Typographical Union, AFL–CIO (The Avalanche-Journal Publishing Company),* 196 NLRB 177. We believe that case to be distinguishable. The respondent union there was found not guilty of an unlawful refusal to bargain when it insisted on its position that the contract applicable to other employees in the unit should be applied to the newly added group of proofreaders, while at the same time offering to bargain about any amendments which the company might think appropriate for this special group. The company, however, took an equally adamant position that a wholly new and different contract be negotiated, but failed to make any concrete proposals. On those facts, the Trial Examiner recommended that the charges be dismissed and the Board adopted his recommendation. There, as here, the union sought to bargain for the Globed employees as part of the existing unit, but offered to negotiate a supplemental agreement with special terms covering them. In the instant case, however, the Respondent changed the terms and conditions of the setup men by unilaterally applying the existing production and maintenance contract to them *in toto,* before offering the Union any opportunity to bargain. We are not suggesting that the Respondent here was precluded from asserting, as a bargaining position, that the existing contract ought to apply and inviting, as did the union in *Lubbock,* any suggestions as to what specific modifications therein should be made. But until negotiations can be had as to the respective positions of the parties, Board precedent requires that no unilateral changes be made in the wages or benefits of the newly represented employees.

Nor do we suggest that either party may adamantly insist to impasse upon a totally separate agreement so designed as to effectively destroy the basic oneness of the unit which we have found appropriate. It is in that light that the Trial Examiner in *Lubbock* questioned, but did not then decide, whether the "Company thereby, in effect, was proposing to sever the proofreaders from the composing room unit, and by a negotiating tactic annul the Board's Decision and Certification . . . ."

Neither do we need to reach that issue here, for the evidence in this regard will not support such a finding. While neither party appears to have qualified as a model of flexibility, it was the Respondent which unlawfully and unilaterally made changes in benefits and which then adamantly insisted, as a matter of *law,* that it did not have to bargain about any of those items. The Union's position, while an insistent one, was not tantamount to a rejection of a contract which would encompass all employees in a single unit; nor can its insistence upon discussing the retention of previously enjoyed benefits be deemed a

[6] Our colleagues concede that, as to some "matters not covered by the existing contract and which were of unique concern to the setup men," the parties have a duty to bargain. We think it clear that the setup men's compensation, here in issue, falls into that category. The setup men's own compensation is, of course, unique to them, and the contract is unquestionably silent on this matter. As we have noted, the contract is silent as to *all* matters affecting setup men, since at the time of execution of the agreement setup men were specifically excluded from its coverage.

Our colleagues suggest that Respondent may have met whatever bargaining obligation it had. We cannot agree. Respondent advised the Union on May 12, 1971, that, *inter alia,* it proposed to convert setup men to an hourly basis and, when the Union replied on May 18 that bargaining was first required, Respondent on May 25 informed the Union that it found it "administratively necessary to proceed to implement immediately" that and other changes. The obligation to bargain collectively is not normally satisfied by an employer's making changes first and then bargaining about them later. Moreover, we are unable to divine which of the changes made were, in our colleagues' words, of "unique concern" to setup men, and thus bargainable. Respondent made changes in setup men's vacation benefits, pension and health insurance, manner of recording work time, sick leave, opportunity to participate in stock investment, *et cetera.* We would, as indicated, leave to collective bargaining the applicability of existing contractural provisions to setup men.

tactic designed to annual the Board's certification by destroying the integrity of the single unit.

Under these circumstances and for the above reasons, we, like the Administrative Law Judge, find that Respondent violated its obligations under Section 8(a)(5) of the Act.

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 Respondent, Federal-Mogul Corporation, Bower Roller Bearing Division, Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

MEMBERS KENNEDY and PENELLO, dissenting:

We dissent from the majority's finding that Respondent violated Section 8(a)(5) of the Act by applying the terms of the existing contract to setup men who voted in a mid-term election to join the production and maintenance unit, and by simultaneously withdrawing those preelection benefits formerly enjoyed by the setup men which were inconsistent with the contract. In our view, when a union, as a result of an *Armour-Globe* election, is certified to represent certain employees "as part of" an existing bargaining unit for which the union has already negotiated a contract, the provisions of that contract apply automatically and equally to all individuals in the unit, including those who are newly included.

For over 30 years, the Union (hereafter Union or UAW) has been the certified representative of Respondent's production and maintenance employees employed at Respondent's two Detroit plants. During that time, successive collective-bargaining agreements have been negotiated in the production and maintenance unit, the current agreement encompassing the period from March 1, 1971, through February 28, 1974.

On April 29, 1971, an election was conducted among Respondent's setup men in accordance with the Board's *Armour-Globe* election procedures[7] to determine whether they wished to abandon their nonunion status in favor of UAW representation. A majority of the setup men voted in favor of such representation thereby indicating, according to the Board's Notice of Election, a desire "to be included in the existing production and maintenance unit . . . ."

As a result of the election, the Board thereafter issued a Certification of Results which certified that the Union "may bargain" for the setup men "as part of the group of employees which it currently represents" (i.e., the production and maintenance employees). Thereafter, Respondent informed the Union that as a result of the Board's action, it deemed the setup men to be "covered exclusively by the existing Labor Agreement with respect to their wages, hours, rates of pay and other conditions of employment." Accordingly, Respondent advised that it would implement the contract terms with respect to the setup men as of a certain date, subject to postimplementation bargaining on matters unique to such employees.

The Union disagreed with Respondent's position, contending that the setup men were entitled to "fresh bargaining" with regard to all of their working conditions, and that until such time as complete agreement could be reached they were entitled to a continuation of their preelection benefits.

On June 1, 1971, Respondent applied the existing contract to the setup men with the result that certain benefits which they had formerly enjoyed were replaced by new benefits contained in the contract. Five postimplementation bargaining sessions failed to resolve the deadlock created by Union insistence on the one hand that preelection benefits be restored and Respondent's insistence, on the other hand, that the setup men were automatically covered by the existing contract and their benefits derived exclusively therefrom. Following adjournment of the fifth meeting without an agreement, the Union filed the instant charges. We cannot agree that Respondent's conduct violated Section 8(a)(5) of the Act.

In the April *Armour-Globe* election, a majority of Respondent's setup men elected to abandon more than 30 years of unrepresented status in favor of union representation. Their vote, however, reflected more than a desire for union representation in general; it reflected, in addition, a desire for representation by a specific union in a specific preexisting bargaining unit. These twin desires were and are clearly preserved in the Board's Certification of Results issued after the election wherein the UAW is certified to represent the setup men "as part of" the existing production and maintenance unit. UAW representation of the production and maintenance employees, in turn, is reflected in the benefits and working conditions which it has negotiated and incorporated into the production and maintenance contracts. It follows, therefore, that if the setup men are to be represented "as part of" the production and maintenance employees, their benefits and working

[7] *Globe Machine & Stamping Co*, 3 NLRB 294, *Armour and Company*, 119 NLRB 623; *NLRB Field Manual*, sec 11090 2 c(1)

conditions should likewise be derived exclusively from the production and maintenance contracts.

The majority argues that such a result would contravene the dictates of the U.S. Supreme Court, as enunciated in *H. K. Porter Co., Inc.* v. *N.L.R.B.*, 397 U.S. 99, because the effect would be to compel "both parties to agree to specific contractual provisions. . . ." Such an argument fails to take into account the fundamental differences between a regular Board election and an *Armour-Globe* election, and the different bargaining obligations which flow therefrom.

The purpose of a Board election conducted pursuant to the filing of an RC petition is to determine which union, if any, shall be certified to represent the employees in an appropriate unit. In a pure *Armour-Globe* election such as the one run here, on the other hand, the question of which union will be the certified representative in the preexisting unit has already been determined—it will always be the incumbent union—and the only purpose of the election is to determine whether a fringe group of unrepresented employees desires to share in the representation provided by that incumbent union. *NLRB Field Manual,* Section 11090.2 c(1). Accordingly, when a majority of the voting fringe employees vote in favor of such representation, a Certification of Results rather than a Certification of Representative is issued by the Board.[8] It is evident that a Certification of Representative would be meaningless following an *Armour-Globe* election because the issue at stake is not who the representative shall be, but precisely who shall be represented.

Given the above-described differences between a regular Board election and an *Armour-Globe* election, it must be recognized that different bargaining obligations flow therefrom, and it is on this basis that the *Porter* case must be distinguished. Following a regular election in which the union is victorious, a certification of representative is issued and the employer is thereafter obligated to bargain with that representative in a good-faith effort to reach a collective-bargaining agreement covering the unit employees. Following an *Armour-Globe* election in which the fringe employees vote to join the preexisting unit, on the other hand, the parties have already discharged their duty to bargain, at least with regard to contract provisions which are unitwide in scope and which therefore apply equally to all unit members. With respect to such provisions, the incumbent union and the employer have already bargained in good faith, have already agreed to specific terms, and have already incorporated those terms into an executed contract covering each and every employee in the unit. In short, with regard to these provisions, no duty to bargain remains at the time of the election.

The majority decision requires bargaining for the setup men in a separate and distinct unit and only "when it comes time to negotiate a new contract, the Union and the Employer must bargain for a single contract to cover the entire unit, including the setup men." Thus, the majority would treat the setup men as a separate unit for a period of time and thereafter as a part of the existing bargaining unit. This concept of double certification is not reconcilable with the certification that issued in the election case.[9] If the majority believe that the setup men are not covered by the production and maintenance contract, as required by our certification and as voted by the employees, in future cases the Board should not entertain petitions or conduct *Armour-Globe* elections unless timely under established contract bar rules with respect to the termination date of the production and maintenance contract. We perceive this to be the only way to avoid the majority's concept of double certification.

Under our *Armour-Globe* certification, we believe that the Employer had a limited postelection duty to bargain on matters not covered by the existing contract and which were of unique concern to the setup men. The Employer could lawfully implement the unitwide provisions of the contract with respect to the setup men including changes in preelection benefits in conflict therewith. As to those items which were the unique concern of the setup men, Respondent stood willing to bargain and did, in fact, bargain.

Our position is supported by the Board's recent decision in *Lubbock Typographical Union No. 888, International Typographical Union, AFL–CIO (The Avalanche-Journal Publishing Company),* 196 NLRB 177, wherein Members Fanning and Jenkins joined Member Kennedy in adopting, without comment, a Trial Examiner's decision rejecting arguments similar to those of the Union in the instant case. There, the incumbent union had a collective-bargaining contract covering the employer's composing room employees. The employer's proofreaders voted in a mid-term *Globe* election to be included in the composing room unit and the union, as here, was certified to represent them "as part of" the existing

[8] *NLRB Field Manual, supra.* We note that in the instant case, a certification of representative erroneously issued on May 7, 1971, was withdrawn and replaced 4 days later by a proper certification of results.

[9] Under well-established precedent the Board would have conducted an election in a separate residual unit of setup men if the Union had sought to represent them on that basis. But the Union sought to represent the setup men as a part of the production and maintenance unit. The Union cannot now be heard to complain of the Employer's treating them as a part of the production and maintenance unit.

unit. Following certification, the union insisted that its existing contract automatically covered then newly added proofreaders; the employer, on the other hand, insisted on bargaining and reaching a separate agreement. Thereafter, the employer filed an 8(b)(3) charge. Although the Trial Examiner recommended that the complaint be dismissed on the basis of a factual finding that the company had never actually requested the union to bargain, he nevertheless first discussed[10] the effect of separate bargaining for the Globed employees in the following terms which the panel adopted without comment:

> The Union advanced the position that . . . the proofreaders automatically were covered by the existing composing room contract. . . . The Company . . . insisted that it would negotiate only for a separate and independent agreement covering the proofreaders. This raises the interesting question of whether the Company thereby, in effect, was proposing to sever the proofreaders from the composing room unit, and by a negotiating tactic annul the Board's Decision and Certification . . . which had added the proofreaders to the . . . composing room unit. . . . General Counsel has not been able to explain to my satisfaction how the Union "may bargain for the [proofreaders] as part of the group of employees [composing room] which it currently represents" and yet engage in negotiations for the proofreaders separate and apart from the balance of the unit and enter into a separate and independent contract covering only the proofreaders.

In *Lubbock* the Trial Examiner also noted (in his fn. 8) that none of the parties contended that after the expiration of the then-current agreement it would be possible to insist on negotiating separate successor agreements for the proofreaders and the rest of the composing unit. He concluded that "Such position would violate the certification . . . ." The same rationale is applicable to the instant case.

Accordingly, we find that neither the Respondent's postcertification application of the current production and maintenance contract to the setup employees, nor its simultaneous withdrawal of inconsistent preelection benefits, violated Section 8(a)(5) of the Act.[11] Accordingly, we would dismiss the complaint in its entirety.

[10] *Lubbock, supra,* 179

[11] We are also of the opinion that the record does not support the majority's conclusion that Respondent violated Sec 8(a)(5) by maintaining a fixed and unalterable position throughout the five postimplementation bargaining sessions The Respondent was obligated to bargain with respect to only those subjects unique to the setup men The record discloses that the Respondent met with the Union, considered its proposals, issued counterproposals, and tentatively accepted certain union demands

DECISION

STATEMENT OF THE CASE

MAURICE S. BUSH, Administrative Law Judge: For more than 30 years the above-named Union, together with one of its locals, has been the exclusive bargaining representative of a unit in Respondent's two Detroit plants consisting of all of its production and maintenance employees (P&M) except for certain named excluded groups of employees. As here pertinent, one of the excluded groups were the setup men employed at the two plants. They were unrepresented salaried employees.

On April 29, 1971, a majority of the set-up men in the two plants voted in a Board-conducted election "to be represented for purposes of collective bargaining" by the same Union and thereby, in accordance with the preamble of the "Notice of Election," indicated "their desire to be included in the existing production and maintenance unit, currently represented" by the Union.

As a result of the election, the Board on May 11, 1971, under a corrected certification, certified that the Union "may bargain" for the setup men "as part of the group of employees [P&M] which it currently represents." The agreed result of the corrected certification was to make the setup men part of the preexisting unit of the P&M employees and to certify the Union as the collective-bargaining representative of the setup employees, with the consequence that the Union was now authorized to represent the setup employees in addition to the P&M employees it already represented under the current collective-bargaining agreement.

On June 1, 1971, the Company unilaterally and against the Union's protest extended the subsisting collective-bargaining agreement it had with the Union for its P&M employees, to its setup employees. As a consequence of this unilateral action, the Company divested the setup employees of certain valuable preexisting benefits and placed them under other valuable benefits the P&M employees have under their contract as well as certain disadvantages.

The above action was taken by the Company pursuant to advance notice in a letter dated May 12, 1971, to the Union. In the letter the Respondent notified the Union that as a result of the election, it deemed the setup employees as "now covered exclusively by the existing Labor Agreement [for P&M employees] with respect to their wages, hours, rates of pay and other conditions of employment."

The Union on May 18, 1971, replied that it did not agree with the Company's assumption that the setup men "are now covered" by the P&M contract and put the Company on notice of its position "that arrangements are to be made mutually to bargain collectively" in behalf of the setup employees with respect to their wages, hours, rates of pay, and other conditions of employment. In line with its request for collective bargaining on these matters, the Union further requested the Company to "refrain from the matters of implementation detailed in your letter of May 12 until collective bargaining relative to the jobsetters [setup employees] has been concluded."

The Company by reply dated May 25, 1971, reiterated its position that "the job setters passed into the existing

production and maintenance unit" from the date of the Board's certification of the Union on May 7, 1971, as the setup employees' exclusive bargaining representative and declined to refrain from implementing as of June 1, 1971, "those aspects of the present [P&M] collective bargaining agreement" as set forth in its earlier letter of May 12, 1971. However, the Company offered "to bargain with the Union as to all of these matters" *after* its implementation of June 1, 1971.

The implementation as noted above took place on June 1, 1971, with resulting changes in the benefits of the setup employees, some detrimental and some beneficial compared with the benefits they had prior to the certification of the Union as their exclusive bargaining representative.

Thereafter at the Union's request a series of five meetings were held between the Union and the Company, concluding on September 15, 1971, for the purpose of bargaining concerning the terms and conditions of employment of the recently certified group of setup employees. At these meetings the Company never receded from its original position that as a result of the certification and the inclusion of the setup men in the long standing P&M unit, the setup employees became *automatically* covered by the preexisting collective-bargaining agreement the Company had with its P&M employees. Similarly, the Union never receded from its position that the certification did not automatically put the set-up men under the P&M contract and that the Company could not take away from the setup employees any of the benefits they had prior to the certification without bargaining and agreement thereon. Failing to reach agreement on these conflicting positions, the Union after the fifth and final meeting filed unfair labor practice charges against the Respondent which eventually resulted in the issuance of the complaint herein.

Under the above-admitted basic but skeletonized facts, the issue under the pleadings may be stated as follows: The setup employees having agreed to be included in the P&M unit and having elected to be represented by the same Union that represents the P&M unit, the question is whether under such circumstances the Respondent's unilateral application of its P&M collective-bargaining agreement to its setup employees with notice but without bargaining and against the Union's protests, with resulting cancellation and withdrawal of preexisting benefits, constitutes a refusal to bargain in good faith in violation of Section 8(a)(1) and (5) of the National Labor Relations Act.[1]

The complaint herein was issued on May 5, 1972, pursuant to a charge filed on November 10, 1971, and duly served upon the Respondent. Respondent's answer denies the alleged unfair labor practices.

The case was heard on July 10 and 12, 1972, at Detroit, Michigan.[2] Briefs filed by counsel on August 22, 1972, have been carefully reviewed and considered.

For reasons hereinafter indicated, the Respondent is found in violation of the Act as alleged in the complaint.

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

FINDINGS OF FACT

I. JURISDICTIONAL FINDINGS

Respondent, a Michigan corporation, maintains offices and places of business at 3040 Hart Avenue and 11031 Shoemaker Avenue in Detroit, Michigan, herein called the Hart Avenue and Shoemaker plants, or collectively, the Detroit, Michigan, plants. At all times here material, the Respondent has been engaged at the two Detroit plants in the manufacture, sale, and distribution of roller bearings and related products. The two indicated plants are the only facilities involved in this proceeding. During the past year which is representative, the Company manufactured, sold, and distributed at its Detroit plants products valued in excess of $500,000, of which products valued in excess of $50,000 were shipped from said plants directly to points located outside of the State of Michigan. Similarly, during the past representative year the Company purchased and caused to be transported and delivered at its Detroit plants steel and other goods and materials valued in excess of $100,000, of which goods and materials valued in excess of $50,000 were transported and delivered to its plants in Detroit directly from points located outside the State of Michigan. By reason of these admitted facts, I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

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

III. THE ALLEGED UNFAIR LABOR PRACTICES

The Company at all times here material employed a total of approximately 2,000 P&M employees and some 145 machinery setup employees at its two Detroit plants which are operated around the clock in three shifts. Historically, the P&M employees have been hourly rated, timeclock employees. Historically, the setup men have been salaried employees, not required to use a timeclock. The P&M employees for many years have been represented by the International Union and its Local 681. The setup employees up until 1971 were both unrepresented and specifically and expressly excluded from the P&M unit contract.

On April 29, 1971, the heretofore excluded setup men

[1] The issue as framed above is based on the allegations of par. 13 of the complaint and Respondent's answer thereto. The key phrase in par. 13 is that the Respondent "has refused to bargain in good faith" with the Union Counsel in their respective briefs see multiple issues in the case but essentially the issues they set forth in their briefs are embraced in the unitary issue stated above. More bluntly, the Respondent sees the central issue as, "Did the Respondent, by unilaterally implementing coverage of the setup men by the P&M Unit collective-bargaining agreement, violate the law?" More explicitly, General Counsel sees the central issue as follows, "Whether the existence of a contract covering a unit of Production and Maintenance employees, relieved the Respondent of its bargaining obligation with respect to a new group of employees who were being added to this Production and Maintenance unit pursuant to the Board's *Armour-Globe* election procedure"

[2] The unopposed motion of General Counsel, filed simultaneously with his brief, to correct three obvious errors in the transcript of testimony is granted.

voted in a Board-conducted election by a majority vote to be included in the existing P&M unit and to be represented by the same Union that represents the P&M employees.

As a result of the election the Board on May 11, 1971, in a corrected certification, certified that the International Union "may bargain for the employees in the above-named category [setup men in the two Detroit plants] as part of the group employees [P&M] which it currently represents."

In the preelection campaign the Company opposed the efforts of the Union to organize the setup men by letters and speeches by its industrial relations manager, J. E. Steinhelper. Just prior to the election Steinhelper held about 10 meetings with small groups of setup employees to cover all such men working in the three shifts. At these meetings, Steinhelper told the setup men that if they voted for union representation there "was a possibility benefits could be changed and they might lose some of their benefits."

But Steinhelper admits that he did not tell the setup men at these meetings that if they voted to be represented by the Union that they would automatically come under the coverage of the P&M unit contract, or that the Company intended to terminate the benefits they currently enjoyed as salaried employees if they voted for the Union, or that the Company even planned to exchange the benefits they currently received as salaried employees for the benefits the P&M employees receive if they voted for the Union.

The Union also held preelection meetings with the setup men. At one of these meetings the setup men raised the question whether they would lose their salaried position if they voted for the Union. The union organizer in charge of the meeting advised them that "under the law they could not lose any of their current benefits, as far as them *automatically* being taken away." (Emphasis supplied.)

After the election the Company for the first time by letter dated May 12, 1971, notified the Union that as a result of the Board's certification of the Union as the exclusive bargaining agent for the setup men, the Company deemed the setup men as "now covered exclusively" by the existing P&M unit contract[3] and that it would take steps to implement the provisions of the P&M contract to the setup employees as of June 1, 1971. The Company admits that its original decision to extend the P&M contract to the setup employees was based "solely" on its belief that as a result of the certification, the setup men "are covered exclusively by the existing agreement with respect to hours, rates of pay and other conditions of employment."

But at the trial herein, the Company for the first time advanced a new and second ground as a further justification for its unilateral decision to extend the P&M unit collective-bargaining agreement to the setup men. As a second defense for applying the current P&M unit contract to the setup men, the Company relies on the contents of one of the paragraphs of the P&M Unit agreement although the contract itself specifically excludes the setup employees from its application to them. The paragraph of the P&M agreement relied on by the Company reads as follows:

> 180. When new hourly rated classifications are established, the Union will be advised as to the temporary hourly rate to be paid. The Union may then initiate negotiations on the rate to be paid by written notice to the Company at any time within the first thirty (30) days after an employee has been assigned to and worked in the classification.

In support of this second defense, the Respondent cites the Board's decision in *Vickers, Incorporated*, 153 NLRB 561 (1964). In the *Vickers* case, the Board adopted the Trial Examiner's decision therein without discussion. The *Vickers* case also involved (1) excluded employees who voted to be included into the larger P&M unit and (2) an existing P&M collective-bargaining agreement with a clause or paragraph substantially the same as the paragraph quoted above from the P&M unit contract involved in the instant case. In *Vickers* the Trial Examiner held, "Under all circumstances, I find that Respondent's unilateral changes in the status of the schedulers and expediters [the excluded employees who voted to be included into the P&M unit] from salaried employees to hourly paid employees did not constitute an unlawful refusal to bargain with the Union." In the discussion below it will be shown that the "all the circumstances" in the *Vickers* case were radically different than they are in the present case.

The Union by letter dated May 18, 1971, put the Company on notice that it was in complete disagreement with the Company's position that the setup men as the result of the certification were now covered exclusively by the existing P&M unit collective-bargaining agreement and stated its position to be that all matters pertaining to the setup employees' wages, hours, rates of pay, and other conditions of employment were subject to collective bargaining. The Union also requested that the Company "refrain from the matters of implementation detailed" in the Company's letter "until collective bargaining relative to the jobsetters has been concluded."

Notwithstanding the Union's protest and request for bargaining prior to any changes in the existing working conditions of the setup men, the Company on June 1, 1971, by its own admitted unilateral action implemented its prior announced decision to place the setup employees under the P&M unit contract by applying a number of the provisions of the P&M contract to them. This resulted in depriving the setup men, without bargaining, of numerous benefits they had prior to the Union's certification as their exclusive bargaining representative. The following are some of the benefits the setup employees lost by reason of the Company's unilateral action:

1. Loss of salary status, which the setup personnel wished to retain, by the Company's action of converting them into hourly paid employees. (However, it is noted that the conversation gave the setup employees precisely the same take-home pay as hourly paid employees as they had had as salaried employees prior to the certification.)
2. Loss of their prior right as salaried employees to

[3] The current P&M unit contract commenced on March 1, 1971, and continues in effect through March 1, 1974

check in and out of work on an honor card system by the Company's action in requiring them to use a timeclock.
3. Loss of 4 days' sick leave they had as salaried employees.
4. Loss of casual absence leave unrelated to sick leave they had as salaried employees.
5. Reduction of bereavement leave from 5 days to 3 days.
6. Reduction of life insurance benefits from a maximum of about $30,000 to $11,000 in some areas.
7. Loss of investment plan for purchase of Company stock.
8. Loss of marriage leave and leave for illness in the immediate family.
9. Loss of major medical benefits by substitution of less medical benefits provided for in P&M Unit contract.
10. Loss of assigned parking space.

The Company's unilateral application of the P&M Unit contract to the setup men also had the affect of giving them without request or bargaining certain benefits they did not have as salaried employees prior to their unionization. Among such benefits are the following:

1. Grievance and arbitration procedures.
2. Job transfer rights and shift preferences within the plant.
3. Right to bid for posted openings.
4. Supplemental unemployment benefits.
5. Improved accident and sickness insurance benefits.
6. Extended disability benefits.
7. Prescription drug benefits.
8. Blue Cross and Blue Shield coverage.
9. Combined UAW and company retirement benefits.
10. Paid up life insurance policies to retirees.

As heretofore noted, at the time the Company extended the P&M unit agreement to the setup men, it took such action solely because of its belief that the setup employees became exclusively covered by the existing P&M contract by the event of the Union's certification as their bargaining representative.

It was only after the Company, against the Union's protest, had taken its unilateral action of extending the P&M unit contract to the setup men, that bargaining at the Union's request began between the Company and the Union on the future status of the setup employees. There were five such bargaining meetings in all, commencing on June 29 and concluding on September 15, 1971. It is only on the basis of these postevent[4] bargaining sessions with the Union that the Respondent claims good faith bargaining with the Union on the future status of the setup employees under the Union's certification.

The first two or three meetings were rather exploratory in nature, but from the first through the last meeting the Union requested the restoration of the benefits the setup men enjoyed prior to unionization and the Respondent would not budge from its original position that the setup men became automatically covered by the existing P&M unit collective-bargaining agreement as a consequence of the Union's certification and accordingly no longer entitled to the benefits they had prior to their unionization.

The first meeting was held on June 29, 1971. About the only positive thing to come out of that meeting was a tentative agreement between the parties that the setup men would be temporarily represented by the P&M steward in the area in which they worked for the processing of grievances. From the date of that meeting until the date of trial herein about a year later, the setup men, under this temporary agreement, have filed more than 100 grievances, but more than half of these were complaints about the loss of the benefits they had enjoyed prior to their unionization.

The second meeting was held on August 25, 1971. At this meeting the Company furnished to the Union, pursuant to its prior request, a written summary of the items that the setup men had enjoyed as salaried employees prior to the Company's unilateral act of placing them under the P&M unit collective-bargaining contract. Each item was discussed but the meeting ended in a stalemate on the Company's refusal to restore these preunionization benefits. However, the parties agreed to meet again.

The third meeting was held on August 31, 1971. The Union at that meeting presented its written contractual demands to the Company consisting of 30 separate items. Some of these items asked for provisions that were in the current P&M Unit contract, but for the most part called for the restoration of the benefits the setup men had prior to unionization. The items were discussed point by point but no agreement was reached. The meeting was adjourned to give the Company further opportunity to study the Union's demands and prepare a response.

The fourth meeting was held on September 10, 1971. At this meeting the parties resumed their discussion of the Union's contractual demands, but were unable to reach agreement. Again the controversy was chiefly over the Union's demand for the restoration of the set-up men's preunionization benefits. The Company through Steinhelper as its spokesman reiterated its position that the setup men should fall under the P&M Unit contract and the Union again rejected that position.

The fifth and final meeting took place on September 15, 1971. At this meeting the Respondent presented a written response to the Union's itemized contract demands. The Respondent's opening response was that, "The Company deems that as a result of this certification, these employees [setup men] are now covered exclusively by the existing labor agreement [the P&M Unit contract] with respect to their wages, hours, rates of pay and other conditions of employment." In line with this position the Company agreed only to the nine items in the Union's demands which corresponded with the language in certain paragraphs of the P&M unit contract and rejected all demands for the restoration of preunionization benefits and all other demands unrelated to the provisions of the P&M Unit contract.

In the credited and undisputed words of James Sawyer, president of Local 681, the last thing that happened at the final meeting of September 15 was that International Union Spokesman Gordon Buchanan, "asked Mr. Stein-

[4] That is, bargaining sessions that took place *after* the fact of the Company's unilateral extension of the P&M unit contract to the setup men.

helper [company spokesman] . . . to change his position about the setup men coming under the current [P&M unit] agreement." Steinhelper as at previous meetings declined the request, Buchanan thereupon informed Steinhelper that the Union would turn the issue over to its legal department and the meeting broke up.

Steinhelper, as Respondent's spokesman at all the meetings, admits that the Union at no time made a conscious waiver of the benefits the setup men enjoyed as salaried employees prior to their unionization. The record shows that the Union at all times asserted that the setup employees' preunionization benefits could not be cancelled and withdrawn without bargaining and agreement thereon.

Discussion and Conclusions

As heretofore noted the Board on May 11, 1971, certified the Union following a Board-conducted election. The election was held under well established *Globe-Armour* procedures. *Globe Machine & Stamping Co.,* 3 NLRB 294; *Armour & Company,* 5 NLRB 535; *United States Gypsum Company,* 107 NLRB 122. In the election the Respondent's salaried and unrepresented setup employees indicated their desire to be "Globed" in, that is, to become a part of Respondent's production and maintenance unit and voted to be represented by the Union which also represented the production and maintenance employees. The Board in its certification, as corrected, certified that the Union "may bargain" for the setup employees "as part of" the production and maintenance unit currently represented by the Union.

Based upon the Board's certification, the Respondent defends and contends, as a matter of law, that its setup employees as of the date of the certification became automatically covered by the terms and conditions of the existing production and maintenance collective-bargaining agreement although the setup men are not a party thereto; and from this premise justifies as lawful its admitted unilateral cancellation and withdrawal of the benefits the setup men enjoyed prior to their unionization. Thus in Respondent's answer to the complaint's allegation that it had "engaged in bad faith bargaining in that it maintained a fixed and unalterable position throughout that the 'setup men' were automatically covered in all respects by the [P&M unit] contract," Respondent pleads that it, "Admits that it has maintained its position that, as a matter of law, the setup men are now subject to the provisions of the production and maintenance collective-bargaining agreement. It has maintained this position because of its conviction as to what the law requires of it and under no circumstances should this in and of itself be deemed a violation of Section 8(a)(5) of the Act."

As shown above Respondent's original decision to extend its P&M unit agreement to its setup employees was based "solely" upon its belief that "as a result of this certification these employees are covered exclusively by the existing labor agreement with respect to hours, rates of pay and other conditions of employment." Conversely, this original belief and conduct pursuant thereto was not based on any of the provisions of the P&M Unit contract although Respondent now also relies on the contract as justification for its conduct as will be shown below.

Respondent's position that the Board's certification by itself compelled it as a matter of law to apply its P&M unit contract to its setup employees cannot be justified by the language of the certification itself. This is obvious from the literal language of the certification which reads:

> IT IS HEREBY CERTIFIED that the said organization [Union] may bargain for the employees in the above-named category [all setup men employed by the Employer at its Hart Avenue and Shoemaker Avenue Plants] as part of the group of employees [P&M] which it currently represents.

No authority has been cited to support Respondent's contention that the mere decision of a small unrepresented group of employees to become part of a larger represented group of employees has the affect of putting the small group of employees under the collective-bargaining agreement of the larger group. On the contrary, Board decisions show that when such an enlargement of an existing unit takes place, the Union has the right to bargain separately for the newly allied group of employees as part of the larger unit. Thus the Board in *Bingham-Herbrand Corporation,* 97 NLRB 65, 67, held that, "If a majority of the employees voting cast ballots for the Petitioner [the Union], they will be taken to have indicated their desires to be part of the production and maintenance unit, and *the Petitioner may bargain for them as part of the existing unit."* (Emphasis supplied.) See also to same affect, *Martin Parry Corporation,* 95 NLRB 1506, 1508.

As the Board's certification by its very terms gives the Union a clear and unqualified right to bargain for the setup employees as part of the larger P&M unit, it necessarily follows and is found that the certification *per se,* as claimed, did not give the Respondent the unilateral right to extend the existing P&M contract to its set-up employees as this would be inconsistent with the Union's officially authorized right to bargain for the setup employees.

Insofar as the Respondent seeks justification for its refusal to bargain with the Union over the restoration of the setup employees' preunionization benefits solely on the basis of the Board's certification, I find that the Respondent's refusal to bargain with the Union on that matter constitutes a refusal to bargain in good faith with the Union in violation of Section 8(a)(1) and (5) of the Act.

Respondent's second defense—asserted for the first time at the trial—for its unilateral application of the P&M unit contract to its setup employees, is that such application was authorized by the above-quoted paragraph 180 of the P&M unit contract itself under the precedent of a Board decision in *Vickers, Incorporated, supra.* This defense now appears from Respondent's brief to be its chief defense. The *Vickers* case also involved a Globe-type election where

unrepresented employees chose to become a part of the employer's large organized P&M unit and voted to be represented by the same union as represented the P&M unit. As conceded by counsel for General Counsel, the P&M contract in *Vickers* contained a clause, paragraph 162,[5] essentially the same in meaning as paragraph 180 of the agreement in the present case.

As heretofore noted, in *Vickers* the Trial Examiner held that, "*Under all the circumstances,* I find that Respondent's unilateral changes in the status of the schedulers and expediters from salaried employees to hourly paid employees did not constitute an unlawful refusal to bargain with the Union." (Emphasis supplied.)

Any reading of "all the circumstances" in the *Vickers* case shows they were factually essentially different and far more complex than the circumstances in the instant case. In *Vickers* one of the circumstances that the Trial Examiner based his decision on was the presence of paragraph 162 (as set forth in fn. 5) in the subsisting P&M unit contract in that case. Paragraph 162 in *Vickers* and paragraph 180 of the contract in the instant case provide, essentially, that the employer may establish a temporary rate job for new classifications of employees in the P&M unit. All postelection factual resemblances between *Vickers* and the present case begin and end with that single resemblance.

It is evident from the Examiner's decision in the *Vickers* that the Trial Examiner was searching for the *intent* of the union and the company on the question of whether they had mutually agreed that the existing P&M unit agreement was to be made applicable to the newly added employees to the unit. In the *Vickers* case there is abundant evidence that the "Globed" employees desired and intended to be placed under the existing P&M unit contract. After the "Globe" election in *Vickers* the company immediately notified the union in writing that it was establishing a temporary hourly rate for the newly "Globed" employees pursuant to paragraph 162 of the existing contract. Then followed a most significant step or fact not present in the instant case. After the receipt of the notice and before the union in *Vickers* filed its charges, both the *union and the company agreed to change the recognition clause in the existing collective-bargaining P&M agreement to add the newly "Globed" employees* to the contractual unit of "hourly paid production and maintenance employees." This in *Vickers* is the clearest evidence of *intent* by the union as agents for the newly added employees that the existing P&M unit collective-bargaining agreement was to be made applicable to them. By contrast, in the present case the Company never at any time notified the Union in writing or orally that they were relying on any contractual clause in the existing P&M unit contract for its authority to extend the P&M unit contract to its setup employees. Such reliance or defense in the instant case was at most an afterthought first brought up at the trial. Similarly in the instant case neither the Company or the Union ever suggested changing the recognition clause to include recognition of the setup men as "hourly rated employees." Thus the recognition clause in the instant case stands unaltered with the setup men expressly excluded from the P&M unit collective-bargaining agreement. The record herein moreover shows that the setup men through their Union not only never agreed to the Company's conversion of their salary status to that of hourly rated employees but that they have always, on the contrary, demanded the restoration of the salary status and benefits they enjoyed prior to the certification of the Union as their exclusive bargaining representative.

Only one other indication in *Vickers* of the intent of the "Globed" employees to be placed under the existing P&M unit collective-bargaining agreement need be noted. At the time of the "Globing" in *Vickers* the agreement was expiring and up for renegotiation. At the suggestion of the employer in *Vickers* the union agreed that "any disagreement concerning the schedulers [one of the two groups of "Globed" employees] be discussed as part of the general negotiations in progress." This is another clear indication of the intent of the "Globed" employees in *Vickers* through their union to forego their former status and benefits as salaried employees in favor of general negotiations for all employees in the unit, including themselves. Nothing of this sort occurred in the instant case.

In summary I find and conclude that Respondent never at any time in its postcertification negotiations with the Union on the then status of the setup men relied on paragraph 180 of the existing collective-bargaining agreement for its authority to extend that agreement to its setup employees. I further find and conclude that paragraph 180, standing alone as it does without any supporting evidence of intent by the setup men to go along with that clause, did not give the Respondent the authority to impose the existing contract on its setup employees with resulting loss of their prior benefits and status as salaried employees.

The fact that the setup men became the beneficiaries of some new benefits as heretofore outlined under Respondent's unilateral imposition on them of the existing P&M unit contract cannot legitimatize or make more palatable the fact that in doing so the Respondent took from them without their consent and against their opposition certain valuable benefits they enjoyed before they voted to have the Union represent them. The fact is that they were not consulted in this swap of new benefits for their existing benefits. The new benefits were admittedly thrust upon the setup men without opportunity or power to disavow by Respondent's unilateral and opposed extension of the existing contract to them. The use by the setup men of the contract's grievance procedures cannot be deemed an implied agreement to come under the existing P&M agreement for the use of such grievance procedure is the normal concomitant of union representation. By virtue of the certification, the Union would have had the right to present grievances in behalf of the setup men, even if the existing P&M unit agreement had no grievance clauses in it. It is especially noteworthy that the majority of the

[5] In *Vickers* the comparable contractual clause under paragraph 162 reads as follows "When the Company establishes and places in use a new job classification or makes a revision of an existing classification that materially affects the applied skills and responsibilities of the operator, a temporary rate shall be established by the Company and written notice of the rate and job classification will be furnished to the Local President." Compare with par 180, *supra*

grievances filed by the setup men were complaints about the prior benefits the Company had taken away from them after they became unionized.

Respondent's final argument or defense is perhaps best stated by a quotation from its brief, towit: "It is Respondent's position that the terms of the existing P&M unit agreement were applicable in every way, *except* the law requires immediate good faith bargaining as to the newly included members of the unit."

Respondent's contention "that the terms of the existing P&M unit contract agreement was applicable in every way" is based on its interpretation of the Trial Examiner's decision in the *Vickers* case. But as shown above the Trial Examiner's decision in that case was based in his own words on "all the circumstances" in that matter, only one of which is present in this case, namely, the essential similarity of paragraph 180 of the collective-bargaining agreement in the instant matter with paragraph 162 of the agreement in the *Vickers* case. As noted above, that circumstance is not of itself sufficient to bring the present case under the precedent of *Vickers,* either under the language of the Board's certification of the Union or under the existing collective-bargaining agreement inasmuch as the agreement expressly excludes the setup employees from its operation Moreover, unlike the situation in *Vickers,* the Respondent herein in its postcertification negotiations with the Union on the status of the setup employees never once indicated that it was relying on paragraph 180 of the existing agreement for its authority to unilaterally apply that agreement to the setup employees.

But even if Respondent's full premise is accepted "that the terms of the existing P&M unit agreement were applicable in every way, *except* the law requires immediate good faith bargaining as to the newly included members of the unit," Respondent's defense thereunder is not sustained because the record fails to show any good-faith bargaining by the Respondent on the status of the newly included setup men in the P&M unit. On the contrary, the record unmistakingly shows bad-faith bargaining by Respondent because in the five postcertification negotiation meetings with the Union on the status of the setup men, the Company never once receded from the *fait accompli* of its unilateral application of the existing P&M unit agreement to its setup employees. At such meetings the Company refused to enter into any bargaining on any of the Union's demands for the restoration of the setup employees' preunionization benefits because of its unyielding position that the certification *per se* gave it the right to apply the existing P&M unit contract to the setup men with consequent automatic loss of their precertification benefits. Thus of the 30 contract demands the Union made, the Company agreed only to those 9 of such demands which comported with parallel clauses of the existing P&M unit agreement. All other contractual demands unrelated to the agreement were rejected.

In summary, based on all the facts and circumstances of record, I find and conclude that Respondent has at all times refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of its setup employees in accordance with the Board's certification of the Union, as alleged in the complaint.

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, Federal-Mogul Corporation, Bower Roller Bearing Division, is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.
3. All production and maintenance employees of Federal-Mogul Corporation, Bower Roller Bearing Division, employed at its 3040 Hart Avenue and 11031 Shoemaker Avenue, Detroit, Michigan, plants excluding superintendents, assistant superintendents, foremen, foreladies, assistant foremen, setup men (sometimes called job setters), timekeepers, time study engineers, plant protection employees, temperature equipment operators, professional employees including chemists, metallurgists, research and development technicians and first aid employees, followup men, draftsmen, experimental engineers, office clerical employees, shipping and receiving clerks, confidential clerks and female counselors, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.
4. On April 29, 1971, a majority of the setup men employed by the Respondent at its 3040 Hart Avenue and 11031 Shoemaker Avenue, Detroit, Michigan, plants, by secret ballot election, designated the above-named labor organization as their exclusive representative for purposes of collective bargaining and by doing so indicated a desire to be and were included in and became a part of the appropriate unit designated above.
5. Since on or about December 6, 1941, the above-named labor organization has been the exclusive collective-bargaining representative of the employees in the aforesaid appropriate unit within the meaning of Section 9(a) of the Act and since May 7, 1971 has also been the certified exclusive collective-bargaining representative of the setup men who were included in and became a part of the appropriate unit designated above.
6. By unilaterally, and without prior notice to and/or bargaining with the above-named labor organization, announcing that as a result of the May 7, 1971 certification, referred to above, the setup men were covered exclusively by the terms and conditions of employment embodied in the current collective-bargaining agreement then in effect between the Respondent and the above-named labor organization and that implementation of said contract terms to the setup men would begin effective June 1, 1971, the Respondent has refused to bargain collectively with the above-named labor organization and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
7. By unilaterally and without prior notice to and/or bargaining with the above-named labor organization, and notwithstanding the objection of the above-named labor organization, withdrawing all benefits enjoyed by the setup men prior to their unionization and applying to them the

current collective-bargaining agreement then in effect between the Respondent and the above-named labor organization, Respondent has refused to bargain collectively with the above-named labor organization, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

8. By maintaining a fixed and unalterable position throughout the meetings between the Respondent and the above-named labor organization, that the setup men were automatically covered in all respects by the current collective-bargaining agreement then in effect between the Respondent and the above-named labor organization, and by agreeing only to those proposals by the above-named labor organization which were identical with the terms of this collective-bargaining agreement, Respondent has refused to bargain collectively with the above-named labor organization, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

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

10. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

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

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that the Respondent be ordered to cease and desist therefrom and from in any other manner infringing upon its employees' Section 7 rights, and that it take certain affirmative action designed to effectuate the policies of the Act.

As I have found that the Respondent unilaterally changed the terms and conditions of employment of its setup men by withdrawing the benefits and other conditions of employment which they enjoyed prior to their unionization and replacing said benefits and conditions of employment with the existing collective-bargaining agreement between Local 681, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and the Respondent, I shall recommend that the Respondent be ordered to reinstate the *status quo ante* as it existed for the setup men prior to June 1, 1971, except for such postcertification unilateral changes to which the Charging Party has acquiesced.[6] I shall also recommend that the Respondent make the setup men whole for any losses occasioned by said unilateral action.

Having also found that the Respondent unlawfully refused to bargain with the above-named labor organization as the certified representative of its setup employees, I shall recommend that upon request it bargain collectively and exclusively with said duly designated representative, concerning rates of pay, wages, hours of work, and other terms and conditions of employment.

Upon the basis of the foregoing findings of fact and the entire record in this proceeding, I make the following recommended:

ORDER[7]

The Respondent, Federal-Mogul Corporation, Bower Roller Bearing Division, Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unilaterally applying the existing collective-bargaining agreement we have with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and its Local 681, or unilaterally changing the wages, rates of pay and other conditions of employment, for employees in the unit set forth below, who by voting to be represented have indicated their desire to be included in the existing production and maintenance unit currently represented by the above-named labor organization.

> All setup men employed by the Employer at its Hart Avenue and Shoemaker Avenue plants in Detroit, Michigan, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

(b) Refusing to bargain collectively with the above-named labor organization as the exclusive collective-bargaining representative of the employees in the unit set forth above.

(c) In any other 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:

(a) Upon request, bargain collective with the above-named labor organization, as the exclusive collective-bargaining representative of the employees in the unit set forth above.

(b) Reinstate the *status quo ante* as it existed prior to June 1, 1971, with respect to employees in the unit set forth above, except for such changes to which the Union has acquiesced, and make said employees whole for any losses occasioned by our unilateral actions.

(c) Preserve and, upon request, make available to the Board or its agents for examination and copying, all payroll records and reports and all other records necessary to analyze and give effect to the *status quo ante* order herein.

(d) Post at its Detroit, Michigan, Hart Avenue and

[6] It appears for example that the Charging Party, as could be expected, acquiesced in the Company's invocation of the Union dues checkoff clause of the existing agreement. In his summation at the conclusion of the hearing, the lay representative of the Charging Party urged a *status quo ante* order *subject* only to exceptions for such acquiescences I am of the opinion that exceptions for such acquiescences would do away with any practical difficulties in applying a *status quo ante* order.

[7] 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.

Shoemaker Avenue plants, copies of the attached notice marked "Appendix."[8] Copies of said notice, to be furnished by the Regional Director for Region 7, shall, after being duly signed by the Respondent's representative, be posted by the 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 the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[8] In the event that the Board's 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 be changed to 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 are posting this notice to inform you of the rights guaranteed to you by the National Labor Relations Act.

WE WILL NOT unilaterally apply the existing collective-bargaining agreement we have with Local 681, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) or unilaterally change the wages, rates of pay and other conditions of employment, for employees in the unit set forth below, who by voting to be represented have indicated their desire to be included in the existing production and maintenance unit currently represented by the above-named labor organization.

> All setup men employed by the Employer at its Hart Avenue and Shoemaker Avenue plants in Detroit, Michigan, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act and all other employees.

WE WILL NOT refuse to bargain collectively with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), as the exclusive representative of the employee unit set forth above.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed in Section 7 of the Act.

WE WILL upon request bargain collectively with the above-named labor organization, as the exclusive bargaining representative of the employees in the unit set forth above.

WE WILL reinstate the *status quo ante* as it existed prior to June 1, 1971, with respect to employees in the unit set forth above, except for such changes to which the above-named Union acquiesced and make said employees whole for any loss occasioned by our unilateral actions.

FEDERAL-MOGUL CORPORATION, BOWER ROLLER BEARING DIVISION
(Employer)

Dated By
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 313–226–3200.