New Orleans Stevedoring Company *and* General Longshoremen Workers, Local No. 3000, International Longshoremen's Association. Case 15–CA–11565

September 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

An exception filed to the judge's decision in this case[1] presents the question whether the Respondent violated Section 8(a)(5) and (1) by failing to execute a written contract embodying a full and complete collective-bargaining agreement between the Respondent and the Union.

The Board has considered the exceptions in light of the record and brief and has decided to affirm the judge's ruling, findings,[2] and conclusions[3] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, New Orleans Stevedoring Company, New Orleans, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] On May 14, 1992, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We agree with the judge's finding that the Respondent agreed to the proposed contract on May 14, 1991, when General Manager Flanagan, after receiving a copy of the agreement, told Union Representative Ellis that it ''looked okay to him.'' Accordingly, we find it unnecessary to pass on the judge's conclusion that the negotiations between Transocean Terminal Operators (TTO) and the Union between February and April 1991 constituted joint bargaining, binding the Respondent to any agreements reached by TTO.

Kathleen McKinney, Esq., for the General Counsel.
Douglass M. Moragas, Esq., of Harahan, Louisiana, for the Respondent.
Jerry L. Gardner Jr., Esq. (Gardner, Robein & Urann), of Metairie, Louisiana, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. I heard this case in trial in New Orleans, Louisiana, on March 23, 1992, based on a complaint and notice of hearing issued by the Regional Director for Region 15 of the National Labor Relations Board (the Board) on August 9, 1991,[1] following his investigation of an unfair labor practice charge filed by General Longshoremen Workers, Local No. 3000, International Longshoremen's Association (the Union) on June 27. In substance, the complaint alleges that on or about May 15, New Orleans Stevedoring Company (the Company or NOSC) reached a full and complete agreement with the Union regarding terms and conditions of employment of certain of its employees, and that on or about May 31, the Union requested the Company execute a written contract embodying the agreement and that since on or about June 13, the Company, by oral statement, has failed and refused to do so. It is alleged that the Company's failure to execute such a written contract violates Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).

The Company's answer admits it is ''an employer'' whose operations are ''in commerce'' within the meaning of Section 2(2), (6), and (7) of the Act and that its revenues are derived from its function as an essential link in the transportation of freight and commodities in interstate commerce satisfies the Board's standards for assertion of jurisdiction and that the Board's jurisdiction over this controversy is properly invoked.

The Company admits its vice president/general manager Flanagan is a supervisor and agent within the meaning of Section 2(11) and (13) of the Act, and that he has the authority, but has refused to, sign an agreement with the Union because it asserts no agreement was ever arrived at with the Union for the unit employees involved here. The Company denies having violated the Act in any manner alleged in the complaint.

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

All parties were afforded a full opportunity to call, to examine and cross-examine witnesses, and to present relevant evidence. I have considered the entire record including the parties' briefs. I carefully observed the demeanor of the witnesses as they testified. Based on the above, and more particularly on the findings and reasonings set forth below, I will find the Company violated the Act essentially as alleged in the complaint.

FINDINGS OF FACT

I. BRIEF OVERVIEW

The Company and Union have for an extended time been parties to two collective-bargaining agreements. One of the two agreements is the Deep Sea Agreement (DSA) which is a multiemployer agreement that covers stevedoring work performed at this and other employers on the Port of New Orleans, Louisiana.[2] Negotiations for the most recent DSA com-

[1] All dates are in 1991 unless I specify otherwise.

[2] On a weekly basis, as many as 400 employees are covered by the DSA.

menced in August 1990 and resulted in an agreement that is effective until 1994. The parties' second agreement covers the employees of the Company that maintain and repair equipment including containers serviced and repaired by the Company whether such equipment is owned, leased, or otherwise used by the Company. It is this latter agreement known as the gear yard agreement (GYA) that is at issue.[3]

II. THE FACTS

Certain pertinent facts are not disputed and are set forth without identifying the witnesses that testified with respect thereto. Where facts are disputed, the conflicting versions will be set forth or noted. Appropriate resolutions of credibility will be made for all conflicts at one specific point in the decision.

The employers that are signatory to the DSA at the Port of New Orleans are also parties to gear yard agreements. However, the GYA's have traditionally, as was the case here been negotiated separately between the Union and the various employers whereas the DSA is negotiated on a multiemployer basis. The Company and Union have been parties to a GYA at least since the 1970s. The most recently negotiated GYA, other than the one at issue here was negotiated in 1980 and was effective from October 1, 1980, until September 30, 1983. By various memorandums of agreement and/or otherwise, the agreement was extended until November 30, 1990.

On September 18, 1990, Union President Irvin Joseph notified Company General Manager Flanagan and the other employer representatives that the GYAs would not be extended and that the Union was ready to enter into negotiations with each employer for new GYAs.

In November 1990, the Union presented the Company a 14-page written proposal for a new GYA.

Union Financial Secretary/Treasurer Mark Ellis and other representatives of the Union met with General Manager Flanagan on two occasions in early December[4] regarding a new GYA.

The first of the two December meetings took place on December 4. Union Representative Ellis[5] explained to General Manager Flanagan that the three main issues the Union wanted in a new GYA were wage parity with the longshoremen, no subcontracting of unit work, and portwide seniority for the three gear yard employers.[6] General Manager Flanagan told the Union the Company could hire mechanics at less than longshoremen wages and added he did not wish to be compelled by portwide seniority to have to hire someone his Company might find unsuitable for employment. Flanagan also did not want to accept a no subcontracting provision in any new GYA.

The second December meeting took place on either late December 7 or during the early morning hours of December 8, 1990. This meeting also took place during a break in the ongoing DSA negotiations. Union Representative Ellis again explained what it would take to arrive at a GYA, specifically, the three items he had raised with Flanagan in their earlier December meeting. Ellis said the Company was not willing at that time to reach an agreement that included the three specifically sought provisions.[7]

The Union and Company next met on January 3.[8] Those present for the Union in addition to Union Representative Ellis were Union President Joseph and Union Attorney William Lurye. (Union Attorney Lurye). Ellis started the meeting by telling General Manager Flanagan the Union and another gear yard employer, TTO, had reached an agreement on the ''big three items that [the Union] wanted . . . in the contract this time around.'' According to Ellis, they then ''argued''/discussed those three critical items. Ellis said he first explained to Flanagan, regarding port wide seniority, that ''there was no problem with them having to hire someone that wasn't qualified out of the pool, or someone that had been discharged from another company.'' Flanagan was concerned about having the authority to choose only the employees he felt were appropriate when hirings took place. Regarding the issue of no subcontracting, Ellis testified:

> [W]e explained to them that anything that they were doing at the time in their shops, they would be able to continue doing; that the no subcontracting provision was designed to stop any further erosion of ILA work, and not to try to recapture anything that may have gone out of the door in the past.

Flanagan expressed concern that he not be restricted from continuing to operate as he was currently doing. Ellis assured Flanagan the Union simply did not want to lose any more unit work to outside contractors than had already been lost.

Ellis explained to Flanagan the Union had settled all monetary issues with TTO by agreeing to phase in parity for the gear yard employees with the stevedore employees over a 4-year period rather than having it all up front the first year. Ellis told Flanagan it was the Union's desire that wage parity be achieved by the final year of the new GYA. General Manager Flanagan was concerned about being forced into a position where the Company would not be competitive and he expressed an opinion that he could hire qualified mechanics on the waterfront for the wages the Company was then paying or even less.

It is undisputed the Company and Union did agree to parity of wages phased in over 4 years for the gear yard em-

[3] Three employees of the Company are covered by the GYA.

[4] The Union, the Company, and other members of the multiemployer bargaining association were meeting on these same dates in an effort to negotiate a new DSA. The meetings on the GYA took place during breaktimes in the DSA negotiations.

[5] Benny Holland and Clyde Fitzgerald, president and financial secretary/treasurer, respectively, of the South Atlantic and Gulf Coast District of the Union were present at the December meetings as well as Union President Joseph.

[6] The two gear yard employers at the Port of New Orleans other than the Company are Transocean Terminal Operators (TTO) and Ryan-Walsh, Inc. (Ryan-Walsh).

[7] The above description of the December meetings is taken from Union Representative Ellis' credited testimony. General Manager Flanagan only gave very generalized testimony about the December negotiations. Flanagan did testify ''the Union was trying to encourage us to sign some Gear Yard Agreement. we discussed various things, but no decision was reached [i]t got to be a loud yelling match.''

[8] The Company and Union, among others, met on this occasion at the offices of the New Orleans Steamship Association to discuss container royalties and the GYA discussions were had during a break in the royalties discussions.

ployees so that their pay would equal that of the stevedores under the DSA. The Company implemented the first phase of wage parity on January 28.

Ellis testified, regarding the parties' understanding, on the other key issues on January 3:

> I asked Mr. Flanagan if we had an agreement. And Mr. Flanagan agreed that we had an agreement. And the three of us—or the four of us in the room, the three from the ILA and Mr. Flanagan . . . stood up and shook hands with each other.

Ellis said they did not have a final agreement:

> It was still going to have to be reduced to writing. But it was agreed that we were going to have a contract that embodied those three principal items that I had described.[9]

General Manager Flanagan described the January 3 meeting as one where the Union indicated they needed ''some type of seniority protection for the men''; ''a no subcontracting clause''; and ''parity with the longshore wages.'' Flanagan said ''exact details were not discussed'' but he said he did agree'' in ''principle'' with the three key items the Union was seeking.

General Manager Flanagan testified he told the Union's representatives at the January 3 meeting ''that whatever we come up with has to be approved by the people in Texas.''[10] Union Representative Ellis, Union President Joseph, and Union Attorney Lurye all deny Flanagan said anything about his authority to negotiate and/or to execute an agreement being limited or that he had to obtain anyone's approval of whatever final product might be negotiated.

It is acknowledged that General Manager Flanagan met with Union Representative Ellis at Ellis' office on or about January 7. The two had ''a brief discussion over the proposed language of the agreement.'' Ellis said it was a ''rather congenial meeting'' at which ''seniority and the subcontracting provisions'' were discussed. General Manager Flanagan testified they discussed ''various points'' in the GYA with Ellis suggesting ''some wordings'' that Ellis contended would ''clarify'' their agreement but that he (Flanagan) ''was not completely happy'' with Ellis' proposed clarifying language.

Flanagan testified he told Ellis at this meeting that whatever was arrived at would have to be approved by Texas. Ellis denied Flanagan mentioned any such limitations or restrictions on his negotiating authority.

Union Representative Ellis testified that after the January 7 meeting, with Flanagan, the Union decided that since the GYA had not been rewritten in such a long time that it would be best for the Union to select the employer of the three involved it perceived would be ''the hardest to actually get [an agreement] nailed down'' with and concentrate on that employer. The Union selected TTO.

Ellis stated that commencing on January 14, he began detailed negotiations with TTO's vice president Richard Teissier.[11] Ellis testified he and Teissier attempted to refine language on, among other subjects, no subcontracting and seniority and that when it appeared they were about to reach an agreement on hiring procedures and seniority Teissier faxed him a message requesting the Union meet jointly with the three gear yard employers, namely, the Company (Ryan-Walsh and TTO). Teissier's February 21 fax to Ellis, reads in part as follows:

> REF: GEARYARD CONTRACT
>
> With earlier changes mutually agreed to, this leaves only article III and IV to finalize. Since both referred to articles are newly proposed and relate to portwide practices it is TTO's position that these particular articles should be jointly discussed with Ryan Walsh, NOCS, [Teissier's way of identifying the Company herein] and TTO. We are requesting that a mutually acceptable date be agreed to in order to fully discuss these proposed issues. When acceptable wording is agreed to, we will be in a position to officially sign contract agreement. We wish to assure you that we are as anxious as you to finally conclude this agreement, and look forward to finalizing the (2) two remaining issues.

On February 27, the Union[12] met with TTO Vice President Teissier, General Manager Flanagan, and Ryan-Walsh's senior vice president, Kingsley Baker, at TTO's headquarters.[13] Ellis testified the parties ''bickered a lot about [seniority] language'' but that they also discussed ''manning night-time operations''; and the requirement for gear yard employees on ''weekends,'' ''holidays,'' and on ''automated ships.'' Ellis testified that when the meeting ended, there was no complete agreement but it was understood that since he had everything in his computer, he would prepare the negotiated changes and ''get [the changes] to the three employers'' and they could then see where they were in negotiations.

Ellis testified he sent the negotiated language changes[14] to all three gear yard employers but that he continued to talk with TTO Vice President Teissier ''in refining the final language.''[15]

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[9] Union Attorney Lurye testified the parties did not arrive at a final agreement at this meeting but that he ''viewed it as an agreement in principal.''

[10] The Company is headquartered in Texas where General Manager Flanagan's younger brother resides and serves as president of the corporation.

[11] Ellis at times was joined in the negotiations by Union Attorney Lurye and/or Union President Joseph as well as others.

[12] Those present for the Union in addition to Union Representative Ellis were Union President Joseph and Union Vice President Charles Coleman.

[13] The Union agreed to meet with the three gear yard employers without locking them into a multiemployer bargaining arrangement.

[14] The three-page fax Ellis sent to the employers on February 28, reflects approximately three changes to art. III related to ''hiring procedures'' and one change to art. IV related to ''seniority.''

[15] TTO Vice President Teissier testified no agreement was reached at the February 27 meeting ''other than we would get back to them'' on art. III and IV. Teissier testified he was ''the point man'' and that after the February 27 meeting, he reviewed issues that he and Ellis discussed with NOSC General Manager Flanagan and Ryan-Walsh Senior Vice President Baker. Teissier said he and Ellis ''faxed'' information back and forth several times after the February 27 meeting regarding changes to articles III and IV.

Union Representative Ellis testified he and TTO Vice President Teissier spoke and/or communicated via fax once or twice a week after February 27, until a final agreement was arrived at with TTO.

On March 27, Teissier faxed Ellis a one-page memorandum[16] that in pertinent parts reads as follows:

> Re your fax February 28th, note majority of items addressed by TTO/RW/NOCS [Teissier's way of identifying the Company herein] agreed to by you. Have poled RW/NOCS and would hope to finalize Thursday/Friday however, in interim, would like to know if you discussed suitable wording under Article IV Section (1a) with Bill [Union Attorney Lurye] that could satisfy our joint concerns. Putting aside Articles 3 & 4 for time being, would now like to address only those remaining issues relating only to TTO.[17]

On April 16, Teissier ''faxed'' Union Representative Ellis a one-page memorandum regarding the GYA in which he noted further revisions to articles III and IV. In his memorandum, Teissier advised Ellis the proposed language changes had ''been reviewed with both [Ryan-Walsh] and [NOSC].'' Regarding one of the proposed changes, Teissier indicated ''as previously, discussed, TTO/RW/NOSC position remains unchanged and will accept proposed verbiage'' provided certain words were deleted in the paragraph. As to still another part of article IV, Teissier wrote ''after further review, we accept wording as proposed by you.''

TTO Vice President Teissier also sent General Manager Flanagan and Ryan-Walsh Seniority Vice President Baker a ''faxed'' memorandum on April 16, with his April 16 memorandum to Ellis attached. In his memo to the employers, Teissier pointed out certain proposed language changes for articles III and IV; made reference to Ryan-Walsh Senior Vice President Baker's having obtained advice from Attorney David Walker; and, sought the comments of Flanagan and Baker.

On April 25, Teissier sent Ellis a faxed message in which he noted they only had one item remaining on seniority then they would have an agreement. Teissier said that when negotiations for TTO were being finalized, he specifically advised General Manager Flanagan ''that we had set up a conversation between Mr. Lurye[18] [Union Attorney] and Mr. Walker [TTO's attorney] and that so far as Kingsley [Baker of Ryan-Walsh] and I were concerned, the change under that seniority classification was found acceptable.'' On April 30, Ellis wrote Teissier that ''the last remaining issue [had] been resolved by their attorneys [Lurye and Walker]'' and that he would drop off a copy of the final agreement for Teissier that day.

TTO Vice President Teissier testified he subsequently notified Flanagan and Baker that TTO was in a position to, and did, on or about April 30, sign a GYA with the Union.

Teissier testified that at the time TTO reached an agreement with the Union, he understood Ryan-Walsh and the Company had not reached ''an agreement in toto to all items.'' Union Representative Ellis testified that after reaching an agreement with TTO, and having the same ratified by TTO's gear yard employees, he, on May 9, dropped a copy of the agreement (with the name changed to the Company) at General Manager Flanagan's office for him to review. Ellis attached a note thereto that reads as follows:

> May 9, 1991
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> Dear Henry—
>
> Enclosed is the final version of the gear yard contract with Transocean Terminal Operators. All areas of concern were worked out and agreed to including the seniority provisions. We will be ratifying this document tonight. Please review this contract as soon as possible. I would like to present it to your employees for ratification on Tuesday, May 14, 1991.
>
> Thanks
> /s/ Mark

Ellis testified that after he dropped the proposed contract at General Manager Flanagan's office on May 9, he tried to telephone Flanagan several times but was unsuccessful. He said Flanagan finally returned his calls on May 14. Ellis asked Flanagan if he had reviewed the contract and Flanagan said he had. According to Ellis, Flanagan wanted to know how TTO and the Union resolved the very last impasse related to management rights. Ellis told Flanagan ''the lawyers had worked it out.'' Ellis said he responded to and/or answered other concerns and questions Flanagan had. Ellis testified ''Mr. Flanagan, at the end of the conversation, told me

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[16] On that same occasion, Teissier ''faxed'' General Manager Flanagan and Ryan-Walsh Senior Vice President Baker the following message:

REF: GEAR YARD CONTRACT

In the event you have not already received same, we herein enclose changes agreed to by 3000 re our joint meeting of February 27th. Upon review of my notes, all appears to be in order except the following:

(1) *ARTICLE IV—''SENIORITY''*

Mark was waiting for us to propose new wording which Kingsley has now received from [Attorney] David Walker reading as follows and which I have no problem proposing to Mark; ''Seniority shall prevail to the fullest extent possible, consistent with the employer's right to make work assignments under this article.''

(2) *ARTICLE IV—(1a)*

We proposed ending sentence after ''The Current Employer.'' Not addressed by Ellis.

(3) *ARTICLE IV—SECTION 4 (2d)*

We proposed (3) three years, Mark held at (5) years. This is no strike issue with me since this only applies to referral when an employee is on lay-off from his employer and taking into consideration our agreement whereas employers' seniority will take precedence over port-wide seniority.

Suggest we hand tough on Article IV, Section 1(a) and agree to Section 4 (2d) as proposed by Mark.

Please give me a call and lets discuss.

[17] Ellis testified that while he and Teissier were working through language for art. III and IV, that Teissier represented he was speaking for the other two employers namely, Ryan-Walsh and NOSC, on art. III and IV. General Manager Flanagan denied Teissier was at any time his authorized representative for any negotiations with the Union.

[18] Union Attorney Lurye testified, without contradiction, that Attorney Walker told him when they talked sometime in April that he represented all three employers in their efforts to arrive at acceptable contract language. General Manager Flanagan denied Walker was ever authorized to speak on behalf of NOSC.

that it looked okay to him.''[19] Ellis told Flanagan he would like to meet with his employees to ratify the agreement. Flanagan asked that Ellis not meet with his gear yard employees until Flanagan's supervisor returned to the city. Ellis told Flanagan he did not see why the supervisor needed to be present but subsequently agreed to Flanagan's request and delayed the ratification vote until May 20. According to Ellis, Flanagan never at any time made mention of having to obtain approval of the agreement from anyone. Ellis further testified Flanagan voiced no objections to the agreement but rather assisted in setting up a ratification vote on the agreement.

Subsequently, the Company's gear yard employees voted 3 to 0 in favor of the new agreement.[20]

Ellis testified that after NOSC's employees ratified the agreement, he had Union President Joseph sign a copy and that he also took Flanagan a copy with a note for him to sign it and he would thereafter provide all parties with signed copies of the agreement.

Ellis testified he did not thereafter see General Manager Flanagan until June 16, when they were both attending a meeting of the New Orleans Steamship Association. Ellis asked Flanagan if he had signed a copy of the GYA. Flanagan responded he could not until Texas told him he could. Ellis said he was ''angry'' and didn't want to make a scene in front of others from the Steamship Association so he simply walked away from Flanagan. Ellis subsequently asked Flanagan to sign the agreement and even threatened to go to the Board if Flanagan did not do so. Ellis stated that to date, the Company has not signed the GYA.

General Manager Flanagan testified that on or about May 9, he received a copy of the contract the Union had negotiated with TTO. He said he was away from his office at the time but that Ellis left a note for him to consider the agreement. Flanagan testified:

> I talked to Mr. Ellis at some point after May 9. Maybe it was May 9; I don't have the exact date to give you. But I told him that—basically, that we did not negotiate this contract, that we cannot be held to somebody else's contract, that we would like to negotiate.

Flanagan stated Ellis responded it was what TTO had agreed to and that it should be good enough for him.[21] Flanagan said Ellis asked to present the contract to NOSC's employees for ratification. Flanagan said he asked Ellis to delay the vote because his supervisor, Glenn West, was out of the city *and* he had not had an opportunity to discuss the agreement with Texas *and* that ''we certainly didn't approve of the contract at that date.''

Flanagan testified he subsequently told Ellis NOSC had not had an opportunity to negotiate an agreement with the Union. Flanagan could not recall what, if any, response Ellis made.

Flanagan said he did not know when the ratification vote at NOSC took place but that Ellis left a note at his office saying the agreement had been ratified and asked Flanagan to sign it. Flanagan said he telephoned Ellis and told him, ''Mark, you know you can't do that, we [have] not agreed to that.''

The Company admits it has not signed a new GYA with the Union.

III. POSITIONS OF THE PARTIES

The positions of the parties may be summarized in general terms as follows.

Counsel for the General Counsel contends General Manager Flanagan had the authority to negotiate and execute any agreement arrived at. Counsel for the General Counsel asserts that as of mid-May, the parties reached a ''meeting of the minds'' on all terms for a new GYA. She contends Flanagan never at any time prior to arriving at an agreement expressed any limitation on his negotiating authority or his authorization to execute any agreement arrived at. She asserts the Union asked Flanagan to sign the agreement and she argues Flanagan's admitted refusal to do so constitutes a violation of Section 8(a)(5) and (1) of the Act.

The Union's position parallels that of the General Counsel.

The Company asserts the parties *never* arrived at an agreement or a meeting of the minds on all issues related to a new GYA. In that regard, the Company contends the joint meeting on February 27, was not a negotiating session because the parties were not bargaining in a multiemployer fashion. Accordingly, the Company argues the only negotiating sessions between it and the Union were held in December 1990 and early January 1991. The Company contends no agreement was arrived at in those negotiating sessions. The Company argues the Union simply presented it with an agreement that had been negotiated with another employer, namely, TTO and insisted it execute it. The Company asserts General Manager Flanagan told Union Representative Ellis on or about May 9, that the TTO contract was not acceptable to it and that the Company wanted to negotiate its own collective-bargaining agreement. Additionally, the Company contends General Manager Flanagan told Ellis on that same occasion that he would have to run the TTO agreement by his superiors in Texas for their views on that particular agreement. Simply stated, the Company asserts no agreement was ever arrived at and as a result it has no obligation to execute an agreement with the Union.

IV. LEGAL PRINCIPLES

Section 8(d) of the Act, which addresses the obligation to bargain collectively and in good faith, requires ''the execution of a written contract incorporating any agreement reached if requested by either party.'' Thus, if the parties reached an agreement, the Company's failure to execute a contract embodying the agreed on terms with the Union would constitute an unlawful refusal to bargain. *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). On the other hand, if there was no agreement or ''no meeting of the minds'' as contended by the Company, then it was not unlawful for the Company to refuse to execute the contract presented to it by

[19] Ellis stated Flanagan ''accepted'' and ''agreed to'' the ''identical contract'' that TTO agreed to.

[20] Due to a death in Ellis' family, the ratification vote was not actually held until May 30.

[21] Ellis, during rebuttal testimony, denied Flanagan ever stated any disagreement with the proposed contract. Ellis also denied telling Flanagan it was tough but he would just have to sign the same contract TTO had signed.

the Union. Stated somewhat differently, the Board has no authority to order an employer to execute an agreement to which it has not assented. *H. K. Porter Co. v. NLRB*, 397 U.S. 99 (1970). The obligation to execute an agreement arises only after a ''meeting of the minds'' on all substantive issues occurs. See, e.g., *Luther Manor Nursing Home*, 270 NLRB 949 (1984). As noted in *Kelly's Private Car Service*, 289 NLRB 30, 39 (1988), a party's signifying assent to an unsigned paper can serve as the formation of a contract. The issue is simply one of intention. Did the parties *intend* to have a contract? In determining whether an agreement has been arrived at, the Board ''is not strictly bound by the technical rules of contract law but is free to use general contract principles adopted to the collective-bargaining context.'' *NLRB v. Electra-Food Machinery*, 621 F.2d 956 (9th Cir. 1980). Inadvertent errors in a written agreement does not reflect a lack of agreement and the need for minor changes or alterations in language does not relieve the parties of the obligation to execute an agreed-on contract. *Kelly's Private Car Service*, supra at 40. The burden of proof on the issue of whether there was a ''meeting of the minds'' is on the General Counsel. See, e.g., *Teamsters Local 287 (Reed & Graham)*, 272 NLRB 348 (1984).

V. CREDIBILITY RESOLUTIONS

Union Representative Ellis appeared generally candid and impressed me that he was attempting as best he could to testify truthfully. I am not unmindful of his interest in the outcome of this case; however, I found him to be a believable witness. Additionally, Ellis' testimony was supported by that of Union Attorney Lurye and Union President Joseph on those occasions when the two were also present at conversations about which Ellis testified. The overall circumstances of the case as well as the documentation presented at trial generally supports Ellis' testimony. Accordingly, I credit his testimony and specifically do so where it conflicts with the testimony given by General Manager Flanagan. General Manager Flanagan was to a great extent unresponsive to questions generally and specifically to questions related to limitations or restrictions placed on his authority by the Company's Texas headquarters. Flanagan seemed anxious to shift responsibility for his actions (or inactions) to higher officials of the Company in Texas. In light of all the above, I am unwilling to rely on Flanagan's testimony where it is contradicted by that of other witnesses.

VI. ANALYSIS AND CONCLUSIONS

Applying applicable legal principles to the credited facts I conclude counsel for the General Counsel sustained her burden of proof in showing the parties reached full agreement on a contract which, after being requested, the Company, in violation of Section 8(a)(5) and (1) of the Act, refused to execute.

First, I note the Company acknowledges General Manager Flanagan had the authority to negotiate and/or execute a collective-bargaining agreement with the Union. The credited evidence establishes he never at any time prior to arriving at an agreement expressed to the Union that his authority was limited in any manner or that he needed prior approval from anyone before agreeing to and/or signing a contract. Ellis', Lurye's, and Joseph's testimony that Flanagan never expressed any limitation on his authority was convincing and dispositive of this issue.

Having determined that General Manager Flanagan had authority without expressed limitations to finalize an agreement, did he, on behalf of the Company, arrive at a new GYA with the Union? A number of factors clearly indicate he did. First, General Manager Flanagan admittedly reached agreement in principle with the Union on January 3, on the three items the Union contended were absolutely essential to a new GYA. Flanagan and the three union negotiators even shook hands on the agreement in principle at the conclusion of their January 3 negotiating session. Flanagan and Union Representative Ellis discussed further language changes on January 7, when Flanagan called on Ellis at Ellis' office for that specific purpose. Contrary to the Company's contention, the evidence demonstrates the parties along with the two other gear yard employers (TTO and Ryan-Walsh) did negotiate jointly on February 27, regarding articles III and IV of the proposed agreement. TTO Vice President Teissier testified he acted as ''the point man'' for all three employers on that and subsequent occasions in attempting to arrive at mutually acceptable provisions that had portwide ramifications, namely, hiring procedures and seniority. That the February 27 meeting was in fact a negotiating session and binding on the Company is borne out not only by General Manager Flanagan's participation in the meeting, but by the correspondence that was exchanged with Flanagan by TTO Vice President Teissier. Teissier credibly testified that within a week to 10 days after he received from Ellis the proposed changes discussed at the February 27 meeting related to articles III and IV, that he checked with General Manager Flanagan (as well as Ryan-Walsh Senior Vice President Baker) to see if they had received copies of the changes from Ellis and to determine what, if any, changes they wanted addressed. That the bargaining after February 27 was on behalf of all three employers related to articles III and IV, is also borne out by the memorandum TTO Vice President Teissier sent to Union Representative Ellis on March 27 in which Teissier advised Ellis he had polled the other employers about those articles. TTO Vice President Teissier in a March 27, memorandum to the Company (as well as to Ryan-Walsh) suggested the employers ''hang tough on Article IV, Section 1(a) and agree to Section 4 (2d) as proposed by Mark [Union Representative Ellis].'' TTO Vice President Teissier invited General Manager Flanagan and Ryan-Walsh Senior Vice President Baker to give him ''a call and let's discuss'' the proposed changes. There is no showing that General Manager Flanagan objected to the negotiations related to or the resolution of articles III and IV of the proposed agreement. Further communication (April 16) between Teissier and the Union, the Company and Ryan-Walsh reflects the position of the three employers remained the same on certain subsections of the articles under consideration while upon further review the employers accepted the Union's proposal on a specific subsection of these particular articles. I am persuaded the negotiations regarding articles III and IV were on behalf of and binding on all three employers. This conclusion is supported by the testimony of Union Attorney Lurye that when he and Attorney Walker resolved final language on these two articles Walker told him he represented all three employers on these two articles.

After the Union reached an agreement on all terms of a new GYA with TTO and it had been ratified by TTO's gear yard employees, Union Representative Ellis on or about May 9, provided General Manager Flanagan with a copy of that contract with the Company's name herein substituted for TTO's. When Ellis and Flanagan made telephonic contact on or about May 14, they discussed how the final language had been arrived at and specifically discussed the entire agreement. It was at that time that General Manager Flanagan told Union Representative Ellis that the proposed contract looked okay to him. That Flanagan agreed to the proposed contract on that day is, in addition to Ellis' testimony, borne out by the fact Flanagan assisted Ellis in arranging for a ratification vote by NOSC's gear yard employees on the contract. The only reservation General Manager Flanagan expressed about scheduling the ratification vote was that his gear yard supervisor was out of the city. The credited testimony establishes he did not object to but rather accepted the contract on that occasion.

After a favorable ratification vote had been taken on May 30, Ellis presented Flanagan with a signed copy of the contract on May 31, and requested he execute it on behalf of the Company. The evidence establishes Flanagan refused by oral statement on or about June 15 to do so. Based on Ellis' credited testimony, June 15, was the first time Flanagan had raised the issue of his needing to get approval from the Company's Texas office to enter into a collective-bargaining agreement with the Union. Such belated announcement by Flanagan is of no benefit to the Company. Its negotiator had negotiated and accepted a contract before any restrictions on the negotiator's authority had been made known to the Union.

In summary, the evidence establishes and I find the parties arrived at a new GYA on or about May 14, and that the same was presented to the Company for execution on May 31, and the Company in violation of Section 8(a)(5) and (1) of the Act refused to do so on or about June 15.

CONCLUSIONS OF LAW

1. New Orleans Stevedoring Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. General Longshoremen Workers, Local No. 3000, International Longshoremen's Association is a labor organization within the meaning of Section 2(5) of the Act.

3. The unit of employees described in article I of the parties' newly arrived at collective-bargaining agreement constitutes a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material the Union has been the exclusive representative of all the employees in the above-described unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing since on or about June 15, to sign and comply with the collective-bargaining agreement agreed on between it and the Union on May 14, the Company has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

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

THE REMEDY

Having found that the Company has violated Section 8(a)(5) and (1) of the Act I shall recommend that it cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

I recommend the Company be ordered, on request, to execute the collective-bargaining agreement it agreed to on May 14, with effective dates as set forth at article XVI of the agreement. A copy of the specific agreement that is to be signed was received in evidence as General Counsel's Exhibit 13b. Additionally, the Company shall make whole the employees in the bargaining unit for losses, if any, which they may have suffered by the Company's refusal to sign the agreement in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[22]

ORDER

The Company, New Orleans Stevedoring Company, New Orleans, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to sign, implement, and comply with the terms of the collective-bargaining agreement it agreed on between it and the Union which agreement is specifically described in the remedy section of this decision.

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

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

(a) Sign, implement, and comply with the terms of the collective-bargaining agreement it agreed on between it and the Union which agreement is specifically described in the remedy section of this decision.

(b) Make whole its employees in the bargaining unit for losses, if any, which they may have suffered by its failure to sign, implement, and comply with the terms of the collective-bargaining agreement it agreed on between it and the Union.

(c) Post at its New Orleans, Louisiana location copies of the attached notice marked ''Appendix.''[23] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Company's authorized representative, shall be posted by the Company immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken

[22] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[23] If 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.''

by the Company to ensure that the notices are not altered, defaced, or covered by any other material.

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

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to sign, implement, and comply with the collective-bargaining agreement we agreed on with General Longshoremen Workers, Local No. 3000, International Longshoremen's Association on May 14, 1991.

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

WE WILL NOT sign, implement, and comply with the terms of the collective-bargaining agreement agreed to with the Union on May 14, 1991.

WE WILL make whole our unit employees for any losses they may have suffered by reason of our unfair labor practices.

NEW ORLEANS STEVEDORING COMPANY