V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

In view of the fact that since the events in this case Respondent has entered into a collective-bargaining agreement with the Union, it is probable that there will be no repetition of the conduct which led Respondent into the widespread violations of Section 8(a)(1) here found. Nevertheless, the possibility of such repetition does exist, and a cease and desist order should be entered to guard against it. For purposes of this proceeding, however, the various Section 8(a)(1) violations are of primary importance as background for the findings of discrimination violative of Section 8(a)(3). No useful purpose would be served in detailing in the order the specific types of conduct which Respondent has heretofore engaged in in violation of Section 8(a)(1). Therefore in the light of the widespread and varied nature of the acts of interference, restraint, and coercion, I shall recommend that Respondent be ordered to cease and desist from infringing its employees' Section 7 rights in any manner. I shall also recommend that Respondent restore insofar as possible the conditions existing prior to the unfair labor practices, restore each of the discriminatees to the position he filled prior to the discrimination against him, and make each of them whole (in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289) for any loss of pay which he may have suffered by reason of the Respondent's discrimination against him. I shall also recommend that the Respondent, upon reasonable request, make available to the Board and its agent, all payroll and other records pertinent to an analysis of the amount due under these recommendations.

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

2. By discouraging membership in a labor organization through discrimination in employment, and by interfering with, restraining, and coercing employees in the exercise of their rights under the Act, the Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Bethlehem Steel Company (Shipbuilding Division) *and* Bethlehem-Sparrows Point Shipyard, Inc. *and* Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO.

Cases Nos. 2-CA-6866 and 2-CA-6867. April 25, 1962

SUPPLEMENTAL DECISION AND ORDER

On October 25, 1961, the Board issued a Decision and Order in this proceeding,[1] finding, as the Trial Examiner did, that Respondent Bethlehem Steel Company (Shipbuilding Division) had engaged in certain unfair labor practices within the meaning of Section 8(a)(5) of the Act,[2] but had not otherwise violated Section 8(a)(5) as alleged in the complaint.

[1] 133 NLRB 1347

[2] The Trial Examiner's finding, which is not disturbed herein, is that Respondent violated Section 8(a)(5) by insisting to impasse in collective-bargaining negotiations with the Union with respect to the hourly paid unit upon a contract clause requiring the signature of individual employees on grievances

On December 6, 1961, the Charging Union filed a motion for reconsideration of the Board's Decision and Order to the extent that it dismissed the complaint, and on December 8, 1961, the General Counsel filed a motion for clarification of the Decision and Order. On December 18, 1961, Respondent filed a statement with respect to the aforesaid motions in which it expressed opposition to the motion for reconsideration but took no position on the request for clarification.

Upon consideration of the motions filed by the Charging Union and General Counsel, the statement filed by Respondent, and the entire record in the case, including the exceptions and briefs heretofore filed, the Board finds merit in the motions and hereby grants them as indicated below.[3]

1. In any case such as this, where it must be determined whether the employer engaged in bargaining with a genuine desire to reach an agreement, or in only sham bargaining, an issue is presented which must be resolved on the basis of all the facts and circumstances of the particular case. Although, as indicated below, we have found several particular aspects of the Respondent's behavior to have been unlawful, considering the totality of Respondent's conduct we are unable to conclude from the present record that Respondent did not honestly endeavor to reach an agreement in its negotiations with the Union. We must therefore adhere to our prior argeement with the Trial Examiner on this aspect of the case.

2. In our original Decision, we also agreed with the Trial Examiner that Respondent did not violate Section 8(a)(5) of the Act by its unilateral action taken with respect to certain matters following the expiration of its collective-bargaining agreements with the Union on July 31, 1959, covering hourly paid and salaried employees. We continue to believe that Respondent did not violate the Act when it ceased giving effect to the contract provisions which required employees to join the Union 30 days after hire and discontinued the checkoff of union dues. However, upon reconsideration, we believe that Respondent violated the Act when it deprived union representatives of certain seniority rights and declined to process grievances as before.

In finding that the unilateral changes made after the termination of Respondent's contracts with the Union were not unlawful, the Trial Examiner found that none related to "terms and conditions of employment." We do not agree with this basis for the Trial Examiner's recommended dismissal.[4] There can be little doubt that union secu-

[3] The Union's request for oral argument on its motion is denied for the record of the prior proceeding together with the documents filed since issuance of the Decision and Order adequately present the issues to be decided and the positions of the parties

[4] Nor do we agree with the Trial Examiner's view that, while all conditions of employment are mandatory subjects of collective bargaining, "it does not follow that all mandatory subjects deal with conditions of employment" Section 8(a)(5) and (d) together define an employer's bargaining obligation It is that the employer must bargain with the representatives of his employees in good faith with respect to "wages, hours, and

rity, checkoff, and preferential seniority affect, or may affect, "wages, hours, and other terms and conditions of employment." So too with grievance machinery. A method for presenting and adjusting grievances which deal with "wages, hours, and other terms and conditions of employment" is manifestly related to those matters. In accord with Board and court decisions, we find that union security, checkoff, preferential seniority, and a grievance procedure are matters related to "wages, hours, and other terms and conditions of employment" within the meaning of Section 8(d) of the Act and, therefore, are mandatory subjects for collective bargaining.[5]

Notwithstanding the fact that union security and checkoff are compulsory subjects of bargaining, and that Respondent acted unilaterally with respect to them, we find nothing unlawful in Respondent's action here. The acquisition and maintenance of union membership cannot be made a condition of employment except under a contract which conforms to the proviso to Section 8(a)(3). So long as such a contract is in force, the parties may, consistent with its union-security provisions, require union membership as a condition of employment. However, upon the termination of a union-security contract, the union-security provisions become inoperative and no justification remains for either party to the contract thereafter to impose union-security requirements. Consequently, when, upon expiration of its contracts with the Union, the Respondent refused to continue to require newly hired employees to join the Union after 30 days of employment, it was acting in accordance with the mandate of the Act.

Similar considerations prevail with respect to Respondent's refusal to continue to check off dues after the end of the contracts. The checkoff provisions in Respondent's contracts with the Union implemented the union-security provisions. The Union's right to such checkoffs in its favor, like its right to the imposition of union security, was created by the contracts and became a contractual right which continued to exist so long as the contracts remained in force. The very language of the contracts links Respondent's checkoff obligation to the Union with the duration of the contracts. Thus, they read: ". . . the Company will, beginning the month in which this Agreement is signed and so long as this Agreement shall remain in effect, deduct from the pay of such Employee each month . . . his periodic Union dues for that month." Consequently, when the contracts terminated, the Respondent was free of its checkoff obligations to the Union.

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other terms and conditions of employment" Unless a matter is related to those subjects, it does not fall within the scope of mandatory bargaining imposed by the Act. See *N.L.R.B.* v. *Wooster Division of Borg-Warner Corporation*, 356 U S 342; *North Carolina Furniture, Inc.*, 121 NLRB 41.

[5] *N L R.B.* v *The Proof Company*, 242 F. 2d 560 (C.A 7); *N.L.R B.* v. *Reed & Prince Manufacturing Company*, 205 F. 2d 131 (C.A. 1); *N.L R.B* v *Ross Gear & Tool Company*, 158 F 2d 607 (C A. 7); *United States Gypsum Company*, 94 NLRB 112.

As already indicated, it is with respect to the unilateral action taken in terminating certain seniority rights and altering an existing grievance procedure that we now believe the Respondent violated Section 8(a)(5) of the Act.

A grievance procedure was established by Respondent's contract with the Union which was designed to accommodate "any matter which in the opinion of the Union or of any Employees requires adjustment." This procedure provided the employees with an orderly method, known to all, for adjusting any dissatisfaction with their employment. As of August 1, 1959, the Respondent, acting unilaterally, abandoned this grievance machinery and substituted a new procedure therefor. We find that this unilateral action taken with respect to a matter related to "wages, hours, and other terms and conditions of employment" was in derogation of the Union's representative status and a violation of Section 8(a)(5).

By virtue of Respondent's contract with the Union, certain employee representatives of the Union became vested with "top seniority rights." Such rights provided those employees with additional security and protection of job rights in the event of layoff and the effect thereof was to make available to the employees better qualified union representatives. Again acting unilaterally on August 1, the Respondent abrogated these seniority rights and thus terminated the benefits which had accrued to employees thereby. It has already been noted that preferential seniority may affect an employee's "wages, hours, and other terms and conditions of employment" and is therefore a mandatory subject of bargaining. Just as Respondent could not unilaterally alter the grievance procedure, or would not have been privileged to act unilaterally with respect to any existing wage rate or term or condition of employment, no matter how established, it could not on its own choose to disregard the seniority rights acquired by its employee union representatives.[6] By acting as it did, Respondent violated Section 8(a)(5) of the Act.

THE REMEDY

Having found, upon reconsideration, that Respondent also violated Section 8(a)(5) of the Act by unlawful unilateral action affecting employees in both the hourly paid and salaried bargaining units, we shall enter a Supplemental Order in these cases.

ORDER

Upon the entire record in this case and pursuant to Section 10(e) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Bethlehem Steel

[6] Cf. *Zdanok et al.* v. *Glidden Company, Durkee Famous Foods Division,* 288 F. 2d 99 (C.A. 2), cert. granted on other grounds 82 S. Ct. 476.

Company (Shipbuilding Division), Bethlehem, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO, as the exclusive representative of all its employees in the appropriate bargaining units with respect to rates of pay, wages, hours of employment, or other terms or conditions of employment.

(b) Insisting to impasse in collective bargaining with the Union upon a contract clause requiring the signature of individual employees on grievances or upon any other proposal not related to rates of pay, wages, hours of employment, or other terms or conditions of employment.

(c) Unilaterally changing grievance procedure, seniority rights, rates of pay, wages, hours of employment, or other terms or conditions of employment without first giving notice and bargaining with respect thereto with Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO, as the exclusive representative of all its employees in the appropriate bargaining units.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Union of Marine and Shipbuilding Workers of America, AFL–CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act, and to refrain from any or all such activities, except as permitted by Section 8(a)(3) of the National Labor Relations Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Upon request bargain collectively with Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO, as the exclusive representative of the employees in the appropriate bargaining units with respect to rates of pay, wages, hours of employment, and other terms or conditions of employment and if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at each of its east coast shipyards copies of the notice attached hereto marked "Appendix."[7] Copies of said notice, to be furnished by the Regional Director for the Second Region, shall,

[7] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

after being duly signed by representatives of the Respondent, 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 insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint in these cases be, and it hereby is, dismissed, insofar as it alleges violations of the Act other than those noted herein.

MEMBER RODGERS, dissenting in part:

I agree to revising the Board's Decision in this case. But I would do so by deleting from the Board's Decision the language "without completely agreeing with all his [the Trial Examiner's] subsidiary findings." I would now adopt the Trial Examiner's findings, conclusions, and recommendations in their entirety.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL bargain, upon request, with Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO, as the exclusive representative of all employees in the appropriate bargaining units with respect to checkoff, superseniority for union officers, shop stewards, and grievance committeemen, and grievance procedure.

WE WILL NOT insist to impasse in collective bargaining with the Union upon a contract clause requiring the signature of individual employees on grievances or upon any other proposal not related to rates of pay, wages, hours of employment, or other terms or conditions of employment.

WE WILL NOT unilaterally change rates of pay, wages, hours of employment, or other terms or conditions of employment without first giving notice and bargaining with respect thereto with the Union as the exclusive representative of all employees in the appropriate bargaining units.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to

self-organization, to form labor organizations, to join or assist Industrial Union of Marine and Shipbuilding Workers of America, AFL–CIO, or any labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except as permitted by Section 8(a)(3) of the National Labor Relations Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

All of our employees are free to become or remain members of any labor organization.

BETHLEHEM STEEL COMPANY
(SHIPBUILDING DIVISION),
Employer.

Dated_____ By_____
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 5th Floor, Squibb Building, 745 Fifth Avenue, New York 22, New York, Telephone Number Plaza 1–5500, if they have any question concerning this notice or compliance with its provisions.

The Centor Company[1] ***and*** **District 50, United Mine Workers of America, Petitioner.** *Case No. 13–RC–8259. April 25, 1962*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Richard P. Gethner, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

Upon the entire record in this case the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The Petitioner seeks to represent the landing employees[2] employed at the Employer's Joliet, Illinois, operation. The Employer contends that all the employees sought are guards within the mean-

[1] The Employer's name appears as amended at the hearing.

[2] These employees are referred to in the record both as "landing men" and as "watchmen."