

Brown Shoe Company and Amalgamated Clothing and Textile Workers, Southwest Regional Joint Board, Cape Girardeau District. Case 14-CA-21796

September 21, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On August 6, 1992, Administrative Law Judge George F. McNerny issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party Union filed answering briefs.¹

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

The judge found, and we agree, that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to grant the Union's timestudy engineer access to its plant in order to conduct timestudies on new machinery the Respondent had installed. In finding this violation, the judge inferred that the Respondent either had conducted these timestudies itself and had failed to report the results to the Union or had erroneously led the Union to believe, through its written correspondence, that management officials had done such timestudies when the data actually did not exist.

We find it unnecessary in this case to rely on the judge's unwarranted speculation as to whether the Respondent had conducted the relevant timestudies. We note that the Union filed two grievances in April 1991 alleging that following installation of new machinery

employees who operated that machinery had suffered a decline in wages under the Respondent's piece rate system. Then, on December 2 and 20, 1991, after an arbitrator had been requested on these grievances, the Union requested that the Respondent grant its timestudy engineer access to the plant to conduct timestudies pertaining to the Union's grievance. The Respondent effectively denied these requests on December 9 and 27, 1991. As the judge found, the timestudy was clearly relevant to the processing of the grievance, and the Union had no other reasonable means of obtaining the information. Thus, the judge properly found that the Respondent's refusal to grant access violated Section 8(a)(5) under the test set out in *Holyoke Water Power Co.*, 273 NLRB 1369 (1985), enf. 778 F.2d 49 (1st Cir. 1985), cert. denied 477 U.S. 905 (1986).³

In so concluding, we reject the Respondent's contention that the Union's failure to invoke article III, section 6 of their collective-bargaining agreement and request a joint investigation of the employees' alleged wage losses barred the finding of a violation here.⁴ We stress that this contractual provision did not specifically preclude the Union from using other means to address these grievances and that, as the Union noted in its answering brief, any such request would have been futile based on the Respondent's denial that any problem existed regarding employees' piece rates on the new machinery.

Further, the "joint investigation" envisaged by article III, section 6 is no substitute for an actual timestudy of the machine in question. Article XIII, section 5 of the contract provides for such a timestudy. How-

¹The Respondent thereafter filed a motion to reopen the record and the General Counsel and the Charging Party filed responses in opposition to the motion. The Respondent then filed a motion and a second motion to supplement its motion to reopen and/or a motion for judicial/official notice to which the General Counsel and the Charging Party filed responses in opposition. We deny the Respondent's various motions as lacking in merit.

²The Respondent argues in its exceptions that the complaint should be dismissed because of the judge's "prejudicial rulings and conduct at the hearing." After a careful examination of the entire record, we are satisfied that this allegation is without merit. We find, contrary to the Respondent, that the judge did not demonstrate bias and prejudice towards the Respondent's position by the comments and rulings he made during the course of the hearing.

The judge stated in both the 6th and 14th paragraphs of his "Statement of Facts" that under the parties' collective-bargaining agreement machine operators had a "120 day" trial period in which they received 100 percent of their former hourly wages as they adjusted to the installation of new machinery at the Respondent's facility. However, the contract actually provides, as the judge noted in the 4th paragraph of this section, that the operators receive 100 percent of their former pay for only the first "120 hours." We do not find that correction of these misstatements is sufficient to affect the result here.

³We note that the judge erroneously stated that *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956), and its progeny, including *Lechmere, Inc. v. NLRB*, 112 S.Ct. 1513 (1992), are "inapposite" here. Contrary to the judge, the Board expressly relied on *Babcock* in articulating the *Holyoke* test. In *Holyoke*, citing *Babcock*, the Board agreed "with the [employer] [r]espondent's contention that an employer's right to control its property is a factor that must be weighed in analyzing whether an outside union representative should be afforded access to an employer's property." Under the *Holyoke* test, however, we analyze an incumbent union's entitlement to an employer's premises as opposed to a union's attempt to organize an employer's employees as in *Babcock*. The *Holyoke* test, which all parties agree applies here, "is a balancing test under which access is to be granted if 'responsible representation of employees can be achieved only by the union's having access to the employer's premises' and under which access can be lawfully denied if 'a union can effectively represent employees through some alternative means other than by entering on the employer's premises.'" *Exxon Chemical Co.*, 307 NLRB 1254 (1992), quoting *Holyoke*, 273 NLRB at 1370. As we have stated, however, the judge properly found that the Union had no alternative means for gathering the timestudy information.

⁴This provision provides, inter alia, that:

Where a new job, a new machine, or a new method is introduced into the factory, and, after a reasonable learning period, the operators thereon fail to reach their former line average, the Company and Union shall make a joint investigation to determine the cause of such failure.

ever, two points are critical in this respect. First, although the study is to be done by the Company, the Union can be present during such a study. Thus, the Respondent has implicitly recognized that union access is necessary during a study. Second, on February 11, the Union invited the Respondent to perform such a study. *In the alternative*, the Union asked to do its own study. The Respondent never replied. Thus, the Union's request for access to perform a study was made only because the Respondent declined the Union's reasonable request that the Respondent perform its own study. In these circumstances, we conclude that union access was necessary in order for the timestudy to be accomplished.

Finally, the Respondent asserted that the judge improperly ignored the parties' record stipulation that during calendar years 1989-1991 they had resolved 68 grievances relating to employees' piece rates without the Union ever conducting a timestudy. The Respondent, while further noting that before the instant hearing the parties also resolved one of the two grievances here without conducting a timestudy, argued that the judge should have permitted the parties to resolve the remaining grievance themselves under the relevant procedures set out in the contract. Because there is no evidence regarding the nature of the 68 grievances the parties handled without a timestudy, we find that they are immaterial to our resolution of this case. Further, the Union's past failure to request timestudies in resolving grievances does not prejudice its right to decide that such information would advance the processing of later grievances. Regarding the evidence that the parties settled one of the grievances filed here, we note that this grievance was pending at the time the Union sought access and that the parties' later resolution of it did not cure the Respondent's unlawful conduct.

Thus, we adopt the judge's finding that the Respondent's refusal to grant the Union access to its premises in these circumstances violated Section 8(a)(5) and (1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Brown Shoe Company, Caruthersville, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Kathleen C. Fothergill, Esq. and *Robert Seigel, Esq.*, for the General Counsel.

Terry L. Potter, Esq. and *James N. Foster Jr., Esq.* (*McMahon, Berger, Hanna, Linihan, Cody and McCarthy*), of St. Louis, Missouri, for the Respondent.

Carl Bush, Esq., of St. Louis, Missouri, for the Charging Party.

DECISION

GEORGE F. MCINERNEY, Administrative Law Judge. Based on a charge filed on January 29, 1992, by Amalgamated Clothing and Textile Workers, Southwest Regional Joint Board, Cape Girardeau District (the Union), the Regional Director for Region 14 of the National Labor Relations Board (respectively, as the Regional Director), and the Board, issued a complaint on February 25, 1992, alleging that Brown Shoe Company (Respondent or the Company) had violated and was continuing to violate certain provisions of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act). The Respondent filed a timely answer in which it denied the the commission of any unfair labor practices. Pursuant to notice given by the Regional Director, a hearing was held before me in St. Louis, Missouri, on April 13, 1992, at which all parties were represented by counsel, and had the opportunity to present testimony and documentary evidence, to examine and cross-examine witnesses, and to argue orally.

Following the close of the hearing, all parties filed briefs, which have been carefully considered. The General Counsel's brief has been corrected as requested in a motion dated June 12, 1992.

Based on the entire record, including my observations of the witnesses, and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Brown Shoe Company is a corporation authorized to do business in the State of Missouri. It maintains a number of facilities engaged in the manufacture of shoes and other articles of clothing in Missouri and in other States, including the plant in question here, located in Carruthersville, Missouri. The complaint alleges, the answer admits, and I find that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union here is alleged to be a labor organization within the meaning of Section 2(5) of the Act. The answer admits this, and I so find.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Statement of Facts*

The Union has represented the employees of this Company at its plant in Carruthersville, Missouri, since at least 1964. The bargaining unit as described in the latest collective-bargaining agreement effective from September 20, 1990, to August 27, 1993 (the contract) includes "all employees of the Company" excepting the "Plant Manager, Assistant Plant Manager, Foremen, Assistant Foremen, Instructors, Floorladies, Commissary Clerks, Upper Leather Clerks, Nurse, Clerical, Office Force and Record Writers."

This unit, as so described in the complaint, is admitted in the answer, and I find it to be an appropriate unit for collective bargaining within the meaning of Section 8(b) of the Act.

The contract provides, in article III, section 6 that

where a new job, a new machine, or a new method is introduced into the factory, and, after a reasonable learning period, the operators thereon fail to reach their former line average, the Company and the Union shall make a joint investigation to determine the cause of such failure.

Section 9 of the same article provides that

when an operator is required to move to a new type machine where new work habits must be learned, he shall be compensated for a period of the first 120 hours at 100 percent of his former hourly average or at his earnings on the new machine, whichever is the greater.

The facts in this case are substantially undisputed. Early in 1991 new machines were introduced in the bottoming department (where the bottoms of shoes are made and soles and heels attached), and the lasting department (where uppers are formed onto shoe lasts). The new machines affected particularly the rough and cement section in the bottoming department, and the simple sidelast section of the lasting department.

In April 1991, some of the employees in these two sections, rough and cement, and Simple sidelast, came to Kathleen Lee, an employee at the Carruthersville plant and the president of the Union's Carruthersville local. The employees complained to Lee that when methods were changed and new machines were installed in their sections, they were unable to keep up their average production. Lee testified that she checked the Company's payroll records (which were made available to her without limitation) showing wages before the new methods and machines, and the wages after 120-day trial period. She discovered that, in fact, the employees in the rough and cement and simple sidelast section were indeed averaging substantially less earnings than they had before the introduction of the new machines and methods.

Lee thereupon prepared two grievances, one for each affected section, requesting piece rate increases because of failure to maintain employee averages, together with backpay. The grievances were then submitted by the respective shop stewards to their foremen in accordance with contractual grievance procedures.

The grievances were denied, in writing, by Jarol Smith, a representative of the Company's labor cost analysis unit. The reasons for the denial were worded identically in both grievances, stating:

Investigation reveals that the piece rate in question is correctly applied from the standard and established piece rate list. This rate compensates the operators for all work steps required and is sufficient to return the expected earnings for the operations.

The Company presented no witnesses in this case, preferring to rely on the testimony of the General Counsel's witnesses, which was substantially undisputed, the documentary evidence, and the Company's own legal theories. Without testimony, for example, on the letters concerning and decisions on grievances, I am left with the bare wording of the documents, and actions taken by the parties to the grievance process, to draw what inferences seem to me to be warranted by these documents and actions.

At this point, then, I think that I can draw two inferences based on the Company's actions in installing new machinery in the simple sidelast and the rough and cement sections. First, the installation of the machinery itself leads to the inference, which I draw, that the purchase of expensive equipment would logically have been the subject of cost analysis, including labor cost analysis, to determine whether the cost of the machinery would be justified by its value to the Company. Labor cost analysis must consider the time which each operator spends, if not on every operation in the process, certainly in the whole production process. Whether labor cost analysis is called a wage study or a timestudy, it involves calculations and projections of production time spent, hourly rates, and the ability of employees to utilize the new machines efficiently.

Turning then to the letter denying the Union's grievances, it is evident to me, in the absence of contrary testimony, that the word "investigation" refers to investigations made by the author of the letters, Jarol Smith, or by some other members of the labor cost analysis staff. Further, such an investigation must have been concerned with the same considerations as those which preceded the purchase of the machines. Thus, I infer and find that matters of labor costs, productivity, effectiveness, and profitable use of machines must have been considered by the Company in coming up with its decision that "the piece rate in question is correctly applied from the standard and established Piece Rate List."¹ The grievance denial letters went on to say that: "This rate compensates the operators for all work steps required" The use of the phrase indicates, clearly, that some sort of study was made which evaluated time and productivity and the relation between these factors and piece rates received by employees before and after the introduction of new methods and new machines.²

Finally, on this issue, I infer and find that the cost analyses made either in the evaluations of the purchase of new machines, as in the decision on the grievances here, are equivalent to timestudies made to determine the applicability of established piece rates to changed working conditions.

At this point, if the preceding analysis is correct, the Company has made changes in the methods and machinery used in the rough and cement and simple sidelast operations. The changes have resulted in substantially lower earnings or employees. The Company had analyzed these changes but had given the Union no notice beforehand, nor any opportunity, as provided in article XIII, section 5 of the contract, to participate in any studies made in connection with the grievance process.

Moreover, the Company did not, as mandated by article III, section 6 of the contract, make a "joint investigation" to find out why operators were failing to reach their former line average, after the changes, and after the 120-day adjustment period.

¹ Whether the decision was based on the studies made before the purchase, or on new studies made in this grievance process.

² The last part of this sentence in the denial letters continues: "and is sufficient to return the expected earnings for this operation." It is not clear whether the Company is referring to employee earnings or its own earnings from the operation in question, but the word "expected" is another clue pointing to a management study of the operation, which examined the relationship of time to production and piece rate wages.

Returning to the chronology of the grievance procedure, Bobby Joe Carr, an International representative for the Union, assigned to the Carruthersville area, testified that he was called in to handle the next step of the procedure. On August 20, Carr met with local union representatives and company representatives. The latter group included, at the meeting on the simple sidelast grievance, Cost Analysis Representatives Mike Davis and Mike Willyard, with Plant Manager Alton Phillips, and Senior Vice President for Manufacturing Gene Flowers. At the rough and cement meeting, only Davis and Willyard were present.

After these meetings, on August 27, the rough and cement and simple sidelast grievances were denied in an unsigned note addressed to Plant Manager Phillips, using exactly the same language as had been used in the previous denial at the shop floor level.

The local union executive board then voted to request arbitration. This request was approved by Carr, and by Jeryl W. Slinkard, district manager of the Cape Girardeau office of the Union. On November 18, Slinkard wrote to R. J. Wargo, manager, labor cost analysis, at the Company's headquarters in St. Louis, informing him that the Union wished to go to arbitration on these grievances.

Then, on December 2, Slinkard wrote to Wargo stating:

In order to prepare for arbitration for grievances (including Rough and Cement, and Simple Sidelast) the union is requesting dates for the union time study engineer to study the operations involved.

Slinkard gave a number of dates in January 1992 when the Union's engineer would be available.

Wargo answered on December 9 in the following manner:

I have received your request for a time study and in light of our pattern of handling previous grievances I am surprised, as was the case when you requested performance of time studies at Piedmont. I am concerned that operations could be seriously disrupted by your time study. Again, as in that case, you offer no assurances that such a study would have sufficient repetition or duration to have any validity. Before I can further evaluate your request for a time study. I would need your specific proposal in this regard.

In addition to my concerns above, I have investigated the grievances at the Carruthersville facility and can find none which are pending which involve a time study. I would appreciate if you would further explain the purpose and nature of your request. I look forward to your prompt response in this regard.

Wargo, of course, did not testify, nor did the Company offer any explanation as to the meaning of this letter. I remarked at the hearing that it was difficult of understanding, particularly the stated need for "assurances that such a study would have sufficient repetition or duration to have any validity."³ Wargo's demands for a "specific proposal"; for "further" explanations of "the purpose and nature of your request"; and his investigations of the Carruthersville grievances which turned up "none which are pending which in-

³Unless these are words of art in the timestudy profession, but there is no translation in this record.

volve a time study"; all strike me as disingenuous and designed not to clarify matters, but to obfuscate and delay.

But Slinkard persisted, without comment, replying to Wargo on December 20, and stating:

An arbitrator has been requested for the listed grievances that involve a challenge to the adequacy of the piece rate the company is now applying. The grievances concerning piece rates are the same as listed in the letter of December 2, 1991

The Collective Bargaining Agreement, Article XIII, in addition to labor laws, grant the privilege of a union representative presence during a time study. It also permits the review of such study.

Slinkard went on to renew his request for a union timestudy on one of the dates previously offered, and enclosed the Company's rejections of the grievances.

In response to this, Wargo wrote Slinkard on December 27, setting out, in full, section 5 of article XIII, which states:

In the event that a time test is made by the Company as a result of a grievance submitted by the Union, it is understood and agreed that a representative of the Union shall be permitted to be present during the making of such test and shall be permitted to view the results of the test. The Company in the foregoing cases shall furnish to the President of the Local Union a signed copy of the timestudy summary sheet and shall, if requested, permit the Union representative to see the complete data sheets pertaining to the timestudy.

Wargo went on to say that "none of these cases pending involve making a timestudy by the Company," and he offered to notify the local union representative if it did make such a study. He concluded by offering a number of dates for arbitration.

Slinkard did not reply to this until February 11, 1992, when he wrote to Wargo setting out two alternative proposals, either the Union would observe the Company's timestudy engineer perform the studies, or the Union's engineer would conduct his own study with or without the assistance of the Company's engineer.

There was no further correspondence on contact between Slinkard and Wargo which is noted on the record of this hearing.

B. Analysis and Conclusions

The testimony of Kathleen Lee, that the employees in the rough and cement, and simple sidelast sections suffered substantial losses in their averages after the new machinery was installed, is undenied in the record. To be sure, the Company, in its responses to the grievances filed over those lost wages, maintained that the prior existing wage rate was sufficient "to return expected earnings" in the operations. But no evidence was introduced as to why that would be so, and no evidence of the "investigation" showing the merit of that company position was forthcoming.

As I have found above, if any investigation took place, it would necessarily have considered as a most important factor in responding to the grievance, the time elapsed either in the steps, or in the totality of the manufacturing process.

It is for this reason that I find either that some sort of timestudy was conducted, of which the Union was not informed, and the fact of which has been denied throughout this proceeding; or that no timestudy was performed, and the answers to the grievances filed by the Union were a sham, and that the "investigations" used as the basis for the denials of the grievances just did not take place.

Either way, the Company has not been candid with the Union, and, in equity, I do not believe that the Company can use the provisions of article XII, section 5 as a contractual defense to the Union's statutory rights, as discussed below.

A timestudy such as that requested by the Union in this case, and the refusal of which request is the sole issue in the case, differs from the ordinary request for information case in that here the Union seeks to obtain the necessary information by sending a nonemployee employed by the Union onto the Company's premises to perform his functions. The Company in its defense seeks to show that the access to the employer's premises must be controlled by cases following *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956), and most recently *Lechmere, Inc. v. NLRB*, 112 S.Ct. 1513 (1992), which line of cases sets up standards and guides for access to the employer's premises by nonemployee union organizers.

In my opinion, these case are inapposite in the situation we have here where the access is sought for a nonemployee, not to organize, not to proselytize the unorganized, but to attempt to secure contractual rights for employees who are already organized and members of the Union. In *Babcock* and *Lechmere* the nonemployee organizers are strangers to the company. In this case the union representatives are part of a contractual family composed of the Company, the employees and the Union.

In *Holyoke Water Power Co.*, 273 NLRB 1369 (1985), the Board set out certain standards governing access to the employer's premises by employee statutory representatives:

Where it is found that responsible representation of employees can be achieved only by the Union's having access to the employer's premises, the employer's property rights must yield to the extent necessary to achieve this end. However, the access ordered must be limited to reasonable periods so that the union can fulfill its representation duties without unwarranted interruption of the employer's operations. On the other hand where it is found that a union can effectively represent employees through some alternate means other than by entering on the employer's premises, the employer's rights will predominate and the Union may properly be denied access. [273 NLRB at 1370.]

In *American National Can Co.*, 293 NLRB 901 (1889), in a factual situation similar to this case,⁴ the Board found that the Union was entitled to have access to the employer's premises to obtain data concerning heat conditions within the plant.

The Board stated in *American National Can*, 293 NLRB at 904:

⁴ Although we do not have the two-tiered grievance problem which was present in *American National Can*.

It is well settled that an employer has a duty to supply requested information to a union that is the collective bargaining representative of the employer's employees if the requested information is relevant and reasonably necessary to the Union's performance of its responsibilities.

Citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967), and *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

In the instant case there is really no question that the information sought is relevant and reasonably necessary to the Union's performance of its responsibilities. Article III, section 6, quoted above, makes it clear that the introduction of new machinery and methods was recognized by the parties to the contract as potentially affecting earnings. Section 6 provides that after the 120-hour transitional period noted in article III, section 9, "if the operations fail to reach their former line average" then the Union and management "shall make a joint investigation to determine the cause of such failure." There is no evidence in this record as to why such a joint investigation was not made. I have found, as noted above, that, in fact, the Company did make an investigation of the problem, unilaterally, and without sharing the bases for its findings with the Union. The information sought by the Union here, the time which operators must spend in order to reach the line averages which they were earning before is clearly relevant and necessary to the Union's presentation to an arbitrator hearing the grievances the Union has filed here. I find, therefore, that the information sought is relevant and reasonably necessary in this case, in accordance with the standards laid down by the Board.

In *American National Can*, supra, having established the relevance and reasonable necessity for the union there to obtain the information, the Board went on to hold that the union was entitled to enter on the employer's premises to obtain that information, in that case heat-measurement data. The Board said:

The health and safety of employees are terms and conditions of employment, and thus mandatory subjects of bargaining about which an employer's obligated to bargain with the collective-bargaining representative of its employees. Therefore, acquiring the heat-measurement information in question is clearly relevant to and necessary for the Unions' performance of (1) their general collective bargaining responsibilities, and also (2) their particular representational responsibilities in question here, i.e., (a) to evaluate and if warranted) pursue intelligently the Local's grievance [293 NLRB at 904-905.]

The Board in *American National Can* went on to discuss the *Holyoke Water Power* test for permitting union access to the employer's premises and found that permitting access to the Union was the only way the union could obtain relevant and necessary information in order to process its grievance in that cases.

In this case, as well, I think it is clear that the timestudy data is essential for the Union adequately to prepare for arbitration of the wage-loss questions. The Company has, by its failure to document its assertion that the existing wage scale was sufficient, even after the new methods and machinery were introduced, left the Union with only the Company's de-

nial, and the workers' individual and probably anecdotal experiences, to support its arbitration claims. The Company's argument that the Union should seek out the manufacturer of the machinery is at best facile and unhelpful, and at worst cynical and misleading. The manufacturer would know about the machines, but not the workers, or the conditions of employment of the machines. In the end, the Union has no way other than conducting an actual timestudy of the operations in question to establish the validity of its grievances.⁵

The Respondent here has presented no evidence that there is any alternative method of obtaining the required information. Indeed, even in its arguments, Respondent has not shown that the data requested could be obtained from talking to employees, contacting the manufacturer of the new machinery, or in any other way making any determination of the critical time elements here.

Moreover, there is no indication in this record, beyond the bare assertion in Wargo's letter of December 9, 1991, that the Company's operations "could be seriously disrupted" by the Union's timestudy. Indeed, article III, section 6 plainly contemplates that the Union will participate in just this kind of study.

Finally, in all the circumstances of this case, I cannot find any justification for an application of the principle of *inclusio unius, exclusio alterii*, to bar any entering of union representatives to the Company's plant except in the constrained circumstance set out in article XIII, section 3, of the contract.

Accordingly, in accordance with the principles of *Holyoke* and *American National Can Co.*, I find that the Respondent's property rights, on balance are outweighed here by the employees' rights to be responsibly represented by the Union in processing the rough and cement and the simple sidelast grievance. Thus I find that the Respondent has violated Section 8(a)(1) and (5) of the Act by refusing to permit the Union to enter on its premises to conduct a timestudy in the rough and cement⁶ and the simple sidelast sections.

THE REMEDY

Having found that Respondent here has failed and refused to bargain in good faith by denying the Union the right to conduct a timestudy in the plant, I shall recommend that Respondent cease and desist therefrom, and that it shall, on the Union's request grant, access to union representatives at its Carruthersville, Missouri, at reasonable times and under reasonable conditions plant in order to permit the Union to conduct a timestudy concerning the effect on average piece-rate earnings in the rough and cement section of the bottoming department, and the simple sidelast section of the lasting department.

CONCLUSIONS OF LAW

1. The Respondent, Brown Shoe Company, is an employer engaged in commerce within the meanings of Section 2(2), (6), and (7) of the Act.

⁵ Or, possibly, the invalidity of its grievance.

⁶ I note that the rough and cement grievance has settled, so that actual entry, to that section of the plant may not be required. But the refusal to permit access still stands, and I will leave to the compliance stage of the proceedings what access, if any, is necessary to that section.

2. The Union, Amalgamated Clothing and Textile Workers, Southwest Regional Joint Board, Cape Girardeau District, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all material times, the Union has been the designated and recognized collective-bargaining representative of a unit of Respondent's employees described above in section III, A of this decision and as set out in article I of the parties' September 20, 1990–August 27, 1993 collective-bargaining agreement.

4. By denying the Union access to the Respondent's Carruthersville plant to conduct timestudies on losses of wages to employees, the Respondent has failed and refused to bargain with the Union in good faith in violation of Section 8(a)(5) and (1) of the Act.

5. The above violation of the Act is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷

ORDER

The Respondent, Brown Shoe Company, Carruthersville, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with Amalgamated Clothing and Textile Workers, Southwest Regional Joint Board, Cape Girardeau District by refusing to permit the Union to conduct timestudies at its Carruthersville, Missouri plant.

(b) In any like or related manner interfering with, restraining, or coercing 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) On request of the Union, permit the Union to enter on the Company's premises at the Carruthersville plant at reasonable times and under reasonable conditions to conduct timestudies in connection with grievances filed on May 7 and 21, 1991.

(b) Post at its facility in Carruthersville, Missouri, copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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 by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

⁷ 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.

⁸ 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."

(c) 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.

WE WILL NOT refuse to bargain in good faith with Amalgamated Clothing and Textile Workers, Southwest Regional

Joint Board, Cape Girardeau District by denying its request for access to its Carruthersville, Missouri plant to take the timestudies which are relevant and necessary for the Union's performance of its collective-bargaining and representational responsibilities.

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

WE WILL, on the request of the Union, grant it access to our Carruthersville, Missouri plant for reasonable periods of time at reasonable times in order to permit it to make timestudies which are relevant and necessary for the Union's performance of its collective-bargaining and representational responsibilities.

BROWN SHOE COMPANY