

Southern California Gas Company and Utility Workers Union of America, AFL-CIO, Local 132. Case 31-CA-20615

March 30, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

On December 2, 1994, Administrative Law Judge James M. Kennedy issued the attached decision. The General Counsel and Charging Party filed exceptions and supporting briefs, and the Respondent filed answering briefs.

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

The 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, and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Ann Cronin-Oizumi, for the General Counsel.
David B. Reeves, of Los Angeles, California, for the Respondent.
Ira L. Gottlieb (Taylor Roth, Bush & Geffner), of Los Angeles, California, for the Charging Party; *Jay D. Roth* and *Matthew P. Polesetsky* on brief.

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge. This case was tried in Los Angeles, California, on September 20-21, 1994, upon a complaint issued by the Regional Director for Region 31 of the National Labor Relations Board on June 24, 1994. It is based on an unfair labor practice charge¹ filed on May 21, 1993,² by Utility Workers Union of America, AFL-CIO, Local 132 (whose parent Union, Utility Workers Union of America, AFL-CIO, together with its partner, International Chemical Workers Union AFL-CIO, are collectively called the Union). The complaint alleges that Southern California Gas Company (Respondent) has engaged in certain violations of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).

Issues

The principal issue presented by this complaint is whether or not Respondent, in breach of the good-faith bargaining obligation, directly dealt with bargaining unit employees re-

¹ Originally filed in Region 21, the case's first docket number was Case 21-CA-29398. It was subsequently transferred to Region 31 and given its current docket number.

² All dates are 1993, unless otherwise indicated.

garding mandatory subjects of bargaining, thereby bypassing the Union and undermining its status as the exclusive collective-bargaining representative of the employees in the bargaining unit. The General Counsel also contends that this constitutes an unlawful unilateral change in working conditions. Respondent denies such conduct, asserting that its communication with employees was simply a data gathering process having little, if any, bearing on the collective-bargaining relationship. It also observes that the data being collected does not qualify as a mandatory subject of bargaining.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to orally argue, and to file briefs. All parties have filed briefs which have been carefully considered. Based on the entire record of the case, as well as my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a California corporation, is headquartered in Los Angeles, where it operates a public utility, i.e., the generation and distribution of natural gas throughout Southern California. It admits that it annually purchases and receives goods valued in excess of \$50,000 from sources outside the State and it further admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

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

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Activity Value Analysis*

As is common with a large public utility such as this, Respondent's facilities are spread through a wide geographic area, constituting many buildings, properties, and construction sites. One of its operational components is known as the engineering & operating support department (E&OS). The approximately 450 persons who work in that department are likewise spread around the Los Angeles area. Insofar as that department is concerned, the Union's representational breadth is more narrow. It represents 173 of the E&OS employees, only about one-third of the department. The bargaining unit to which those 173 belong is huge, however, covering about 6000 employees, amorphously extending into many other departments, and divers locations. Although the Union's 9(a) status is historic³ and goes back many years, it is not a unit which lends itself to an easy, shorthand, description. The collective-bargaining contract does so only by reference to a myriad of job classifications covering a wide range of tasks. These range from janitorial to clerical, from customer relations to line and street repair, from meter technicians to auto

³ According to the collective-bargaining contract, Utility Workers Union of America, AFL-CIO, and International Chemical Workers Union, AFL-CIO are the joint representative of the employees and enjoy 9(a) status. They appear to have delegated day-to-day administration of the agreement to various locals, including the Charging Party, Local 132.

mechanics and from pipeline mapping to appliance service. E&OS is a part of the headquarters division and its purpose is to provide various types of support to all the other divisions and their departments. A complete list of the tasks performed by the organized portion of the E&OS department is found in the back of the collective-bargaining contract.

Due to its perception that deregulation was forcing it to become more competitive, Respondent's management decided sometime in early 1993 to embark upon a "re-invention" program, something tailored to its role as a public utility, but in ordinary terms, a cost-cutting effort. Yet, due to the sheer size of the business, management had no easy means of determining where beneficial cuts could be made. Accordingly it embarked on a program known as the "Activity Value Analysis Project" or AVA. As a "stretch" target, it hoped to be able to cut costs by as much as 40 percent. The AVA survey was actually begun in another department about 2 months earlier than the transactions under scrutiny here. Indeed, the first department to undergo it was the headquarters group, primarily located in The Gas Company Tower, located on West 5th Street in downtown Los Angeles. Some E&OS employees work in that building as well.

By virtue of a stipulation, the parties have agreed that, on April 23, two of Respondent's supervisors and agents, L. M. Stewart⁴ and G. E. Strang,⁵ distributed to all employees in the E&OS department a four-page memorandum regarding the AVA project. That document is in evidence as General Counsel's Exhibit 4. They have also agreed that on May 10 these two, accompanied by other managers, conducted AVA orientation meetings of E&OS employees at two locations: the Holiday Inn in the City of Commerce and the Biltmore Hotel in Los Angeles. Many of those E&OS people were bargaining unit members. At that time these employees were advised of the AVA project and the creation of employee teams to implement it. Similarly, the parties have stipulated that certain written materials were distributed to the E&OS employees at those meetings. These are in evidence as General Counsel's Exhibit 5.

Finally, the parties have stipulated that on May 25, one of its supervisors, Ron Schwedler, conducted a meeting of about 50 E&OS employees at its own auditorium in Compton where he "solicited input" about "their individual job tasks," informing them that the "data in question" would be analyzed by the AVA team for their department pursuant to the AVA project.

As initially conceived, and as carried out, the AVA had three basic stages to carry out its goal of identifying and valuating company activities. The first step was to "generate data," i.e., have employees conduct a self-audit of their daily tasks and report that information on a form. Initially, that was expected to take about 6 weeks. The second stage was "idea generation and evaluation." That task was estimated to take about 11 weeks. The third was to present recommendations to the AVA steering committee, targeting early September as the date for completion. After the third stage was ended, the project was finished. The steering committee was composed of members of executive management. It had the power to determine whether any of the recommendations were to actually be implemented.

⁴ Misspelled "Stuart" in the stipulation.

⁵ In fact, both are corporate vice presidents.

It is only the first two stages which are really of concern under the Act, particularly the first, data collection. The employees' concern, however, was a bit different. One of them, Michaeljohn Martinez, now an appliance service representative, but in May a mapping aide, allows us a look at the employee perspective. He says that during the May 25 meeting, he told Schwedler and Senior Vice President Lee Harrington of his fears: "I stated my concern that with the data collected by management, that there was the distinct possibility that our jobs would be eliminated. It's almost like cutting our own throats." Similarly, Sonia Wheeler, a "building service assistant" (janitor) and a union steward, said she and fellow employee Terry Byrn (a copy center lead) concluded that the mandate to cut back whatever needs to be cut back was "like getting rid our department, period."

Tempering his testimony that management persons said that the AVA might result in the elimination of jobs, Martinez acknowledged that the managers likewise said, and the documentation which they used confirms, that if it came to that, such matters would first need to be negotiated with the Union.

In this regard, at the May 10 orientation, according to Martinez, Stewart responded to a question from the floor, asking, if jobs were going to be eliminated, "[w]hy they weren't going through the normal route of negotiations?" He says Stewart replied, "[A]t this point we just want to take this process in a step-by-step time; if there was [to be] the [sic] job elimination, it would be dealt with at that time." A question-and-answer portion of the documentation projected onto an overhead screen at that meeting also dealt with the same subject matter. Questions 13 through 15 addressed possible job losses. The first simply spoke to possible work group realignments, making the observation that if that occurred, there would probably be no uniform way of reorganizing, that a decision on that issue would not be made until September, then 4 months hence. In answer to the second, there was a reference to a company job guarantee policy, followed by a statement that "[i]mpacts on represented employees will be in accordance with the Union contract." The last answer also said, "Any revisions to represented positions will be negotiated with the Union."

I think it is clear that the management representatives at that meeting stated that the AVA consisted of stages, the first of which involved the creation of teams to collect data. Other stages were to follow. The next stages were to be the valuation of those tasks and the generation of ideas based on the data collected, followed by the actual recommendations. As of May 10, indeed, as of June 2, the last day any bargaining unit people were involved in the AVA, the only stage in progress was data collection.

I turn now to the actual collection of the data. To collect it, the E&OS department was divided into 1 groups of tasks, later expanded to 12. These "units,"⁶ as they were called, were assigned to a "unit leader." (As used in this project the word "unit" should not be confused with the labor relations definition of the word. It is not shorthand for "bargain-

⁶ Another unit was the communications group; its duty did not include data collection or idea generation. Its duty was to keep all the AVA participants informed about its progress and provide information about the program. This was accomplished through the frequent publication of a flyer called the Update. It was authored by Cheryl Raine, the communications unit leader.

ing unit.”) Each leader was assigned several employees which were collectively called a “team.”⁷ The team members were all rank-and-file employees, although of the 56 employees selected, only 2 or 3 came from the Union’s bargaining unit. Some of the unit leaders were supervisors; others were not.

Beginning on May 11, the teams were called together by their unit leader. They were given a package of documents, in evidence as General Counsel’s Exhibit 26, which was both a review of previously disseminated information as well as a blueprint for the team members to follow as they went about their duties of collecting the data. It is a useful document, for it sets forth the levels of authority under the project and also lists the various duties of each level. It describes from the top down, the four organizational levels of the AVA. The highest authority is the steering committee. Aside from being in charge of the program, it is also the body which is to “[d]ecide which recommendations to accept,” and, I infer, to implement those recommendations. The second highest level is the AVA project manager, Rick Phillips (whose regular job was manager of underground storage and transmission). He was the “ramrod” of the program and was accountable to keep the it on schedule and to make certain that all the tasks were completed properly. The next level down was the unit leaders, followed by the unit employees or team members.

The blueprint for data collection included the creation of questionnaires following the acronym “M/A/E.” The letters stand for the information which each employee was to provide. The first was the employee’s (M)ission. The second, his or her (A)ctivities on an annual basis, but measured in hours. The last is (E)lements, meaning any tangible product or service which the employee or work unit provided, and in the earlier survey was more readily recognizable as “(E)nd Product.” In addition, there were specific instructions to omit labor costs from the survey. (See the Reeves memo of May 18 (G.C. Exh. 27, p. 9) which was distributed to the team members.)

The General Counsel has not offered in evidence any M/A/E questionnaire filled out by any employee in the E&OS department. The only ones in evidence are the samples which Respondent distributed to the unit members in May. There is one document in evidence which collates some of the material generated by the M/A/E questions to E&OS (C.P. Exh. 3), an Update of August 13, the “Quick Hit Table.” This is a compilation of nonlabor budget items which the AVA recommended be eliminated, saving about \$239,000 for the remainder of 1993 and \$379,000 for 1994. None involves a mandatory bargaining subject and none involved a loss of jobs, much less jobs which were positions in the collective-bargaining unit.

The results of the AVA for the E&OS department were published in an Update of September 14. It shows that the project manager, among other things, did recommend that 68 FTEs (full-time equivalents) be eliminated.⁸ Testimony shows that of the 68, 18 were from the bargaining unit. It

should be noted here that the complaint does not contend that the elimination, or proposed elimination of 18 bargaining unit jobs violated the Act, either under Section 8(a)(3) or (5). I infer from that circumstance that Respondent, as promised, did in fact notify the Union and bargain with it either over the decision or the effects of the decision. It is also appropriate to note here that Respondent never reached its “stretch” target of a 40-percent reduction of operational costs; the actual savings was 16–17 percent.

It is undisputed that a few bargaining unit members were included on the data collecting teams. One of these was Wheeler. Two others were Byrn and a key shop employee named Bill Vanottes. A fourth person who may or may not have been in the bargaining unit was Nancy Castro, who had been serving as a drafting supervisor for almost a year, although still paying union dues as a lead engineering clerk. Except for Castro, all the others were removed from the AVA unit teams on or before June 2. None of them was ever asked to do any AVA task except help create and distribute the questionnaires and advise fellow employees of the proper way to fill them out. Thus none of them performed the next stages, task valuation and/or idea generation or participated in any recommendation process. It is possible that, unknown to anyone, that they did submit ideas, for all employees had been invited to submit ideas for cost savings. Even though there is no evidence about the extent to which ideas were submitted by statutory employees (whether in or out of the bargaining unit), it is clear that the invitation was simply that—an invitation and entirely voluntary. It was no different from being asked to use the old-fashioned suggestion box.

B. The Alleged Connection to the Collective-Bargaining Process

During the AVA process, the collective-bargaining contract was about to expire. Its term had begun in 1991 and it had an expiration date of March 31, 1993. The evidence shows that the contract was extended twice after that date to June 30. According to the Union’s secretary-treasurer, Janet Jones, bargaining had actually begun in early January, was quite protracted, and a new contract was not reached until March 1994. She says the parties averaged two to three collective-bargaining meetings per week during that 15-month period.

At the outset of negotiations, Respondent made two proposals which the Union now believes track the AVA. They are known as company proposals 24 and 31 (C–24 and C–31 in the negotiation records). C–24 proposed to modify section 15.01 of the collective-bargaining contract. That provision regulated Respondent’s right to contract with outside providers for the performance of routine bargaining unit work. The clause permitted outside contractors to perform such work so long as bargaining unit personnel were working full time and the work could not be postponed. Respondent made at least two proposals to change section 15.01 to expand its right to contract out. One was made in March and another in June. The March proposal was broader; the June proposal narrowed its scope.

Proposal C–32 dealt with an entirely new matter for the contract, the creation of “Employee Involvement Efforts.” The contract in other places had previously established shop committees for certain purposes. This proposal was to create similar committees “to identify projects, develop goals and

⁷ There is no contention that the teams are dominated labor organizations within the ambit of Sec. 8(a)(2).

⁸ A full-time equivalent is not quite the same as a full-time employee. It addresses hours and tasks, not jobs per se. Thus a full-time equivalent is worth 40 hours per week, but the 40 hours may be parsed among several employees.

implement changes designed to improve the Company's operating performance" through the participation of employees who were directly involved in such work.

The proposal was designed to incorporate into the contract, the right to ask employees, operating as a committee, to provide ideas to make the company operate more efficiently as well as to give them the authority to carry them out. This concept, too, went through several modifications. It was eventually withdrawn from the table on July 26.

Jones asserts she sees similarities between the AVA and these proposals. She sees it through the use of some jargon which Respondent appears want to use. Specifically, the terms are "benchmarking" (together with its cousin "competitive benchmarking") and "employee breakthrough teams." In looking at this jargon and these parties' constant use of nonspecific terminology elsewhere, I wonder whether this case would have even come about had ordinary English been the norm. Certainly such imprecision leads to both confusion and suspicion of motive.

In any event, the AVA literature had used the word "benchmark" in an effort to describe an aim of the program, to evaluate all tasks which the Company performed against a benchmark or best practice with respect to those same tasks. That benchmark may already be found within the Company, but it might also be found elsewhere. Once found, the way the Company performed the task was to be measured against that benchmark, and a valuation placed on it. Depending on the result, the AVA might make a variety of recommendations. These would range from task elimination, modification, consolidation, or "outsourcing" (more jargon meaning "contracting with an outside supplier"). The phrase "benchmarking" is actually defined in the AVA paperwork and appears to have been orally defined to the employees as well. Nonetheless, Wheeler says her team leader, Osburn, described it to mean "contracting out." I think either she or Osburn is mistaken here, but given the confusion generated by such terms, a mistake is understandable.

At the bargaining table, but not appearing until sometime in June, Respondent introduced the phrase "competitive benchmarking" with regard to proposal C-24, modifying the scope of the contracting clause. This dealt with the Company's right to contract with outside vendors in the event they could perform unit work more economically than Respondent's own employees. The two phrase are indeed similar, but they are certainly not the same. If Jones saw similarities, it was because Respondent inadvertently led her to see them. Even so, the timing does not truly support her claim of a connection.

Similarly, the phrase "employee breakthrough" was seen in both places. The AVA used it to describe the process of employee commitment to the idea generation stage. It wanted employees and first line management to feel free to create, to give birth to new ways of doing things. That same concept appears in the employee involvement shop committees which were the subject of C-32 at the bargaining table, for the committees were called at the table "employee breakthrough teams."

Analysis and Conclusions

Focusing on the principal issue raised by the complaint, whether Respondent has engaged in unlawful direct dealing with its employees in derogation of the exclusivity provisions

of Sections 8(a)(5) and 9(a) and thereby undermining the Union, I must conclude that the evidence fails to support a violation. In order to prove such a violation, it must be shown that Respondent is communicating with its represented employees and that the discussion is for the purpose of establishing or changing the wages, hours, and terms and conditions of employment within the meaning of Section 8(d)⁹ or undercutting the Union's offer to establish or change them, and finally, such communication must be to the exclusion of the Union. See generally *Obie Pacific*, 196 NLRB 458, 459 (1972). I think the evidence fails on a number of fronts.

First, there is the question of the involvement of bargaining unit employees. The evidence shows only that three (possibly four) bargaining unit employees in the E&OS department had any involvement in the AVA program at all. Their only function was to collect data about the jobs of themselves and their fellow employees through the use of questionnaires which attempted to collect descriptions of the functions each department employee performs. This is nothing more than a desk audit. The employees involved may have had some role in modifying the questionnaires for different parts of the department, but that has not clearly been shown. What these employees did, together with their 53 unrepresented colleagues, was to distribute the questionnaires to other employees and answer questions concerning the proper manner to fill them out. This was accomplished on a departmentwide basis and was without regard to whether certain portions of the department personnel were represented by the Union. Thus only three of the approximately 173 represented employees in the E&OS department were asked to help, about 1.7 percent of that portion of the bargaining unit. It is also only about 0.67 percent of the E&OS department and an infinitesimal portion of the entire 6000 person bargaining unit.

To be sure, the AVA program was aimed at all persons in the department, including the one-third who were bargaining unit members. Indeed, both the represented and unrepresented E&OS department employees answered the questionnaire. Even so, that act amounted to nothing more than asking those employees to summarize their daily tasks, hardly an effort to poll employees about their preferences for changes in wages, hours, or terms and conditions of employment. Management certainly has the right to know what tasks its employees perform on a daily basis. It has that right whether or not it intends to use that information to later formulate operational changes or propose changes in the collective-bargaining contract or other forms of collective bargaining, such as work rule changes, i.e., matters which need to be first discussed with the Union.

Thus, at the outset, I do not find that using employees to carry out the data gathering process relating to themselves in any way involves proposals to employees themselves or an effort to undercut the Union's proposals. Nothing of substance has been proposed here. In fact, this does not even

⁹Sec. 8(d) defines the obligation to bargain collectively. In doing so, it requires both the union and the employer to bargain in good faith "with respect to wages, hours, and other terms and conditions of employment." These topics have come to be known as mandatory subjects of bargaining.

qualify as a “poll” which might run afoul of the holding in *Obie Pacific*, supra.

Second, mandatory bargaining subjects of Section 8(d) are not actually implicated in any way. The General Counsel has not shown a single item of wage, hour, or term or condition of employment which the questionnaire suggests changing. It is true that the questionnaire asks for the number of hours spent on a particular task during the year and it is also true that it seems to be an effort to get each employee to describe his/her job. Even so, those are not the “hours” or “terms and conditions” of employment which the statute envisions. Moreover, wages are not mentioned anywhere in the questionnaire.

Lastly, to the extent the AVA might result in recommendations, which, if implemented, would require changing wages, hours, or terms or conditions of employment (and there was at least some likelihood of that), at the very outset management said, both orally and in the written material, that such proposals, if ever formulated, would be routed through the collective-bargaining process. Thus, the Union was not to be excluded from the role which the statute contemplates for it. It was, however, to be excluded from the data collection and task valuation process, matters which are not contemplated by the statute for they are not mandatory subject matters. Even so, at the time of the activity, no recommendations had been, or even could have been, authored. Thus, the Union’s concern was entirely premature. None of this went beyond permissible communication with its employees over legitimate business concerns. See *Logemann Bros. Co.*, 298 NLRB 1018, 1019–1020 (1990).

Apparently recognizing the inadequacy of the facts standing alone, the General Counsel has attempted to fold into the mix two company proposals from the collective-bargaining table. They deal with a modification of the extant clause governing the right of Respondent to contract with an outside supplier work which would ordinarily be done by bargaining unit personnel and new language concerning a possibly related effort to involve bargaining unit employees in operational decision-making.

The first matter was already in the collective-bargaining contract. It therefore stands independent of any separate effort to contract away bargaining unit work. The limited right to do so pre-existed the AVA by at least 2 years; perhaps more if that subject was covered by agreements earlier than the 1991–1993 contract. That it would come up again in the course of periodic bargaining seems entirely predictable. The presence or absence of the AVA program can have had nothing to do with it. Moreover, the AVA’s concern with the possibility of contracting out can literally be seen as only one of several possible outcomes. At best it was conjectural. It was certainly nothing having any certainty. And, assuming such a recommendation was eventually made, bargaining unit employees would not have been involved in making the recommendation. Therefore, the Union could not have been undermined by being bypassed. No event had yet occurred which could have undermined its status.

With respect to the employee involvement shop committees, whatever form they may have taken, again the connection to the AVA is entirely speculative. In the AVA, some rank-and-file employees (a minuscule number from the bargaining unit and the rest unrepresented) engaged in some questionnaire distribution and data collection for a period of

about 3 weeks. I am unable to see what that has to do with the contractual creation of employee involvement shop committees whose job would be to make recommendations regarding operational changes. Assuming the Union acceded to such a proposal, it might give the committee members some authority they do not now possess. Assuming it did not acquiesce, they would have the authority they now have. Either way, the AVA process is entirely discrete from the contract proposal. Being unrelated, it could not have had the undermining effect which the General Counsel claims, despite Jones’ belief. And, of course, the whole thing became moot when the proposal was withdrawn.

Similarly, Martinez’ and Wheeler’s beliefs and fears, while no doubt genuine, appear to be both premature and not germane to the appropriate legal analysis. The subjective fears of employees are not a ground for any decision which the Board must make. That can be based only on the portion of Section 8(a)(5) which prohibits direct dealing.

It seems to me that the reality of this fact pattern is that the Union is attempting to nip, even before the bud appears, proposals which it foresees coming from the data developed by the AVA. It, like Respondent, does not know what they may turn out to be, but it prefers not to have to deal with them. By attempting to characterize the AVA as direct dealing and undermining, it seeks to prevent Respondent from using a process designed to assist it to learn about its own business. In essence it seeks to prevent management from having access to information permitting it to manage knowledgeably. If it accomplishes that, it believes it can avoid bargaining over unpleasant proposals which might come up. That is a motive far different than complaining that management is engaging in direct dealing or attempting to undermine its 9(a) status. It is not a purpose which the Board can countenance. This portion of the complaint should be dismissed.

As a backup theory, the complaint asserts that the imposition of the AVA somehow constitutes an unlawful unilateral change of working conditions. The complaint is not very specific in that regard. It seems to attack Respondent’s very imposition of AVA duties on the E&OS department’s bargaining unit employees, whether being directed to attend meetings, becoming a team member or even filling out the questionnaires. That sort of breadth appears to be unwarranted. Clearly being required to attend company meetings and answering questions about one’s daily tasks are not mandatory bargaining subjects and do not raise any obligation to bargain. No wage, hour, or term and condition of employment is implicated.

It is true, however, that for a short period of time three bargaining unit employees were asked to distribute questionnaires and assist fellow employees in filling them out. There is, however, no evidence in the record describing the amount of time these employees were daily involved in that effort. Looking at the questionnaires themselves, it would appear that most employees could fill them out adequately without asking the team member for assistance. Certainly that assistance, when given, would not have taken long. Indeed, there is no evidence that the jobs of these three employees was permanently changed or that this temporary duty was in any way more onerous than each employee’s regular job.

In this regard, I note that article II of the collective-bargaining agreement is a management rights clause in which

Respondent has “retain[ed] the unquestionable and exclusive right to manage its business and direct the working forces . . . provided it does not conflict with” other provisions of the contract. No party has cited me to any contract provision prohibiting this sort of work assignment and I cannot find any. Accordingly, it seems to me that Respondent had the right to ask its employees to perform the data collection task.

And, it seems to me, asking 1.7 percent of the affected portion of the bargaining unit to perform this duty for a short period is not a material or substantial change warranting a remedy. See *Rust Craft Broadcasting of New York*, 225 NLRB 327 (1976). Accordingly, the allegations that Respondent’s activity here constitutes an unlawful unilateral change of working conditions must be rejected.

CONCLUSIONS OF LAW

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

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

3. Respondent has not committed the unfair labor practices of which it is accused in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The complaint is dismissed in its entirety.

¹⁰If 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.