

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

CONSUMERS POWER COMPANY

and

CASE NO. 7-CA-19737

MICHIGAN STATE UTILITY
WORKERS COUNCIL

COMPLAINT AND NOTICE OF HEARING

It having been charged by the Michigan State Utility Workers Council, herein sometimes called the Charging Party, that Consumers Power Company, herein sometimes called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Seventh Region, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Complaint and Notice of Hearing as follows:

1. The original charge in this proceeding was filed by the Charging Party on August 26, 1981, and served by certified mail upon Respondent on or about August 27, 1981.
2. Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Michigan.
3. At all times material herein, Respondent has maintained an office and place of business at 212 West Michigan Avenue, Jackson, Michigan. Respondent has also maintained a nuclear power facility in the Township of Covert, and State of Michigan, herein called the Covert Township facility. Respondent maintains other facilities throughout the Lower Peninsula of the State of Michigan and is, and has been at all times material herein,

a public utility providing gas and electric power to various areas in the State of Michigan.

4. During the year ending December 31, 1980, which period is representative of its operations during all times material hereto, Respondent, in the course and conduct of its business operations, had gross revenue in excess of \$500,000 and purchased and caused to be transported and delivered to its Michigan facilities goods and materials valued in excess of \$50,000 which were transported and delivered to its Michigan facilities directly from points located outside the State of Michigan.

5. Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. Utility Workers Union of America, AFL-CIO, hereinafter referred to as the Union, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

7. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b)

of the Act:

All employees employed by the Employer at its facilities located throughout the Lower Peninsula of the State of Michigan; but excluding general and assistant general foremen, outside crew foremen, plant supervisors, and any other supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, office employees, office building janitors and watchmen, plant watchmen, customer account representatives, connected load inspectors, electrical, mechanical and civil engineers, efficiency men, junior engineers, draftsmen, surveyors, chemists, architects, temporary employees hired for specific jobs and for not more than six months, part-time local servicemen and local servicemen who do not perform mechanical work in the regular course of employment, and storekeepers with supervisory power who do not ordinarily do mechanical work, but including watchmen other than those excluded above, load dispatchers, meter readers, bill distributors, plant janitors, and storekeepers other than those excluded above.

8. At all times since June 17, 1944, the Union, by virtue of a Certification of Representative issued by the Regional Director for Region Seven of the National Labor Relations Board in Case No. 7-R-1599 has been and is now the exclusive representative within the meaning of Section 9(a) of the Act for the purposes of collective bargaining for the employees in the unit described in paragraph 7 above. There have existed successive collective bargaining agreements between Respondent and the Union, the most recent of which is effective by its terms for the period from September 1, 1980, to September 1, 1983.

9. On or about March 9, 1981, Respondent, by its agents, formulated and suggested to the Nuclear Regulatory Commission changes in the maximum number of overtime hours for the licensed operators at Respondent's Covert Township facility, thereby decreasing overtime for the involved employees and transferring some of the work to supervision.

10. Respondent engaged in the act described above in paragraph 9 without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of Respondent's employees with respect to such acts and the effect on the employees in the unit described in paragraph 7 above.

11. By the act described above in paragraphs 9 and 10, Respondent did interfere with, restrain, and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, an unfair labor practice affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

12. By the act described above in paragraphs 9 and 10, Respondent did refuse to bargain collectively and is refusing to bargain collectively with the representative of its employees, and thereby did engage in, and is engaging in, an unfair labor practice affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

13. The act of Respondent described in paragraphs 9 and 10, above, occurring in connection with operations of Respondent described in paragraphs 2 through 5, above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

14. The act of Respondent described above constitutes an unfair labor practice affecting commerce within the meaning of Section 8(a)(1) and (5), and Section 2(6) and (7) of the Act.

WHEREFORE, it is prayed that Respondent be ordered to:

1. Cease and desist from engaging in the conduct described above in paragraphs 9 and 10, or in any other manner interfering with, restraining or coercing its employees in the exercise of their Section 7 rights, or in any other manner refusing to bargain with the Union as the exclusive bargaining representative of the employees in the unit described above in paragraph 7.

2. Take the following affirmative action:

(a) Meet and bargain with the Union as to changes Respondent desires in overtime for its licensed operations at Respondent's Covert Township facility and, upon agreement or legitimate impasse, present the results therefrom to the Nuclear Regulatory Commission as Respondent's proposals to comply with the Nuclear Regulatory Commission's demands for corrective action.

(b) Make whole its employees for any financial losses sustained by them as a result of the Respondent's unilateral change as described above in paragraphs 9 and 10, with interest computed in accordance with current Board policy.

(c) Post appropriate Notice to Employees.

IT IS FURTHER PRAYED that the Order provide for any additional relief appropriate herein.

PLEASE TAKE NOTICE that on a date and at a time and place to be designated at a later date a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person or otherwise and give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

YOU ARE FURTHER NOTIFIED that pursuant to Section 102.20 and 102.21 of the Board's aforementioned Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof, and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Detroit, Michigan this 6th day of October, 1981.

(SEAL)

/s/ Bernard Gottfried

Bernard Gottfried, Regional Director
National Labor Relations Board
Seventh Region
Patrick V. McNamara Federal Building
Room 300
477 Michigan Avenue
Detroit, Michigan 48226-2569

Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, Series 3, as amended, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D.C., (or, in cases under the San Francisco, California, branch office of Administrative Law Judges, the Deputy Chief Administrative Law Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Deputy Chief Administrative Law Judge, as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service on the other parties.

In due course the Administrative Law Judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the Administrative Law Judge may suggest discussions between the parties or, upon request, will afford reasonable opportunity during the hearing for such discussions.

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial trier of the facts and the law whose decision in due time will be served on the parties. The offices of the Administrative Law Judges are located in Washington, D. C., and San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clearcut; or the Administrative Law Judge may independently conduct such a conference. The Administrative Law Judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the Administrative Law Judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the Administrative Law Judge before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law Judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.



NATIONAL LABOR RELATIONS BOARD

REGION 7

Patrick V. McNamara Federal Building, Room 300
477 Michigan Avenue, Detroit, Michigan 48226

October 7, 1981

A.T. Udiys, Esq.
G.A. Sando, Esq.
Consumers Power Company
212 West Michigan Ave.
Jackson, MI 49201

Re: Consumers Power Company
Case No. 7-CA-19737

Gentlemen:

Enclosed herewith is a proposed informal Settlement Agreement and Notice to Employees in the above-captioned matter. Signature on this agreement and compliance with its terms will make further litigation in this matter unnecessary. In regards to the specific amounts due to remedy the alleged violations, I am sure we can reach a satisfactory method of calculation if there is serious intent to settle the matter.

If you wish to enter into this agreement, please sign and date the Settlement Agreement where indicated, initial the Notice and return both to this office.

If you wish to discuss the terms of the agreement, feel free to telephone me at (313) 226-6994.

Very truly yours,

Patrick Labadie
Board Agent

PL/cm
Enclosure

RECEIVED
OCT 8 1981
C. P. Co. Legal

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the Matter of

CONSUMERS POWER COMPANY
CASE NO. 7-Ca-19737

SETTLEMENT AGREEMENT

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board, HEREBY AGREE AS FOLLOWS:

POSTING OF NOTICE - Upon approval of this Agreement, the Charged Party will post immediately in conspicuous places in and about its plant/office, including all places where notices to employees/members are customarily posted, and maintain for 60 consecutive days from the date of posting, copies of the attached Notice made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith signed copies of said Notice to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for 60 consecutive days from the date of posting.

COMPLIANCE WITH NOTICE - The Charged Party will comply with all the terms and provisions of said Notice.

BACKPAY - The Charged Party will make whole the employees named below by payment to each of them of the amount opposite their name.

REFUSAL TO ISSUE COMPLAINT - In the event the Charging Party fails or refuses to become a party to this Agreement, and if in the Regional Director's discretion it will effectuate the policies of the National Labor Relations Act, the Regional Director shall decline to issue a Complaint herein (or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement), and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 15 days thereof. This Agreement is contingent upon the General Counsel sustaining the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case.

PERFORMANCE - Performance by the Charged party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or, if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of advice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE - The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in this case.

CONSUMERS POWER COMPANY
(Charged Party)

MICHIGAN STATE UTILITY WORKERS COUNCIL
(Charging Party)

By: _____
(Name and Title)

By: _____
(Name and Title)

Date: _____

Date: _____

Recommended By: _____
(Board Agent)

Approved By: _____

National Labor Relations Board

Date: _____

NOTICE TO



POSTED PURSUANT TO
APPROVED BY A RE
NATIONAL LABOR RELATIONS BOARD

The Act gives all employees these rights:

- To engage in self-organization;
- To form, join or help unions;
- To bargain collectively through a representative of their own choosing;
- To act together for collective bargaining or other mutual aid or protection; and
- To refrain from any and all of these things.

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT refuse to bargain collectively with the Utility Workers Union of America, AFL-CIO as the representative of the employees in the unit described below.

WE WILL NOT unilaterally recommend to the NRC changes in the maximum amount of overtime allowed licensed operators or in any other term or condition of employment.

WE WILL bargain in good faith with the Utility Workers Union of America, AFL-CIO as to changes we desire or feel compelled to recommend in overtime for licensed operators at the Palisades Nuclear Power Plant and, upon agreement or legitimate impasse, present the results therefrom to the Nuclear Regulatory Commission as our proposals to comply with the Nuclear Regulatory Commission's demands for corrective action.

WE WILL bargain in good faith with the Utility Workers Union of America, AFL-CIO as the bargaining representative of the employees in the unit described below:

All employees employed by the Employer at its facilities located throughout the Lower Peninsula of the State of Michigan; but excluding general and assistant general foremen, outside crew foremen, plant supervisors, and any other supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, office employees, office building janitors and watchmen, plant watchmen, customer account representatives, connected load inspectors, electrical, mechanical and civil engineers, efficiency men, junior engineers, draftsmen, surveyors, chemists, architects, temporary employees hired for specific jobs and for not more than six months, part-time local servicemen and local servicemen who do not perform mechanical work in the regular course of employment, and storekeepers with supervisory power who do not ordinarily do mechanical work, but including watchmen other than those excluded above, load dispatchers, meter readers, bill distributors, plant janitors, and storekeepers other than those excluded above.

THIS IS AN OFFICIAL NOTICE AND

This notice must remain posted for 60 consecutive days from the date of posting. Any questions concerning this notice or compliance should be directed to the Employer.

EMPLOYEES

A SETTLEMENT AGREEMENT
LOCAL DIRECTOR OF THE
AGENCY OF THE UNITED STATES GOVERNMENT



WE WILL make whole our employees for any financial losses sustained by them as a result of the alleged unilateral change in overtime hours by paying to them the amounts listed below:

CONSUMERS POWER COMPANY
(Employer)

Dated: _____

By: _____
(Representative) (Title)

MUST NOT BE DEFACED BY ANYONE

Posting and must not be altered, defaced, or covered by any other material. All provisions may be directed to the Board's Office. Patrick V. McNamara Federal Building, 477 Michigan Avenue, Room 300, Detroit, MI Telephone: 226-3244