

Aeronca, Inc. and Local Lodge 2535 of District Lodge 13 of the International Association of Machinists and Aerospace Workers, AFL-CIO.
Case 9-CA-12250

November 12, 1980

DECISION AND ORDER

**BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND PENELLO**

Upon a charge filed on March 1, 1978, by Local Lodge 2535 of District Lodge 13 of the International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board by the Regional Director for Region 9, issued a complaint and notice of hearing on November 17, 1978, against Aeronca, Inc., herein called Respondent, alleging Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended. Respondent filed an answer to the complaint, denying commission of unfair labor practices and raising affirmative defenses. A hearing was held on May 23, 1979, before Administrative Law Judge Walter H. Maloney, Jr.

Thereafter, the parties to this proceeding entered into a stipulation that the charge, complaint, and record evidence adduced at the hearing herein constitute the entire record in this proceeding, that there are no outstanding questions of credibility, and that the proceeding involves legal issues only. The parties waived the making of findings of facts and conclusions of law by the Administrative Law Judge and the issuance of an Administrative Law Judge's Decision. They moved that the case be transferred directly to the Board for decision.

On July 3, 1979, the Board issued its order granting the motion and transferring the proceeding to the Board. Thereafter, the General Counsel and Respondent filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, an Ohio corporation, is engaged in the manufacture of aircraft components at its facility in Middletown, Ohio. During the 12 months prior to the issuance of the complaint, a representative period, Respondent purchased and received

goods and materials valued in excess of \$50,000, which were shipped to its Middletown, Ohio, facility directly from points outside the State of Ohio. It is admitted, and we find, that at all times material herein, Respondent is, and has been, an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act. Accordingly, we find that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Local Lodge 2535 of District Lodge 13 of the International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. Facts

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally discontinuing a longstanding practice of giving Christmas turkeys to all unit employees. Respondent contends that the Board should defer to the arbitration award denying the Union's grievance over the matter and that the Union contractually waived the right to bargain over the matter.

Respondent manufactures aircraft and aerospace components at its Middletown, Ohio, facility. The Union is the certified exclusive collective-bargaining representative of Respondent's employees in the following appropriate unit:

All production and maintenance employees of Respondent at its Middletown division plants at Middletown, Ohio, including plant clerical employees and truck drivers, but excluding all office clerical employees, technical employees, and professional employees, guards and supervisors as defined in the Act.

On April 1, 1974, Respondent and the Union entered into their first bargaining agreement effective until 1976, and on July 18, 1976, the parties entered into their second agreement effective through July 18, 1979. This later agreement was in effect at all material times herein.

For years Respondent maintained a practice of giving all employees, including managers and supervisors, a Christmas turkey on their last day of work prior to the customary plant shutdown for the Christmas holidays. Employer Ronald Baker, who was union president in 1976 and 1977, testified that he received a turkey every year from 1952, when he was first employed by Respondent,

through 1976. The turkeys averaged 14 to 16 pounds and would easily feed eight people. The practice of giving a Christmas turkey continued after the Union was certified, even though neither of the bargaining agreements referred thereto.

In December 1976, poor financial conditions prompted Respondent to institute a general austerity program. As a part of the program, Respondent's president decided at that time to discontinue the turkey bonus but not to do so until 1977 as it was then too close to Christmas. In late November 1977, at a grievance meeting, a shop committeeman asked Respondent's president if employees would receive a Christmas turkey that year. The president answered that he did not know. Later in the meeting Frank Sciutto, Respondent's vice president for industrial relations, told the union representatives that the employees would not receive turkeys that year. In the first part of December 1977, Union President Baker again asked Sciutto about the turkeys and was told that they would not be given that year. Baker asked Sciutto to post a notice to that effect, and Sciutto said he would. No notice, however, was posted. Sciutto said that posting the notice would be "like waiving a red flag in front of a bull." The employees were not given turkeys that Christmas.

On December 29, 1977, the Union filed a grievance protesting Respondent's unilateral discontinuance of the turkey bonus. At step 2 of the grievance procedure, Sciutto replied in a letter dated January 11, 1978, "The Company does not recognize that the subject of Christmas turkeys is a grievable matter and will not discuss it in that context." At the third-step grievance meeting in mid-January, Sciutto said he would not discuss the turkey bonus grievance, period. On February 7, 1978, the Union gave notice that it was submitting the grievance to arbitration. On March 1, 1978, the Union filed the instant charge with the Board.¹

On May 23, 1978, an arbitration hearing was held on this and two other grievances. Both parties were present, participated in the hearing, and submitted briefs to the arbitrator. On July 17, 1978, the arbitrator issued his award denying the Christmas turkey grievance. In the award, the arbitrator fully set forth the positions of the parties, referred to the Board's decision in *Radioear, Inc.*, 214 NLRB 362 (1974), briefly discussed the issues, and concluded:

The Union accepted the bargaining waiver [zipper] clause in the contract, failing to incorporate continuance of any past practises [sic],

¹ The Regional Director initially deferred the matter to the pending arbitration but subsequently determined that the award did not meet deferral standards and issued the complaint herein.

consequently, the Arbitrator must recognize restrictions and limitations placed on him as Arbitrator and reject the Union contention the Christmas turkeys are a benefit and past practise [sic] and I so find.

The arbitrator did not determine if the subject of turkeys was raised in the 1976 contract negotiations but found, "Whether or not it was mentioned the fact remains it was not in the contract specifically or by reference to it and I so find."

Neither the 1974 nor the 1976 bargaining agreement referred to Christmas turkeys. Neither contained a maintenance-of-benefits clause or similar provision. Both, however, contained the following waiver or zipper clause:

The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Company and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

Both contracts also contained in article 23 the following provision:

This document contains the entire Agreement of the parties and neither party has made any representations to the other which are not contained herein.

At the beginning of negotiations in 1976 for the more recent agreement, the Union submitted a 72-page contract proposal. With respect to the zipper clause, the Union proposed adding "except as required by this Agreement" to the waiver of the obligation to bargain. The Union also proposed the addition of a maintenance-of-benefits provision to article 23 to read "except that any and all benefits that the employees and/or Union are now receiving which are not specified in this Agreement shall continue during the term of this Agreement." The

chief negotiator for Respondent objected to the length of the proposal stating, "we can't negotiate on that thing," and the session ended. Subsequently, in reducing the proposal, the maintenance-of-benefits provision was dropped. Union Business Representative James Ronto testified that he met with the union negotiating committee to reduce the proposal, that the Christmas turkey bonus was referred to in connection with the maintenance-of-benefits proposal, and that it was decided to drop the proposal because the employees had "been getting [the turkeys] right along." However, in the protracted (50, 60, or 75 sessions) negotiations with Respondent for the new agreement, there was no mention of the turkey bonus, and the waiver provision and article 23 were carried over verbatim from the prior contract without discussion.

B. Contentions of the Parties

The General Counsel contends that the arbitration award does not meet the *Spielberg* standards² for deferral because the arbitrator relied exclusively on the literal wording of the contract, failed to consider the parties' past practices, ignored Board precedent, and failed to make a crucial finding under Board law of the extent to which the turkey bonus was discussed during negotiations. More specifically, the General Counsel argues that although both parties to the arbitration cited *Radioear, supra*, as controlling and the arbitrator referred to the case, the arbitrator, as the award makes clear, ignored that case and its legal principles.

On the merits, the General Counsel argues that the turkey bonus was an employee benefit established on the basis of longstanding practice, that Respondent was therefore obligated to bargain with the Union over any change in the benefit unless the obligation had been waived, that a zipper clause in and of itself does not constitute a waiver of a statutory right, that the Union did not waive its bargaining rights about the matter, and that Respondent did not bargain about its discontinuance of the Christmas turkeys. Accordingly, the General Counsel contends that Respondent unlawfully refused to bargain about the turkey bonus and unilaterally discontinued the benefits of unit employees in violation of Section 8(a)(1) and (5) of the Act.

Respondent argues that this case should be deferred to arbitration because the parties had full opportunity to present all factual and legal issues and did so, that the award addressed and resolved these issues, and that the award is not contrary to Board law. Respondent contends that the arbitrator, in deciding the waiver issue, did consider a number of

factors including a zipper clause broader than that in *Radioear, supra*, the failure of the contract specifically or by reference to include the Christmas turkey bonus, the failure to incorporate continuance of past practices, and the completeness of the contract.

On the merits, Respondent contends that it was motivated solely by its dire financial straits and that it did not refuse to bargain over discontinuance of Christmas turkeys but gave the Union prior notice. Respondent argues that various factors demonstrate that the Union knowingly waived its right to bargain. Respondent further argues that the Union's failure to raise the turkey bonus during negotiations, despite its opportunity to do so, and its knowledge of the contract's provisions, proves that the Union clearly waived whatever rights it had to bargain about the matter.

C. Discussion and Conclusions

There are, as the parties stipulated, no factual issues to be resolved. The first legal issue to be resolved is whether the arbitration award meets the *Spielberg* standards for deferral. We find that it does not. Although all parties had agreed to be bound by arbitration of the dispute and the proceedings appear to have been fair and regular, we find for the reasons below that the award is clearly repugnant to the purposes and policies of the Act. The Board does not defer to an arbitration award where the arbitrator has not addressed himself to the unfair labor practice issue and his award is contrary to unfair labor practice decisions under the Act. *Alfred M. Lewis, Inc.*, 229 NLRB 757 (1977). Here the arbitrator specifically stated as the basis for his award that "the Union accepted the bargaining waiver clause in the contract [and failed] to incorporate continuance of any past practises [sic]." Thus, the arbitrator reached his decision on the basis of the silence of the contract about the Christmas turkeys and the broad zipper clause, that is, on the terms of the contract itself. The arbitrator thereupon specifically rejected "the Union contention the Christmas turkeys are a benefit and a past practise [sic]." Thus, the arbitrator rejected the Union's grievance solely because the turkey bonus was not covered or protected by the contract. From the foregoing, it appears that the arbitrator neither considered nor discussed the statutory issue.

Respondent contends that the award properly decided the statutory issue in effectively finding that the Union, based on a number of factors, had contractually waived its right to bargain about the matter. We do not agree. First, as we read the award, the arbitrator did not consider, let alone resolve, the statutory issue. Second, as discussed

² *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955).

below, the factors presented to the arbitrator do not under Board precedent establish such a waiver of the statutory right to bargain. The law is settled that the right to be consulted concerning changes in conditions and terms of employment, including an established practice, is a right given by statute and not necessarily one obtained by contract. To establish a waiver of such a right there must be a showing of a clear relinquishment of the right which is to be decided on the facts and circumstances surrounding the making of the contract as well as the language of the contract itself. *McDonnell Douglas Corporation*, 224 NLRB 881 (1976). Here, the factors cited by Respondent as having been considered by the arbitrator are all based on the wording of the contract—the length of the contract, the zipper clause, the silence of the contract on Christmas turkeys, and the clause that the document contained the entire agreement. Yet the arbitrator refused to determine whether the turkeys were mentioned during negotiations and failed to consider the parties' past practices under the predecessor agreement and in 1976 under the new agreement. Thus, we find that the arbitrator reached a result at odds with Board law and that deferral is therefore inappropriate.

It is undisputed that Respondent for years had annually given its employees Christmas turkeys until the practice was discontinued in 1977. It is well settled that an employer violates its duty to bargain collectively when it institutes changes in employment conditions without first consulting with the Union. *N.L.R.B. v. Benne Katz, etc., d/b/a Williamsburg Steel Products Co.*, 369 U.S. 736 (1962). It is also settled that a Christmas bonus consistently paid over a number of years is considered a component of wages or term of employment, even though not expressly provided by the bargaining agreement, which cannot be discontinued by the employer before the Union has been given notice and an opportunity to bargain. *Nello Pistoresi & Sons, Inc. (S & D Trucking Co.)*, 203 NLRB 905 (1973); *Gas Machinery Company*, 221 NLRB 862 (1975). Respondent contends that the Union was given notice and an opportunity to bargain prior to the discontinuance of the turkey bonus. The record, however, shows that what Respondent told the Union prior to the time employees were to receive the turkeys was that employees would not get them that year. In addition, the record shows that Respondent made its decision in 1976 nearly a year prior to its "notification" to the Union. Even though Respondent may have been willing, as it contends, to discuss the matter, it did not inform the Union of its proposed actions prior to its decision in the matter or under circumstances which af-

forded a reasonable opportunity for counterarguments or proposals. It is irrelevant that the Company's action was based on compelling economic considerations; an employer is not required to forgo needed changes, but it must first notify and bargain with the Union. Accordingly, we find that Respondent has neither bargained over the matter nor afforded the Union a reasonable opportunity to do so. *N.L.R.B. v. Citizens Hotel Co. d/b/a Hotel Texas*, 326 F.2d 501 (1964).

As found above, Respondent's unilateral discontinuance of the turkey bonus is an unlawful refusal to bargain unless, as contended by Respondent, the Union has waived its right to bargain over the matter. Respondent, to establish such a waiver, must show that the Union consciously yielded its statutory right. Whether there has been such a "clear and unmistakable" waiver of the right is determined by the contractual language and the facts and circumstances surrounding the making of the contract. *McDonnell Douglas, supra* at 895; *Pepsi-Cola Distributing Company of Knoxville Tennessee, Inc.*, 241 NLRB 869 (1979). Upon the varied factors and circumstances herein, we find that the Union made no such waiver.

We do not find *Radioear, supra*, or *Bancroft-Whitney, supra*, relied upon by Respondent, determinative.³ Although *Radioear* concerned "turkey" money bonuses and a similar though somewhat less broad zipper clause, the agreement containing the zipper clause was the first bargaining agreement between the parties and there was no practice, as herein, of giving the bonus in face of the zipper clause. In addition, the parties had bargained about a maintenance-of-benefits provision but failed to reach agreement and did not include such a provision in the final contract. Although *Bancroft-Whitney* also involved an annual bonus or dividend and a similar zipper clause, the zipper clause was a newly negotiated provision and there was no history of payments of the benefit under the zipper clause. In addition, the contract also provided that "all wages and other benefits to be received are contained in this agreement," a more specific provision than that in the instant contract providing that the "document contains the entire agreement of the parties."

Although Respondent and the Union herein engaged in extensive negotiations resulting in the complete and detailed 1976-79 bargaining agree-

³ Then-Member Fanning and Member Jenkins dissented in *Radioear* and would overrule that decision. Chairman Fanning agrees that *Bancroft-Whitney* is not determinative in this case. However, this does not mean that he agrees with the finding in *Bancroft-Whitney*, in which he did not participate. Member Jenkins dissented in *Bancroft-Whitney* and would overrule that decision.

ment of the parties, the turkey bonus was never discussed or referred to during the negotiations. Initially the Union had, in its written contract proposal, asked for a minor change in the existing zipper clause and the inclusion of a maintenance-of-benefits provision. Respondent took a brief look at the proposed contract and concluded that it was too ponderous a basis for meaningful negotiations. In an intraunion meeting to reduce its proposal, the union negotiating committee discussed the maintenance-of-benefits provision with reference to the turkey bonus but decided to drop the provision because the bonus had never been a problem under the prior contract. Because Respondent had given out the turkey under the old contract which did not have a maintenance-of-benefits provision but did have the zipper clause, the Union had a rational basis for concluding that the zipper clause did not affect the turkey bonus. During the subsequent negotiations, maintenance of benefits was not raised or discussed. Both the zipper clause and the concluding provision were carried over from the prior contract without modification and without discussion during the negotiations. There were, thus, no new provisions or changes in the contract or discussions during negotiations that would reasonably lead the Union to believe that the turkey bonus was in peril or its rights with respect thereto in any way modified. Accordingly, we find that the conduct of the negotiations indicates that the Union had not waived its right to bargain over the turkey bonus.

As indicated, Respondent has had a long, and until 1977 uninterrupted, practice of giving its employees Christmas turkeys. That practice continued despite the Union's having become the certified bargaining representative of the unit employees. That practice continued during the term of the 1974-76 contract despite the presence of the identical zipper and concluding provisions. And that practice continued in 1976 under the more recent agreement despite the same zipper and concluding provisions. Respondent's contention that the zipper clause and other contractual provisions constitute a waiver by the Union of its right to bargain about the Christmas turkeys is refuted by this extensive past practice under these varied circumstances. In addition, that practice was such that the Union could rely thereon in not seeking to protect its rights by contract.

For the foregoing reasons, we find that the Union has not clearly and unmistakably waived its right to be consulted with regard to any change in the Christmas turkey bonus. Inasmuch as a waiver of a statutory right is not lightly inferred, we conclude that, in the circumstances herein, there was

no waiver by the Union and Respondent should have bargained with the Union prior to discontinuing its established practice regarding this condition of employment. Accordingly, we find that Respondent has violated Section 8(a)(5) and (1) of the Act by unilaterally discontinuing giving unit employees this benefit.

CONCLUSIONS OF LAW

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

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

All production and maintenance employees of Respondent at its Middletown division plants at Middletown, Ohio, including plant clerical employees and truck drivers, but excluding all office clerical employees, technical employees, and professional employees, guards and supervisors as defined in the Act.

3. Respondent and the Union have at all material times been parties to a collective-bargaining agreement covering the employees in the above-described unit.

4. By unilaterally, without notification to or consultation with the Union, discontinuing its established practice of giving annually to each of the employees in the above unit a 14-16 pound turkey shortly before Christmas, Respondent has violated Section 8(a)(5) of the Act.

5. By its refusal to bargain Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act and thereby has violated Section 8(a)(1) of the Act.

6. The foregoing unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(5) and (1), we shall order that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act including, upon request, to bargain collectively with the Union as the exclusive representative of unit employees about the Christmas turkey bonus. As Respondent's unfair labor practice consists of unilaterally discontinuing giving its unit employees Christmas turkeys, a bonus constituting an established benefit of employment, we shall order Respondent to make the employees whole for the loss

of benefits due them by paying them the value of the lost benefits, with interest to be computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977).⁴ Further, as Respondent has unilaterally and unlawfully rescinded a benefit of unit employees, we shall order Respondent to reinstate its practice of giving unit employees the Christmas turkey bonus.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Aeronca, Inc., Middletown, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unilaterally, without notification to or bargaining with Local Lodge 2535 of District Lodge 13 of the International Association of Machinists and Aerospace Workers, AFL-CIO, discontinuing its past practice of giving annually to each of its unit employees a 14- to 16-pound turkey shortly before Christmas.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of mutual aid or protection, as guaranteed in Section 7 of the Act, or to refrain from any and all such activities.

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

(a) Upon request, bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of the employees in the appropriate bargaining unit with respect to any change in the practice of giving the Christmas turkey bonus to unit employees.

(b) Make whole its unit employees, with interest, for any losses they may have suffered by Respondent's unlawful and discriminatory discontinuance of the Christmas turkey bonus, in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Reinstate the Christmas turkey bonus for unit employees.

(d) Post at its facility in Middletown, Ohio, copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the

Regional Director for Region 9, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

MEMBER PENELLO, concurring:

I agree with the majority, but for different reasons, that deferral is inappropriate because the arbitration award is clearly repugnant to the purposes and policies of the Act. As I would find the award repugnant on a narrower, more restricted basis than the majority, and as I have often disagreed with them over the application of *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955), I am concurring separately.

As fully set forth by the majority, the issue herein is whether Respondent violated the Act by unilaterally ceasing to give employees an annual Christmas turkey bonus. The matter was taken through the contractual grievance procedure to arbitration. The arbitrator permitted the parties to fully develop their positions, and all issues, including the unfair labor practice issue, were presented. There was no dispute before the arbitrator that the Employer had given Christmas turkeys to its employees for a number of years or that the Employer discontinued giving turkeys in 1977. In dispute was whether the Employer acted properly and what was the effect of the contractual zipper clause (i.e., a provision that the contract is complete and the parties waive the right to bargain over anything contained or not contained in the contract). In conclusion, the arbitrator rejected the Union's contention that the turkey bonus was a benefit and past practice on the grounds that the contract contained a zipper clause and did not contain a maintenance-of-benefits clause.

As is evident, the arbitration proceedings were fair and regular and all parties agreed to be bound by the proceedings. However, in my view the award does not meet the *Spielberg*, test for repugnancy solely because the arbitrator reached a result wholly at odds with Board law. Although a zipper clause in certain circumstances may constitute a bargaining waiver,⁶ such a clause does not waive the right to bargain over employment benefits

⁴ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

⁵ In the event that 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."

⁶ See, e.g., *Radioear, Inc.*, 214 NLRB 362 (1974).

given under the very same zipper clause. As the Employer continued to give turkeys to employees in the face of the contractual zipper clause, that clause cannot, as a matter of law, constitute a waiver with respect to the turkey bonus. By finding a waiver in these circumstances, the arbitrator has in effect found that the Employer does not have to bargain with the Union over terms and conditions of employment, a finding clearly repugnant to the fundamental purpose of the Act to promote industrial peace through bargaining.

For the above reasons I agree with the majority that deferral is inappropriate herein and that the proceeding is properly before the Board for decision. On the merits, I agree with the results, rationale, and remedy in the majority decision and join my colleagues in finding that Respondent violated the Act as alleged.

APPENDIX

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

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to bargain with Local Lodge 2535 of District Lodge 13 of the International Association of Machinists and Aerospace Workers, AFL-CIO, by unilaterally, without notification to or consultation with the Union, discontinuing our past practice of giving Christmas turkeys to unit employees.

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

WE WILL, upon request, bargain with the above-named Union with respect to the practice of giving Christmas turkeys to unit employees.

WE WILL make unit employees whole by paying them the value of lost Christmas turkey bonuses with interest.

WE WILL reinstate the Christmas turkey bonus for unit employees. The following employees constitute the appropriate unit:

All production and maintenance employees of Aeronca, Inc., at its Middletown division plants at Middletown, Ohio, including plant clerical employees and truckdrivers, but excluding all office clerical employees, technical employees, and professional employees, guards and supervisors as defined in the Act.

AERONCA, INC.