

**A & R Window Cleaning & Janitorial Services, Inc.
and Guadalupe Villagrana. Case 13-CA-17093**

DECISION

January 23, 1980

STATEMENT OF THE CASE

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

On September 6, 1979, Administrative Law Judge Paul Bisgyer issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

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.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, A & R Window Cleaning & Janitorial Services, Inc., Cicero, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Respondent also has excepted to the Administrative Law Judge's finding that employees refused to go to work at their regular 5 p.m. starting time on November 23, 1977, because Respondent had announced that employees would not be given holiday pay for Thanksgiving. Rather, Respondent claims the employees' grievance was limited to the question of whether employees would be paid for the day following Thanksgiving. We find no merit in this exception as the record clearly and unmistakably shows that the employees acted in response to the announcement that they would not be paid for Thanksgiving because they had not been employed by Respondent for 90 days.

PAUL BISGYER, Administrative Law Judge: This proceeding, with all the parties represented, was heard on June 26-28, 1978, in Chicago, Illinois, on the complaint of the General Counsel issued on January 26, 1978,¹ as subsequently amended, and the answer of A & R Window Cleaning & Janitorial Services, Inc., herein called Respondent or Company. In issue is the question whether Respondent, in violation of Section 8(a)(1) of the National Labor Relations Act, as amended,² discharged employees Guadalupe Villagrana, Luz Perez, and Raquel Paez on November 28, 1977, because they engaged in a protected work stoppage for mutual aid and protection. Although afforded the opportunity at the close of the hearing, the parties waived oral argument, but subsequently filed briefs with the Administrative Law Judge in support of their respective positions.

Upon the entire record, and from my observation of the demeanor of the witnesses, and with due consideration being given to the arguments advanced by the parties, I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

Respondent, an Illinois corporation with its principal office and place of business in Cicero, Illinois, is engaged in the business of providing janitorial and window cleaning services to industrial and other commercial establishments. In the regular course of its business, Respondent annually performs services valued in excess of \$1 million for various business enterprises, more than \$50,000 of which were furnished to enterprises which themselves receive or ship goods valued in excess of \$50,000 directly in interstate commerce.

It is admitted, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

¹ The complaint is based on a charge filed on December 1, 1977, by Guadalupe Villagrana, a copy of which was duly served on the Respondent by registered mail on December 5, 1977.

² Sec. 8(a)(1) of the Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." Insofar as pertinent, Sec. 7 provides that "[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection"

II. THE LABOR ORGANIZATION INVOLVED

There is no question that Local 25, Service Employees International Union, AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Introduction; the Litigated Questions

As indicated above, Respondent is a contractor which furnishes janitorial and window cleaning services to business establishments at various locations. The principal stockholders of the Company are two brothers, Robert and Angelo Velasquez, who are the president and vice president, respectively. The next high ranking official is Kenneth LaRoe, the director of corporate operations, who is in charge of the Detroit operations where he spends 80 percent of his time and the balance of his time at the Company's main office in Cicero, Illinois.¹ At the time of the hearing, Respondent employed some 165 employees at various locations. Approximately 50 percent of its service contracts cover Western Electric facilities. The instant case is only concerned with Western Electric's Hawthorne facility.

On June 21, 1977,⁴ before Respondent contracted with Western Electric for janitorial services at the latter's Hawthorne plant, Respondent signed the Union's standard agreement for a term running from March 28, 1977, to March 30, 1980, covering "all janitorial, elevator and security employees and working supervisors employed in buildings which are now or may hereafter be serviced by the Employer within the jurisdiction of the Union" and recognizing the Union as the exclusive bargaining representative of the employees in such unit. This agreement contains familiar provisions relating to union security, dues checkoff, a grievance procedure, a restriction on strikes and work stoppages, and a schedule of wage rates and fringe benefits. At this time, Respondent was performing janitorial services for various companies at locations other than the Hawthorne facility. The validity of this agreement is not questioned.

In about June, Respondent submitted a bid to Western Electric to provide janitorial services at its Hawthorne

facility which were then being performed by another contractor, Service Master. In August, Respondent was awarded the contract effective September 27 with the understanding, according to Respondent's President Robert Velasquez, that it was to be a union operation.

On September 27, Respondent's President Velasquez met with the former employees of Respondent's predecessor contractor, Service Master. After identifying himself as the president of the contractor which had taken over the janitorial services at the T.A. Building, the merchandise area and the hospital at the Hawthorne facility, he introduced Marvin Harris as the regional supervisor in charge of this operation; Miguel Paz Pinzon, commonly known as Paz, as the site supervisor of the employees assigned to the T.A. Building; and Zbigniew Zakraweaz, as the site supervisor of the employees assigned to the merchandise area.⁵ Following the practice prevailing in the janitorial service industry, job applications were distributed among service master's former employees who were then interviewed by Regional Supervisor Harris and Site Supervisor Paz.⁶ Some 28 employees, including Guadalupe Villagrana, Luz Perez, and Raquel Paez, the alleged dischargees, out of approximately 45 persons who attended the meeting were hired and were informed that they would receive the same union wage rates previously paid by Service Master.⁷ Although Velasquez testified that he was advised of such wage rates by the Union, it is clear that they were considerably less than those prescribed in the Union's above mentioned standard agreement signed by Respondent.⁸ On the same day, September 27, the hired employees began working for Respondent at the Hawthorne facility.

On November 22, President Velasquez signed a memorandum of understanding which he had received from the Union during that month, containing the signature of the Union's president. In this document, Respondent agreed to be bound at its Hawthorne location by the terms and conditions of the standard agreement except with respect "to wage scale and fringe benefit contributions" in lieu of which, effective September 26, lower wage rates and benefit contributions are provided for the Hawthorne location.⁹ According to Velasquez, in negotiations respecting the memorandum of understanding initiated between him and the Union's business agent a week or 10 days before September 27, he

¹ LaRoe's functions include the establishment of policy and procedures, the development of training programs for the personnel, and the performance of management consultant studies and engineering evaluations on various projects. On the basis of the record, I find, contrary to Respondent's contention, that LaRoe is both a managerial employee and a supervisor within the meaning of Sec. 2(11) of the Act, and therefore is an agent whose acts involving the work stoppage are imputable to Respondent. Indeed, at the hearing, Respondent's counsel, in answer to the Administrative Law Judge's inquiry, conceded that LaRoe had "limited authority. He's an agent in some capacity of the employer's as far as corporate matters are concerned. He doesn't have all the indicia indicated in Section 2(11)." Counsel further conceded that LaRoe had authority over employees "[a]s a policy matter . . . I mean he is definitely in the policy hierarchy of the employer."

⁴ All dates, unless otherwise indicated, relate to 1977.

⁵ Harris, known to the employees as "Mr. Peanuts," is the superior of the site supervisors at the Hawthorne facility and other locations of the Respondent's customers in a specified area. He generally oversees the janitorial work performed at these facilities where he spends several hours each day and issues directives to the site supervisors. As will later be discussed, he gave disciplinary notices to the dischargees, Perez and Paez, for their involvement in the November 23 work stoppage, which warned them that a repetition of their offense would result in their termination. Paz, as site

supervisor, does not perform manual labor but responsibly directs approximately 20 employees, most of whom are Spanish speaking persons, assigned to the T.A. Building, while Site Supervisor Zakraweaz, known as Zbig, responsibly directs the work of Respondent's Polish speaking employees in the merchandise area. In disagreement with Respondent's contention, the evidence plainly establishes that Harris, Paz, and Zakraweaz fall within the definition of supervisors in Sec. 2(11) of the Act.

⁶ Harris interviewed the English speaking applicants, while Paz interviewed the Spanish speaking applicants.

⁷ During this meeting, there was some reference made to a union, which will subsequently be discussed in connection with the question of the employees' knowledge of Respondent's contractual relationship with the named Union.

⁸ There is no evidence whether Respondent's predecessor was party to the Union's standard agreement.

⁹ Provision is also made in the memorandum of understanding for the establishment of wage scales and fringe benefit contributions for "employees of the Employer who are employed at job locations not presently covered under the terms of the standard agreement or not listed" in this memorandum of understanding. In addition, there is a provision for amending the latter document "from time to time to list such job locations and the date of commencement of service."

accepted the business agent's proposed wage rates subject to the Union's approval, which came when he received that document in the mails in November. He admitted that the wage rates therein prescribed, which were higher than those previously paid by Respondent to its employees at the Hawthorne facility, were applied subsequent to the execution of the memorandum of understanding.

As will presently be fully discussed, on November 23 the employees reported for work at the T.A. Building, but refused to go to work at their regular 5 p.m. starting time because Respondent had announced that they would not be given holiday pay for Thanksgiving. The work stoppage ended 2 hours later when Respondent's Director of Corporate Operations LaRoe persuaded them to return to work. On the following workday, Monday, November 28, the Respondent admittedly terminated Luz Perez, Raquel Paez, and Guadalupe Villagrana because of their participation in the work stoppage. It is the General Counsel's position that Respondent penalized these employees for engaging in lawful concerted activity for their mutual aid and protection over a condition of employment and hence violated Section 8(a)(1) of the Act. Respondent, on the other hand, justifies its action principally on the ground that the work stoppage was unprotected as it was in breach of the no-strike clause in its standard collective-bargaining agreement with the Union. Countering this defense, the General Counsel argues that the employees were neither informed nor were otherwise possessed of knowledge of the existence of a collective-bargaining agreement between Respondent and the Union and that therefore they could not be punished for exercising their Section 7 rights. Alternatively, the General Counsel urges that, even assuming that the work stoppage were unprotected, the named employees' conduct was condoned and may not be revived to support their discharge. Respondent, however, denies any condonation by a responsible official. Another defense advanced by Respondent is that two of the three discharged employees, Perez and Paez, had threatened a "supervisor," Miguel Paz, with bodily harm and that they thereby lost the protection of the Act.

We turn to the relevant evidence concerning the work stoppage and the discharges.

B. The Evidence

1. The November 23 work stoppage

A day before Thanksgiving Day, which fell on November 24, Respondent posted a notice¹⁰ in its wire-enclosed office in the T.A. Building, that employees would not be paid for this holiday. On November 23, when Guadalupe Villagrana and Raquel Paez reported early for work for their regular shift from 5 p.m. to 1:30 a.m., they were informed by Supervisor Paz that employees would not be paid for the Thanksgiving

¹⁰ The notice read, as follows: "NOTICE TO: ALL A&R WINDOW CLEANING & JANITORIAL SERVICE EMPLOYEES. FRIDAY—NOVEMBER 25 IS A PAID HOLIDAY FOR A&R EMPLOYEES. WESTERN ELECTRIC—HAWTHORNE PLANT WILL BE CLOSED ON THIS DAY."

¹¹ It is noted that one of the provisions in the Union's standard agreement (art. VI, sec. 1) provides for a paid Thanksgiving holiday without any requirement of employment for a specific period. The Respondent asserts that the employees were not eligible for holiday pay because, under its policy, they had not been in its employ for 90 days as of November 23.

holiday because they had not been in the Company's employ the required 90 days.¹¹ Villagrana and Paez protested that this was contrary to the promise previously made to the employees and demanded an explanation which he was unable to give, suggesting, instead, that they seek an explanation from "the big boss." When employees Luz Perez and Ella and Luther Williams arrived for work, they were informed by Villagrana and Paez of the Company's decision not to give employees Thanksgiving holiday pay. They, too, questioned Paz about the denial of holiday pay but without receiving any satisfaction. As other employees reported for work, they were advised of the situation, which they discussed among themselves. In answer to an employee's question, Luther Williams told the employees that, under state law, they were entitled to holiday pay. The upshot of all this was that, despite Paz' exhortation to go to work, the employees refused to do so until they first spoke to a company official concerning the denial of holiday pay. It is quite clear that Perez, Paez, Villagrana, and Ella and Luther Williams were the most vocal supporters of the work stoppage.

Paz, thereupon, telephoned Respondent's main office to speak to President Velasquez or Paz' immediate superior, Regional Supervisor Harris. However, Director of Corporate Operations LaRoe answered the telephone and advised Paz that Velasquez and Harris were not there but that he would try to contact them. In reply to LaRoe's inquiry, Paz related that the employees refused to go to work because they were denied Thanksgiving holiday pay. LaRoe told Paz to make every effort to persuade the employees to return to work while he (LaRoe) would try to communicate with Velasquez and Harris. Since LaRoe was unable to locate Velasquez or Harris, he left a message at their respective homes. When Paz called back about a hour later, LaRoe informed him of his inability to reach either Velasquez or Harris, and Paz advised him that the employees persisted in their work stoppage. In response, LaRoe stated that he would be at the facility in 10 minutes. Subsequently, LaRoe received a call from Western Electric Inspector Robert Kaczmarek,¹² urging Respondent to take measures to end the work stoppage.

There is uncontradicted testimony, which I credit, that after Paz completed a telephone call to "the boss," not otherwise identified, he turned the telephone over to Ella Williams, saying that "the boss" wanted to speak to her.¹³ In the ensuing conversation, "the boss" confirmed to Ella Williams that the employees would not be given holiday pay for Thanksgiving and asked to speak to her husband. When Luther Williams got on the telephone, the cause of the work stoppage was discussed with "the boss" adhering to the Company's position that the employees were not entitled to holiday pay because they had not worked long enough for the Company. Luther Williams, however, voiced his disagreement, asserting that state law required the payment of

¹² Kaczmarek, as Western Electric's agent, generally oversees the Respondent's performance of its service contract at the Hawthorne facility.

¹³ The record does not indicate whether this was one of the calls to LaRoe. Although President Velasquez testified he first learned of the work stoppage when he arrived at home between 8:30 and 9 p.m. November 23, Paz testified that he was able to locate Velasquez at 6 p.m. and informed him of the work stoppage and that the employees wanted to speak to a high company official. Neither Ella Williams nor her husband, Luther, who also spoke to "the boss" on this occasion, could identify to whom they had spoken.

holiday pay. Concluding their conversation, "the boss" stated that, if the employees refused to return to work, they should leave, but added that he would come to the facility in a short while. Perez conveyed the substance of Luther Williams' conversation with "the boss" in Spanish to the Spanish-speaking employees and urged them to continue the work stoppage until a company official arrived. Paz also announced to the employees that a company official was coming down to speak to them.

After waiting a while without anyone from the Company making an appearance, Luther Williams called the main office again and was told by the same individual that he would be there in a few minutes. The Williamses continued to wait along with the other employees. However, between 6:30 and 7 p.m., they decided to leave, informing Paz they were quitting because the Company refused to pay them for the Thanksgiving holiday.¹⁴ The other employees, nevertheless, remained in the office.

At about this time, Western Electric Inspector Kaczmarek entered Respondent's Hawthorne office where the employees were waiting. He first approached Raquel Paez and politely asked her to hand over a stick which she was holding under her left armpit and which she readily relinquished. This stick was roughly 3 feet long and 1-½ inches in diameter and was customarily used by the cleaning employees to keep washroom doors open. Kaczmarek thereupon addressed the employees, stating that he was not associated with the Respondent but that he had called its office and was advised that someone would come to the facility to talk to them within a half an hour. Kaczmarek also told them that, if they then went to work, they would be reassembled when Respondent's official arrived or they could remain in the office and wait for that individual. With the possible exception of two or three employees who returned to work, most of the work force decided to wait.

Later in the evening, about 7 o'clock, Director of Corporate Operations LaRoe arrived at the facility.¹⁵ Before addressing the employees, he asked Supervisor Paz who knew English and Spanish to serve as an interpreter so that the Spanish speaking employees would understand what he had to say to them. Employee Marco Nunez volunteered. In answer to LaRoe's inquiry, Nunez told him that the employees were concerned about not being given Thanksgiving holiday pay. With Nunez, as interpreter, LaRoe introduced himself as Director of Corporate Operations and proceeded to explain that, under the Company's policy, the employees were not eligible for holiday pay because they had not been in the Company's employ for 90 days. He then urged them to return to work, adding that, if they did not, they should leave or else he would punch out their

timecards, as he had the authority to do. This elicited inquiries from Villagrana, Perez, Paez, and other employees whether they would be paid for the full 8 hours since they had already missed 2 hours work. LaRoe replied that they would be paid for the full 8 hours if they completed their work by the end of their shift.¹⁶ When LaRoe was then asked about the employees being paid for the upcoming Christmas holiday, he stated that he would confer with President Velasquez about it and assured them that they would receive timely notice whether or not it would be granted.

During this meeting, subjects of insurance, the wage rate, and the Union were also raised. According to LaRoe's testimony, an employee complained that he was not receiving the wage rate he thought he would be paid and that, in response, he (LaRoe) placed the blame on the Respondent's predecessor contractor, Service Master. When asked by the General Counsel for an explanation of the answer he had given to the employee, LaRoe testified that "[a]pparently . . . Service Master . . . did not put the people in the union per se . . ." Clarifying the situation, LaRoe, in effect, explained to the employees that they did not have a union¹⁷ because their prior employer, Service Master, had failed to forward their signed union cards to the Union but added that the employees would have one in the future. At the close of the meeting, the employees returned to work. Their next paycheck included pay for the full 8 hours they were on the timeclock on November 23.¹⁸

2. Regional Supervisor Harris' warnings to employees Perez and Paez

Following the termination of the work stoppage, Regional Supervisor Harris learned from his wife about that occurrence and promptly proceeded to the Hawthorne facility arriving there before 9 p.m. At the Company's Hawthorne office, Supervisor Paz informed him what had happened and that the employees' refusal to go to work was on account of being denied Thanksgiving holiday pay. Harris then called LaRoe who apprised him of his successful efforts in ending the work stoppage. After this conversation, Harris directed Paz to bring Perez and Paez separately to him, which he did. In the presence of Supervisor Zakraweaz, Western Electric Inspector Kaczmarek and Paz, Harris voiced his disapproval to Perez of her involvement in the work stoppage and questioned her respecting her participation. Perez answered that she had simply transmitted to the Spanish speaking employees what employee Luther Williams had asked her to

Regional Supervisor Harris, as will later be discussed, testified that at the subsequent supervisory meeting held by President Velasquez on November 28, LaRoe proposed that the employees should be paid for a full 8 hours they were scheduled to work on November 23.

¹⁷ This probably explains why, even from LaRoe's own testimonial account of this meeting, he made no mention of the existence of a collective-bargaining contract which prohibited any work stoppage. Although the Union is not explicitly identified in the testimony, it appears to be the labor organization named above.

¹⁸ The foregoing narration of the events on November 23 is based on a composite of the testimony of all the witnesses, which I find reflects what probably had occurred. Whatever variances there are in the testimony of these witnesses, they are minor and do not affect my ultimate determination.

¹⁴ Although named in the unfair labor practice charge as unlawfully discharged employees, Ella and Luther Williams were not included in the complaint issued herein and the legality of their separation is not in issue.

¹⁵ Although Respondent does not contend that it discharged Perez and Paez because they physically prevented employees from going to work, it asserts in its brief that they had engaged in such conduct before LaRoe's arrival. I, however, credit the denials of these employees that they had committed such acts and find from my evaluation of all the evidence that their actions were nothing more than peaceful efforts to persuade their coworkers to cooperate in supporting the work stoppage in protest to the Company's refusal to grant them holiday pay for Thanksgiving.

¹⁶ Although LaRoe testified that he did not believe that any employee questioned him about the employees being given the full 8 hours pay,

tell them. Harris then stated that since she did not have a union he was going to give her a warning notice¹⁹ and with that introduction handed her such a paper dated November 23 and signed by him, which recited the following:

You were involved in a work stoppage on the above date which lasted for 2 hrs. I want this to serve as a warning that if you are involved in any type of stoppage or slowdown we, the Company of A & R Janitorial, will terminate you on the spot, of the infraction by punching your card out.²⁰

Perez refused to sign the warning notice, as Harris requested, asserting that she was unable to read English. Thereupon, Harris read the warning notice to her. Perez, however, still declined to sign and Harris noted her refusal on the paper. As Perez was leaving the office to return to her job, Harris jokingly told her to have a happy Thanksgiving. This provoked her cynical response that she could not understand how he could issue a warning notice and simultaneously wish her a happy Thanksgiving.²¹

Raquel Paez was next summoned to the office, arriving there around 9 p.m. There, Harris questioned her about her participation in the work stoppage and handed her an identical warning notice as the one previously given to Perez, which she refused to sign unless it was explained. With Paz as an interpreter, Harris stated that she had been threatening employees with a stick, although the warning notice made no mention of such alleged misconduct. Paez, obviously thinking that the warning notice mentioned the threat, thereupon chided Paz for its purported inclusion in the warning notice as he very well knew that it was untrue and Harris was not even in the office at the time of the alleged occurrence. Paz denied that he informed Harris about such a threat. This led to a verbal exchange between Paz and Harris with each blaming the other for the threat charge. Paez further asked Harris why other employees who were involved in the work stoppage were not given warning notices. In response, Harris said that he would hold a meeting with the employees at lunchtime where he would distribute warning notices to the other employees.²²

Following the issuance of the warning notices to Perez and Paez, President Velasquez, who assertedly learned of the work stoppage about 8:30 or 9 p.m. from the message previously left by LaRoe at Velasquez' home, telephoned the Hawthorne facility shortly thereafter. Velasquez spoke to Supervisor Paz who informed him of the work stoppage and its termination by LaRoe. Advising Paz that a supervisory meeting was scheduled for early Monday morning, Novem-

¹⁹ Here, too, it is noted that no mention was made by Harris either verbally or in the written warning notice that the strike was unlawful and in violation of a contractual no-strike clause.

²⁰ Whether or not Harris also commented that Perez, Paez, Villagrana, and the Williamses had barred the door to keep employees from returning to work, it is sufficient to note that, not only is such conduct not mentioned in the warning notice Perez and Paez received from Harris, but I have previously found that they did not engage in such conduct during the work stoppage.

²¹ The foregoing findings are based on substantially uncontradicted testimony except that Harris denied mentioning the Union during this interview while Perez testified that he did. I find that Perez' testimony is more accurate and credit it. In any event, my ultimate determination would not be different even if I were to accept Harris' denial.

²² The foregoing narration is based on Paez' more convincing testimony than Harris' version which, at any rate, if accepted does not require a result different from that I ultimately reach in my concluding findings. Harris

ber 28, at the main office, Velasquez directed Paz to have Regional Supervisor Harris call him at work. Between 9:30 and 10 p.m., Harris telephoned Velasquez and apprised him of the issuance of the warning notices to Perez and Paez while Velasquez informed Harris of the scheduled supervisory meeting on the following Monday morning.

As a result of this conversation with Velasquez, Harris notified Paz to cancel the lunchtime meeting with the employees. In the meantime, around 10 p.m., some eight employees had assembled in the office, with the rest of the employees intending to join them after they had finished their lunch. Paz then announced that the meeting was called off because Harris was unable to attend but that Harris would meet with them the following Monday.

At the supervisory meeting, presently to be discussed, Velasquez authorized the issuance of a warning notice to all the employees, which Harris had contemplated doing at the employee lunchtime meeting. Such a notice addressed to the employees was subsequently posted, stating:

ON FRIDAY NOVEMBER 23RD, 1977 [sic] THERE WAS A WORK STOPPAGE HERE AT HAWTHORNE WORKS FOR TWO (2) HOURS.

IF ANY ONE IS INVOLVED IN STOPPAGE OR SLOW DOWN YOU WILL BE TERMINATED IMMEDIATELY.

3. The discharge of Perez, Paez, and Villagrana

On Monday morning, November 28, President Robert Velasquez and Vice President Angelo Velasquez held a meeting with Director of Corporate Operations LaRoe, Regional Supervisor Harris, and Site Supervisors Paz and Zakraweaz, where the work stoppage was discussed, as was the fact that it was conducted to protest the denial of Thanksgiving holiday pay, although the employees were not entitled to it under the Company's 90-day eligibility policy. Considerable discussion centered around the active involvement of Perez, Paez, and Villagrana in the work stoppage and assertedly their threats of bodily harm to be visited upon Supervisor Paz, which were allegedly made after the employees had returned to work.²³ Velasquez testified that, on the basis of the information thus developed, and noting that he had had some problems in the past with these employees,²⁴ he made his decision to discharge the three named employees principally because of the threats made to Paz and because the work stoppage violated the Company's collective-bargaining agreement with the Union. In this connection, employee Nunez' name was brought up as an

testified that, in response to his inquiries concerning her involvement in the work stoppage, she claimed that she had only acted as an interpreter; that he then read the warning notice to her in English without using Paz as an interpreter; and that he then explained to Paez that she had a stick, closed the door and stood in front of it, preventing some of the employees who wanted to go to work from leaving the office. It is noted that, although Harris testified that during this interview Paz said nothing, Paz himself testified that on this occasion, when Paez stated that she did not understand the warning notice, he explained to her that the paper was the result of what had occurred earlier in the day.

²³ The evidence relating to these alleged threats will be separately considered in the concluding findings of this Decision.

²⁴ These problems, which relate to inconsequential matters affecting two of the named employees, are not urged in the Respondent's brief as a cause for the discharges. Manifestly, these two employees would not have been discharged but for the work stoppage.

active participant in the work stoppage, but Velasquez decided that his activity was essentially that of an interpreter which did not warrant his termination. As for Ella and Luther Williams, whose names were also mentioned, Velasquez saw no need for further action since he viewed their departure from the Hawthorne facility on November 23 as a quit.

Also considered on this occasion were the subjects of Christmas holiday pay and pay for the full 8 hours of the employees' workday, which included the 2 hours they were engaged in the work stoppage. These matters, which had previously been raised by the employees with LaRoe on November 23, were presented by LaRoe at the supervisory meeting. Velasquez decided to grant the employees a Christmas bonus in lieu of holiday pay for which they were not eligible under the Company's policy, although the bargaining contract (art. VI, sec. 1) listed Christmas as a paid holiday. Accordingly, Velasquez ordered that a notice be posted on the bulletin board, notifying employees of the granting of such a bonus. In addition, Velasquez approved LaRoe's proposal to pay the employees for 8 hours on November 23. Velasquez testified that he gave his approval in order to avoid any difficulties with the Government or the Union. At Harris' suggestion, Velasquez also authorized the posting of the previously quoted notice to all the employees warning them that a repetition of a work stoppage would result in their discharge.

In order that Perez, Paez, and Villagrana would have sufficient notification that they were not to report for work at their regular time (5 p.m.), Velasquez directed that telegrams be sent to their homes and that Supervisor Paz call them on the telephone. When the three of the discharged employees nevertheless came to work, they were informed by Paz of their termination and, after some conversation, they departed. Subsequently, they received their paychecks for the week of the November 23 work stoppage, which included full 8 hours' pay for that day.

C. Concluding Findings

Respondent concedes that Perez, Paez, and Villagrana were discharged "because they instituted and maintained . . . [a] work stoppage." However, it argues, in opposition to the General Counsel's position, that the work stoppage was unprotected as it was in breach of a valid no-strike clause in its standard agreement with the Union,²³ which required the employees to use its grievance procedure to resolve their dispute with Respondent. I find no merit in Respondent's contention.

Putting aside for the moment Respondent's defense that the work stoppage violated the contractual no-strike clause, there is no doubt that the employees' refusal to work in order to protest Respondent's denial of Thanksgiving holi-

day pay was a form of concerted activity for mutual aid and protection guaranteed employees by Section 7 of the Act and that a discharge for exercising that statutory right violated Section 8(a)(1) of the Act. Therefore, the critical question here presented is whether the standard agreement or the subsequently executed memorandum of understanding supposedly signed by Respondent on November 22, embodying that agreement, was applicable to the Respondent's Hawthorne employees at the time of their work stoppage on November 23. In my opinion, neither agreement barred the employees from engaging in such otherwise protected activity because, as I find below, the employees were never informed by Respondent of the existence of any collective-bargaining agreement with the Union binding on them; nor were they otherwise aware of such a contractual relationship between those parties when the employees resorted to the work stoppage. The controlling principle was aptly enunciated in a comparable situation in *Waco Insulation*,²⁶ where the court held that "absent knowledge of the collective bargaining agreement between . . . [the employer and the union], the spontaneous work stoppage by . . . [the discharged and other employees] to present their wage demands to management constituted a protected concerted activity."²⁷

Guided by this principle, I find that at the time of the work stoppage the employees were unaware of the existence of a collective-bargaining agreement binding on them. I do not credit President Velasquez' testimony that at the September 27 meeting, when he hired the former employees of the prior service contractor, he made those employees aware of the existence of a union contract.²⁸ Not only was this evidence convincingly contradicted by the discharges Perez and Paez,²⁹ but it is highly unlikely that Velasquez would apprise the employees of the Company's bargaining contract with the Union if for no other reason than the contract prescribed a wage scale considerably higher than that he intended to pay and actually did thereafter pay them. Probably, the most that Velasquez said on this occasion when, as Velasquez also testified, in response to the inquiry of several employees who stated that they had previously signed union cards while employed by the former service contractor, he (Velasquez) indicated that the Hawthorne operation was *going* to be a union shop. Further suggesting that Velasquez did not disclose the existence of a collective-bargaining contract at the September 27 meeting is the fact that, in addition to wage rates, other significant provisions in the standard agreement were not enforced at Hawthorne during the period preceding the work stoppage, such as holiday pay, union security, dues checkoff, and apparently fringe benefit contributions.²⁹ Indeed, Respondent's denial of Thanksgiving pay, which caused the work stoppage, was viewed by Respondent, as late as November 28 following the work stoppage, as a company policy matter rather than a term and condition of employment embodied in a bargaining

argument in its brief, the Administrative Law Judge also made perfectly clear the relevance of evidence concerning the employees' knowledge of the *existence of a collective-bargaining agreement* and *not* specific knowledge of the incorporation of a no-strike clause in such a known agreement.

²⁸ Perez and Paez also credibly testified that they had never seen the Company's standard agreement with the Union or the parties' memorandum of understanding.

²⁹ It appears that reduced fringe benefit contributions by Respondent were set forth in the memorandum of understanding.

²³ Art. XVII, sec. 1, of the standard agreement provides that "During the term of this agreement, there shall be no strikes, lockout or picketing." The agreement also contains conditions under which the Union could be relieved of liability for an unlawful work stoppage.

²⁴ *N.L.R.B. v. Waco Insulation, Inc.*, 567 F.2d 596, 602 (4th Cir. 1977), *enfg.* in this respect 223 NLRB 1486 (1976).

²⁵ The Administrative Law Judge made it clear at the hearing that, notwithstanding Respondent's failure to plead affirmatively that the work stoppage violated a contractual no-strike provision, he would receive evidence to support such a defense. Moreover, contrary to the premise of Respondent's

contract. On that date, Respondent similarly treated the matter of Christmas holiday pay. With respect to the November 22 memorandum of understanding, Respondent does not even claim it had apprised employees of its terms. Moreover, it is clear that, although Velasquez testified that he had agreed to the terms of the memorandum about 2 months before its execution, the wage rates therein prescribed which were higher than those paid employees, if not the fringe benefit contributions also, were not put into effect before the work stoppage.

Another factor demonstrating the absence of an operative bargaining contract applicable to the Hawthorne facility is the indisputable fact that Director of Corporate Operations LaRoe, in urging the employees to return to work on November 23, made no mention to the employees of the existence of a bargaining contract which prohibited work stoppages, rendering them vulnerable to discharge. Indeed, on this occasion, in answering an employee's complaint about his wage rate which he thought would be higher, LaRoe remarked that the reason was that the employees did not have a union yet, although they would have one in the future. Similarly, before LaRoe's arrival, when Supervisor Paz tried to persuade the employees to end their work stoppage, he, too, did not refer to any bargaining contract which prohibited their action. This is easily understandable in view of Paz' admission under cross-examination that prior to the November 23 work stoppage a majority of the employees had asked him when the Union was coming in and that he replied that he did not know.

Also quite revealing is the fact that the warning notices issued by Regional Supervisor Harris to Perez and Paez for their involvement in the work stoppage did not allude to any violation of the Company's no-strike contract with the Union as the reason for the warning. Even more incomprehensible is the fact that on November 28, when President Velasquez decided to terminate Perez, Paez, and Villagrana supposedly for breaching the no-strike clause in the Respondent's bargaining agreement, the notice he also authorized to be posted on that occasion, warning all the employees for their November 23 work stoppage, omitted any reference to the unlawfulness of that work stoppage under the contract. All this suggests that Respondent's defense that the work stoppage was unprotected is actually an afterthought. Finally, if the no-strike contract were really applicable to the Hawthorne operation, there is nothing in the record to explain why Respondent did not call upon the Union to take immediate steps to terminate the work stoppage less it be

held legally liable for the employees' actions under the terms of the contract.¹⁰

In sum, I find, on the basis of all the evidence, that at the time the employees engaged in the spontaneous 2-hour work stoppage in protest to the denial of Thanksgiving holiday pay and refused to go to work unless they first spoke to a company official, the employees were totally without information from Respondent or any other source of the existence of any collective-bargaining agreement applicable to the Hawthorne facility and binding on them. This determination is not precluded by the evidence relied upon by Respondent that at the September 27 meeting, at which the employment of the prior service contractor's employees was discussed, employee Nunez told Velasquez he was a union member and Velasquez remarked that he could retain his membership as the Hawthorne facility was a union job. Nor is employee knowledge of the existence of a bargaining agreement or of a contractual grievance procedure established by the comment of Jose Guerrero to employee Perez as the former was leaving the office to go to work at the time of the work stoppage that the employees should do likewise and thereafter file a complaint with the Company. Similarly, such knowledge is not shown by Perez' statement to Supervisor Paz some 8 days prior to the work stoppage that, if Paz created any problems for the employees, they would complain to the Union about him.

Accordingly, I conclude that neither Respondent's standard contract with the Union nor the subsequently executed memorandum of understanding was applicable to the Hawthorne facility as to render the November 23 work stoppage unprotected. It follows that Respondent violated Section 8(a)(1) of the Act by discharging Perez, Paez, and Villagrana on account of their involvement in the work stoppage.¹¹

As indicated previously, Respondent makes an alternative argument that, in any event, its discharge of Luz Perez and Raquel Paez was independently justified by their threats to harm the Company's supervisor, Paz,¹² which were made after the employees had returned to work. According to President Velasquez, this subject was discussed at the November 28 supervisory meeting when he decided upon the threats as one of the two reasons for terminating these employees and Guadalupe Villagrana. I find this contention unsupported by credible testimony.

Admittedly, the alleged threats were not made directly to Paz. Paz testified that he left the Hawthorne facility an hour earlier than his regular 1:30 a.m. departure time¹³ because he was nervous and upset as a result of being told by Site

¹⁰ Art. XVII of the standard agreement with the Union provides in sec. 2:

No action or suit of any kind or description shall lie by the Employer against the Union, or any officer, representative or agent thereof, because of a strike, work stoppage or picketing in violation of this Agreement if:

- (a) The Union has not authorized or instigated the strike, work stoppage or picketing, and
- (b) The Union promptly denounces such strike, work stoppage or picketing and makes an earnest effort to terminate the same within a period of five (5) days.

¹¹ In view of this determination, there is manifestly no need to pass upon the General Counsel's alternative contention that, in any event, Respondent had condoned the employees' actions and that therefore the alleged unprotected work stoppage may not be resurrected to justify the discharge of the named employees. However, should the Board decide to reach this question, I find, contrary to Respondent, that Director of Corporate Operations LaRoe's successful inducement of the employees to return to work without any

qualification or indication to the employees that Respondent intended subsequently to consider punishment of the alleged instigators establishes condonation under Board and court decisions. See, for example, *Bentex Mills*, 213 NLRB 296 (1974).

¹² Curiously, Respondent also contends that Paz is not a supervisor within the meaning of the Act.

¹³ Paz further testified that he received permission to leave early from Western Electric Inspector Kaczmarek, as he was required to do for security reasons. However, although Paz testified that he had spoken on the telephone to President Velasquez at midnight and informed him that everything was normal and that the employees were working, there is nothing in his testimony that he requested permission from Velasquez, his employer, to leave the facility early because of threatened assaults. Velasquez, on the other hand, testified that in a telephone call Paz made to him after 9 p.m. Paz requested permission to leave early because Perez and Paez had threatened to get him in the parking lot. Oddly enough, Supervisor Zakraweaz had not named Paez to

Supervisor Zakraweaz about 8 p.m. (November 23) to be careful since it was possible that Perez might hurt him and as a result of similar advice he received from employee Jose Guerrero about 11 p.m. to be careful because Perez wanted to hit him. Zakraweaz, however, testified that *after* the end of the workday and Paz' early departure, Perez approached him and inquired where Paz was. Zakraweaz further testified that when he informed her that Paz had already left, Perez made some disparaging remarks about Paz and said that if Paz gave her or the employees any more problems, she would "punch him" and, in so saying, directed her fist into the open palm of her other hand. As for the alleged threat against Paz made to Guerrero, Guerrero was not produced as a witness to attest to it.

Perez denied having had the conversation to which Zakraweaz testified and categorically denied telling him or anyone else that she intended physically to harm Paz. In view of the inconsistency between Paz' and Zakraweaz' testimony with respect to the time sequence, and the absence of any contradictory testimony by Guerrero regarding his alleged conversation with Perez, I accept Perez' denial that she threatened to harm Paz. Indeed, it appears that Zakraweaz probably erroneously identified Perez to Paz as the one who made the threat since he testified that the offender was the employee who was holding the stick during the work stoppage. The evidence discloses that it was Paez who held the stick. For this reason, Paez, although not identified by Zakraweaz to Paz as the one who made the threat, gave testimony in which she denied that she told Zakraweaz or any one else that she would do physical harm to Paz. I credit her denial. Finally, it is noted that, after Paz testified that he was afraid of Perez and Paez because of the information he received from Zakraweaz and Guerrero, Paz admitted, under further examination, that he really was not afraid but added that he wanted to avoid problems.¹⁴ I find that, as Perez and Paez were not guilty of the misconduct attributed to them, they did not forfeit the protection the Act afforded them to engage in concerted activity for mutual aid and protection. While I question Respondent's good-faith belief that these employees actually made serious threats of physical assaults upon Paz, such an honest belief does not relieve Respondent of liability for its Section 8(a)(1) violation, as found above.¹⁵

IV. THE REMEDY

Pursuant to Section 10(c) of the Act, as amended, it is recommended that Respondent be ordered to cease and desist from engaging in the unfair labor practices found and like and related conduct and that it take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent unlawfully discharged employees Perez, Paez, and Villagrana because of their involvement in protected concerted activities. To remedy this unfair labor practice, it is recommended that Respondent offer these employees immediate and full

¹⁴ Paz as having made the threat and, according to Zakraweaz' testimony, when Paz left the facility, Paz did not tell him why he was leaving early.

¹⁵ Perez is approximately 5 feet tall and weighs 130 pounds, while Paez is 5 feet 2 inches tall, weighing 125 pounds. Paz is taller and weighs more than the two women.

¹⁶ *N.L.R.B. v. Burnup & Sims, Inc.*, 379 U.S. 21 (1964).

reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and that Respondent make each of these employees whole for any loss of earnings they may have suffered by reason of their unlawful discharge by payment to each of them of a sum of money equal to that which they normally would have earned from the date of their discharge to the date of the offer of reinstatement, less their net earnings during the said period. Backpay shall be computed with interest on a quarterly basis in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977); see also *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). To facilitate the computation, as well as to clarify the named employees' right to reinstatement, Respondent shall make available to the Board, upon request, payroll and other records necessary and appropriate for such purposes. The posting of an appropriate notice is also recommended. In view of the fact that most of Respondent's employees working in the T.A. Building at the Hawthorne facility and who engaged in the work stoppage are Spanish-speaking persons with little knowledge of the English language, the notice ordered to be posted shall be in both languages.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in 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. By discharging Luz Perez, Raquel Paez, and Guadalupe Villagrana for engaging in protected concerted activities for mutual aid and protection, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, as amended, I hereby issue the following recommended:

ORDER¹⁶

The Respondent, A & R Window Cleaning & Janitorial Services, Inc., Cicero, Illinois, its officers, agents, successors, and assigns shall:

1. Cease and desist from:
 - (a) Discharging, disciplining, issuing warning notices, or otherwise discriminating against employees for engaging in protected concerted activity for mutual aid and protection with respect to paid holidays, wages, hours, or other terms and conditions of employment.

¹⁶ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights which are guaranteed to them in Section 7 of the Act.

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

(a) Rescind the warning notices issued to Luz Perez and Raquel Paez on November 23, 1977, and delete from their personnel files any reference thereto.

(b) Offer Luz Perez, Raquel Paez, and Guadalupe Villagrana immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of their unlawful discharge, in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful in analyzing the amount of backpay due and the right to reinstatement and employment under the terms of this recommended Order.

(d) Post at its main office in Cicero, Illinois, and at its office at the Western Electric Hawthorne Works the attached notice marked "Appendix."¹⁷ Copies of said notice, in English and Spanish, and on forms provided by the Regional Director for Region 13, 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, where notices to employees are customarily posted. Reasonable steps shall be taken to insure that

¹⁷ 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."

said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

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

WE WILL NOT discharge, discipline, issue warning notices, or otherwise discriminate against any employee for engaging in protected concerted activity for mutual aid and protection with respect to paid holidays, wages, hours, or other terms and conditions of employment.

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

WE WILL rescind the warning notices issued to Luz Perez and Raquel Paez on November 23, 1977, and delete from their personnel files any reference thereto.

WE WILL offer Luz Perez, Raquel Paez, and Guadalupe Villagrana immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings suffered by reason of their unlawful discharge.

**A & R WINDOW CLEANING & JANITORIAL
SERVICES, INC.**