Williams and Lane, Inc. *and* **Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL-CIO.** Case 20-CA-14836

January 14, 1981

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND ZIMMERMAN

On September 26, 1980, Administrative Law Judge George Christensen issued the attached Decision in this proceeding. Thereafter, both the General Counsel and the Charging Party filed exceptions' and supporting briefs, and Respondent filed limited cross-exceptions and a supporting brief, and an answering brief to the General Counsel's and the Charging Party's exceptions.

Pursuant to the provisions of Section 3@) 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,[2] and conclusions of the Administrative Law Judge[3] only to the extent consistent herewith.

ORDER

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

1. Cease and desist from:

(a) Questioning applicants for employment or employees concerning their union membership, sympathies, activities, or desires.

(b) Threatening applicants for employment or employees with discharge or other retribution if they seek or secure union representation.

(c) As a condition of employment, requiring applicants for employment or employees to resign their membership in any labor organization.

(d) As a condition of employment, requiring applicants for employment or employees to execute statements renouncing any interest in or desire for union representation.

(e) Assisting applicants for employment or employees to prepare and execute resignations from their membership in any labor organization and

[1] There were no exceptions to the Administrative Law Judge's unfair labor practice findings and conclusions. As discussed in fn. 2, *infra*, the General Counsel and the Charging Party do except to the Administrative Law Judge's failure to find that the Union represented a majority of Respondents unit employees for purposes of collective bargaining at its Sacramento facility, and to the Administrative Law Judge's resultant failure to recommend the issuance of a remedial bargaining order directing Respondent to bargain with the Union at Respondent's Sacramento facility. under the authority of *N.L.R.B* v. *Gissel Packing Company,* 395 U.S. 575 (1969).

[2] In affirming the Administrative Law Judge's finding that the Union did not represent a majority of employees for collective-bargaining purposes at Respondent's Sacramento facility at any time material herein, we note, as pointed out by the Administrative Law Judge, thal while employee Grindstaff and Ladd had not actually lost their union membership due to their failure to pay dues from July 1979 onward they at no time material herein expressed any desire to be represented by the Union for collective-bargaining purposes at Sacramento. Indeed, both Grindstaff and Ladd specifically requested to be transferred from Respondent's Berkeley facility—where they were covered under the collective-bargaining agreement then in effect between the parties—to Respondent's new facility at Sacramento, with full awareness in advance that Respondent intended to keep the Union out of its Sacramento facility. In this regard, we note that they expressed their willingness to transfer to such a nonunion facility in Sacramento before Respondent unlawfully required them to resign their membership in the Union. Finally. Grindstaff and Ladd were in no way compelled to go from Berkeley to Sacramento and, in fact, were expressly told by Respondent that their decision to transfer to the nonunion facility at Sacramento was entirely up to them, and that they could simply remain in, or return to, their jobs at Berkeley if they changed their minds about going to, or remaining at, Sacramento.

Under the circumstances we agree with the Administrative Law Judge that the fact that Grindstaff and Ladd were still being carried as members of the Union does not, without more, constitute a showing that they desired to be represented by the Union for collective-bargaining purposes at Sacramento. Thus, their membership in the Union lends no support to the assertions by the General Counsel and the Charging Party that the Union at any material time enjoyed representational support of a majority of Respondent's Sacramento unit employees.

[3] The General Counsel has also excepted to the Administrative Law Judge's use of the phrase "within the unit" throughout the "cease and desist" part of his recommended Order. Such phraseology would have the effect of limiting this aspect of the remedy to only those employees within the appropriate bargaining unit. However, the proscriptions against unlawful activity recommended by the Administrative Law Judge apply with equal force to all employees or applicants for employment and not just those within the unit. Accordingly we shall issue an Order and notice to replace those recommended by the Administrative Law Judge.

statements renouncing any interest in or desire for union representation.

(f) Thwarting its employees from seeking or securing union representation by instructing or causing its employees to eject any union representatives who appear at its Sacramento facility.

(g) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act to form, join, support, or assist the labor organization of their choice.

2. Take the following affirmative actions designed to effectuate the purposes of the Act:

(a) Return to Grindstaff and Ladd the statements they were required to furnish to the Company renouncing any desire or interest in representation by Local 3 or any other labor organization, accompanied by a cover letter advising Grindstaff and Ladd they are free to join, support, or assist Local 3 or any other labor organization in such organization's efforts to represent them and other employees for collective-bargaining purposes, without fear of discharge or other retribution.

(b) Post at its facilities at Sacramento and Berkeley, California, copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by the Company's authorized representative, shall be posted by the Company 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 the Company to insure that said notices are not altered, defaced, or covered by any other material.

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

[4] 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."

APPENDIX

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

WE WILL NOT question applicants for employment or employees concerning their union membership, sympathies, desires, or activities.

WE WILL NOT threaten applicants for employment or employees with discharge or other retribution if they seek or secure union representation.

WE WILL NOT require applicants for employment or employees to resign their union membership to secure or retain employment with us.

WE WILL NOT require applicants for employment or employees to execute statements renouncing any interest in or desire for union representation to secure or retain employment with us.

WE WILL NOT assist applicants for employment or employees to prepare and execute resignations from their membership in any labor organization and statements renouncing any interest in or desire for union representation.

We will not thwart our employees' desire to or interest in securing union representation by requiring or causing our employees to eject any union representatives who appear at our premises.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the free exercise of the rights guaranteed them under Section 7 of the National Labor Relations Act, as amended, to form, join, assist, or support the labor organization of their choice.

WE WILL return to Johnny Grindstaff and Thomas Ladd the statements we required they execute and submit to us before we would permit them to transfer their employment from our Berkeley facilities to our Sacramento facilities, wherein they were required to renounce any interest or desire for representation by Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL–CIO, or any other labor organization, accompanied by a letter wherein we shall advise Grindstaff and Ladd they are free to join, support, or assist Local 3 or any other labor organization in such labor organization's efforts to represent them and other unit employees for collective-bargaining purposes, without fear of discharge or other retribution.

WILLIAMS AND LANE, INC.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge: On February 26, 1980, I conducted a hearing at Sacramento, California, to try issues raised by a complaint

issued against Williams and Lane, Inc.,[1] on October 30, 1979, based on charges filed by Operating Engineers Local Union No. 3, International Union of Operating Engineers, AFL-CIO,[2] on September 6 and 26, 1979.[3]

Prior to 1979, the Company operated a facility at San Leandro, California (where it manufactured diesel and gas generators and related components), and a second facility at Berkeley, California (where it sold and serviced diesel engines, automatic transmissions, and related components). Its parts and production department employees at San Leandro and its parts and service department employees at Berkeley were represented by Local 3 and covered by a contract expiring August 31, 1980.

The complaint alleged that prior to opening a third facility at Sacramento, California (for the sale and service of diesel engines, etc.), the Company decided to operate its Sacramento facilities nonunion; that in order to accomplish that purpose, its service and parts department manager, Roger Deaver (who was slated to assume the same position at Sacramento), conditioned offers of employment at the new facility, addressed to several Berkeley employees within the contract-covered unit, on such employees' resignation of membership in Local 3 and execution of a document renouncing any desire for representation by Local 3 or any other labor organization; that Deaver, following his assumption of duties at Sacramento, interrogated a job applicant concerning his union membership and threatened employees with discharge if they engaged in union activities; and that, by such conduct, the Company violated Section 8(a)(1) of the National Labor Relations Act, as amended, (hereafter called the Act).

The complaint also alleged the Union achieved majority representative status among an appropriate unit of the Company's Sacramento employees; that the Company's aforesaid alleged unfair labor practices were so serious, substantial, and coercive in nature that a bargaining order should issue.

The Company admitted, at times pertinent, that Deaver was a supervisor within the meaning of the Act, but denied he was acting as its agent at the times he committed the acts alleged in the complaint; denied, in any event, he committed those acts; denied it violated the Act; denied Local 3 ever achieved majority representative status among an appropriate unit of the Company's Sacramento employees; and denied a bargaining order should issue.

The issues before me for resolution are:

1. Whether at times pertinent Deaver was the Company's agent;

2. If so, whether he committed the acts attributed to him in the complaint;

3. If so, whether by such commission the Company violated the Act;

4. Whether Local 3 achieved majority representative status among an appropriate unit of the Company's Sacramento employees;

5. If so, whether a bargaining order should issue.

[1] Hereafter called the Company or Respondent.
Hereafter called Local 3.
[3] Read 1979 after all further date references omitting the year.

The parties appeared by counsel at the hearing and were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue, and file briefs. The General Counsel argued orally immediately prior to the close of the hearing and Local 3 and the Company filed briefs.

Based upon my review of the entire record, observation of the witnesses, perusal of the oral argument, the briefs and research, I enter the following:

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleged, the answer admitted, and I find at all pertinent times the Company was an employer engaged in commerce in a business affecting commerce and Local 3 was a labor organization within the meaning of Section 2 of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

As noted heretofore, prior to January 1979, the Company manufactured, sold, and maintained engines and components utilized in the trucking industry, at two facilities located in San Leandro and Berkeley, with employees represented by Local 3 and covered by a contract with that organization. Its plans to open a third facility at Sacramento, for sales and service operations similar to those it conducted at Berkeley, were a subject of common discussion among its Berkeley employees for some time prior to commencement of its operations there.

When Johnny Grindstaff appeared at the Berkeley facilities in February to seek employment there, he was interviewed and hired by Deaver (as an advanced apprentice). Deaver identified himself as either the service department manager or the truck shop manager. During his subsequent employment at Berkeley (February–June) in the service department, Grindstaff's work was directed and supervised by Deaver. During the course of the February employment interview, Deaver informed Grindstaff the Company was thinking of opening an additional service facility at Sacramento; Grindstaff expressed interest in securing employment there and Deaver promised to note his interest in his file. When Deaver informed Grindstaff, during the interview, he would have to join Local 3 on the 31st day of his employment in order to continue working for the Company, Grindstaff advised Deaver he had been a member of Local 3 continuously since September 1978.

Thomas Ladd was hired in June 1978 as a diesel truck mechanic by Will Malchow, Deaver's predecessor as service shop manager at Berkeley. Ladd identified Deaver as Will Malchow's successor as foreman of the truck repair shop. Malchow told Ladd he would have to join Local 3, and that he had 31 days before he had to join. Ladd joined Local 3, however, on the day he commenced work for the Company.

In early 1979, Ladd told Deaver he heard a rumor the Company was going to open a new truck repair shop at

Sacramento and asked Deaver if the rumor was accurate. Deaver replied the Company's plans were not definite.

In early June, Deaver informed Ladd the Company was definitely going ahead with plans to open a new truck repair facility in Sacramento and the only thing that was indefinite was the date the new operations would start, that he was going; and asked Ladd if Ladd was interested in coming along and continuing to work for him. Ladd replied in the affirmative. Deaver then stated the shop was going to be nonunion and Ladd would have to secure a withdrawal card from Local 3. Ladd assented. At about the same time, Deaver contacted Grindstaff to inform him the Company had acquired land and a building at Sacramento and was definitely going to open new truck repair facilities there, and was only waiting for the current occupant of the building to vacate. Deaver asked Grindstaff if he still wanted to go to Sacramento. Grindstaff replied he was. Deaver then stated the Company intended to operate nonunion in Sacramento and Grindstaff would have to secure a withdrawal card from Local 3 if he wanted to go. Grindstaff assented. Deaver went on to explain he had to acquire a withdrawal card when he went on salary for the Company, and that securing the card meant the cardholder no longer would have to pay dues to Local 3 and the card would entitle him to reacquire active membership in Local 3 at any time without paying a new initiation fee.

The day after his conversation with Deaver, Grindstaff visited Local 3's offices and asked how to acquire a withdrawal card. He was informed he could acquire the card by paying $2 or $3 for it, provided he was current in his dues.

The Company scheduled July 11 as its first day of operations at Sacramento; both Deaver and Ladd, however, were scheduled to report to Sacramento about Monday, July 2 to get the premises ready and Grindstaff was scheduled to report to Sacramento the following Monday, July 9 (working at Berkeley through Wednesday, July 3).

In mid-June, however, Grindstaff asked Deaver if he could also cease work at Berkeley on Friday, June 29, so he would have sufficient time to locate and purchase a new house in the Sacramento area and move into it, and to avoid having to pay $90 in dues to Local 3 to qualify for a withdrawal card.[4] Deaver granted the request.

On Thursday, June 28, the day before Deaver, Ladd, and Grindstaff were to cease work at Berkeley, Deaver spoke with Ladd and Grindstaff in his office; he told them the Company's attorneys had advised him the only way the Company could legally accomplish its objective of keeping the Sacramento operations nonunion and still employ Ladd and Grindstaff there was to require that Ladd and Grindstaff quit Local 3 rather than just securing a withdrawal card from it, and to require their execution of a document addressed to the Company disavowing any desire to be represented by Local 3 at Sacramento. Ladd responded this meant losing the $1,000 initiation fee they paid to Local 3 and said Grindstaff had even more to lose than he did. Grindstaff stated it had been difficult for him to acquire Local 3 membership, he had taken three aptitude tests and tried for 3 years before he got in (he had been a construction laborer). Deaver replied if Ladd or Grindstaff wanted to go back into Local 3, they could come back to Berkeley whenever they wished and Local 3 would have to take them back in after 30 days on the job, under the Company-Local 3 contract. Ladd and Grindstaff conferred, decided they had gone so far along in their plans already that they did not want to back off, and advised Deaver they would comply with the requirements. Ladd asked Deaver how to quit Local 3. Deaver responded he would have to write a letter to Local 3. Ladd asked Deaver what to put in the letter. Deaver stated he would give Ladd and Grindstaff a draft containing the language to use. Later in the day, Deaver furnished Ladd and Grindstaff with a document setting out language of the letter they were to send to Local 3 resigning membership therein.[5]

As noted above, by July 9 Deaver, Ladd, and Grindstaff were working at the Sacramento facility; Deaver as manager, Ladd as a mechanic, and Grindstaff as an advanced apprentice. A fourth man, Keith Griggs, was also employed at Sacramento on July 9 as a partsman.[6]

On August 13 Fred Drollinger was hired by Deaver as a first-step apprentice.[7]

Harold Parker, an experienced diesel engine mechanic and a member of Local 3,[8] began looking for work in the Sacramento area in early August. A local business representative, Ken Allen, advised him work was slow in his field (primarily truck diesel engine maintenance) and advised him to register on the out-of-work list, which he did, for possible work in construction. In the absence of any calls for employment, Parker began calling diesel truck repair shops in the area with respect to possible openings. He contacted Deaver by telephone and was invited to an interview on August 14. He appeared, Deaver had him fill out a job application, reviewed the application, and asked him questions about his prior experience. Satisfied concerning his qualifications, Deaver recited the mechanic wage scale the Company was paying, the benefit schedules and hours, and offered

[4] He paid dues quarterly and was paid up through June 30.

[5] Neither Ladd nor Grindstaff, however, wrote and mailed a letter to Local 3 resigning their membership therein. They did not inform Deaver of their noncompliance with Deaver's instructions. however, and the Company was unaware of their noncompliance until company counsel and management personnel interviewed them in preparation for the hearing in this case. and inquired. On July 18, however, they copied language furnished by Deaver disavowing any interest in representation by Local 3 or any other union at Sacramento and signed and gave same to Deavers at his request.

[6] While Griggs was listed in a company exhibit as parts manager, Ladd stated he was the one and only partsman employed at Sacramento, he looked up catalog numbers and prices of parts desired by the mechanics when they needed parts, wrote up invoices listing the desired parts, procured the parts, and delivered them to the requesting mechanic. Ladd also stated these were the identical duties performed by the partsman included within the unit represented by Local 3 at Berkeley and covered by the Company-Local 3 contract. Ladd's testimony is undisputed and is credited.

[7] A first-step apprentice was a beginning trainee; as he progressed, he was assigned advancing steps (1, 2, 3, etc.). At that time Grindstaff was an eighth-step apprentice. Ladd testified Drollinger worked as his assistant in truck maintenance and repair, receiving on-the-job instructions. Ladd's testimony is undisputed and is credited.

[8] Parker testified he paid dues to Local 3 in August.

Parker work as a mechanic. Parker accepted the offer. Deaver then asked him if he was a union member. He responded he was. Deaver stated the shop was nonunion, and if Parker or any of the other employees tried to bring in a union, they would lose their jobs. Parker did not respond and commenced work. Not long thereafter, Deaver instructed Parker to run off any union representatives who came around.

A few days later Parker called Allen, told him he had secured employment with the Company, and asked Allen what he knew about the Company.[9] Allen replied it was his understanding the Company had a truck repair shop in Berkeley whose employees were represented by Local 3. Parker stated the Sacramento shop was nonunion and asked if the Union would come in so he could continue to participate in its benefit plans. Allen suggested Parker check among the other employees at Sacramento and see if they wanted representation; if so, the Union certainly would be interested in representing them.

On October 8 Fred Weigmann was hired as a first-stage apprentice to perform the same work performed by Drollinger.

On November 21 Parker quit.

On February 11 Michael Williams was hired as a first-stage apprentice to perform the same work as Drollinger and Weigmann; he replaced Drollinger, whose employment terminated on February 15, 1980.

The record does not show Local 3 demanded recognition as the collective-bargaining representative of any of the Company's Sacramento employees based on attainment of majority representative status among them; there was reference only to a claim by Local 3 (rejected by the Region) that on some unspecified date Local 3 demanded it be so recognized, on the ground the Sacramento shop was an accretion to the Berkeley unit.

B. *Analysis and Conclusions*

1. The agency issue

It is clear (and the Company admitted in its answer to the complaint) at certain material times (between January 1 and June 30), Deaver was manager of the Company's Parts and Service Department at Berkeley and a company supervisor within the meaning of Section 2 of the Act and at other material times (between July 1 and August 31), Deaver was manager of the Company's Parts and Service Department at Sacramento and a supervisor within the meaning of Section 2 of the Act. The Company denies, however. Deaver was acting as its agent when he made the statements deemed violative of the Act set forth in the complaint and found to have been uttered by Deaver in the factual findings set out above (Deaver was not called to testify, so the findings are based upon the undisputed testimony of Grindstaff, Ladd and Parker, which I credited).

Section 2(13) of the Act states the issue of whether or not specific acts committed by an alleged agent were authorized or ratified by his principal shall not be controlling and the courts consistently have sustained Board determinations holding an employer responsible for acts of his supervisor *vis-a-vis* employees under his supervision in the absence of clear proof the supervisor in question was acting outside the scope of his authority.[10]

Here Grindstaff, Ladd, and Parker had no reason to doubt Deaver was acting within his powers as the supervisor designated by the Company to direct and control their work and employment when he told the former two they would have to resign from the Union and renounce any desire for representation by the Union or any other labor organization to secure employment under him in Sacramento, as well as when he questioned Parker concerning his union affiliations, told Parker that Parker and any other employee under his supervision at Sacramento would be discharged if they sought union representation, and instructed Parker to eject any union representative who attempted to make contact with any of the Sacramento employees; the Company conceded Deaver was its designated supervisor; and the Company failed to produce any evidence Deaver was not acting within the scope of his powers when he made the aforesaid statements.

I, therefore, find and conclude Deaver was both a supervisor and agent of the Company acting on its behalf when he made the statements set out heretofore to Grindstaff, Ladd, and Parker.

2. Commission of the alleged acts

As noted above, Deaver did not testify and findings based on the credited testimony of Grindstaff, Ladd, and Parker credibly have been entered that Deaver offered the former two employment under his continued supervision at Sacramento only if they resigned their Local 3 membership and formally renounced any interest or desire for representation by Local 3 of any other labor organization and that Deaver interrogated Parker concerning his union affiliations, threatened Parker and the other employees with discharge if they sought union representation, and instructed Parker to eject any union representative who sought to contact the employees at Sacramento.

3. Act violations

An employer violates Section 8(a)(1) of the Act when it interferes with, coerces, or restrains its employees' exercise of their Section 7 rights under the Act, including their right to join or assist labor organizations and to seek or secure labor union representation for the purpose of bargaining with their employer concerning their wages, rates of pay, etc.

The Board, with court approval, has held in a number of cases that an employer who solicits and aids its employees to withdraw from the union representing them thereby interferes with, restrains, and coerces those em-

[9] This was the first time Allen became aware the Company had commenced operations in Sacramento.

[10] *Miami Springs Properties, Inc., et al.*, 245 NLRB 278 (1979); *N.L.R.B. v. Big Three Industrial & Equipment Gas Co.*, 579 F.2d 304 (5th Cir. 1978); *N.L.R.B. v. Internarional Metal Specialties*, 433 F.2d 870 (2d Cir. 1970); *N.L.R.B. v. Sagamore Shirt Company, d/b/a Spruce Pine Manufacturing Company, 401* F.2d 925 (D.C. Cir. 1968) (also see 365 F.2d 898); etc.

ployees in the exercise of their Section 7 rights and violates Section 8(a)(1) of the Act.[11]

In this case. the Company, by Deaver, required Grindstaff and Ladd to formally resign from Local 3 and to renounce any support for representation by that or any other labor organization before he would grant their requests for transfer of their employment from Berkeley to Sacramento; on the basis of the foregoing, I find by that conduct the Company interfered with, restrained, and coerced Grindstaff and Ladd in the exercise of their rights under Section 7 of the Act to freely decide whether they desired continued membership in and representation by Local 3 or another labor organization and violated Section 8(a) (1) of the Act.

The Board, with court approval, has also held an employer's interrogation of applicants for employment concerning whether they are union members inhibits their free exercise of their Section 7 rights and is violative of Section 8(a)(1) of the Act,[12] particularly when accompanied by threats of discharge if the applicant and other employees seek union representation.[13]

In this case the Company, by Deaver, asked Parker if he was a union member in his hiring interview and informed him he and the other employees risked discharge if they sought union representation when Parker informed Deaver he was a union member; Deaver also instructed Parker to eject any union representative who came to the Sacramento facilities and sought to make contact with him or any other employee.

On the basis of the foregoing, I find by that conduct the Company committed additional violations of Section 8(a)(1).

4. The unit and Local 3's representative status therein

The complaint alleged, the answer admitted, and I find the following constitutes a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All persons employed in the parts and semce departments of Williams and Lane, Inc. at its West Sacramento, California facility, excluding office and clerical employees, guards, professional employees and supervisors as defined in the Act.

The abovedescribed unit is identical to the unit represented by Local 3 at the Company's Berkeley facilities.

As noted heretofore, the initial (July 11) employee complement within the unit consisted of Ladd, Grindstaff, and Griggs.[14] Technically, the two former employees still were members of Local 3;[15] the latter was not. By August 13, the unit included a fourth employee, Drollinger; the record does not show whether or not he was a union member or, if so, of what organization. Parker, an active member of Local 3, became the fifth employee within the unit on August 14. On October 8, Weigman, whose union membership status was not demonstrated, became the sixth employee within the unit. Parker's employment terminated on November 21; Drollinger's employment terminated on February 15, 1980, a few days before Williams, whose union membership was not developed, was hired for employment within the unit.

Neither Local 3 nor the General Counsel produced evidence to establish any of the unit employees ever executed cards authorizing Local 3 to represent them for the purpose of bargaining collectively with the Company concerning their rates of pay, wages, etc. The fact Grindstaff and Ladd technically were still members of Local 3 after June 30 and the fact Parker was an active member of Local 3 on August 14 does not establish any of the three, at some point in time after July 11 (when the Company commenced its operations at Sacramento), wished to, or did, authorize Local 3 to represent them; and the record is totally devoid of any evidence Griggs, Drollinger, Weigman, or Williams ever did so.

On the basis of the foregoing, I find and conclude neither the General Counsel nor the Union demonstrated at some point that Local 3 achieved majority representative status within the unit nor a date Local 3 asserted such status.

5. The bargaining order issue

Local 3 and the General Counsel contend the Company's unfair labor practices in the instant case were sufficiently serious and substantial to warrant the issuance of a remedial order directing the Company to bargain with Local 3 at its request concerning the rates of pay, wages, etc. of its Sacramento employees within the unit, relying on *N.L.R.B.* v. *Gissel Packing Ca., Inc.*, 395 U.S. 575 (1969), as authority therefor.

The typical case in which such an order has issued is one in which a union has secured cards from a majority of the employees within an appropriate bargaining unit authorizing the union to represent those employees for collective-bargaining purposes; the union on the basis of those cards either has sought recognition from the em-

[11] *Sequoyah Spinning Mills Inc.*, 194 NLRB 1175 (1972); *General Motors Acceptance Corp. v. N.L.R.B.*, 476 F.2d 850, enfg. 196 NLRB 137 (1st Cir. 1973); *Texas Electrical Co-op, Inc.*, 197 NLRB 10 (1972); *Jai Lai Cafe, Inc.*, 198 NLRB 781 (1972); *N.L.R.B. v. Okla-Inn d/b/a Holiday Inn of Henryetta*, 488 F.2d 498 (10th Cir. 1973); *Omark-CCI, Inc.*, 208 NLRB 469 (1974); *Liberty Homes Inc.*, 216 NLRB 1102 (1975); *Star Manufacturing Company, 220 NLRB 582 (1975); N.L.R.B. v. Triumph Curing Center*, 571 F.2d 462 (9th Cir. 1978); *Providence Medical Center*, 243 NLRB 714 (1979); *Nevis Industries, Inc., d/b/a Fresno Townehouse*, 246 NLRB 1053 (1979).

[12] *N.L.R.B. v. Bighorn Beverage*, 614 F.2d 1238, (9th Cir. 1980), enfg. 236 NLRB 736 (1978); *Slotkowski Sausage Company*, 242 NLRB 931 (1979): *Servomation, Inc.*, 237 NLRB 48 (1978); *McCain Foods, Inc.*, 236 NLRB 447 (1978); *N.L.R.B. v. North American Mfg. Co.*, 563 F.2d 894 (8th Cir. 1977); *Moshannon Valley TV Cable Co.. Inc.*, 216 NLRB 89 (1975); *Hyster Company v. N.L.R.B.*, 480 F.2d 1081 (5th Cir. 1973): *Rochester Cadet Cleaners*, 205 NLRB 773 (1973): *Howard Johnson Company*, 198 NLRB 763 (1972).

[13] *N.L.R.B. v. J. W. Mays Inc.*, 518 F.2d 1170 (2d Cir. 1975), enfg. 213 NLRB 619; *American Map Company. Inc.*, 219 NLRB 1174 (1975); *Burns International Security Services.* 216 NLRB 11 (1975); *Effingham Food Store, Inc.*, 201 NLRB 263 (1973); *MPC Restaurant Corp., et al.*, 198 NLRB 14 (1972); *Sequoyah Spinning Mills Inc.*, 194 NLRB 1175 (1972).

[14] See fn. 6 for the basis of my determination Griggs' was within the unit.

[15] While Grindstaff and Ladd ceased paying dues to Local 3 after June 30, they did not resign their membership therein and there is a grace period before membership lapses.

ployer as the unit employees' bargaining representative or certification by the Board as the duly designated representative of the unit employees for collective bargaining purposes; and the employer has dissipated the union's card majority representative status within the unit through the commission of serious and substantial unfair labor practices.

That situation does not apply here; no authorization cards were produced to establish Local 3 ever represented a majority of the Company's employees within the Sacramento unit; Local 3 unsuccessfully sought recognition on some undesignated date on the basis the Sacramento unit was an accretion to the Berkeley unit (which would have permitted a count of Local 3's supporters at Berkeley in establishing majority representative status); Local 3 never petitioned for an election nor sought recognition on the basis of proof a majority of the Sacramento employees within the unit had designated it as their collective-bargaining representative; and findings have been entered above Local 3 and the General Counsel failed to establish that at some point Local 3 secured majority representative status within the unit and either sought recognition or certification based thereon.

In such circumstances, the Board has refused to issue a bargaining order.[16] I, therefore, shall not recommend issuance of a bargaining order.

CONCLUSIONS OF LAW

1. At all pertinent times the Company was an employer engaged in commerce in a business affecting commerce and Local 3 was a labor organization within the meaning of Section 2 of the Act.

2. At times pertinent Deaver was a supervisor and agent of the Company acting on its behalf within the meaning of Section 2 of the Act.

3. The Company, by Deaver, violated Section 8(a)(1) of the Act by:

(a) Requiring Grindstaff and Ladd to resign their Local 3 membership and to renounce any desire or interest in representation by Local 3 or any other labor organization at Sacramento, as a condition for granting their applications for transfer to employment at Sacramento, and preparing and giving them drafts of resignation and renunciation documents for preparation and submission;

(b) Questioning Parker concerning his union membership, threatening Parker and other employees within the Sacramento unit with discharge if they sought union representation, and instructing Parker to thwart any union effort to organize the employees by ejecting any union representative who appeared at the Company's Sacramento facility.

4. The aforesaid unfair labor practices affected commerce as defined in the Act.

THE REMEDY

Having found the Company engaged in unfair labor practices violative of Section 8(a)(1) of the Act, I shall recommend the Company cease and desist therefrom and take affirmative action designed to effectuate the purposes of the Act.

On the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I recommend the issuance of the following:

ORDER[17]

The Respondent, Williams and Lane, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Questioning applicants for employment or employees within the unit described below concerning their union membership, sympathies, activities, or desires.

(b) Threatening applicants for employment or employees within the unit with discharge or other retribution if they seek or secure union representation.

(c) As a condition of employment, requiring applicants for employment or employees within the unit to resign their membership in any labor organization.

(d) As a condition of employment, requiring applicants for employment or employees to execute statements renouncing any interest in or desire for union representation.

(e) Assisting applicants for employment or employees within the unit to prepare and execute resignations from their membership in any labor organization and statements renouncing any interest in or desire for union representation.

(f) Thwarting its employees from seeking or securing union representation by instructing or causing its employees to eject any union representatives who appeared at its Sacramento facilities.

(g) In any other manner interfering with, restraining, or coercing its employees within the unit in the exercise of their rights under Section 7 of the Act to form, join, support or assist the labor organization of their choice.

2. Take the following affirmative actions designed to effectuate the purposes of the Act:

(a) Return to Grindstaff and Ladd the statements they were required to furnish to the Company renouncing any desire or interest in representation by Local 3 or any other labor organization, accompanied by a cover letter advising Grindstaff and Ladd they are free to join, support, or assist Local 3 or any other labor organization in such organization's efforts to represent them and other employees within the unit for collective-bargaining purposes, without fear of discharge or other retribution.

(b) Post at its facilities at Sacramento copies of the attached notice marked "Appendix."[18] Copies of that notice, on forms provided by the Regional Director for

[16] *Sambo's Restaurant, Inc.*, 247 NLRB No. 122 (1980); *United Dairy Farmers Cooperative Association*, 242 NLRB 1026 (1979); *South Station Liquor Store, Inc., d/b/a Bereson Liquor Mart.* 223 NLRB 1115 (1976).

[17] 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.

[18] 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."

Region 20, after being signed by the Company's authorized representative, shall be posted by the Company immediately upon receipt, and shall be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to ensure that said notices are not altered, defaced, or covered by other material.

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps the Company has taken to comply with the Order.

3. The unit in question consists of:

> All persons employed in the parts and service department of Williams and Lane, Inc. at its West Sacramento, California facility, excluding office and clerical employees, guards, professional employees and supervisors as defined in the Act.