

Arcadia Foods, Inc. and Allied Food Workers, District Union No. 327, affiliated with United Food and Commercial Workers International Union and Lenet R. Smith, Jr. Cases 15-CA-7490, 15-CA-7552, and 15-CA-7548

February 26, 1981

DECISION AND ORDER

On October 22, 1980, Administrative Law Judge Lowell Goerlich issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and briefs in support thereof, and Respondent filed an answering brief to the General Counsel's exceptions.

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 and conclusions of the Administrative Law Judge, as modified herein, but not to adopt his recommended Order.¹

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), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Administrative Law Judge inadvertently stated in par. 1 of sec. III, A, of his Decision that the Union was certified on October 18, 1978. In fact the Union was certified on October 26, 1978.

² The Administrative Law Judge found that Respondent improperly reinstated unfair labor practice strikers. Although he also stated that the General Counsel failed to prove that these employees suffered any loss, we note that the General Counsel presented uncontradicted testimony that three employees suffered a loss of overtime opportunities and corresponding losses of wages following their improper reinstatements. Our normal practice in these circumstances is to leave to the compliance stage of this proceeding the determination of whether any employee is actually entitled to receive payments. We shall therefore provide that Respondent make whole these employees for loss of earnings, if any, that they may have suffered by reason of Respondent's failure to reinstate them properly.

The Administrative Law Judge provided that Respondent shall offer reinstatement to employee Lenet Smith, Jr., requiring Respondent to dismiss, if necessary, any employee hired on or after January 11, 1980. As the strike was an unfair labor practice strike from its inception, we shall modify this portion of the Administrative Law Judge's remedy to require that Respondent dismiss, if necessary, any employee hired on or after November 8, 1979.

The Administrative Law Judge also found that Respondent unlawfully withdrew recognition, and refused to bargain thereafter, on October 31, 1979, and recommended issuance of a bargaining order. In agreeing with the Administrative Law Judge that Respondent unlawfully withdrew recognition, we rely on his factual finding that Respondent did so solely on the basis of a mere rumor that a decertification petition was circulating among its employees. Obviously, Respondent has failed to demonstrate sufficient objective considerations to justify its withdrawal of recognition. *Terrell Machine Company*, 173 NLRB 1480, 1480-81 (1969), enf. 427 F.2d 1088 (4th Cir. 1970).

Regarding the issuance of a bargaining order, the Administrative Law Judge provided that Respondent be required to bargain with the Union for 1 year from the time it first complies with the order to bargain. We shall modify this portion of his remedy to accord with our customary bargaining order in these circumstances to require Respondent to bargain in good faith with the Union for a reasonable period of time.

³ The Administrative Law Judge found that Respondent, through Supervisor Roland Chacon, violated Sec. 8(a)(1) by circulating a decertification petition among employees. However, we note that unit. The

AMENDED CONCLUSIONS OF LAW

Substitute the following Conclusions of Law 4, 5, and 9, respectively, for those of the Administrative Law Judge:

"4. Since October 26, 1978, the Union has been the duly certified and designated exclusive representative of the employees in the unit found to be appropriate within the meaning of Section 9(a) of the Act."

"5. By making unilateral changes in an employee's wages, and by withdrawing recognition from the Union as exclusive bargaining representative of its employees in the above appropriate unit on October 31, 1979, Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act."

"9. By threatening an employee with plant closure, by attempting vehicular assault on an employee who was picketing, and by threatening to run over that employee the next time, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act."

ORDER

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

1. Cease and desist from:

(a) Discouraging membership in Allied Food Workers, District Union No. 327, affiliated with United Food and Commercial Workers International Union, or any other labor organization, by fail-

Board has generally refused to hold an employer responsible for antiunion conduct of a supervisor who is part of the bargaining unit, absent evidence that the employer encouraged, authorized, or ratified the supervisor's activity, or acted in such a manner as to lead the employees to reasonably believe that he was acting on behalf of management. *Montgomery Ward & Co., Incorporated*, 115 NLRB 645, 647 (1956). The record discloses no evidence that would render Respondent liable for Chacon's conduct under the principle of *Montgomery Ward*. We therefore shall dismiss that portion of the complaint which alleges supervisory solicitation of an employee to sign a decertification petition. Member Jenkins would affirm the Administrative Law Judge in finding a violation on the basis of Chacon's conduct. See his dissent in *Times-Herald Inc.*, 253 NLRB No. 66 (1980).

The Administrative Law Judge recommended a narrow cease-and-desist order. In view of the extent of the violations found herein and the seriousness of the withdrawal of recognition and refusal to bargain, we believe that a broad cease-and-desist order is warranted, and shall so provide. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

The Administrative Law Judge found that Respondent violated the Act when a supervisor threatened an employee with plant closure, by attempting vehicular assault on an employee who was picketing, by threatening to run over that employee the next time, and by making unilateral changes in an employee's wages when under a duty to bargain with the Union. However, the Administrative Law Judge inadvertently failed to conform his Conclusions of Law and recommended Order with his findings. We shall amend his Conclusions of Law accordingly. We shall also conform our Order and notice to the violations found herein.

ing or refusing to reinstate lawfully any of its employee\$ who engage in a lawful strike.

(b) **Refusing** to recognize and bargain in good faith **with** Allied Food Workers, District Union No. 327, affiliated with United Food and Commercial Workers International Union, as the exclusive **bargaining** representative of its employees in the following appropriate unit:

All production and maintenance employees including truckdrivers, helpers, all boning, shipping, and ground meat **leadmen** and sanitation **workers** employed by Respondent at its **Me-tairie**, Louisiana, facility; excluding all sales personnel, office clerical employees, watchmen, guards and supervisors, as defined in the Act.

(c) **Unlawfully** threatening an employee with plant closure.

(d) Unlawfully attempting vehicular assault on an **employee** who was picketing.

(e) **Unlawfully** threatening to run over an employee on the picket line.

(f) Unlawfully effecting unilateral changes in an employee's wages.

(g) Unlawfully failing to reinstate properly unfair labor **practice** strikers.

(h) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) **Recognize** and, upon request, bargain with Allied Food **Workers**, District Union No. 327, affiliated **with** United Food and Commercial **Work-**ers International Union, **as** the exclusive representative of its employees in the above-described appropriate bargaining unit, and embody in a signed agreement any understanding reached.

(b) **Offer** Lenet Smith, Jr., immediate and full reinstatement to his former position or, if such position no **longer** exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, discharging, if necessary, an employee hired to replace him on or after November 8, 1979, and make him whole for any loss of pay he may have suffered by reason of the refusal to reinstate him in accordance with the recommendations set forth in the section of the Administrative Law Judge's Decision entitled "The **Remedy**," as modified herein.

(c) **Make** whole Gary M. Chapital, Michael **Es-**teves, and Ronald A. Coste for any loss of pay they may **have** suffered by reason of the failure to reinstate thtm lawfully as set forth herein. **Backpay** with interest therein is to be computed in the

manner set forth in the section of the Administrative Law Judge's Decision entitled "The Remedy."

(d) 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 to analyze the amount of **backpay** due under the **terms** of this Order.

(e) Post at its facility in **Metairie**, Louisiana, copies of the attached notice marked "**Appendix**."⁴ Copies of said notice, on forms provided by the Regional Director for Region 15, after being duly signed by Respondent's representative, **shall** be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify **th** Regional Director for Region 15, in writing, **within** 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

⁴ In the event that this Order is enforced by a Judgment of a United State 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 refuse to recognize and bargain in good faith with Allied Food Workers, District Union No. 327, **affiliated** with United Food and Commercial Workers International Union, as the exclusive representative of our employees in the following appropriate unit:

All production and maintenance employees including truckdrivers, helpers, all boning, shipping, and ground meat **leadmen** and sanitation workers employed by us at our Metairie, Louisiana, facility; excluding all sales personnel, office clerical employees, watchmen, guards and supervisors, as defined in the Act.

WE WILL NOT discourage union or concerted activities of our employees or their membership in Allied Food Workers, District Union No. 327, affiliated with United Food and Commercial Workers International Union, or any other labor organization, by failing or refusing to reinstate lawfully any of them who engage in a lawful strike.

WE WILL NOT unlawfully threaten an employee with plant closure.

WE WILL NOT unlawfully attempt vehicular assault on an employee who is picketing.

WE WILL NOT unlawfully threaten to run over an employee who is picketing.

WE WILL NOT unlawfully effect unilateral changes in an employee's wages.

WE WILL NOT unlawfully fail to reinstate properly unfair labor practice strikers.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them under Section 7 of the Act.

WE WILL recognize and, upon request, bargain with the aforesaid Union as the exclusive representative of our employees in the **above-**described appropriate bargaining unit, and embody in a signed agreement any understanding reached.

WE WILL offer Lenet Smith, Jr., who we refused to reinstate after the strike ended on January 11, 1980, reinstatement to his former job or, if his job no longer exists, to a substantially equivalent job, without prejudice to his seniority or other rights and privileges previously enjoyed, discharging, if necessary, any employee hired to replace him.

WE WILL restore his seniority and other **rights** and privileges and **WE WILL** pay him **backpay** he lost because we failed to reinstate **him**, with interest.

WE WILL make whole Gary M. Chapital, **Michael** Esteves, and Ronald A. **Coste** for any **loss** of pay they may have suffered by reason of our failure to reinstate them properly, with **interest**.

ARCADIA FOODS, INC.

DECISION

STATEMENT OF THE CASE

LOWELL GOERLICH, Administrative Law Judge: A charge and an amended charge (**Case 55-CA-7490**) were filed on November 14, 1979, and January 9, 1980, respectively, by the Allied Food Workers, District Union No. 327, **a/w** United Food and Commercial Workers International **Union**, herein referred to as the Union, and duly

served on Arcadia Foods, **Inc.**, Respondent herein, on or about the same dates. An amendment to the complaint was filed on March 6, 1980. The complaint alleges that Respondent, through Supervisor Roland Chacon, solicited employees to sign a decertification petition, through Supervisor Willie White, orally threatened an employee that Respondent would close the facility rather than deal with the Union, and, through Supervisor Ted Daly **III**, attempted to hit an employee with his automobile and made verbal threats to the employee, all in violation of Section **8(a)(1)** of the National Labor Relations Act, as amended, herein referred to as the Act. Additionally, the complaint alleges that, without notice to or an opportunity for the Union to discuss or bargain thereon, Respondent made unilateral wage increases and decreases in an employee's salary; since on or about May 15, 1979, Respondent failed and refused to bargain in good faith with the Union and had no intention of entering into any final agreement; and, since on or about October 31, 1979, refused to meet with the Union and engage in collective bargaining, all in violation of Section **8(a)(1)** and (5) of the Act. Respondent, by its January 25, 1980, answer, denied that it had violated the Act and also denied the supervisory status of Roland Chacon.

Additional charges were filed by Lenet R. Smith, Jr., in Case 15-CA-7548 and by the Union in Case **15-CA-7552** against Respondent on January 21 and 23, 1980, respectively. On March 6, 1980, the cases were, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 8, as amended, consolidated and a consolidated complaint was issued. The consolidated complaint alleges that Respondent violated Section **8(a)(1)** and (3) of the Act by refusing to recall and/or reinstate certain employees to their former jobs, causing employees to lose hours and corresponding wages, and unlawfully failing to reinstate employee Lenet R. Smith, Jr., after its employees had engaged in a strike. Respondent, by its March 19, 1980, answer, admitted that from November 8, 1979, to January 11, 1980, some of its employees engaged in a strike but denied that it was an unfair labor practice strike. Respondent also admitted that Lenet R. Smith, Jr., had not been reinstated but asserted that this action was based on a good-faith belief that he engaged in picket line misconduct.

Pursuant to an order by the Regional Director issued on March 6, 1980, Cases 15-CA-7548 and 15-CA-7552 were consolidated with Case **15-CA-7490**. The consolidated cases came on for hearing on May 12-16, 1980, in New Orleans, Louisiana. Each party was afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, to argue orally on the record,¹ to **submit** proposed findings of fact and conclusions of law, and to file briefs. All briefs have been carefully considered.

¹ There being no opposition, counsel for the General Counsel's motion to correct the record is granted.

FINDINGS OF FACT,² CONCLUSIONS, AND REASONS THEREFOR

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a corporation duly organized under and existing by virtue of the laws of the State of Louisiana, and is engaged in the wholesaling of meat products at its plant located at 7133 Ivy Street, Metairie, Louisiana.

During the past year, Respondent, in the course and conduct of its business operations, purchased goods and product valued in excess of \$50,000 directly from points outside the State of Louisiana.

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

II. THE LABOR ORGANIZATION INVOLVED

The Allied Food Workers, District Union No. 327, a/w United Food and Commercial Workers International Union, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Threat of Plant Closure

The Union was certified as the collective-bargaining representative of Respondent's employees on October 18, 1978. Actual bargaining sessions commenced on February 6, 1979. In the latter part of October 1979 Thelma LeBeaux engaged in a conversation with Production Manager Willie White whom LeBeaux quoted as saying, "I don't know what you think of the union, but [Ted T. Daly III, president of Respondent] doesn't want it, he doesn't want a union in the place, he doesn't want a union telling him how to run his place. Or what to do, so he'll close up first." On cross-examination LeBeaux testified that the language used was "would rather close up because he don't want no one to come in here telling him what to do and running his business."

While White corroborated certain parts of LeBeaux's testimony he denied that he had uttered the alleged threat. In respect to the subject of plant closure, the undenied testimony of employee Gary Chapital discloses that Daly III told unit employees prior to the 1978 election that:

[H]e didn't want a union in Arcadia Foods. And that he would do anything in his legal powers to keep the union out. And, he mentioned the fact that

² The facts found herein are based on the record as a whole and the observation of the witnesses. The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *N.L.R.B. v. Walton Manufacturing Company and Loganville Pants Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with the testimony of credible witnesses or because it was in and of itself incredible and unworthy of belief. All testimony has been reviewed and weighed in the light of the entire record. No testimony has been pretermitted.

he would shut the doors before the union would ever get in Arcadia Foods.

The credited record in this case does not indicate that Daly III's attitude changed after the 1978 election. Thus, it is reasonable that White, his production manager, would transmit Daly's ideas; LeBeaux is credited. Whether one chooses LeBeaux's version on direct or cross-examination, the language attributed to White, under the circumstances, contains an inference of plant closure. By White's remarks, Respondent violated Section 8(a)(1) of the Act

B. Ted Daly III's Vehicular Assault on Noah Thompson

On November 9, 1979, the Union engaged in a strike and among the pickets were Noah Thompson and Ronald A. Coste. While engaged in picketing, Ted Daly III, who was driving an automobile, "swerved about 20 feet out his way and came up into a driveway and he came about three feet from Noah and Noah had to jump out the way."³

When Daly III passed, after parking his car, he shouted some obscenities to Thompson and added that if he did not get out of the way he would run over him the next time. Daly III's vehicular assault on Noah Thompson and his subsequent threat to run over him were violations of Section 8(a)(1) of the Act. *Green Briar Nursing Home, Inc.*, 201 NLRB 503 (1973); *Fry Foods, Inc.*, 241 NLRB 76 (1979).

C. Unilateral Wage Adjustments for Michael Esteves

The parties stipulated that the payroll records reflect that Michael Esteves was raised to \$5 an hour for the week ending October 3, 1979; his pay was \$4.50 an hour for the week ending October 10, 1979; and it was \$5 an hour for the week ending October 17, 1979. The wage adjustments were affected unilaterally by Respondent while Respondent was under an obligation to bargain with the Union. Citing *Maury's Fluorescent & Appliance Service*, 226 NLRB 1290, 1291-92 (1976), the General Counsel claims that such unilateral action by Respondent violates Section 8(a)(1) and (5) of the Act. This case supports the General Counsel's claim. The violation is found.

D. The Decertification Petition

On November 7, 1979, a petition to decertify the Union was filed with the Board. The solicitor of the petition was Roland Chacon, whom the General Counsel claims was a supervisor within the meaning of the Act. Respondent espouses the opposite view.⁴

³ This is the undenied testimony of Coste which was corroborated by other witnesses to the event.

⁴ Chacon had utilized the services of a lawyer in processing the petition but could not remember his name or the amount of his fee which had not been paid.

When Chacon was first asked if he knew Willie White, the production manager, he answered, "No, sir."

Q. You don't know him?

Continued

In late 1977 or early 1978 Daly **III** convened **Respondent's** employees and, among other things, stated that Chacon would be the supervisor of the boning department, Willie White, the production manager, Henry **Dubroc**, supervisor over shipping and receiving, and **Ralph** Ragusa, supervisor over the patty department. Daly **III** testified that Chacon had been carried on Respondent's payroll as a **supervisor**.⁶ Chacon was paid the supervisor's wage rate. Respondent sought to have **Chacon** excluded from the bargaining unit as a supervisor

According to employee Michael Esteves, he was told by Daly **III** that he "had to obey Roland Chacon." When Webster Daniel Long first went to work Chacon was introduced as his supervisor by Daly **IV**. He said, "Now Roland is in charge of this department, and he will tell [you] what you will do from here."

Chacon testified about his duties: he said that he worked in the grinding or ground meat department. Upon arriving at work he checks the equipment to "[m]ake sure that everything is set right so no one can get hurt on it." This equipment includes the mixer, grinding machine, patty machine, and tunnels. He then helps "them" bring the merchandise out, after which he is culled to the office and given lists by his supervisor, **Daly IV**, which he gives to employees in the department. Chacon then helps to mix a "little bit" and grind a "little bit" and "then get the machine started to get it going." Upon instructions of **Daly IV**, Chacon then goes "into the freezer and take[s] an inventory of the stock that is low" and gives the list to **Daly IV**. **Daly IV** prepares another list and tells Chacon, "Make a copy. Give one to the grinding department and give one to the girls. One to each." It is then about 8:30 a.m. (Chacon starts work: at 7 a.m.) Chacon continued: "Then it just goes on. If the girls need something, I'll bring it down. I have some seasoning downstairs. Patty paper for the machine or I will relieve the girls on the patty machine or she will go the bathroom or something like that. She may get too cold, so I will run the patty machine and then I'll go back to the freezer. Whatever came out the end of the tunnel, I'll go put it away." The rest of the day is "pretty much the same, except after lunch." After lunch Chacon goes to the office and asks **Daly IV**, "What else do you want us to grind." **Daly IV** replies "check this and check that and let me know what you've got." "After that, I give him a list and he says, 'Okay, break it down.' I will start breaking down the grinding and mixing [machine] and start washing." Chacon also resolves the problems which the employees encounter in operating the machines.

Chacon testified that "most of the time" employees would come to him for permission to leave early but he

⁶ A. I know Willie White but I never spoke to Willie White about an) thing [the decertification petition] we were going to do.

Chacon's gratuitous remark raises a question as to whether Respondent's connection with the decertification petition was less remote than is revealed in the testimony.

⁷ **Daly III** testified:

Q: So, since, at least for the last three years, he [Chacon] has been carried as a supervisor, and been viewed as a supervisor by you?

A: Yes.

would refer them to **Daly IV**. However, there is testimony that Chacon excused employees. It seems obvious that, if Chacon did not have authority to excuse employees, they would not have come to him "most of the time" for permission to leave early since such would have been a futile act. Chacon is found to have excused employees.

Chawn testified that he teaches job tasks to inexperienced employees.

Employee Floyd L. Brooks testified that if employees wanted an increase in salary "they had to go up through Mr. Chacon," and when an employee asked **Daly III** for a raise he was told to ask Chacon. Gary M. Chapital's testimony was corroborative. Chapital asked **Daly III** for a raise and was told to "check with Roland Chacon to see if [he] was putting out the production that [he] said [he] was."

Brooks also testified that Chacon "would give or tell Mr. Daly who was doing their work, and who wasn't."

According to Chapital when he was hired he was told by **Daly III** that he would "be working under Roland Chacon, and that he would train [him] in [his] job." Michael Esteves, who had worked in the grinding department for 1-1/2 years, testified that Chacon "goes in the freezer and sees how the stock is doing, what do we have in stock. And then he writes it up, and brings me a paper telling me what he wants" and determines "how much meat has to be ground" and gives "orders" to other grinding department employees. Esteves stated that Chacon did not engage in production work when a full staff was present. "He makes sure that everything is going right, and he works in the office."

Long testified that Chacon "told us what to do, when to do it, and how much to do." Long also said Chacon gave **Daly** "progress reports" on employees. For example, he heard Chacon report to **Daly IV** upon being questioned by **Daly IV** as to how an employee was "doing." "Well, I think he's going to make it, he'll be all right." Long also heard Chacon tell an employee, "Well, you have to get on the ball, because if we don't get to work, I'm going to have to go up there and tell the man." Production Manager White testified that **Daly** would say to Chacon, "Look, Roland this is what we want done today."

Where the testimony of Chacon and other witnesses conflict I have discredited Chacon. His testimony was of a supererogatory nature and his responses appeared to be purposely tailored. Chacon's memory also appeared to be conditioned to favorable responses for Respondent.

Chacon was classified as a supervisor and represented to the employees as a supervisor. Cf. *Dennis E. Ehrhart, d/b/a Americraft Manufacturing Company*, 242 NLRB 1312, fn. 1 (1979). He spent substantial time in the office; he granted employees permission to leave early; he participated in the granting of salary increases; he furnished progress reports to his superior; he determined the amount of meat to be ground and gave orders to the grinding department employees; he told an employee to "get on the ball" or he would "tell the man" (**Daly IV**). In his exercise of the responsibility to direct employees in their work, Chacon required the use of independent

judgment. Chacon was a supervisor within the meaning of Section 2(11) of the Act and his action in circulating the decertification petition was in violation of Section 8(a)(1) of the Act.

13. Respondent's Withdrawal of Recognition on October 31, 1979, and Its Refusal To Bargain Thereafter

On October 31, 1979, Respondent withdrew recognition from the Union and thereafter has refused to bargain with the Union. On this date the Union and Respondent were engaged in a bargaining session. Daly III had heard rumors that a decertification petition was being circulated. Those rumors were transmitted to him by his son, Daly IV, or White. Daly III testified, "I heard that it was a rumor, I don't even know if it was a fact." He had made no attempts to confirm the rumor.

On October 31, Ronald H. Schroeder, Respondent's chief negotiator, phoned Daly III. As related by Daly III:

He called me and he said, "Well, Ted, there's a decertification out." And I said, "Are you sure?" And he said, "Right." And he said, well, I said to him, "What do you think we should do?" Because he was at the meeting with them, and I said, "What do you think we should do?" And he said, "I don't think we should negotiate any more." And I said, "Okay, don't negotiate."

Daly III said it was his decision to discontinue negotiations and that the only reason for his action was the information he had received from Schroeder. At the time Daly III did not know how many employees had signed the decertification petition. He added, "I don't even know for a fact that it even exists." Respondent presently refuses to bargain with the Union.

A week later, on November 7, 1979, the decertification petition was filed with the Board in Case 15-RC-436.

The law applicable to the abovedetailed facts appears in the case of *N.L.R.B. v. Maywood Plant of Grede Plastics A Division of Grede Foundries, Inc.*, 628 F.2d 1 (D.C. Cir. 1980):

All employer does not violate section 8(a)(5) if its refusal to bargain is based on a good faith and reasonably grounded belief that the incumbent union no longer enjoys the support of a majority of the bargaining unit employees. See, e.g., *N.L.R.B. v. Alvin J. Bart and Co.*, 598 F.2d 1267, 1271 (2d Cir. 1979); *N.L.R.B. v. Top Manufacturing Co.*, 594 F.2d 223, 224 (9th Cir. 1979); *Allied Industrial Workers v. N.L.R.B.*, 476 F.2d 868, 881 (D.C. Cir. 1973). But, as this court has previously said:

The naked showing that a decertification petition has been filed, with no indication of the number of signatories or other related matters, is an insufficient basis in fact for refusing to bargain since it establishes no more than that the petition was supported by the requisite 30% "showing of interest."

Allied Industrial Workers v. N.L.R.B., supra, 476 F.2d at 881-82. Accord, *Retired Persons Pharmacy v. N.L.R.B.*, 519 F.2d 486, 490-91 (2d Cir. 1975); *Rogers Mfg. Co. v. N.L.R.B.*, 486 F.2d 644, 647 (6th Cir. 1973), cert. denied, 416 U.S. 937 (1974). Moreover, an employer that has itself orchestrated the union-ousting campaign cannot rely on the pendency of a decertification petition or the loss of majority status to justify its withdrawal of recognition of, and refusal to bargain with, the incumbent representative. *N.L.R.B. v. Sky Wolf Sales* supra, 470 F.2d at 830; *N.L.R.B. v. A. W. Thompson, Inc.*, supra, 449 F.2d at 1336-37. See also *Medo Photo Supply Co.*, 321 U.S. 678, 687 (1944); *N.L.R.B. v. Altermon Transport Lines, Inc.*, 587 F.2d 212, 228 (5th Cir. 1979).

See also *Rogers Manufacturing Company v. N.L.R.B.*, 486 F.2d 644 (6th Cir. 1973), where it is stated: "[T]he mere filing of a decertification petition is of itself insufficient justification" for a refusal to bargain with a union, and *Anthony Carilli, d/b/a Antonino's Restaurant*, 246 NLRB 833 (1979).

It is clear that substantial objective indicia of the loss of union support among Respondent's employees is lacking in the instant case and that there is no credible proof that Respondent entertained a reasonable or good-faith doubt of the Union's majority status.

It is found that Respondent's withdrawal of recognition and its refusal to bargain on and after October 31, 1979, was in violation of Section 8(a)(5) of the Act.

F. The Strike

On November 8, 1979, Respondent's employees engaged in a strike. Charles R. Godfrey, secretary-treasurer of Meatcutters District Union 327, who was involved in the negotiations between the Union and Respondent as principal negotiator, met with certain of Respondent's employees (those who later walked the picket line) about 2 or 3 days before the strike. Godfrey advised the assembled employees that Respondent was "negotiating in bad faith." He also testified, "I told the employees that the company refused to bargain any further, I told the employees about the decertification petition that they had going around, they said they had heard about it, and I said that the company had refused to bargain with us any further. I told them it was, I left it up to them, if they wanted to strike, we would strike." Thereupon the employees present voted "one hundred per cent to strike."

The strike which was caused by Respondent's unfair labor practices detailed above was an unfair labor practice strike. *Notional Fresh Fruit & Vegetable Company and Quality Banana Co., Inc.*, 227 NLRB 2014, 2017 (1977).

G. The Claim that Respondent Failed To Properly Reinstate Certain Unfair Labor Practice Strikers

On January 11, 1980, an unconditional offer to return to work was tendered on behalf of the unfair labor practice strikers. Of these the General Counsel claims Chapital, Coste, LeBeaux, and Esteves were improperly rein-

stat:d. As noted in *C & E Stores, Inc., C & E Supervalue Division*, 229 NLRB 1250, 1252 (1977):

[U]pon their unconditional application Respondent was obligated to reinstate "all its employees who participated in said strike to their former positions or, if such positions no longer exist, to substantially equivalent positions, without impairment of their seniority and other rights and privileges, dismissing, if necessary, any persons hired as replacements on and after" the strike began. *Larand Leisurelies, Inc.*, 213 NLRB 197, 198 (1974); *Mastro Plastics Corp. v. N.L.R.B.*, 350 U.S. 270, 278 (1956).

LeBeaux: Prior to the strike **LeBeaux** worked in the meatcutting department for about 2 years where she packed "all the meat that needed to be packed, ground mea., pork chops, or whatever." After the strike **LeBeaux** was placed in the grinding department. In the grinding department **LeBeaux** operated a "pattie machine." She received the same rate of pay. After 7 days she was returned to her meatcutting department job. New employees were performing **LeBeaux's** meatcutting department job when she returned to the plant. Since Respondent was obligated to replace the new employees with the unfair labor practice strikers, **LeBeaux** was improperly returned to work. (See *C & E Stores Inc., supra.*)

Chapital: At the time of the strike Chapital "bone[d] ribs and rounds, and put up orders, and cut portion control pork, veal steaks" in the "table area" or table department. When he returned from the strike he was given a job as a painter which he filled until he filed an unfair labor practice charge involving Respondent's failure to return him to his prestrike job. He worked as a painter for a period of "about a week or a week and a half" after which he was returned to his prestrike job. The wages were the same in both jobs. It is obvious that Chapital was improperly reinstated.

Esteves: Prior to the strike Esteves was the "head grinder." He was reinstated as the "assistant grinder." His wage rate was the same. In regard to the change in his work after the strike Esteves explained, "I was the head grinder before the strike, I was taking care of all the business for the grinders. After the strike, I was assistant to another guy. I was doing what he told me to do." An employee was filling Esteves' job as head grinder when he returned to employment after the strike. Since Esteves' head grinder's job was in existence, Esteves, as an unfair labor practice striker, was entitled to the job on reinstatement. Thus, he was improperly reinstated. Esteves is presently working in the head meat grinder's job. The head meat grinder who replaced Esteves during the strike has been fired.

Coste: Prior to the strike Coste was assigned to the "order filling" department. He testified "They would send us with an order form and tell us we needed 10 pounds of meat for this certain company and to go into the freezer and get it out and put it on the rack, and then put it on the truck." Coste testified that, after the strike, "They had me cleaning ceilings, the walls, cleaning light fixture, cleaning the freezer. Just cleaning a bunch of

stuff that I didn't do before. Cleaning up everybody else's mess." Coste's wages were the same. Another employee was filling Coste's prestrike job. Coste, who was fired in February 1980, was likewise improperly reinstated.

The General Counsel has failed to prove that any of the strikers suffered any wage losses after their respective reinstatements.

Respondent's failure to return unfair labor practice strikers **LeBeaux**, Chapital, Esteves, and Coste to the jobs to which they were entitled was in violation of Section 8(a)(3) and (1) of the Act. (See *C & E Stores, Inc., supra.*)

H. The Refusal To Reinstat Lenet Smith, Jr.

Respondent refused to reinstate Lenet Smith, Jr., because of an incident which occurred on the picket line between him and John Lawson, a nonstriker. On the same day that the incident occurred Lawson reported it to Daly III. According to Lawson he reported: "I told him that I pulled out. He meddled me and the guy called me a bitch and that's when I turned around and came back and that's when Smith told me . . . 'You better know what you're doing, boy. I've been in the penitentiary.' He didn't have any weapons or anything in his hand. He was standing up and we was just talking . . . I was on one side of the truck and he was on the other . . . I told him the guy said he was going to kill me." Daly III said, "Don't worry about the guy. He's not going to do you anything."

Daly III asked Lawson during the conversation "Do you want me to call the police?" Lawson answered, "No, I don't think it is necessary."

Later Lawson reported to Daly III that Smith, Jr., had apologized to him. Daly III commented, "Well, that's good. I'm glad he apologized to you. At least he admitted he was a man. That he was wrong."⁶

Daly III related that Lawson had come to his office about a week after the strike commenced "very upset." Lawson said, "A guy out there, Smith he threatened to kill me . . . he even made the sign of the cross and he was going to do it on the cross."

When Daly III asked Lawson whether Smith was serious, Lawson answered, "Yeah. sure he is serious." Daly III called either Ernie Malone or Ron Schroeder, apparently for advice. Daly III was informed, "Well, just sit tight and try to calm John down." Daly III told Lawson, "Under no circumstances, go around the guy . . . [s]tay away from him." Daly III testified that Lawson had not disclosed to him that he had turned his truck around and confronted the employees.

Later, according to Daly III, Lawson reported to him that Smith, Jr., had apologized to him. He said that "it didn't make any difference. He still didn't trust him . . . John made the statement that if Smitty even looks at him . . . that if Smitty even raises a hand to me, I am going

⁶ Lawson thus described Smith's apology. "After the incident, he came back and apologized to me but he didn't apologize in front of any of the guys . . . Now, I forgot about it. When we see each other, we wave to each other."

to **drop** him." Daly **III** responded, "John, don't fuck and do **that**."

Had Daly **III** elicited the story of the incident from Smith, Jr., which he failed to do, and had his statement **followed** Smith's testimony, it would have revealed, "Mr. **Lawson** came past and when he got to the corner, he **turned** around fast and came back and stopped in front of my car so I got out of my car . . . he was all **emotional** . . . I asked him what are you doing . . . and he said . . . I'm trying to keep my job and I said well, go on and do your job then. He got back in his car and he pulled off." Smith, Jr., specifically denied that he had called **Lawson** a "bitch," or that he had mentioned the penitentiary or that he was going to kill him. He also denied that he swore on the cross.

Smith, Jr., testified that about a week later he asked **Lawson** why he came back that "fast." **Lawson** replied that **Smith** had "hollered something at him." Smith responded, "Well, I didn't holler anything at you." **Lawson** replied, "I know, I'm sorry, man." Smith said, "I'm sorry **too**," whereupon Smith and **Lawson** "shook hands."

Chapital's version of the incident reveals that he and Esteves were **conversing** on the picket line when **Lawson** was passing in his truck at which time the word "give **bitch**" was remarked. **Lawson** turned the truck around and drove back, "jumped out of the truck and he was all **hysterical**." Addressing Esteves, **Lawson** said, "You **want** to say how much a bitch I am." Esteves replied, "What's wrong with you, man. I wasn't even talking to **you**." At this point Smith got out of his car and told **Lawson**, "You know what you're doing, huh?" **Lawson** replied, "I'm just trying to do my job." Smith countered, "Well, get back in the truck and go do your fucking job then." **Lawson** left.

Esteves' version of the incident was similar to **Chapital's** version.

Lawson thus described the incident:

When I pulled off, I had the window down. I was **moving** off slowly, you know, and that's when Mike **called** me a bitch. **So** that's when I kept going and I **turned** around and came back and I got out of the **truck** and that's when Smith told me, he said, "Boy, you better know what you're doing." I'd be in the **penitentiary**.

There was something else he said but I forgot what he said.

So, I just stood up there a while and Mike didn't say **anything** and Gary didn't say nothing. **So**, I got in the **truck** and I left.

Q. Do you recall anything else that was said?

A. **Yes**. I'm more than sure he said, "**I'll** kill you boy. . . . You better know what you're doing." With **that**, I left and, when I came back, I didn't **see** him out there.

Had Daly **III** interviewed the participants as well as the **witnesses** he would no doubt have concluded, as I have done, **that** there are serious doubts as to whether the threat **was** uttered at all and that by a preponderance of the **evidence** there is no showing that the incident **occurred** as Daly **III's** testimony would indicate. Thus, at

the threshold or a consideration of Daly **III's** action taken against Smith, Jr., Daly **III's** failure to delve into the truth of the matter beyond the representations of **Lawson** supports a strong inference that Daly **III** seized upon **Lawson's** story as a pretext for **refusing** to recall Smith, Jr. As was said in *United States Rubber Company v. N.L.R.B.*, 384 **F.2d** 660, 662-663 (5th Cir. 1967):

Perhaps most damning is the fact that both [employees] . . . were summarily discharged after reports of their misconduct. . . . without being given an opportunity to explain or give their **versions**.

See also Metal Cutting Tools, Inc., 191 NLRB 536 (1971). Such inference **takes** on added substance when it is considered that Daly **III** precipitously withdrew recognition of the Union at the drop of a hat, and revealed a disposition and attitude, throughout the credited record, of an individual who wanted to shed himself of the Union and its adherents. His reason given for the refusal to reinstate Smith, Jr., was pretextual in nature. Thus, Daly **III** expressed his reasons, "I was afraid that if **Smitty** came back and John would ever say something to **Smitty** or vice versa, there would be a big hassle and one of them could get hurt very badly and of course, we don't want that to happen on Company property." Nevertheless, Daly **III** testified that he "called a **good** friend who is a seafood processor just like I am a meat processor and recommended **Smitty** a job with him. . . I recommended him very highly for the job." Moreover, when Daly **III** hired Smith, Jr., he knew he had **served** in the penitentiary for manslaughter. Indeed Smith had worked for Respondent before he was incarcerated and after he was released from the penitentiary. Smith, Jr., had been hired directly from the prison. Daly **III** viewed Smith, Jr., as "a good employee" before he went to prison and "satisfactory upon his **return**."

Lawson was a truckdriver and did not work in the vicinity of Smith, Jr. His only contact with Smith, Jr., would have been when he would have passed by on his way to and from the freezer loading his truck. Moreover, Daly **III** knew that an apology had been effected between Smith, Jr., and **Lawson** and there was no apparent reason for the bad blood⁷ between them. Hence, it is clear that Daly **III**, who had accepted Smith, Jr., as an employee despite his penitentiary record, who had recommended him to a friend, and who had not reported the incident to the police when it occurred, could have held no honest basis for his apprehensions with respect to Smith, Jr. These apprehensions were obviously feigned and seized upon in order to rationalize the barring of Smith, Jr., from the plant.

Based on the credited facts in the record, Respondent could not have entertained an honest belief that Smith's alleged misconduct was of such a violent or serious character as to render him unfit for further employment. I conclude that, except for Respondent's desire to discourage union activity, Smith, Jr., would have been reinstated. **By** refusing to reinstate Smith, Jr., Respondent **vio-**

⁷ **Lawson** testified, "I forgot about it. When we **see** each other, we **wave** to each other."

lated Section 8(a)(3) and (1) of the Act. See *Midwest Solvents, Inc.*, 251 NLRB 1282 (1980); *Geneml Telephone Company of Michigan*, 251 NLRB 737 (1980).

I. Respondent's Alleged Failure To Bargain in Good Faith

In the complaint the General Counsel alleges: "Since on or about May 15, 1979 [Respondent has] failed and refused to bargain in good faith with the Union and with no intention of entering into any final or binding agreement." The General Counsel supports this allegation by argument that Respondent's negotiator lacked authority and Respondent failed to spend sufficient time in negotiations. (See G.C. br., sec. VII.) The General Counsel maintains that Respondent never intended to reach an agreement and cites the following un rebutted, undenied, and unimpeached testimony of Chapital, who quotes Supervisor Chacon:

Yes, he was asking me why hadn't we gone on strike yet? And he told me that that was the only way that we were going to get the company to come to agreement with us, if we forced them. Because Mr. Daly told him that they were just going to keep prolonging the negotiations until they could get another election after one year. And he said that he would be able to get another election. And he said that Mr. Daly had a large

* * * * *

He said, Mr. Daly said that he had hired a union [busting firm], and he was spending a lot of money, and there was no way that we could beat this company. They were just going to bust us up. And that he also stated that, Mr. Daly could let this thing go on for as much as three years or more, and that the only way that we were going to get it, is if we struck. And then he mentioned the fact again, that if we go on strike, that Mr. Daly had another crew that was waiting on standby to come in and replace our jobs. And he said that everyone who walked out on this job to go walk on the picket line, would be fired.

Q. Did he say how he knew all of this?

A. He said Mr. Daly told him all of this.

Q. And did you make any response?

A. I just told him that we can't, just holding an election like that, they are obligated to negotiate with the union, just so long as the union would want to sit down and negotiate with them. Because we had an election, and we [won] an election. And he said that well, he just kept stressing that the company could keep prolonging it, and I argued the fact: with him that they could not just do it like that. And he told me that all they have to do, is wait one year, and then get thirty per cent of the people in there to sign a petition, filing for a petition, and that they would hold another election. And I told him that they would have to get fifty per cent of the people because that's what we had

to get in order to file the petition for a union for the election of a union.

Q. Did he make any response to that?

A. No. He said they just needed thirty per cent. And he cut the conversation off, because it was just turning into argument.

Ronald H. Schroeder, a teacher and a "general business" consultant, was the principal spokesman for Respondent at the negotiation sessions. He had prior negotiation experience. Daly IV also attended the bargaining sessions. Godfrey was the principal negotiator for the Union. Schroeder testified that he was given "the authority to fully conduct" the negotiations by Daly III and, at the preliminary meeting of the Union and Respondent, he was "introduced [by Daly III] as the negotiator that would fully handle the entire negotiations." Schroeder also testified in respect to his relationship with Daly III, "I was keeping him advised, of course, at all times, and he did have veto power over it, but I would always state my position, what my recommendations would be and what I would do and I cannot recall him disagreeing with me at any time."

The parties exchanged proposals on January 27, 1979, and thereafter met in bargaining sessions on February 6 and 20, March 8, 20, and 26, April 12, May 3 and 9, June 21, July 30, and October 26, 1979.

While Godfrey testified that Schroeder on numerous occasions (*see infra*) said that he would have to "get back" with Daly III for his position. Schroeder testified that he could not "recall any specific instance when [he] said that [he] would have to go back to Mr. Daly and get his approval." Assuming, *arguendo*, that Godfrey's testimony accurately states the facts, a review of the testimony does not indicate that bargaining was hampered by reason of Schroeder's lack of authority or that, through Schroeder as its agent, Respondent was avoiding its obligation to bargain. The fact that an agent confers with his principal about matters raised in a bargaining session with which he may not be wholly conversant is not necessarily an exhibition of bad faith. In this respect there is no showing that Schroeder's alleged resort to Daly III may not have been for such purpose. The General Counsel's claim that Respondent's negotiator lacked authority to the extent that his participation in the bargaining was an unfair labor practice is not supported by the facts in the record.

The General Counsel points out that Respondent spent only 14-1/2 hours at the bargaining table. After the certification Respondent, by a letter dated November 22, 1978, set the first meeting for January 27, 1979. The Union protested but the meeting was not held until such date. At the March 8, 1979, meeting which lasted 2-3/4 hours the union representatives told Schroeder that they "would like to go and try to reach agreement." Schroeder responded that that was "as far as they could go that day" and that "he would have to talk with Mr. Daly some more." At the March 20 meeting which lasted 1-1/2 hours Godfrey told "Schroeder that we should have longer sessions so we could try to reach an agreement." Schroeder responded that "he would try to get back to Mr. Daly with some of this stuff." At the

March 26, 1979, meeting which lasted 1-1/2 hours, Godfrey said, "There's no reason why we could not do more to try to reach an agreement." Schroeder answered that "he had to get back to Mr. Daly before he could go any further."

At the April 12 meeting, which lasted 1 hour, the next date for a bargaining session was set for May 3, 1979, since Respondent's representatives insisted on the presence of Daly IV, who was scheduled to attend a cooking school. Godfrey commented that it "looked like the company kept stalling and Daly always had to go to school." Godfrey asked, "Can't you meet without him?" Schroeder answered, "Well, the Company wants him there."

On September 12, 1979, according to Schroeder, Godfrey phoned him and told him that the employees at the meeting on September 12, 1979, did not vote for a strike but that they "wanted to negotiate further, and, specifically, they were looking for more money." During the same conversation, Godfrey advised Schroeder that he was going to call a mediator to take part in further negotiations.

The next negotiation session was postponed to October 26 because the mediator was tied up in a teachers' strike and could not make the scheduled meeting. At the October 26 meeting, in the presence of the mediator, Respondent offered more money. At the close of the meeting another meeting was set for October 31, 1979.

At this meeting the rumor of a decertification petition surfaced and, as noted above, Daly III immediately withdrew recognition.

At the time the withdrawal of recognition occurred, it appeared that negotiations were progressing, with the aid of the mediator, and had not reached the point of impasse. Had Daly III not frustrated and terminated the negotiations by his unfair labor practices, the probabilities are that resolution of the issues separating the parties might have been reached.

Under these circumstances it would appear that the General Counsel's assertion that Respondent violated Section 8(a)(5) of the Act by failure to spend sufficient time in negotiations prior to October 31, 1979, is not well taken.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

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

3. The following unit constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees including truckdrivers, helpers, all boning, shipping, and ground meat leadmen and sanitation workers employed by Respondent at its Metairie, Louisiana, facility; excluding all sales personnel, office clerical

employees, watchmen, guards and supervisors as defined in the Act.⁸

4. Since October 26, 1978, the Union has been the duly certified and designated exclusive representative of the employees in the unit found to be appropriate within the meaning of Section 8(a)(5) and (1) of the Act.

5. By withdrawing recognition from the Union as the exclusive bargaining representative of its employees in the above appropriate unit on October 31, 1979, Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

6. By refusing to recognize and bargain collectively with the Union in good faith Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. By unlawfully refusing to reinstate Lenet Smith, Jr., upon his unconditional offer to return to work after the strike which ceased on January 11, 1980, and by refusing to properly reinstate Gary M. Chapital, Ronald A. Coste, Thelma LeBeaux, and Michael A. Esteves, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

8. The strike which occurred on November 8, 1979, was an unfair labor practice strike.

9. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

10. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

It having been found that Respondent has engaged in certain unfair labor practices, it is recommended that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It having been found that Respondent unlawfully refused to reinstate Lenet Smith, Jr., since January 11, 1980, in violation of Section 8(a)(3) and (1) of the Act, it is recommended in accordance with Board policy that Respondent be ordered to offer the foregoing employee immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, dismissing, if necessary, any employee hired on or since January 11, 1980, to fill said position, and make him whole for any loss of earnings that he may have suffered by reason of Respondent's acts herein detailed by payment to him of a sum of money equal to the amount he would have earned from January 11, 1980, to the date of an offer of reinstatement, less net earnings during such period, with interest thereon, to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).⁹

⁸ This appropriate unit is admitted.

⁹ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Having found that Respondent has also engaged in unfair labor practices violative of Section **8(a)(5)** and (I) of the Act, it is further recommended that **Respondent** recognize and bargain with the Union in good faith as the exclusive bargaining representative of its employees in the appropriate unit concerning any term or condition of employment, or change thereof **(as** to which it would

have **been required** to bargain had it continued its bargaining duty on and **after** October 31, 1979). for a period of **1 year** from the **date** it **first complies** with the order to bargain herein, in conformity with Section **8(a)(5)** of the Act, and embody in a signed agreement any **understand-**ing reached.

[Recommended Order omitted from publication.]