

**Grand Auto, Inc. and Retail Clerks Union Local 1434,
Retail Clerks International Association, AFL-CIO.**
Cases 32-CA-281 and 32-RC-45 (formerly 20-
CA-13160 and 20-RC-14255)

September 29, 1978

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On May 16, 1978, Administrative Law Judge George Christensen issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a response to Respondent's exceptions.

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

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

The Administrative Law Judge found, and we agree, that Respondent committed violations of Section 8(a)(1) of the Act by (1) threatening to discharge unit employees if they sought union representation and (2) by promising and granting wage increases and adjustments of wage scales to discourage employee support for the Union. The Administrative Law Judge also concluded that Respondent's unfair labor practices prevented the likelihood of a free and fair election being held and therefore warranted the imposition of a bargaining order. In finding that a bargaining order was required as part of the remedy, the Administrative Law Judge failed to indicate when Respondent's bargaining obligation commenced. In accordance with our decision in *Trading Post, Inc.*, 219 NLRB 298 (1975), we find that Respondent's bargaining obligation commenced May 13, the date the Union acquired majority status in the appropriate unit and requested recognition and bargaining.² We further find, as alleged in the complaint but not mentioned by the Administrative Law Judge, that Respondent violated Section 8(a)(5) and (1) of the Act

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

² Although Respondent formally refused to bargain on June 1, 1977, we find Respondent was obligated to bargain as of May 13, the date on which the Union both represented a majority of Respondent's employees and requested recognition and bargaining.

by its refusal to bargain with the Union and by its unilateral grant of wage increases to employees.

The complaint alleged, *inter alia*, that since May 13, 1977,³ the Union represented a majority of Respondent's employees in the Sparks and Carson City, Nevada, stores and that since May 13, and continuing to date, the Union has requested it to recognize and bargain with the Union. The complaint also alleges that Respondent unilaterally granted employees wage increases. The record establishes, and the Administrative Law Judge found, that on May 13 the Union had secured valid authorization cards from 19 of the 33 unit employees. In addition, between May 13 and June 1, the Union secured 9 more authorization cards for a total of 28 out of a unit of 33 employees. On May 13, the Union, by letter, requested recognition and bargaining, and on June 1, Respondent formally refused to recognize the Union as the exclusive bargaining representative of its employees. In the meantime, Respondent engaged in unfair labor practices, which made the likelihood of a free and fair election improbable. In these circumstances, all of the elements for finding violations of Section 8(a)(5) and (1) have been alleged and litigated.

Accordingly, we find that the record supports and compels a finding that Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union and by granting wage increases immediately preceding the election.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and hereby orders that the Respondent, Grand Auto, Inc., Sparks and Carson City, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, as so modified:

1. Delete paragraph 1(c) and add the following:
“(c) Refusing to recognize and bargain collectively with Retail Clerks Union Local 1434, Retail Clerks International Association, AFL-CIO, as the exclusive bargaining representative of its employees in the appropriate unit described below.

“(d) Instituting unilateral changes in wages, hours, and terms and conditions of employment of unit employees without first bargaining with the Union. However, nothing herein is to be construed as requiring Respondent to rescind wage increases already granted.

³ All dates herein are 1977 unless otherwise noted.

“(e) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.”

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

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

WE WILL NOT threaten our employees with discharge for seeking representation by Retail Clerks Union Local 1434, Retail Clerks International Association, AFL-CIO, or any labor organization.

WE WILL NOT promise or grant our employees wage increases and favorable wage adjustments to dissuade their efforts to secure representation by the above labor organization.

WE WILL NOT refuse to recognize or bargain collectively with Retail Clerks Association Union Local 1434, Retail Clerks International Association, AFL-CIO, as the exclusive bargaining representative of our employees in the appropriate bargaining unit described below.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in their right to form, join, or assist the above labor organization, to bargain collectively concerning their rates of pay, wages, hours, and working conditions through that labor organization, or to engage in other concerted activities for the purpose of collective bargaining or mutual aid and protection.

WE WILL NOT institute unilateral changes in the wages, hours, and terms and conditions of employment of unit employees without first bargaining with the Union.

WE WILL recognize and bargain collectively with the above labor organization concerning the rates of pay, wages, hours, and working conditions of our employees in the following unit:

All of our selling and nonselling employees employed at our Sparks and Carson City, Nevada, locations, excluding guards and supervisors as defined in the Act.

GRAND AUTO, INC.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge: On January 10 and 11, 1978, I conducted a hearing at Reno,

Nevada, to try issues raised by a complaint issued on September 27, 1977,¹ and amended on November 16 and on January 5, 1978,² and Retail Clerks Union Local 1434, Retail Clerks International Association, AFL-CIO's,³ July 20 objections to an election conducted on July 18. Since the complaint and election objections alleged the same company conduct as basis therefor, they were consolidated for hearing and resolution.

The amended complaint and election objections allege that Grand Auto, Inc.,⁴ dissipated the Union's majority representative status among an appropriate unit of the Company's employees by:

1. Threatening an employee with discharge of the unit employees if they selected the Union as their collective-bargaining representative.
2. Threatening an employee with reclassification of jobs of unit employees with a consequent reduction in wage scales if the unit employees selected the Union as their collective-bargaining representative.
3. Threatening an employee that the unit employees would be required to become members of the Union if they selected the Union as their collective-bargaining representative.
4. Threatening employees with cancellation of existing fringe benefits if they selected the Union as their collective-bargaining representative.
5. Promising and granting wage increases to employees to discourage their support of the Union.

The Company denied its representatives made the alleged threats, denied one of the persons alleged to have threatened employees with cancellation of existing fringe benefits was its agent, and contended the promised and granted wage increases were granted in accordance with policy and procedures established prior to commencement of the Union's organizational campaign and therefore were not violative of the Act.

The issues before me are whether the alleged threats were made, whether one of the alleged threats was made by an agent of the Company and whether the alleged threats and promises, if made, and the wage increases were violative of the Act. An added issue is whether or not a bargaining order is warranted.

The parties appeared by counsel at the hearing and were afforded full opportunity to produce evidence, examine and cross-examine witnesses, argue, and file briefs. Briefs have been received from the General Counsel and the Company.

Based upon my review of the entire record,⁵ observation of the witnesses, perusal of 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 that the Company, a California corporation, was engaged

¹ Read 1977 after all further date references omitting the year.

² The complaint was based upon charges and amended charges filed by the Union on July 21 and 26 and September 14.

³ Hereafter called the Union.

⁴ Hereafter called the Company.

⁵ Errors in the transcript have been noted and corrected.

at times pertinent in the sale and installation of automotive parts at various locations in California and two locations in Nevada, namely, Sparks and Carson City; that during the calendar year 1976 it received gross revenues in excess of \$500,000 and purchased goods valued in excess of \$5,000 from suppliers located outside the State of California; and that, on the basis of the foregoing, the Company at times pertinent was an employer engaged in commerce in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. The complaint also alleged, the answer admitted, and I find that at times pertinent the Union was a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES AND ELECTION MISCONDUCT

A. Background

Prior to 1976, the Company's operations were limited to California; i.e., it operated 68 facilities within the State of California. In 1976, it opened its first two facilities outside of California, one at Sparks, Nevada, and the second at Carson City, Nevada. The former facility opened for business on July, 1976, and the latter on October 1, 1976.

Interviews were conducted and personnel hired to man the Sparks facility during April, May and June, 1976; personnel were interviewed and hired at Carson City in August and September 1976 (some personnel were also transferred from Sparks to Carson City).

The Company established a starting pay scale for full-time sales/installation personnel at both locations of \$3 per hour, with automatic progression each 3 months thereafter to a top rate of \$4 after 9 months and a starting pay scale for mechanics of \$4.23 per hour, with automatic progression each 6 months thereafter to a top rate of \$6.50 after 2-1/2 years.⁶ Regular part-time employees in the former category were placed on the same pay scales, but with progression at 6-month intervals in the case of the former and 1-year intervals for the latter of top rates after 1-1/2 and 5 years, respectively. Several of the new hires in the sales-installation category were informed at hire that there would be a review and evaluation of their performance 1 year after their hire (when they would have been at the top rate for a 3-month period) and a possible merit increase at that time.⁷ In the internal memorandum addressed to the Company's vice president for administration (Richard Halliday) by the then corporate director of personnel (Fred Misakian), setting forth the wage scales, Misakian stated the scales were designed to secure qualified employees at competitive labor overhead costs and establish wage levels calculated to "afford the company the best possible chance of operating a non-union establishment."⁸

B. The Initial Employee Contact With the Union

In late 1976, the Nevada employees began to discuss the possibility of securing union representation to improve their

⁶ A number of employees with prior experience, however, were hired at step rates above the starting rate.

⁷ Company President Merle Krantzman made a statement to that effect to a group of Carson City employees just before that store opened.

⁸ The Company's employees at its California facilities were almost completely union-represented.

wages, etc. Sparks employee Arthur Murchland contacted a representative of the Union (Doris Lowe) to learn what wages and benefits the Sparks and Carson City employees might expect the Union to secure for them and how to go about securing union representation; Lowe advised Murchland in both areas, and he, in turn, passed on Lowe's advice to other employees.

By January or February 1977, a sufficient number of the Nevada employees has expressed interest in union representation to warrant setting up a meeting with a union representative. When Murchland contacted the Union to arrange for a meeting between Lowe and the Company's Nevada employees, however, he was informed Lowe was away from the area on an assignment and was not expected back in the area for some time.

C. The Alleged April Threat

On or about April 18, Carson City employee David Peterson approached Carson City Manager Hank Teague to inquire about a wage increase; when Teague responded there wasn't any money available for a wage increase, Peterson stated the employees might get better wages if they organized and went union. Teague replied that the employees would be unwise to do that; if company headquarters learned the employees were seeking union representation, they would fire and replace the whole crew.⁹

D. The Continued Denial of Requests for Wage Increases

During the same period (April and May 1977), Murchland asked Sparks Manager Don Rick about a wage increase (Murchland reached the top of the rate range for his classification in March). After telephoning Oakland headquarters of the Company, Rick advised Murchland he had discussed the subject of wage increases for the Nevada employees at the top of their rate ranges with the Oakland office and had been informed there were not going to be any raises for such employees. Carson City employee Claude Minor's request in this same period for a wage increase drew similar response: when Minor asked Teague for a wage increase, Teague replied Minor was at the top rate for his job (mechanic) and no increase was possible. When Minor protested he had been promised an \$8.50 per hour rate when he was hired, Teague referred him to Eugene Coleman, supervisor of the mechanical department; when Minor telephoned Coleman and stated his position, Coleman replied Minor was a liar, no Nevada mechanic was entitled to more than \$6.50 per hour, the top mechanic rate, and that was all Minor or any other Nevada mechanic was going to get. Sparks employee Robert Stockton's request during this period for a raise drew the reply from Teague that Stockton was at the top rate for his job and no increase would be forthcoming.¹⁰

⁹ Peterson's testimony to this effect is credited; he was a direct and forthright witness; his testimony was corroborated by Sparks employee Wesley Ross and was not denied by Teague.

¹⁰ The testimony of Murchland, Minor, and Stockton was uncontradicted and is credited.

E. *The Union Attainment of Majority Representative Status*

On May 12, Lowe, who had returned to the area, met with a group of the Sparks employees. She explained the Union's policies, programs, and procedures, answered questions, and solicited the signatures of the employees in attendance to union membership applications.¹¹

Fourteen of the 16 sales-installation-mechanical personnel employed at the Company's Sparks installation signed the proffered membership applications. In a meeting conducted by Lowe the following day at Carson City, 5 of the 17 sales-installation-mechanical personnel employed at the Company's Carson City installation signed membership applications. Between May 13 and June 1, Lowe solicited and secured 9 additional signed membership applications from Carson City sales-installation-mechanical personnel, for a total of 14 such applications among the Carson City employees and a grand total of 28 applications out of total work force of 33 sales-installation-mechanical employees at the 2 locations.

F. *The Request for Recognition and Petition*

On the basis of the 19 applications Lowe had previously secured from the Sparks and Carson City sales, installation, and mechanical employees, on May 13, the Union addressed a letter to Company President Merle Krantzman at the Company's Oakland, California, headquarters wherein the Union notified Krantzman that the Union represented a majority of the Company's selling and nonselling employees at Sparks and Carson City, excluding guards and supervisors; offered to submit proof of its majority representative status within the unit to a neutral person; and requested recognition and bargaining over a contract covering the rates of pay, wages, hours, and working conditions of the Company's employees within the unit.

On May 16, the Union filed a petition with the Regional Office for certification as the exclusive collective-bargaining representative of the Company's selling and nonselling employees at its Sparks and Carson City stores, excluding guards and supervisors as defined in the Act.

G. *The Alleged May Threat*

On or about May 20, Peterson and Teague had another conversation concerning Union representation; in the course of the discussion, Teague produced a copy of a contract between the Company and Machinists Lodge 1546 covering mechanical and related personnel employed by the Company in northern California and stated sarcastically he would welcome Union contract coverage of the Sparks employees under terms of that contract, since the trainee wage rates specified therein would permit the Company to lower the wages of its trainees.¹²

¹¹ The applications, *inter alia*, authorized the Union to act as the signatory employees' representative for the purpose of bargaining collectively with the Company on their behalf concerning their wages, hours, and working conditions.

¹² Peterson was training for service manager at that time or had completed such training a short time before.

H. *The Company Refusal To Recognize the Union and Election Agreement*

On June 1, the Company formally declined to recognize the Union unless and until it was certified as the exclusive representative of an appropriate unit of the Company's Sparks and Carson City employees.

On June 9, the Company and the Union executed a Stipulation for Certification Upon Consent Election within a unit consisting of all selling and nonselling employees employed by the Company at its Carson City and Sparks, Nevada, locations, excluding guards and supervisors as defined in the Act. By that time 28 of the 35 employees within the stipulated unit had signed and submitted to the Union signed membership applications. An election was scheduled for July 18.

I. *The Alleged June 27 Threats and Promise*

On June 27, George Tansill, who had replaced Misakian as corporate director of personnel,¹³ conducted separate meetings of the unit employees at the Sparks and Carson City facilities of the Company. In the course of those meetings, Tansill outlined and praised the fringe benefits provided by the Company, particularly the benefits provided under the Company's noncontributory hospital and surgical plan, and stated that the plan was the same one provided the top executives of the Company, the benefits were superior to those provided under the Union's area contracts, there was going to be a wage increase in July,¹⁴ if the employees designated the Union as their collective-bargaining representative at the July 18 election all the Union could do was to seek a contract, and negotiations would start from zero, and the Union was weak and could not do much for the employees. In response to inquiries concerning whether they would still be covered by the company hospital and surgical plan if the Union was designated as their representative, Tansill replied that the Company plan would cease or terminate when the Union came in and negotiated its plan.¹⁵

Tansill also stated that while, in his judgment, an agency

¹³ I find that at times pertinent Company President Krantzman, Vice President for Administration Halliday, Corporate Directors of Personnel Misakian and Tansill, Mechanical Supervisor Coleman, and Managers Teague and Rick were supervisors and agents of the Company acting on its behalf within the meaning of the Act.

¹⁴ This was the first time any unit employees were informed that a wage increase was in the offing (prior to June 28, employees who requested wage increases were told no increases were contemplated; see findings above). While the Sparks and Carson City managers (Rick and Teague) urged corporate headquarters earlier in the year to authorize wage increases exceeding the top of the existing wage scales, it is apparent the top corporate management of the Company did not authorize such grant until it became aware of the Union's organizational campaign and the employees' major source of dissatisfaction—their wage rates.

¹⁵ A number of employees testified Tansill stated the Company plan would terminate on the Union's selection as their bargaining representative, and others (as well as Tansill) testified he stated the company plan would terminate on the Union's selection as their bargaining representative and *negotiation of an agreement containing the union plan*. I find it more reasonable that Tansill, an experienced labor relations representative, made the latter statement but that the full text of his remarks did not register with some of the employees.

shop was illegal in Nevada,¹⁶ if it was negotiated into a contract between the Company and the Union all the unit employees would be required to join (or make payments to) the Union (Peterson's testimony to this effect was uncontradicted and is credited).

J. *The Alleged July 6 Threats*

Tansill subsequently asked James Seggern, a representative of the insurance brokerage firm (Frank B. Hall Company) which handled the Company's insurance, to visit Sparks and Carson City and address the unit employees concerning the insurance benefits provided to the employees by the Company.

On July 6, Seggern conducted separate meetings of the unit employees at Sparks and Carson City, described the benefits provided under the company plan, and stated they were of superior quality, certainly superior to those provided in the Union's area contracts. Seggern repeated Tansill's observation that company benefits would cease or terminate if the employees selected the Union as their representative on union negotiation of its plan.¹⁷

K. *The July 13 and 16 Promises*

On July 13, Company President Krantzman sent a letter to each unit employee reiterating Tansill's comments that the Union was weak and could not win a strike; that while the Union could make all kinds of promises, all it could really do was to sit down with the Company and attempt to negotiate a contract; that the existing company health and welfare plan was far superior to the Union plan and was provided at no cost to the employees; that a substantial wage increase would soon be granted; and that the company record demonstrated it provided wages and fringe benefits equal to those provided by its competitors in the area.

On July 16, Tansill reappeared at Sparks and Carson City to announce all unit employees would receive an 8-percent wage increase retroactive to July 1, a 4-percent wage increase effective January 1, 1978, a review and another wage adjustment on July 1, 1978, the addition of two additional steps at the top of the sales/installer wage scale providing further increases at 6-month intervals (for a range of \$3.24-\$4.66, effective July 1) and a 2-year progression, plus the addition of two steps at the top of the mechanic wage scale providing increases at 6-month intervals (for a range of \$4.56-\$7.59) and a 3-1/2-year progression.¹⁸

¹⁶ Nevada law prohibits any employer and union within the State to enter into an agreement conditioning employment on membership in or payments to that union.

¹⁷ Again a number of employees testified Seggern stated the company plan would cease or terminate on the Union's selection as their representative, and others testified he stated the company plan would cease or terminate on the Union's selection and negotiations of an agreement containing the union plan; for the reasons set out in fn. 15, I find that Seggern made the latter statement but that a number of the employees interpreted his remarks to mean the company plan would terminate on their selection of the Union as their representative.

¹⁸ Regular part-time sales/installation and mechanical personnel received the same amount of increase on July 1 and January 1, 1978, as the full-time personnel in those categories and continued to advance automatically each 6 months within the rate ranges for their occupations. Two additional steps were also added to their progression schedule, extending such progression in the case of sales/installation part-timers over 2-1/2 years and in that of mechanics over 3-1/2 years.

L. *The Wage Increases*

Both the July 1 and January 1 increases were implemented by the Company.

M. *The Election*

On July 18, there were 34 employees within the stipulated unit;¹⁹ 28 cast ballots; 14 cast ballots for the Union and 14 cast ballots against it.

N. *Analysis and Conclusions*

1. The unit and the Union's representative status therein

On the basis of the parties' June 9 stipulation to an election within a unit consisting of all the Company's selling and nonselling employees employed at its Carson City and Sparks, Nevada, locations, excluding guards and supervisors as defined in the Act, I find and conclude such unit at times pertinent was appropriate for collective-bargaining purposes within the meaning of Section 9 of the Act.

Inasmuch as 19 employees within the unit just specified authorized the Union to represent them for the purpose of bargaining collectively with the Company concerning the wages, hours, and working conditions of the 33 employees within that unit prior to the Union's May 13 request that the Company recognize and bargain with the Union concerning the wages, etc., of those unit employees, and inasmuch as by June 1, 28 of the employees within the unit had authorized the Union to represent them for the purposes of bargaining collectively with the Company concerning their wages, etc., I find that since May 13 the Union has represented a majority of the Company's employees within the unit.

2. The alleged April threat

I find and conclude that by Teague's April 18 statement to Peterson that the Company would fire and replace the whole crew if its top management learned the employees were seeking union representation the Company threatened an employee with the discharge of the entire work force if they sought and secured union representation and thereby violated Section 8(a)(1) of the Act and interfered with employee free choice in the election.

3. The alleged May threat

I find and conclude that Teague's May 20 statement he would welcome union representation of the employees since it would enable the Company to lower the current rates paid to trainees if the trainee rates contained in a current Company-IAM contract were to be agreed upon by the Union and the Company as the trainee rates covering the Nevada trainees neither abstractly nor concretely by Peterson can be or was considered a threat to reduce trainee wages. I therefore find and conclude the evidence is insuffi-

¹⁹ The employment of two unit employees terminated in early July; three of four unit employees hired in June were still employed on July 18. Of the 34 employees within the unit on July 18, 26 executed union membership applications between May 12 and June 1.

cient to support a finding the Company by Teague's May 20 statement violated the Act or interfered with the election and will recommend those portions of the complaint and election objections so alleging be dismissed.

4. The alleged June 27 threats and promise

Since I have entered findings that Tansill stated on June 27 the Company's health and welfare plan would cease or terminate when the Union came in and the Company and the Union agreed to substitute its plan for the company plan and that employee belief he said the company plan would cease or terminate if they selected the Union as their representative was based upon their interpretation of that statement, I find and conclude Tansill's June 27 statement did not violate the Act or prevent a fair election and shall recommend that those portions of the complaint and election objections so alleging be dismissed.

I also find Tansill's June 27 comment the employees would be required to join or pay dues to the Union in the event the Union won the election and the Union and the Company agreed to insert an agency shop provision in a subsequent agreement between them neither violated the Act nor interfered with a free and fair election, inasmuch as Tansill also stated such an agreement was unlawful in Nevada and was simply explaining the effect of such an agreement in States which permitted it. I therefore shall recommend those portions of the complaint and election objections alleging such comment violated the Act and interfered with a free and fair election be dismissed.

I find, however, by Tansill's June 27 promise of a wage increase effective July 1, the Company violated Section 8(a)(1) of the Act and prevented a free and fair election.

It is clear the Nevada employees' major grievance and reason for seeking representation by the Union stemmed from their belief that their wages were inadequate and local management's advice that no adjustments could be expected. Tansill and Krantzman were well aware of this when, with an election scheduled in the near future, they promised the employees a retroactive wage adjustment. A more effective means for discouraging continued employee support of the Union would be difficult to visualize.

5. The alleged July 6 threat and agency question

On the basis of my findings that Seggern's July 6 addresses to unit employees concerning the health and welfare benefits purchased by the Company through his firm for their benefit was authorized and caused by the Company in an obvious bid to play up the alleged superiority of the benefits under the company plan over those provided in the plan contained in contracts between the Union and other employers in the area and to generate fear among unit employees that those benefits would be lost if they voted for the Union in the election scheduled 12 days later, I find and conclude Seggern was an agent of the Company acting on its behalf when he addressed the unit employees on July 6.

I find, however, that Seggern's July 6 remarks to the unit employees neither violated the Act nor interfered with the election; while his comments were interpreted by listening unit employees to mean their voting the Union in would

mean loss of the company plan, I find Seggern stayed within legal bounds by stating the company plan would cease or terminate when the Union was voted in and its plan was negotiated. I therefore shall recommend those portions of the complaint and election objections alleging Seggern's comments violated the Act and interfered with the election be dismissed.

6. The alleged July 13 and 16 promises of wage increases and grant thereof

For the reasons set out in section II, N, 4. above, I find that by Krantzman's July 13 and Tansill's July 16 promises, just 5 and 2 days before the July 18 election, of substantial wage increases retroactive to July 1 (plus later increases and other upward adjustments) and the effectuation thereof the Company violated Section 8(a)(1) and prevented a free and fair election.

CONCLUSIONS OF LAW

1. At times pertinent the Company was an employer engaged in commerce in a business affecting commerce and the Union was a labor organization within the meaning of Section 2(2), (5), (6), and (7) of the Act.

2. At times pertinent Krantzman, Halliday, Misakian, Tansill, Coleman, Teague, and Rick were supervisors and agents of the Company acting on its behalf, and Seggern was an agent of the Company acting on its behalf, within the meaning of the Act.

3. A unit consisting of all the Company's selling and nonselling employees employed at its Sparks and Carson City, Nevada, locations, excluding guards and supervisors as defined in the Act, is an appropriate unit for collective-bargaining purposes within the meaning of Section 9 of the Act.

4. Since May 13, the Union has represented a majority of the Company's employees within the unit just specified.

5. The Company violated Section 8(a)(1) of the Act and prevented a free and fair election by its April 18 threat to discharge unit employees if they sought union representation.

6. The Company violated Section 8(a)(1) of the Act and prevented a free and fair election by its June 27, July 13, and July 16 promises of wage increases and adjustments of its wage scales and by its July 1 and January 1, 1978, wage increases and adjustments.

7. The Company did not otherwise violate the Act or prevent a free and fair election.

8. The aforesaid unfair labor practices and election interference affected commerce as defined in the Act.

THE REMEDY

Having found the Company engaged in unfair labor practices, I shall recommend the Company be directed to cease and desist from such practices and to take affirmative action designed to effectuate the purposes of the Act.

Having found that by such unfair labor practices the Company prevented a free and fair election, I shall recommend the election be set aside and the Company directed to

recognize the Union and bargain with the Union as the exclusive representative of the unit employees concerning their rates of pay, wages, hours, and working conditions.²⁰

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:

ORDER²¹

The Respondent, Grand Auto, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening its employees with discharge for seeking union representation.

(b) Promising and granting its employees wage increases and other wage adjustments to discourage their support of Retail Clerks Union Local 1434, Retail Clerks International Association, AFL-CIO.

(c) Otherwise interfering in its employees' exercise of their rights to form, join, or assist the above labor organization, to bargain collectively through the above labor organization, or to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection.

²⁰ I find the promise and grant of a substantial wage increase, the primary grievance of the unit employees, immediately prior to the election a sufficiently substantive prevention of a free and fair election to warrant a bargaining order.

²¹ 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.

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

(a) Recognize and, at its request, bargain with the aforementioned Union concerning the rates of pay, wages, hours, and working conditions of:

All of the Company's selling and nonselling employees employed at its Sparks and Carson City, Nevada, locations, excluding guards and supervisors as defined in the Act.

(b) Post at its places of business at Sparks and Carson City, Nevada, copies of the attached notice marked "Appendix."²² Copies of that notice, on forms provided by the Regional Director for Region 32, shall be signed by an authorized representative of the Company and posted immediately upon their receipt and 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 insure the notices are not altered, defaced, or covered by other material.

(c) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps the Company has taken to comply with the Order.

The election conducted on July 18, 1977, is set aside, and the petition filed by the aforementioned Union in Case 32-RC-45 is dismissed.

²² 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."