

**American Linen Supply Company; and Textile Service Industries, Inc. and Laundry and Cleaning Drivers, Local 256, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America**

**Laundry and Cleaning Drivers, Local 256, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and American Linen Supply Company; and Textile Service Industries, Inc. Cases 20-CA-11357 and 20-CB-3832**

March 14, 1978

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND PENELLO

On October 13, 1977, Administrative Law Judge David G. Heilbrun issued the attached Decision in this proceeding. Thereafter, Respondent Employers filed exceptions and a supporting brief, and the General Counsel filed a limited exception and a copy of its brief to the Administrative Law Judge.

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

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.<sup>2</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order, the recommended Order of the Administrative Law Judge and hereby orders that the Respondents, American Linen Supply Company; and Textile Service Industries, Inc., San Francisco, California, their officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

<sup>1</sup> We find no merit in Respondent's allegations of bias on the part of the Administrative Law Judge. There is no basis for finding that bias or partiality existed merely because the Administrative Law Judge resolved important factual conflicts in favor of those witnesses who testified on behalf of the Union. As the Supreme Court has stated, "total rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." *N.L.R.B. v. Pittsburgh Steamship Company*, 337 U.S. 656 (1949). Moreover, 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 the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf.

188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and the Administrative Law Judge's Decision, especially his explicitly articulated demeanor findings concerning the testimony of Goldberger and Silbert, and find no basis for reversing his findings.

<sup>2</sup> Through inadvertence the affirmative provision of the Administrative Law Judge's recommended Order has been omitted from the notice to employees. We shall accordingly substitute a revised notice containing the appropriate provision.

**APPENDIX**

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

WE WILL NOT refuse the request of Laundry and Cleaning Drivers, Local 256, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, to bargain with respect to employees of American Linen Supply Company that are performing the work of drivers, salesmen, or route leadmen.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights protected by the National Labor Relations Act.

WE WILL, upon request, bargain with Laundry and Cleaning Drivers, Local 256, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, in the appropriate unit as described herein and, upon further request, execute a written contract incorporating any agreement reached. The bargaining unit is:

All employees of American Linen Supply Company performing the work of drivers, salesmen and route leadmen; excluding office clerical employees, guards and supervisors as defined in the Act.

AMERICAN LINEN SUPPLY  
COMPANY

TEXTILE SERVICE  
INDUSTRIES, INC.

**DECISION**

**STATEMENT OF THE CASE**

DAVID G. HEILBRUN, Administrative Law Judge: This case was heard at San Francisco, California, during May 1977, based on cross-charges underlying consolidated complaints issued January 11, 1977, alleging, as "mutually inconsistent theories," that Local 256, Laundry and Cleaning Drivers, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, called the Union, has particularly since on or about January 15, 1976, refused to sign a written contract

embodying agreement reached through collective bargaining, and that Textile Service Industries, Inc., called the Association or TSI, and American Linen Supply Company as one of its member-employers, has since on or about April 19, 1976, refused to bargain with the Union as exclusive representative of all employees in certain appropriate bargaining units.

Upon the entire record,<sup>1</sup> my observation of witnesses, and consideration of briefs filed by each party, I make the following:

#### FINDINGS OF FACT AND RESULTANT CONCLUSIONS OF LAW

Around late spring 1975, Maureen McClain started to prepare for negotiations on behalf of labor client TSI. The employers to be served were Maryatt Industries, National Linen Service, Exchange Linen Service, and Green Glen Laundry Service, each a linen supply firm, plus American Linen Supply Company and Peninsula Industrial Laundry & Supply, each an industrial launderer.<sup>2</sup> A certain Steam Laundry Drivers' Agreement, applicable to linen supply employers, was then in effect with the Union from November 1, 1972, to October 31, 1975. Relatedly, a certain memorandum of agreement, amending an earlier industrial laundry service master agreement, was similarly in effect from November 1, 1974, through October 31, 1975. On June 22, 1975, Union President George Dillon sent written notification to TSI and each employer-member of intent to reopen contracts.<sup>3</sup>

Matters were dormant until McClain wrote Dillon on September 17, 1975, to request immediate commencement of negotiations with a partial contract proposal enclosed.<sup>4</sup> From this, an initial meeting occurred September 25. At the outset McClain, as principal management negotiator, stated that officials of both linen supply and industrial laundry firms were present as part of a multiemployer unit she would represent during renewal bargaining. Secretary-Treasurer Albert Velez, then principally representing the Union in Dillon's absence, objected to this, saying that labor contracts covering the two types of businesses had always been negotiated separately. The upshot was that all company officials stayed on Velez' tacit consent to observ-

er status for Jack Keilson, manager of American Linen (and another person from Peninsula). In the course of this meeting, Velez furnished separate written union proposals addressed toward the two contracts up for renewal. Negotiations continued through October and intensified in November. On November 18 the Union presented a final offer, which was countered by TSI on November 19. On rejection of this and by preexisting sanction, a strike commenced November 19 by employees of Exchange Linen. The following day Maryatt, National Linen, and American Linen each locked out. After this escalation a lull covered the surface of things until an exploratory luncheon meeting resulted in scheduling a further full-dress negotiation session for December 13. On this date, a Saturday, involved persons commenced meeting at the Lansing Street offices of Teamsters Official Jack Goldberger.<sup>5</sup> The parties separated themselves, with unproductive caucusing and exploratory conversation between Fastiff and Goldberger consuming most of the day. In late afternoon Sabatino injected proposals that spurred pronounced progress in the bargaining. He urged that the preexisting contract be modified only insofar as language change had already been reached on particular subjects, and the parties seek an immediate resolution of economics. Within about an hour wage, pension, and minor fringe benefits were agreed upon. Sabatino wrote down the abbreviated essence of such economics and after final tinkering resulted in strikeouts, interlineation, and added phraseology, both Fastiff and Silbert initialed the single crude sheet. Goldberger, then anxious to leave, twice remarked to Fastiff that it should be understood the agreement just concluded applied only to employees of linen supply firms. Fastiff acknowledged it did, spoke with Silbert about prompt creation of formal language, and telephoned McClain to advise of developments.<sup>6</sup> For their part, Union officials began arrangements for a membership meeting late the following morning.

This routine winding down was abruptly shattered when Fastiff (casually accompanied by Silbert) reentered the room in which his clients had spent the day. Raymond Ostrander, Maryatt's division manager, inquired whether content of the package just achieved covered American Linen. Fastiff said it did not. With this Ostrander fumed

Employers' Council, which was instrumental in reaching the Industrial Laundry contract. Overall, TSI represents many more Bay Area employers than the six embarking on this renewal bargaining.

<sup>4</sup> All dates and named months hereafter falling September through December are in 1975; those January through April are 1976.

<sup>5</sup> Goldberger, president of the joint council and officeholder in certain other Teamsters locals, had entered negotiations on behalf of the Union during October. Attorney Kenneth Silbert, involved only sporadically in the course of bargaining to that point, was also present to advise on matters of language. This particular meeting contemplated that attorney Wesley Fastiff would principally speak for management, although McClain was present when it started and remained for over an hour until illness caused her to leave. Federal Mediator Sabatino, who had entered the negotiations much earlier, was present throughout.

<sup>6</sup> The specific understanding at that point in time was for McClain and Silbert to meet in law offices of the Fastiff firm at 10 a.m. the next day, and draft what was just resolved on economics plus the noneconomic contract changes previously agreed to October 28 as reflected in bargaining notes made that date by Velez. Intent was to allow lawyers upwards of an hour in which to produce fully drafted proposals for ratification vote on December 14 by affected union membership.

<sup>1</sup> Errors in the transcript have been noted and corrected.

<sup>2</sup> A purpose of the Association is to represent its employer-members in collective bargaining and administration of contracts with labor organizations. American Linen Supply Company, a corporation hereafter called American Linen, has at all times been an employer-member of the Association. It is engaged in rental of garments to mechanics from offices and a plant located in South San Francisco, California, annually providing goods and services to commercial enterprises in the San Francisco area which each, in turn, meet a jurisdictional standard of the Board other than nonretail indirect inflow or indirect outflow. I find that TSI and American Linen are each employers within the meaning of Sec. 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Sec. 2(5).

<sup>3</sup> This notice was also dispatched to several other employers, including Hospital Linens, and a copy was provided David M. Dooley of the Laundry and Linen Supply Board of Trade. Such recipients are occasionally referred to in the record, however no major significance arises therefrom. In addition, Peninsula Industrial Laundry and Green Glen Laundry, each a respective signatory to the Industrial Laundry and Steam Laundry contracts, eventually departed the ensuing negotiations. TSI had been formed in 1974. For certain purposes it supplanted entities known as Industrial Employers and Distributors Association (IEDA), which had represented employers in negotiation of the Steam Laundry contract, and the Peninsula

that it should have, and that the blundering failure to have it that way would leave Keilson unhappy. Ostrander angrily hurried away to telephone Keilson, and in the moments following Silbert overheard a motion voiced among the remaining employers for a meeting in the Fastiff office the next day to see what could be done.<sup>7</sup>

At 10 a.m. on December 14, Fastiff, McClain, Ostrander, Keilson, Herman Miller, general manager of National Linen, Mike Marini, an executive official of Exchange Linen, Silbert, and Goldberger all assembled at the California Street law offices.<sup>8</sup> McClain and Silbert immediately commenced drafting and produced an amount of material sufficient to become three legal-size pages of typing. As this occurred, Fastiff importuned Goldberger to hear out his clients. Goldberger agreed and discussion ensued in another portion of the suite which Silbert never approached or did so only in passing. Goldberger listened as requested. Marini was most vocal, arguing the contract should cover all employers that had demonstrated solidarity to that point and specifically American Linen. Fastiff spoke of resolving an identified issue of commission earnings for American Linen drivers by future meetings with Goldberger, who was willing to do this while on other points only offering to report employer views to officials of the local union. From this, Fastiff was stimulated to request that the drafting team couch additional language appropriate to the industrial laundry contract. About this time Goldberger left for the union hall. The additional drafting was done, becoming an unnumbered fourth page reading as follows:

Employees employed in the position of route operator at American Linen, as of November 1, 1975, shall have the option of remaining covered by the present commission arrangement currently in effect at American Linen or receiving the wage structure agreed upon by the linen supply companies and the Union.

Employees hired to replace route operators who are discharged for just cause or who voluntarily terminate their employment shall be hired at the wages agreed to by the linen supply companies and the Union.

Current route operators shall not be discharged disciplined or otherwise discriminated against, for the purpose of causing them to accept the wage structure applicable to linen supply companies.

*Route Territory Protection.*

The route territories currently assigned to route operators shall in no way be affected or reduced by this agreement.

All of the pages so drafted were stapled together as a sheaf headed "Memorandum of Understanding" and

<sup>7</sup> Ostrander's surrogate concern for Keilson was well founded. At that point in time, American Linen had been charged (in Case 20-CA-10867) with unlawfully locking out employees and investigation on the point was proceeding. Had TSI settled separately with the Union along lines envisaged by Fastiff, this would arguably have provided support for rationale of the charge.

<sup>8</sup> Goldberger would not have been there but for a telephone call requesting his presence because the Saturday agreement had "blown up." This call, received by him after leaving Lansing Street late the prior afternoon, was made either by Fastiff or Sabatino.

<sup>9</sup> A significantly material difference between the Steam Laundry and

signed by McClain and Silbert. This was taken to the union hall around noon. As events of the morning unfolded Goldberger had telephoned back to Fastiff, inquiring whether the employer position was to expect a single contract covering all involved employees. Fastiff asserted this was their position. Goldberger spoke with Silbert during this same connection, asking that he so reconfirm with Fastiff. This was also done, and at his end Goldberger informed Dillon of Fastiff's position.<sup>9</sup> The meeting of union members proceeded with 13 employees of industrial laundry firms in a small office and upwards of 100 linen supply drivers in the auditorium. Dillon provided industrial laundry drivers the fourth sheet of the memorandum of understanding, requesting that they discuss it and vote on its terms. He then conducted a ratification meeting from the auditorium stage on substantive proposals as set forth in the memorandum of understanding's first three pages. In the process, and as somewhat enlarged upon by Goldberger from the stage, Dillon characterized negotiations as difficult and advised that industrial laundry drivers were without any employer proposal to increase compensation. A motion from the floor contemplated that linen supply drivers vote to accept their contract, subject to the industrial laundry employees reaching a separate one satisfactory to themselves. Vote was taken on this motion and it overwhelmingly passed. Dillon returned to the small room and found the industrial laundry employees had voted unanimously to reject what appeared on the unnumbered fourth page of the memorandum of understanding. Once these matters were crystallized, Goldberger telephoned for Fastiff and had his call answered by McClain. She stated Fastiff was no longer at the office, nor was Silbert, whom Goldberger next asked to speak with. Upon this, Goldberger advised McClain of developments at the ratification meetings, adding significantly that employees would appear for work the next day. This advice was sufficient to end the strike/lockout situation as all employees resumed operations on December 15.

Cross-communication about happenings of the eventful weekend took several forms. At the operating level, American Linen driver-salesman Bernard Gross conversed with Keilson that Monday concerning the ratification meeting of industrial laundry employees. He stated the vote "went 13 to zero against the contract" as this group of employees relatedly formed a willingness to "go back to work [while we] go on negotiating." Keilson, while having no recollection of a vote being quoted to him, conceded that some form of rejection decision was one of the "conflicting stories" emanating from employees. In early January, Dillon conversed separately by telephone with both Ostrander and Keilson in context of the basic collective-bargaining relationship (although these calls had

Industrial Laundry contracts is the mode of commission earnings applicable to drivers. Controversy between the parties over whether, and how, this difference should be affected is actually at the root of the case. The distinction has traditionally resulted in linen supply drivers earning substantially less overall pay than industrial supply drivers. At the "final offer" stage of negotiations, the parties put forth guarded oral proposals on the point in an effort to entice agreement at that time. The subject remained of such fundamental concern that Dillon once characterized the "grandfathering" prospect which would tie industrial drivers' compensation to a linen supply wage structure as "ruin[ous]" of the industry.

impetus from matters treated in the memorandum of understanding). On both occasions Dillon said pointedly there was no contract in effect, advice which Ostrander at least grumblingly disputed on grounds the attorneys had "signed [a] contract." As for these attorneys McClain had vacationed until early January, while during the late December period Silbert began hearing that the employers claimed a binding contract had been achieved. This awareness arose both from "rumors" filtering back and the implications of a letter dated December 17, written to the Union by the peripherally involved Dooley. The opposing positions manifested fully in meetings held during early 1976, particularly the second and third of these on February 13 and March 15.

On February 13 a major meeting was held to foster some resolution of the then obvious controversy between the parties. For the first time, Fastiff openly and vigorously maintained that a contract was in effect based on Silbert's execution of the memorandum of understanding on December 14 (coupled with events scant hours later which by the Association's version of things validated this claim). On this occasion Silbert argued back that he had only transposed thoughts into formal wording, and such language as was comprehensively proposed on December 14 went unaccepted. The parties did, however, debate commission proposals respecting the industrial laundry drivers and after intervening route tour by Fastiff and Goldberger met again on March 15. This time Fastiff asked for the Union's final proposal on American Linen and Dillon, working with Silbert, rearranged the sought-after 15-percent commission basis onto a different time frame of the future. Their final product was rejected in the context of Fastiff's continuing theme. By this time Case 20-CB-3832 was extant, the charge having been filed March 9. On April 19, McClain wrote Dillon with the following comprehensive recapitulation:

This letter is in response to the Union proposal submitted on March 15, 1976, in the above-referenced matter. Textile Service Industries, Inc. (hereinafter the "Employer") reiterates its stated position that the December 14, 1975, Memorandum of Understanding concluded between Textile Service Industries, Inc., on behalf of American Linen, Exchange Linen, National Linen and Maryatt Industries and Local 256 constitutes a final and binding agreement between the Union and the Employer in settlement of the 1975 negotiations.

Any disputes which arise subsequent to the conclusion of a contract concerning the interpretation or application of the Agreement are properly submitted to arbitration under the final and binding grievance/arbitration procedure set forth in Section XVII of the Agreement. The Employer remains ready and willing to submit any and all disputes arising out of an interpretation of the Memorandum of Understanding, including any disputes relative to the commission structure of American Linen drivers, to arbitration. The Employer hereby requests that the Union proceed to submit any questions which it considers outstanding to the arbitration procedure.

In specific response to the March 15, 1976, proposal of the Union, it must first be noted that the Union's proposal is not in accordance with the Memorandum of Understanding. The Memorandum of Understanding, constituting a complete settlement between the parties, included a verbal agreement to the effect that Wesley J. Fastiff and Jack Goldberger would discuss both whether any change in the commission structure of American Linen drivers was necessary and if necessary, what such alteration would be. Any and all proposals relative to leadmen wage rates, pension benefits and discharge are impermissible as such issues were settled by the December 14, 1975, agreement. Additionally covered in the December 14, 1975, Memorandum of Understanding is the binding agreement to place drivers at American Linen on an hourly wage basis when such drivers are either newly hired or select an option to be so compensated (page four of the Memorandum of Understanding). Any discussions outside the scope of the commission structure are therefore not permissible under the terms of the Memorandum of Understanding.

The Employer has continued to fulfill all obligations arising from the December 14, 1975, contractual agreement. That agreement included the preliminary obligation to discuss whether there is any factual basis for a change in the commission structure. Wesley J. Fastiff of this office has spent considerable time evaluating the commission structure at American Linen as compared to the wage rate received by employees at the remaining three Employers' locations. Based upon the evaluation of Mr. Fastiff and discussions held with Mr. Goldberger, it is the Employer's opinion that there is no need for a change in the present commission structure. This position is particularly well-founded when one compares the average weekly rate of earnings of commissioned drivers at American Linen with those of drivers at the other three places of business. The American Linen drivers receive respectively \$522.50 and \$324.50 per week in opposition to the \$272.50 received by drivers at the other three Employer locations. Given the fact that the American Linen drivers are presently compensated at a much higher rate than other drivers for equivalent work, it is the Employers' position that discussions have shown that the commission structure should not be changed.

If there is any disagreement with the Employer's position, we request that the Union raise such opposition in the proper forum; namely, arbitration. The Employer is also willing to further discuss this matter at any mutually acceptable time and place.

The stated findings of fact embody several major resolutions of credibility. These refer most prominently to the day of December 14, although other specific conflicts in testimony are treated where material to ultimate adjudication. Preliminarily, it must be observed that certain pairings in this saga resulted in sharp ideological or cultural contrast. In addition, the spirit of dealings was such that ordinary workings of human nature soon generated some defensiveness among participants. For practical purposes, dealings originated with McClain's crisp for-

malistic letter of September 17, leading as it did to mutually testy skirmishing by telephone with Velez over how protocols of opening negotiations would proceed. Early on, a sentiment welled up in union representatives that TSI's strategy was to junk long-established informality existing between essential parties of interest, and this consequence grew ever more real when their mail brought repeated scoldings from McClain as to tempo, tone, and trend of the bargaining process.<sup>10</sup> On a more personal level, Dillon failed to conceal some measure of dismay with how McClain projected herself.<sup>11</sup>

This background must be fully understood, lest the assessment of testimonial reliability appear formulated routinely. The critical witness was Goldberger. I find him superbly credible, actually possessed of impeccable recall, and so steeped in the collective-bargaining process that every nuance he experienced during this course of negotiations was encapsulated in a well-disciplined memory process. Aside from fundamental demeanor factors of assurance, composure, projection, emphasis, and consistency, Goldberger answered from the viewpoint of one long trained to remember salient events until there was no need for continued retention. Such acumen does not necessarily leap from these pages of transcript. But in the harsh reality of a hearing situation his version of the facts, from beginning to end, gave every appearance of resounding accuracy. This obtains, even though one must sometimes provide gloss to his Runyonesque manner of speaking.<sup>12</sup> The process of evaluating Silbert's testimony differs essentially in kind, not in degree. He astutely fulfilled each role assigned him over the passage of many months. He talked formally or informally as the occasion required. He drafted with precise care and, most importantly, he recalled with impressive detail just what was said to him by various adversarial speakers. Velez displayed an excellent recollection and Dillon, while less so as he waffled on peripheral points, sufficient to assuredly accept his testimony of at least never assenting to any manner of single-employer bargaining, and that he pointedly informed both Ostrander and Keilson by very early 1976 that they were yet uncontracted with his organization.

Management's case rests pivotally on the testimony of McClain. Assessment of her credibility is intertwined with an understanding of how negotiations evolved from the employer side. Personifying a new elan to spearhead the reconstituted force TSI had become, McClain foresaw the October 31 date as one upon which an entire strategy could hinge. It conveniently permitted assertion of broadly based, multiemployer bargaining and, relatedly, allowed formulation of strike contingency planning. This became

<sup>10</sup> This characterization is based on letters dated during September and October that were larded with vexing phraseology, including "intransigence," "unilaterally [and] absolutely refused," "unreasonable," "inflexible position," and "egregious breach of [Dillon's] duty to bargain in good faith." This is not to say that provocation was not occasionally present to which McClain might reasonably react, nor that her rhetoric was beyond the bounds thought in some quarters to constitute effective labor relations tactics.

<sup>11</sup> A spectre of male chauvinism stands just outside the facts of this case. While routinely denied as a factor, it was nonetheless within the awareness of counsel for TSI and certainly a matter of profound subjective exasperation to McClain. I expressly avoid any finding of fact on the point, it sufficing to note the observable truth that Dillon and Goldberger were each,

the chosen path, and origin of a preconceived notion that adroitly timed unleashing to labor relations weaponry would more than suffice to rout the Union. In several significant regards, I believe McClain was oblivious to realities of the collective-bargaining process. At the outset on September 25, her claim of multiemployer bargaining coextensive with TSI membership then present was rebuffed. When voiced anew with Dillon and Goldberger, the notion was simply ignored as internal procedures of the Union led to timely strike sanction for its members employed by linen supply firms. Proceedings on a concurrent UC petition gave McClain leverage on the disputed subject of supervisors but had no other relevance bearing on negotiations generally. Granting this and other developments, the essential goal of contract settlement remained unfulfilled as of December 13.

The entire case centers on that weekend. Fastiff was cast into the role of management's chief spokesperson, with only the briefest orientation of a luncheon meeting several days earlier. His inappropriate gropings for some manifest role brought brief illusion of success. The satisfaction lasted scant minutes, and dissolved into baleful embarrassment as his own clients brüited loudly over fundamental misconception of objectives. Ironically, these extremes straddled the occasion of Fastiff's telephone call to McClain, gloatingly, albeit baselessly, advising of apparent settlement brought readily by his involvement of only 1 day.<sup>13</sup> On December 14, McClain fulfilled her major responsibility of the morning, participation in drafting language of contract proposals. As this proceeded, she also knew that some assemblage of union members at least "akin to ratification" was imminent. Further, her movements of the morning brought intermittent involvement with Fastiff and clients as they clustered inveiglingly around Goldberger. At the end she was the only attorney left when his final call arrived. Consistent with the dynamics of various personal involvements that day, two others (Fastiff and Silbert) were first asked to be spoken with. Only then did Goldberger transmit news from the union hall. To comprehend what was being said, the hearer needed some semblance of understanding what actually transpires in the rowdy, unparliamentary atmosphere of a Sunday membership meeting where upwards of a hundred persons are gathered and a major strike situation has reached 4 weeks' duration and is threatening to impinge on the year-end holiday season. Goldberger's words were plain enough.<sup>14</sup> She claimed to have heard something

in relation to McClain, not only of the other sex but of at least another generation.

<sup>12</sup> See "Damon Runyon," *Twentieth Century Authors*, Kunitz and Haycraft, The H. W. Wilson Company (1942), pp. 1211-12.

<sup>13</sup> Notably this was the second time in consecutive months that a managing partner of the law firm had claimed settlement of the knotty negotiations. In early November, senior partner Arthur Mendelson reportedly also made a contract upon only limited effort. This phantom agreement, one oddly enough the supposed repudiation of which was not seriously protested, stands as but another indication of confusion, imprecision, and Pollyannaism among TSI's representatives. It was never more than pure fiction, a conclusion I base on Goldberger's typically credible denial.

<sup>14</sup> His recollection of her response was prompted by use of an affidavit.

radically different.<sup>15</sup> In this I am convinced she is totally mistaken and therefore may not be credited as to this crucial exchange. Throughout the time since September, McClain had been preoccupied with a rigid bargaining strategy, one designed to legitimize a lockout by employers should the opportunity present itself. In the process, subtle personal and institutional factors, upon which an extended course of bargaining is actually resolved, were largely ignored. These factors, unglamorous as they might seem, required methodical attention to the real issues in dispute and a degree of attentive participation that permitted actually hearing what the other side said, free of overoptimism that their curmudgeonly persistence had somehow withered. But Goldberger, who started learning the process fully a decade before McClain was even born, knew well and clearly what was to be patiently achieved.<sup>16</sup> He spoke only of the strike/lockout dynamics, having just seen a vote among members of the local union offering to do no more than return to work. This would have had no necessary effect on continuation of the TSI lockout had the Association so chosen, except that McClain mistakenly took his words to be saying contract agreement was confirmed. Resumption of operations followed as she disseminated her perception to managers of the Association's employer-members. The "concrete preparations" formulated months earlier, lay crumbled beyond recognition. This credibility resolution is harmonious with other related events involving McClain, particularly insofar as I reject her testimony that any union negotiator assented to multiemployer bargaining, or that Goldberger was receptive on December 14 to some form of arbitral conclusion for the industrial drivers' commission issue.

Fastiff's testimony is critical only regarding factual issues of whether Goldberger joined the notion of superimposing an arbitration process to hoped for contract agreement on all other matters. I declare first that, as to issues of this case generally, Fastiff was not a reliable witness. Whether from inattention, overcommitment, or confusing this with other bargaining chronologies, I find little of value in his recollection of events. By placing Goldberger still at the December 13 meeting, when Ostrander's outburst occurred, is pure error, and as to December 14, he is utterly unconvincing with respect to a claim of plainly telling

Its substance, that of routine hope that "we can work out the industrial agreement" was mere civility at most since Goldberger well knew this was yet to be done as to the paramount subject of commission earnings. I expressly attach no significance to this same affidavit containing reference to the conversation as one originating in a telephone call to Fastiff.

<sup>15</sup> Her testimony was that Goldberger said the agreement was accepted, and the parties had "a deal" without conditional or tentative qualification.

<sup>16</sup> The comparison of this sentence is taken from "Martindale-Hubbell Law Directory," vol. I (1977), p. 673, read in conjunction with tr. p. 414.

<sup>17</sup> A separate factual point relates to whether Goldberger telephoned Fastiff around midday on December 14 to verify that TSI insisted on one contract for all. Fastiff "absolutely believed" this did not occur, and for the same reason as I unfavorably assess his testimony in general this denial is discredited. Aside from factors of probability and demeanor, the contrary was adequately established by testimony of Goldberger, Silbert, and even Dillon (who eavesdropped the conversation — as he did the later one with McClain). Curiously, the statements exchanged during this conversation were not detrimental to TSI's case, and constitute a basis for saying that even though the Union had anxiously steered a "major concession" out of negotiations on December 13, they were still cautious enough to inquire whether this stood up into the next day. When Fastiff denied that it did (by saying TSI would only abide a contract covering all members), this posture

Silbert that a "side agreement" was achieved on the commission problem and this would ultimately become the final step of contract resolution. This leads to the fundamental question of whether he effectively extracted such a concession from Goldberger in the hour or so the latter was at the law firm's office that morning.<sup>17</sup> I find that Fastiff did mention arbitration, but the prospect went no further than that. Goldberger's role of the morning must be kept in perspective. He was at these offices only in an ambassadorial role, cajoled into discussion with his adversaries and badgered in the process by unwelcome verbiage from an intensely disliked Marini. Such ambience would hardly nurture "side agreement" on the controversial technique of using arbitration to resolve an interest dispute. Fastiff's suspect testimony bears seed of its own destruction, when it is further noted that he hopelessly mischaracterized the phenomenon of interest arbitration. Such a procedure, primarily a creature of public sector employment and rare in effectuation elsewhere,<sup>18</sup> requires criteria, commitment, and some clear mechanism of effectuation. Fastiff averred that under this arbitral approach, unresolved matters "would go to the contract grievance procedure" and it was "correct . . . that grievance procedure and arbitration would be the final resort in event that agreement could not be reached [with] Goldberger." The question becomes "what contract"? Surely not that of linen, one prosaically setting out matters cognizable only in grievance arbitration. Nor the expired industrial contract, containing an arbitration clause which was actually sought to be repealed by the Union. The quandary arises artificially because no arrangement of this type was remotely viable, and Fastiff's self-servingly labeled "novel suggestion" nothing more than fanciful legerdemain. His proclivity for mischaracterization was further illustrated by garbled testimony about Goldberger's supposed role in overall dealings, and gratuitously imprecise projection of how the Union's refusal to accept offers would cause employees to "stay on strike and that would be the end of it." Two final observations before ending treatment of Fastiff's recollection. Ostrander, himself a rather careful witness and possessed of good memory for detail,<sup>19</sup> recalled how on December 14, Goldberger did not concede American Linen would be covered by any agreement reached, only that he would see Dillon about it

was tacitly accepted for purposes of the Union's own internal ratification process (keeping in mind that it never relented from pressing for customary separate contracts over the two distinct industry functions).

<sup>18</sup> On a national basis, one well-publicized instance of genuine interest arbitration is the basic steel industry's Experimental Negotiating Agreement (see 94 LRR 301 (1977)). The process is closely circumscribed by labor management factions and the Board itself, which holds it to be a nonmandatory subject of bargaining under the Act. *Columbus Printing Pressmen Union No. 252 (The R. W. Page Corporation)*, 219 NLRB 268 (1975).

<sup>19</sup> Ostrander unconvincingly denied the testimony of Dillon concerning their telephone conversation in early 1976. As to this I accept Dillon's version. On another point, a particular interrelationship that arises from Ostrander's testimony should be noted. He expressly verified that Keilson had, prior to January 15, remarked how rejection of proposals by industrial drivers was among the "conflicting stories" he (Keilson) was hearing. McClain has testified that following Goldberger's sobering assertion on January 15 about "the industrial portion [not being] accepted," she caucused with Fastiff and clients, then returned to contend "this was the first time we had heard there were any problems with ratification." The configuration casts further serious doubt on McClain's credibility in both

(Continued)

before final commitment. To testify otherwise that an experienced trade unionist would cavalierly agree in this fashion is nonsensical, particularly where this is coupled with misstatement of principles. Finally, and most significant, there was no suggestion that the claimed agreement for arbitration be reduced to writing. Fastiff spoke to this point in terms of honorable assurances, a portion of his testimony that warrants comment only to say that every probability of the situation would have called for just the opposite approach.

Other witnesses for the Association contribute nothing of value to its case. Herman Miller had but sparse recollection of happenings in his presence, while Keilson's breeziness did little to conceal a recollection so faulted in confusion as to be sternly rejected. Of nonattorneys, Ostrander was by far the most impressive; however, such specifics and flavor as he added skirt essence of the case. The incisive manner in which I resolve credibility is not to be taken as inferring deliberate falsehoods have been advanced. Rather, I believe quite assuredly that the factual version adduced to support Case 20-CB-3832 departs from what really occurred because of programmed suggestibility emanating from expectations rooted in superficially artful strategies, and personal disinclination to be an effective listener.

In summary form, the course of bargaining was not particularly complex or unique. The Union sought generous concessions in each of the contracts it administered. Negotiations rather automatically focused on coverage of the numerically larger linen group. By October 28 the talks yielded sufficient partial agreement on certain noneconomic subjects that Velez made written note of highlights. A significant bargaining session occurred November 5 at which Silbert plainly squelched the idea of considering the talks jointly applicable to TSI's total membership (as here represented) and some exchange was made on the subject of industrial drivers' commission. However, the topic foundered as the Union pressed for uniformity with Peninsula at 15 percent of an appropriate base in route sales. Strike sanction was granted the linen group, and crisis bargaining over November 18 and 19 brought the parties to impasse. The ensuing strike/lockout left a crippled industry and over 100 members of the Union idle. Both sides negotiated vigorously on December 13 and were mutually anxious to settle. Goldberger, faithful to his credo of devoting fullest assistance to the cause, appeared innocently at Fastiff's office on December 14. He was primarily rewarded with harangue from Marini and Fastiff's frantic cajolery, relieved only by Silbert's cool inquiry of whether the Union at least desired a lawyer-like rendering of "grandfathering" language with respect to industrial laundry drivers' commission wage structure. Goldberger's uncomfortable involvement ended with a call to his fellow unionist Dillon, advising that he would shortly be at the hall with employer proposals. Happenings soon to

qualitative terms and respecting the associated ability to have comprehendingly communicated with others over subtleties of this case.

<sup>20</sup> In its brief, the Association cited many cases standing for the proposition that subsequent dealings may constitute evidence of how a collective-bargaining agreement is reached. I have considered each of these and find all are fully distinguishable on the facts. Here, the entire course of 1976 dealings was amply explainable in terms of ordinary phraseology of business correspondence, an official position of the Union that was extant

follow at union premises created, as a matter of law, a complete agreement for the linen supply firms *on condition subsequent* that industrial drivers be satisfactorily contracted *and* that TSI would later come to accept such bifurcation. Fulfillment of a condition was found not met by revelations when Dillon stepped from the large hall to the smaller meeting room. Thus tentativeness of the linen contract prevailed while the other awaited a negotiated resolution. At this point in time, union functionaries seem to have comprehended the TSI position better than its own counsel. I say so because they clearly posed choices and subchoices to their members, free of the simplistic notion that refusal to agree on a broader, one-contract level as demanded by the Association necessarily meant that economic warfare of the past 4 weeks would continue. I need not speculate on what situation would have obtained were TSI not to have dissolved its lockout. Whatever misperceptions caused this are irrelevant to decision here on issues that address only Sections 8(a)(5) and 8(b)(3) of the Act. The hasty resumption of operations, effectuation of immediate wage and benefit changes, and rebirth of basic dealings within a recognized collective-bargaining relationship hold no connection to the key finding that nothing more than one conditional contract evolved from this untidy effort of so many.<sup>20</sup>

Accordingly, I render as conclusions of law that TSI, and its employer-member American Linen, by refusing to bargain with the Union upon request, have violated Section 8(a)(5) of the Act, and that the Union has in no manner violated the Act as alleged.

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

#### ORDER<sup>21</sup>

The Respondents, Textile Service Industries, Inc., and American Linen Supply Company, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain with Local 256, Laundry and Cleaning Drivers, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, in regard to wages, hours, and other terms and conditions of employment for employees of American Linen Supply Company employed in an appropriate bargaining unit as performing the work of drivers, salesmen, and route leadmen at the South San Francisco facility, but excluding office clerical employees, guards, and supervisors as defined in the Act.

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

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

no later than January 8, and significance of at least the Union's unfair labor practice charge filed April 9.

<sup>21</sup> 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.

(a) Upon request, bargain with Local 256, Laundry and Cleaning Drivers, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, relative to the bargaining unit described in paragraph 1(a) above and, upon further request, execute a written contract incorporating any agreement reached.

(b) Post at its South San Francisco, California, place of business copies of the attached notice marked "Appendix."<sup>22</sup> Copies of said notice, on forms to be provided by the Regional Director for Region 20, after being duly signed by Respondents or an authorized representative, shall be posted by it immediately upon receipt thereof, and

<sup>22</sup> 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

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 Respondents to ensure that such notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the consolidated complaint in Case 20-CB-3832 be severed and dismissed in its entirety.

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."