Westinghouse Electric Supply Company (WESCO), a Division of Westinghouse Electric Corporation *and* Warehouse Employees Union Local 570, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 5–CA–8377

September 27, 1977

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND MURPHY

On June 14, 1977, Administrative Law Judge Marvin Roth issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief and the General Counsel filed a brief in 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 briefs and has decided to affirm the rulings,[1] findings,[2] and conclusions[3] of the Administrative Law Judge and to adopt his recommended Order as modified herein.

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, Westinghouse Electric Supply Company (WESCO), a Division of Westinghouse Electric Corporation, Baltimore, Maryland, its officers, agents, successors, and assigns shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraphs 1(b) and (e) and reletter paragraphs accordingly.

2. Insert the following as paragraph 1(e):

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

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

[1] We do not adopt the Administrative Law Judge's finding that Respondent violated Sec. 8(a)(1) of the Act by promising benefits to employee Miller inasmuch as such a violation was not alleged in the complaint, as amended, and the matter was not fully litigated.

[2] 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.

[3] The Administrative Law Judge recommends a bargaining order remedy which extends beyond the warehouse employees unit in the instant case to all units at all of Respondent's facilities. There is insufficient basis for such a broad remedy. Therefore, we shall issue our usual order in this type of case with respect to the violation of Sec. 8(a)(5). We shall, however, require Respondent to cease and desist from "in any other manner" interfering with, restraining, or coercing employees in the exercise of their Sec. 7 rights, rather than "in any like or related manner" as recommended by the Administrative Law Judge. Respondent's attempt to rid itself of the Union as the bargaining representative of the unit employees warrants the inclusion of such a remedial provision in our Order.

APPENDIX

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

After a hearing in which all parties had an opportunity to present their evidence, The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post this notice and to carry out its provisions:

WE WILL NOT refuse to bargain collectively with Warehouse Employees Union Local 570, as the exclusive bargaining representative of our employees in the following appropriate unit:

> All warehousemen, including countermen, employed at our Baltimore, Maryland, location but excluding truckdrivers, janitors, service department employees, professional employees and supervisors as defined in the Act.

WE WILL NOT interrogate employees concerning their own or other employees' attitude toward said Warehouse Employees Union or any other labor organization.

WE WILL NOT solicit employees to sign decertification petitions, to abandon said Union, or any other labor organization, as their bargaining representative, to solicit their fellow employees to abandon such labor organization as their representative, or to report on the attitude of any employee toward a labor organization.

WE WILL NOT threaten employees that we will unlawfully refuse to bargain with said Union, or any other labor organization, which is the lawfully designated or selected representative of our employees in an appropriate unit.

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

WE WILL recognize and, upon request, bargain collectively with the above-named Union as the exclusive representative of all employees in the

appropriate unit described above, with regard to rates of pay, hours of employment, and other terms and conditions of employment, including the terminations of Robert Miller and Brightly Stewart, and, if an understanding is reached, embody such understanding in a signed agreement.

WESTINGHOUSE ELECTRIC SUPPLY COMPANY (WESCO) A DIVISION OF WESTINGHOUSE ELECTRIC CORPORATION

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge: This case was heard at Baltimore, Maryland, on April 5, 1977. The charge and amended charge were filed, respectively, on January 20 and February 16, 1977, by Warehouse Employees Union Local 570, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called the Union). The complaint, which issued on February 17, 1977, and was amended at the hearing, alleges that Westinghouse Electric Supply Company (WESCO) (herein called the Company or Respondent), violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended. The gravamen of the complaint is that the Company allegedly has unlawfully refused to bargain with the Union, the incumbent representative of a unit of the Company's employees, and has instead engaged in an unlawful course of conduct designed to undermine the Union's status, thereby tainting any asserted good-faith doubt concerning the Union's majority status. The Company's answer denies the commission of the alleged unfair labor practices. All parties were afforded full opportunity to participate, to present relevant evidence, to argue orally, and to file briefs.

Upon the entire record in the case[1] and from my observation of the demeanor of the witnesses, and having considered the arguments of counsel and the briefs submitted by General Counsel and by Respondent, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Company, a Pennsylvania corporation, is engaged in the sale of electrical supplies and equipment to industrial, commercial, and construction enterprises, *inter alia,* at its Baltimore, Maryland, branch, the location involved in this case. The Company, annually receives at its Baltimore branch, in interstate commerce, materials and supplies valued in excess of $50,000 from points located outside the State of Maryland. I find, as the Company admits, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

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

III. THE BARGAINING UNIT INVOLVED

Since 1953, and until the events which gave rise to this case, the Union was recognized as the collective-bargaining representative of a unit of the Company's employees consisting of all warehousemen, including countermen, employed at the Company's Baltimore branch, but excluding truckdrivers, janitors, service department employees, professional employees and supervisors as defined in the Act. At all times material, and more specifically, from October 12, 1976, until March 1977,[2] the unit consisted of four employees: Working Warehouse Leader Robert Miller, Receiving-Shipping Clerks Robert Farran and Brightly Stewart, and Counterman Joseph Esposito. Stewart was the union shop steward. The Company and the Union were parties to a series of collective-bargaining contracts covering the unit, the most recent of which was executed on February 10, 1975, effective from January 1, 1975, through December 31, 1976. The contract provided for a union shop and checkoff of union dues. All four employees were company employees and union members of long standing. Robert Farran, the employee with the least seniority, had been working for the Company since August 1973. All four remained union members as of the date of this hearing (April 5), including Miller and Stewart, whose employment had terminated on March 5 and 29, respectively. At no time did any of the employees attempt to quit the Union, or request revocation of their checkoff authorizations, even after the contract expired. Rather, the Company, by Branch Manager Henry Einolf, notified the employees on or about March 1, that checkoff would be terminated.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Union's Request for Contract Negotiations and the Company's Response*

On October 12, the Union sent a letter to Einolf notifying the Company of its desire to terminate or modify the existing contract, offering to meet for the purpose of negotiating a new or modified contract, and indicating that the Union was in the process of preparing its proposal. By letter of October 18, Einolf acknowledged the letter and requested receipt of the Union's proposal "as soon as possible." By letter of November 18, Union Secretary-Treasurer Anthony Monti submitted the Union's proposals, and requested that Einolf contact Monti for the purpose of commencing negotiations. The proposals were in sum, for a 1-year contract, $1 wage increase for each employee, a cost-of-living clause, two additional holidays, a self-contributory pension program, and retroactivity to

[1] I hereby grant General Counsel's unopposed motion to correct the transcript to reflect that Einolf's affidavit was admitted into evidence as G.C. Exh. 8.

[2] All dates herein refer to the period from October 1976 to April 1977, unless otherwise indicated.

January 1, if negotiations went beyond that date. Monti inadvertently failed to indicate that the proposed wage increase referred to the hourly rate. Having received no response, the Union, by Business Representative Robert Turner, telephoned Einolf in early December and requested negotiations. Einolf told Turner that other corporate officials were going over the proposals, and "as soon as it got back" to him he would be in touch with Turner. Einolf made a reference to the wage increase proposal, i.e., whether it was hourly or weekly, which Turner in his testimony described as sarcastic and which Einolf described as joking. In any event, Einolf understood the proposal to be for an hourly increase. Turner asked for retroactivity if negotiations went beyond December 31.[3] Einolf agreed. Turner asked for a confirming letter. Einolf queried why he couldn't simply tell the employees. Turner renewed his request, and Einolf agreed to send a confirming letter on retroactivity. In fact, he never did, although Turner renewed his request in their next telephone conversation which took place in late December. Einholf initially testified that Turner asked for and he agreed to retroactivity, and that he could not recall anything else being said. However, in response to a leading question from company counsel, Einolf admitted that he had promised to send a confirming letter. This was not the only instance in which Einolf changed his testimony as to a material matter.

Einolf's son died on January 3. Einolf remained out for the balance of the week, was away from his office on company business from January 9 through 11, and returned to his office on Wednesday, January 12. Turner telephoned Einolf's office in the second week of January and was told that his son had died, which was true; but was not the reason for his absence during the first part of that week. After this call, Turner and Steward Stewart discussed their mutual concern over the fact that negotiations had not yet begun, although the 1975–76 contract had expired. Turner called again and this time reached Einolf, who told Turner that he had heard from his supervisors and would have a proposal sent to him. No such proposal was ever sent. In fact, at least according to the testimony of Einolf, he never received any substantive advice from other company officials on contract proposals. Rather, the only thing he received from them were forms for a decertification election, but Einolf did not disclose this to Turner. At this point, Turner requested the assistance of Union Business Representative Charles Stansbourge, who had more experience in that capacity than Turner. On January 17, Stansbourge telephoned Einolf's office and was told that he was not in. He tried again on January 18 and got the same answer. On each occasion he first identified himself as a union representative. In the meantime, on January 17, Stansbourge heard from Steward Stewart of rumors that there might not be negotiations, and, on January 19, Stewart reported that the Company was saying that there was going to be an election. Union Officials Stansbourge and Monti then went to the Company's facility, and were again told that Einolf was not in. They returned to the union hall, again called Einolf's office, getting the usual answer, and left a message that, if they received no response, they would pull out the employees.[4] At this point (it is not clear who called), Einolf told Stansbourge that there would be no negotiations because the Company had filed a petition for a Board election. At no time from his receipt of the Union's proposals in November until his January 19 refusal to negotiate did Einolf communicate or even attempt to communicate with the Union.

Einolf's attempted explanations of the Company's evident procrastination and ultimate outright refusal to bargain were pervaded with inconsistencies and inherently implausible testimony. His testimony constituted a virtual implied admission that the Company had intentionally avoided negotiating with the Union even prior to December 30 when, according to Einolf, he first talked to employees Miller and Farran about an election. Einolf testified that as branch manager he had total and complete responsibility for the branch, including collective bargaining. He further testified that on January 18, acting on his own initiative, he drafted counterproposals which he intended to submit to the Union and which activity took him a total of one-half hour. In light of these admissions, Einolf was unable to give any plausible explanation why it was necessary for him to wait 2 months for advice on contract proposals which was not forthcoming. According to Einolf, he submitted the Union's proposals to C. A. Rivers, the Company's regional manager in Philadelphia, who in turn informed Einolf that he would forward the proposals to corporate headquarters in Pittsburgh. Einolf further testified that in mid-December, after Turner called, he called Rivers, who told him that he (Rivers) was not ready. Einolf initially testified that he asked Rivers when he would be ready, and that Rivers answered that he didn't know. When confronted with a contrary statement in his affidavit, Einolf then changed his testimony, stating that he did not ask Rivers when he would be ready because he (Einolf) was too busy. Parenthetically, it might be noted that at this point Einolf was subsequently not too busy to badger employees Miller and Farran into abandoning their support for their union. Einolf's purported explanation for his failure to respond to the Union's telephone calls in January was equally implausible. Einolf testified that he did not instruct his secretary to tell the Union that he was unavailable, and that he received no messages that the Union had called. Einolf initially testified that "my secretary's instruction," with respect to "any caller," "is to let me know who is calling." Thereafter, Einolf testified that, when a caller leaves a message, his secretary will say where he is, but that otherwise she is instructed "to do nothing." However, on cross-examination, Einolf testified that he had no policy concerning callers who did not leave messages. The inescapable inference from this inconsistent testimony was that Einolf had a special policy when it came to calls from the Union. Einolf also indicated that he was in his office during the period from January 12 to 19; indeed, during this period he was busily engrossed in his

[3] Einolf testified that retroactivity was not discussed until their next conversation. For reasons which will be discussed in this Decision, I credit Turner.

[4] Stansbourge testified that on the advice of the Union's attorney, they instead filed the instant unfair labor practice charge.

attempts to get Miller and Farran to sign a decertification petition. I do not credit the testimony of Einolf, and I find that he deliberately avoided communicating with the Union concerning their requests for negotiations. Viewing the entire period from November 18 to January 19, it is immaterial for purposes of Section 8(a)(5) and 8(d) of the Act whether the responsibility for the Company's avoidance of its bargaining obligations rested with Einolf or with higher corporate officials who did not testify in this case or otherwise explain their inaction in this regard. I find that following the Company's receipt of the Union's contract proposals, the Company violated Section 8(a)(5) and (1) of the Act by failing and refusing to comply with its statutory obligation to meet and bargain with the Union concerning the negotiation of a contract. I further find, in light of Einolf's testimony concerning his communications with Rivers, and in light of additional evidence discussed *infra*, concerning the election petition, that Einolf was acting pursuant to a policy dictated by officials at corporate headquarters in Pittsburgh. While, as indicated, this finding does not affect the merits of the case, it is significant with regard to the remedy, as will be discussed herein.

B. *The RM Petition and the Company's Dealings with its Employees*

Einolf testified that on January 18, when he was ostensibly drafting counterproposals for submission to the Union, he was not withdrawing recognition from the Union. The next day, Einolf filed an election petition (5–RM–811) which was subsequently blocked by the instant complaint. On the basis of his action in filing the petition, Einolf expressly refused to negotiate with the Union. From an objective standpoint, nothing happened on January 18 or 19 which could have changed the Union's representative status. Einolf's explanation for his action on January 19 was that, acting on his own, he went to the Board's Regional Office, intending to file a decertification (RD) petition which employees Miller and Farran had declined or failed to sign, that he learned for the first time, from the Regional Office, that an employer could file an RM petition, and that acting on the advice of the Region's representative, he did so, thereby terminating a 24-year bargaining relationship. Einolf further testified that he did so without the benefit of advice from company counsel, and without consulting with Company Employee Relations Manager Dick Swan, who furnished him with decertification petition forms, or with his immediate superior, District Manager R. E. Cook, whose office adjoined that of Einholf, although Cook had ostensibly asked Einholf to keep him posted on decertification activity. Einolf's story would be questionable enough if he were the proprietor of a small firm, but in the case of a large corporation, it can fairly be characterized as frivolous. Einolf's testimony concerning the actions of the Board's Regional Office representative reflects not the truth, but rather Einolf's knowledge that he could attribute any statement or action to Board personnel, no matter how incredible, secure in the knowledge that that person would not be called as a witness to contradict him.

In support of the RM petition, Einolf concurrently filed with the Board's Regional Office a handwritten letter which he personally signed. The text of the letter stated as follows:

> On December 30, 1976, two members (2) of the Warehouse Employees Local Union #570 indicated their desires to me to eliminate the Union as their representative in future bargaining with Westinghouse Electric Supply.
>
> In light of this conversation and at their request, Westinghouse Electric Supply Co hereby file [sic] Petition for RM — Representation.

The next day (January 20), at the request of the Regional Office, Einolf submitted a followup letter in which he identified Miller and Farran as "[t]he two men who spoke to me regarding elimination of the Union." In his investigatory affidavit, dated February 4, Einolf again categorically reiterated that both Miller and Farran told him that they wanted to "eliminate" the Union. However, in his testimony at the hearing, Einolf impliedly conceded that his prior statements to the Regional Office were false in two material respects. First, Einolf never testified that Farran expressed a desire to "eliminate the Union." Rather, according to Einolf, Farran said that "he had not always been prounion in his life, but he would like an opportunity to have an election." Second, even according to Einolf's testimony, neither Miller nor Farran requested him to file the RM petition. Rather, Einolf conceded that Miller refused to sign a petition for an election, and that Farran never returned the petition form which Einolf gave him.

In support of the complaint, General Counsel presented, in addition to the testimony of Business Representatives Turner and Stansbourge, the testimony of all four bargaining unit employees. The Company presented the testimony of Einolf and, in addition, the testimony of his subordinate, Branch Administration Manager Leslie Houg, concerning certain peripheral aspects of the case. While I have some reservations concerning the testimony of Miller, I have found the employees' testimony to be substantially and materially credible. Brightly Stewart, in particular, impressed me as a candid person. In contrast, as I have indicated, Einolf repeatedly demonstrated his lack of reliability concerning material matters. Moreover, the fact that Miller and Farran have continuously maintained their membership in the Union, and never requested revocation of their checkoff authorizations, renders it unlikely that they would have expressed a desire to "eliminate" the Union. Therefore, unless otherwise indicated, I have credited the testimony of the employees concerning their conversations and meetings with Einolf.[5]

On or about December 30, Einolf requested Miller to come into his office. They talked about the Union. Einolf

[5] I find without merit the Company's argument that Miller and Stewart should be discredited because of the circumstances or alleged circumstances of their terminations, particularly when considered in the light of Einolf's demonstrated lack of credibility concerning matters which lay at the heart of this case. No unfair labor practice charge was filed concerning their terminations, and the merits of these terminations are not before me for decision. However, as discussed *infra*, their terminations are a factor which should be considered in fashioning an appropriate remedy in this case.

asked Miller why he needed the Union. As he had done before, Miller complained and expressed his view that, as warehouse leader, he should be receiving a greater pay differential from the other unit employees. Einolf offered to try to get more for him, and also offered (either in this or a subsequent conversation), to pay for Miller's diet workshop. Einolf asked Miller to ask the other employees if they wanted the Union in or out. He also asked Miller to get employee Farran to go against the Union. Miller went out to get Farran.[6] Farran privately told Miller that he favored the Union, but he did not state his views to Einolf. Einolf resumed his discussion, asking if the employees were interested in getting rid of the Union, and telling them that they could thereby save $10 per month. Farran was noncommittal, and let Miller do the talking. Shortly thereafter, Farran left to return to work. Einolf asked Miller to get papers for an election. Miller answered that he didn't know how to go about it. Einolf said that he would take care of it.

Immediately upon his return to the office in mid-January, Einolf again called Miller, and then Farran, into his office. Before summoning Farran, Einolf asked Miller if he had succeeded in getting him out of the Union. He told Miller that he had the papers. Einolf told the employees that he wanted a chance to show what he could do for them if the Union was not in, and that, if they did not like it after a year, they could get the Union back in. Miller asked about what the nonunion conditions would be, and Einolf told them. Einolf asked them to sign the election petitions. Miller and Farran refused to sign or initial the petitions. However, both agreed to take the forms with them. Farran remained noncommittal, and Miller said he would take the papers home with him and look them over. The next day, or the following Monday (January 17), Miller returned with the papers unsigned. Miller told Einolf that his wife advised against signing them. Miller added that he was fearful of what the Union might do and of going to court.[7] Einolf curtly told Miller to forget about it. Farran never returned with the papers, but he told Einolf that if he (Einolf) wanted an election he could go ahead. Shortly after Miller's refusal to sign, Branch Administration Manager Houg approached Miller and asked him what he did to upset Einolf, noting that it probably had something to do with the papers. Houg asked Miller to walk by Einolf's office and nod his head, thereby indicating that he (Miller) wanted an election.[8] Miller did so, whereupon Einolf asked him if he wanted an election. Miller answered that it was all right with him if Einolf wanted one, but that all four employees were for the Union. Undaunted, Einolf proceeded to file the RM petition on January 19. In the meantime, as indicated, during the course of his meetings with Miller and Farran, Einolf deliberately avoided negotiations with the Union.

Shortly after filing the RM petition, Einolf called the warehouse employees together and told them what he had done. He claimed he did so because a couple of people expressed a desire to have the Union out. At this point, Farran, who had previously been noncommittal under Einolf's interrogation, told Einolf that he was wasting his time because all of the employees were for the Union. Unfazed, Einolf told them that if he didn't succeed in getting the Union out this year he would definitely try again the following year.[9]

C. *Analysis and Concluding Findings*

I find that the Company, through Einolf, violated Section 8(a)(1) of the Act: by interrogating Miller and Farran about their attitude toward the Union; by interrogating Miller about the attitude of his fellow employees toward the Union; by soliciting Miller to persuade Farran to abandon the Union and to report Farran's views to him; by soliciting Miller and Farran to abandon the Union and sign petitions for a decertification election, and, by such conduct, interrogating them by requesting or directing them to disclose their attitude toward the Union. Similarly, the Company violated Section 8(a)(1) when Houg asked Miller to indicate that he wanted an election. I further find that the Company, by Einolf, violated Section 8(a)(1) by promising benefits to Miller in order to persuade him to abandon the Union.[10] Additionally, in view of the fact that the Company was unlawfully refusing to bargain with the Union, I find, as alleged by General Counsel in its brief, that the Company violated Section 8(a)(1) by Einolf's statement to the warehouse employees that, if unsuccessful, he would try again the following year. Einolf's statement, in the context in which it was made, constituted a threat to engage in a continuing or further unlawful refusal to bargain. Like Einolf's promise of benefits, the matter was not alleged in the complaint, but was fully and fairly litigated, and a finding thereon is warranted. In the context of these unfair labor practices, coupled with the Company's concurrent violation of its bargaining obligation, the Company is precluded as a matter of law from invoking statements or alleged statements of its employees as a basis for withdrawing recognition from the Union. Moreover, as indicated, the Company has failed to show by credible evidence that any of its employees expressly or impliedly indicated that they no longer desired the Union as their bargaining representative.

General Counsel and the Company are in agreement as to the general principles of law applicable to the Compa-

[6] Miller did not testify that Farran was present in Einolf's office that day. However, Farran's testimony indicates that he was present during a portion of the interview.

[7] There is no probative evidence that the Union ever threatened Miller in this regard.

[8] Houg did not deny Miller's testimony concerning this conversation.

[9] Einolf's testimony concerning this last statement further demonstrated his lack of credibility. All four employees distinctly remembered that Einolf made this statement, and the fact that this case was heard under the rule of exclusion of witnesses, lent further credence to their testimony. Einolf, who was present throughout the hearing, made no reference to this or any similar statement in describing the meeting in his investigatory affidavit. Instead, when his time came to testify, he concocted an altered version of the statement.

[10] The complaint does not allege an unlawful promise of benefits. However, the matter arose in the same series of conversations which are a subject of this case, the matter was fully litigated, and the questions prepondered by company counsel and the testimony of Einolf indicated that they were aware that they were confronted with such an allegation. In the context in which the statements were made, Einolf's offer to try and get more money for Miller, and to pay for his diet workshop, could fairly be interpreted by Miller as a promise of benefits for the purpose of persuading him to abandon the Union.

ny's withdrawal of recognition. These principles, as stated by the Company in its brief, are "that an employer may withdraw recognition from an incumbent union if it affirmatively establishes either (1) that at the time of withdrawal of recognition, the Union in fact no longer enjoys a majority status; or (2) that the employer's refusal to bargain is based on a reasonably grounded doubt as to the Union's continued majority status asserted in good faith, based on objective considerations and raised in a context free of employer unfair labor practices." Applying these principles to the instant case, the Company's position fails on all counts. The Union never lost its majority status (indeed, its unanimous support); the Company never had an objective basis for questioning that status, and knew it; and the considerations advanced by the Company, if they existed at all, were brought about by the Company's own unfair labor practices. The statements made by Miller and Farran were brought about by Einolf's own interrogation and related unlawful conduct, accompanied by his outspoken opposition to the Union, all in the context of an unlawful avoidance of the Company's bargaining obligations. Even absent such unlawful conduct, nothing said by Miller or Farran furnished an objective basis for withdrawing recognition. While Miller complained about his wage differential, and Miller and Farran indicated that they would go along with an election, these statements fell far short of indicating, either expressly or impliedly, that the employees no longer desired the Union to represent them. Indeed, the whole matter of a decertification election was raised and persistently pressed by Einolf himself. Viewing the evidence in its entirety, including the actions of Einolf and his testimony concerning his contacts with his superiors, the inference is warranted, and I so find, that corporate headquarters directed Einolf to avoid bargaining with the Union while engaging in a campaign to undermine the Union's support, and to find some suitable pretext for withdrawing recognition. Einolf carried out this directive and the Company thereby violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. All warehousemen, including countermen, employed at Company's Baltimore, Maryland, location, but excluding truckdrivers, janitors, service department employees, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.
4. At all times material, the Union has been, and is, the exclusive collective-bargaining representative of the Company's employees in the unit described above.
5. The Company has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, by failing and refusing to bargain in good faith with the Union as the representative of the employees in the appropriate unit, and by engaging in a course of conduct designed to undermine the Union's status as collective-bargaining representative.
6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Company has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.
7. 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

Having found that the Company has committed violations of Section 8(a)(1) and (5) of the Act, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Company be ordered to recognize and, upon request, bargain with the Union as the bargaining representative of the employees in the appropriate unit, and to post appropriate notices.

Two aspects of the remedy warrant specific discussion. As indicated, Brightly Stewart resigned in March when told that otherwise he would be fired, and the Company contends that Robert Miller similarly terminated his employment. At the time, both employees, like Farran and Esposito, had been unlawfully deprived of the full benefits of union representation, the Company having refused to bargain with the Union. The expired contract provided that dismissals were subject to the grievance and arbitration provisions of the contract. It is quite possible that, but for the Company's unlawful refusals to bargain, Miller and Stewart might not have resigned. Accordingly, I shall make clear in the recommended Order that the Company's obligation includes, if so requested by the Union, an obligation to bargain concerning the terminations of Miller and Stewart.

The second aspect of the remedy relates to my finding that the Company's unlawful course of conduct was directed from corporate headquarters in Pittsburgh. That course of conduct, for no apparent reason involving only the Baltimore facility, disrupted a bargaining relationship which had functioned for nearly a quarter of a century in this small and hitherto stable unit. It may well be more than coincidental that, at the time of these events, litigation was pending which culminated in a Board decision establishing a single-multiplant unit of the parent corporation's employees represented by the International Union of Electrical, Radio and Machine Workers, AFL–CIO–CLC and its affiliated locals. *(Westinghouse Electric Corporation,* 227 NLRB 1932 (1977). There is a justifiable concern that in reprisal, the Company may be taking a harder line toward smaller, more vulnerable units. The involvement of higher corporate officials, and the indication of motives which are not limited to this small unit, warrant a remedy which specifically extends beyond the Baltimore facility. Accordingly, I shall recommed that the Order enjoin the Company from refusing to bargain with any labor organization which it lawfully recognizes as the collective-bargaining representative of its employees in an appropriate unit.

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

ORDER[11]

The Respondent, Westinghouse Electric Supply Company (WESCO), Baltimore Maryland, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Warehouse Employees Union Local 570, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All warehousemen, including countermen, employed at Respondent's Baltimore, Maryland, location, but excluding truckdrivers, janitors, service department employees, professional employees and supervisors as defined in the Act.

(b) Refusing to bargain collectively with any labor organization which it lawfully recognizes as the representative of its employees in an appropriate bargaining unit at any location or locations.

(c) Interrogating employees concerning their own or other employees' attitude toward said Warehouse Employees Union or any other labor organization;

(d) Soliciting employees to sign decertification petitions, to abandon said Warehouse Employees Union or any other labor organization as their bargaining representative, to solicit other employees to abandon such labor organization as their representative, or to report on the attitude of any employee toward a labor organization.

(e) Promising benefits to employees in order to persuade them to abandon said Warehouse Employees Union or any other labor organization as their collective-bargaining representative.

(f) Threatening employees that it will unlawfully refuse to bargain with said Warehouse Employees Union or any other labor organization which is the lawfully designated or selected representative of its employees in an appropriate unit.

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

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

(a) Recognize and, upon request, bargain collectively with the above-named Union as the exclusive representative of all employees in the appropriate unit described above, with regard to rates of pay, hours of employment, and other terms and conditions of employment, including the terminations of Robert Miller and Brightly Stewart, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Baltimore, Maryland, facility, copies of the attached notice marked "Appendix."[12] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, 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.

(c) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[11] 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.

[12] In the event that the Board's 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."