Accurate Die & Manufacturing Corp. *and* Local 247, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 7-CA-14551

May 15, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On February 16, 1979, Administrative Law Judge Morton D. Friedman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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, and conclusions of the Administrative Law Judge and to adopt his recommended remedy and Order,[1] as modified herein.

Amended Remedy

Following issuance of the Administrative Law Judge's Decision, the Board held that discharged strikers should be treated the same as any other discharged employees with respect to backpay, and that their backpay should be computed from the date of discharge rather than from the date that reinstatement is requested. See *Abilities and Goodwill, Inc.*, 241 NLRB 27 (1979), Members Penello and Murphy dissenting. Here, as the day-shift employees were walking out on the morning of October 26, 1977, Respondent's secretary and part owner, Edward Markarian, told them that if they did not return to work or if they did walk out, they would all be fired. Instead of returning to work, they left and began picketing. That afternoon Respondent's president and part owner, Ernest Hovizi, told striking employees that if they did not return to work immediately they were fired. None of them returned, and the late-shift employees joined the strike instead of reporting to work. In these circumstances, we conclude that the strikers were effectively discharged on October 26, 1977. Accordingly, The Remedy is amended to provide that the dischargees receive backpay from October 26, 1977, until the date they are offered reinstatement.[2]

[1] We correct the Administrative Law Judge's inadvertent references to Rudy Thomas as having been recalled, rather than employee Larry Gerald, by substituting the name Gerald for Thomas wherever it appears in sec. III, B, par. 18, and in sec. V, fn. 15, of his Decision.

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, Accurate Die & Manufacturing Corp., Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

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

"(a) Offer Aaron Toland, Timothy Ginn, Rudy Thomas, Dale Bailey, Larry Gerald, James Jefferson, Robert Williams, Kenneth Williams, and James Peterson immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings, with interest, which they may have suffered by reason to our discrimination against them, in the manner set forth in the section of the Board's Decision and Order entitled 'Amended Remedy.' "

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

[2] For the reasons stated in Member Murphy's and Member Penello's dissenting opinion in *Abilities and Goodwill, Inc., supra,* Member Murphy would, contrary to her colleagues, compute backpay from December 12, 1977, when an unconditional offer to return to work was made by the strikers.

APPENDIX

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

WE WILL NOT discourage membership in Local 247, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discharging any employee who engages in any activity in support of said Union, or any other union, or in any other manner discriminating against them in regard to their hire or tenure of employment or any terms or conditions of employment.

WE WILL NOT refuse to bargain collectively with the aforesaid Union as exclusive bargaining representative of all of our full-time and regular part-time production and maintenance employ-

ees employed by us at our Detroit, Michigan, facility excluding all office clerical employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization; to form, join, or assist the aforesaid Union or any other organization; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement, requiring membership in a labor organization as a condition of employment, as authorized by the National Labor Relations Act.

WE WILL offer Aaron Toland, Timothy Ginn, Rudy Thomas, Dale Bailey, Larry Gerald, James Jefferson, Robert Williams, Kenneth Williams, and James Peterson immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings, with interest, which they may have suffered by reason of our discrimination against them.

WE WILL, upon request, meet and bargain collectively with Local 247, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of our employees in the above-described unit, concerning rates of pay, wages, hours of employment and other terms and conditions of employment and, if an understanding is reached, WE WILL embody such understanding in a signed agreement.

All our employees are free to become, remain, or refrain from becoming or remaining members of the aforesaid Union or any other labor organization.

ACCURATE DIE & MANUFACTURING CORP.

DECISION

STATEMENT OF THE CASE

MORTON D. FRIEDMAN, Administrative Law Judge: This case was heard at Detroit, Michigan, upon the complaint of the General Counsel issued December 16, 1977, which complaint was based on an original charge filed on October 28, 1977, by Local 247, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union or the Charging Party, and an amended charge filed by the Union on December 7, 1977. The complaint alleges, in substance, that Accurate Die & Manufacturing Corp., hereinafter called Respondent or the Company, has violated and is violating Section 8(a)(5) of the National Labor Relations Act, as amended, herein called the Act, by refusing to bargain with the Union as the recognized majority representative of Respondent's employees and Section 8(a)(3) and (1) of the Act by discharging and otherwise discriminating with regard to the tenure of employment of Respondent's employees and by interfering with, restraining, and coercing Respondent's employees' exercise of their Section 7 rights. Respondent, while admitting the jurisdictional allegations of the complaint, denies the commission of any unfair labor practices. Respondent contends that the Union was not and is not the majority representative of its employees, that it did not discharge any of its employees or interfere in any way with the tenure of their employment, and did not interfere with any of the employees' Section 7 rights.

Upon the entire record and after consideration of the brief filed by counsel for Respondent,[1] and upon my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Michigan corporation which maintains its office and place of business in the city of Detroit, Michigan, is engaged in the painting of automotive stamping parts and related products. During the year ending December 31, 1976, a representative period, Respondent performed services of a value in excess of $70,000, of which services of a value in excess of $50,000 were performed for a company located in the State of Michigan, which annually, in the course and conduct of its operations, purchased and caused to be shipped to its Detroit, Michigan, facility, directly from points located outside the State of Michigan, products of a value in excess of $50,000.

It is admitted, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(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 UNFAIR LABOR PRACTICES

A. *The Issues*

This case arises from the Union's organizational drive of Respondent's employees within a 2-day period, a demand for recognition on the second day, an alleged refusal to recognize by Respondent followed by a strike of the employees, and the alleged discriminatory discharge and refusal by Respondent to reinstate the strikers upon their offer to return to work made on the striker's behalf by the Union.

[1] Counsel for the General Counsel did not file a brief although requested to do so inasmuch as he waived oral argument at the hearing.

Respondent's defense to the complaint allegations consists of three basic contentions: (1) the Union did not enjoy majority status at the time the demand for recognition was made by the Union; (2) Respondent did not discharge the employees; and (3) Respondent could not reinstate the strikers (with some exceptions) because the strike resulted in such a loss of business that there was no longer work for the individuals who joined the strike or for anyone else.

B. *The Facts*

In October 1977 Respondent, in its business of painting automotive stamping parts, employed 10 nonsupervisory employees. The working owners of Respondent at that time were, and still are, Edward Markarian, secretary and Ernest Hovizi, president. In addition, a supervisor on the day shift was Thomas Kalustin, also known to the employees as "T.K."

Sometime in early October 1977[2] day-shift employee Robert Williams was working beside Markarian when the two began to discuss unionism. Williams asked Markarian why the employees in the shop did not have a union. Markarian replied to the effect that Respondent could not afford a union, and that if one was brought in Respondent ". . . might as well close the place." He further stated that if Williams wanted a union, he would have to get a job at Ford, (evidently referring to the Ford Motor Company).

On October 20 after some of the day-shift employees had overstayed their coffeebreak, a notice was posted by Respondent to the effect that during the coffeebreak employees were not permitted to leave the building. It would seem that the employees left the building to have their coffee because they desired to get away from the paint fumes. Upon reading the notice, the employees talked among themselves and agreed that there was a need to unionize. They chose employees Robert Williams and Larry Gerald to make contact with the Union. Although the record reveals some conflict between the testimonies of Williams and Gerald as to how the contact with the Union was first made, they mutually agreed in their testimonies that Edward J. Kantzler, vice president construction business manager of the Union, appeared outside the door of Respondent's premises shortly after the noon break on October 25 and was met by Robert Williams. Kantzler gave membership applications and checkoff authorization cards to Williams as well as instructions as to the filling out of the same. After giving to Williams enough of the cards and authorization slips to be signed by all of Respondent's employees, Kantzler left the premises.

Williams returned inside the plant with the cards, which he laid on a worktable under his jacket. Evidently, Kalustin saw him do this, came over to the table, lifted the jacket, looked at the cards, and then turned around and left, but only after Williams grabbed the cards from Kalustin and put them back in the jacket with the other cards. Williams then placed all of the cards and his jacket in his locker.[3]

Thereafter, during the breaks, lunch break, and after work at the home of one of the employees (all of whom seem to live in the immediate neighborhood), Williams distributed the cards. A number of them were signed at the time, and some of them were returned to Williams. Some of the cards were retained by the employees who signed them and returned them the next day, October 26.

The following morning, October 26, Kantzler returned to Respondent's premises at approximately 10 a.m., together with an associate, John Kolandra. Kantzler approached Kalustin and asked him who was the boss. Kalustin pointed out Markarian. Kantzler thereupon approached Markarian and told him that he, Kantzler, "represented his people." Markarian led Kantzler to Respondent's office in the vicinity of the working area.

After the two were in the office, Kantzler gave Markarian his business card and again told him that he represented Markarian's people. When Markarian asked whether Kantzler represented all or some of the employees, Kantzler stated "all of them." Markarian then told Kantzler "we don't need a union" or "we don't want a union." Markarian denied that he had the authority to talk to Kantzler about the Union or union matters and informed Kantzler that the president of Respondent was Ernest Hovizi. Markarian informed Kantzler that Hovizi was not in at the time but would be returning in approximately 1 hour. Kantzler thereupon informed Markarian he would return at approximately 11:30 a.m. on that date. Kantzler then left the premises with his associate.

While Kantzler was in Respondent's office with Markarian, his associate, Kolandra, collected signed cards from a number of the employees. However, at the moment that Kantzler made his demand for recognition upon Markarian at approximately 10 a.m. on the morning of October 26, Kantzler did not have in his possession, nor were there in the possession of the Union any union designation cards. Nor did Kantzler possess any knowledge of how many cards had been signed. However, by the time Kantzler left the premises with his associate John Kolandra, the latter had collected some of the cards. Nevertheless, the record is insufficiently precise to determine that at the time a majority of signed designation cards had been collected by Kolandra.

Shortly after Kantzler and Kolandra left with the promise to return in 1 hour, Respondent's president, Hovizi, returned to the premises. Although informed by Markarian as to what had occurred and that Kantzler would return at approximately 11:30 a.m., Hovizi stated that he could not wait for Kantzler because he had a delivery to make to the airport to meet a scheduled flight with finished material on the Company's truck. Accordingly, Hovizi left the premises before the appointed time of Kantzler's return.

When Kantzler returned with his associate at approximately 11:25 on that day, he again spoke to Markarian who informed him that Hovizi had returned but had then left. At that time Kantzler again asked Markarian to recognize the Union as Respondent's employees' bargaining representative. Again Markarian stated that Respondent did not need and did not want a union. When Kantzler answered that Markarian did not leave him very much room, Markarian told Kantzler to see Respondent's lawyer.

Following some futher discussion, Kantzler, not having received either consent or encouragement from Markarian, he left the office and went into the working area of the

[2] Unless otherwise specified, all dates herein are in 1977.

[3] The record does not reveal what Kalustin did thereafter with regard to his recently acquired knowledge of the cards.

plant. Although there is some confusion as to the exact words used by Kantzler, there is no doubt that he signaled to the employees with his arms and informed them that they had to decide what they wanted to do. The motion he made with his arms was calculated to direct the employees out of the shop. After some consultation among themselves the employees stated that they wanted the Union. Kantzler stated, "well come on." He then talked out with the employees following him. However, before the men walked out Markarian came out of the office and stated to the employees that if they did not return to work or if they did walk out, they would all be fired. It was after this that the employees decided to follow Kantzler out onto the street.[4]

All of the day-shift employees walked out with Kantzler. When they arrived outside the shop, Kantzler distributed picket signs[5] which the men used to picket the entrance to Respondent's facility.

Shortly after the picketing began, Hovizi returned in the truck, looked at the men picketing, and went inside. Approximately 1 hour later he came out and spoke to Kantzler and told the latter he could not do this. He then turned to the picketing employees and stated "if you guys don't get back in there you are fired." He then walked back inside.[6]

During the afternoon and evening of October 26, when the late-shift employees came to work, they saw the picket signs. Although there were some attempts by them to enter the plant, they did not enter. Instead, they joined the picket line. Although some of them had not signed cards or check-off authorizations before that time, they did so that afternoon. Accordingly, by the evening of October 26, 9 out of Respondent's 10 employees had signed either one or both types of cards distributed by the Union through Williams or through other union officials. The only employee who did not either sign a card or strike was Henry Tolis, who did not testify.

On October 27 one of the employees on the picket line, Aaron Toland, asked Hovizi when they were going to be paid. Hovizi answered that as soon as the accountant made out the checks the men would be paid. Shortly thereafter the firm accountant, who is also a stockholder of the firm although he performs his work for Respondent away from the premises, arrived. The checks were then distributed. Each man was given two checks. One check, which was for the week before the week of the strike, was the usual check for the amount given each employee according to the hours he worked times the rate of his wages. The second check, dated October 26, which was for the short week which ended the day the strike commenced, had inscribed thereon the word "final" in capital letters. Although Hovizi did not pass out all of the checks personally, those employees to whom he did pass out these final checks were told that they were fired by Hovizi. However, as noted, all of the checks for the short week ending October 26, had inscribed thereon the word "final."

In order to induce Hovizi to talk to him regarding possible recognition and bargaining, Kantzler began to follow Hovizi about as the latter made deliveries in Respondent's truck. During the early part of November, within 2 weeks after the strike had begun, Kantzler was thus engaged in following Hovizi when Hovizi stopped his truck and asked Kantzler to pull up beside him. He asked Kantzler why the latter was following him. Kantzler answered that it was his intention to picket wherever Hovizi was making a delivery. After some discussion and after Kantzler explained that all he was seeking was for Hovizi to sit down and talk, Hovizi, who had first stated that there was nothing to talk about, evidently changed his mind and told Kantzler, "come on, I will buy you a beer." Kantzler accepted Hovizi's invitation, and the two went into a nearby bar.

After they were seated Hovizi stated he did not need a union, but that he had nothing against the Union, and that he had been a Teamsters member himself at one time. He further told Kantzler that Respondent had "just come out of bankruptcy," and that Respondent was without funds and if the pressure continued he would sell the material in the shop and close it down. Hovizi declared that he just wanted to get out what he put into the building, after which he would be finished. Kantzler replied to the effect that if this was what Hovizi's intention was (evidently finishing the work and closing down), Kantzler would not harass him anymore. This ended the conversation.[7] In connection therewith, Hovizi, in testifying, stated that Respondent just could not afford a union at that time.

On November 29 the Union, over the signature of Kantzler's assistant, sent to Respondent and to each of the employees a notice that the picketing had ceased and that the employees were directed to return to work immediately. On December 7 the Union again sent Respondent a notice, by letter signed by Kantzler, which stated that the letter constituted a notice of the Union's unconditional offer on behalf of all employees covered by the representation demand of the Union to return to work. Thereafter, Respondent recalled employees Aaron Toland, Dale Bailey, and Rudy Thomas at a date or dates not established by the record. None of the other employees who went on strike have been recalled.

Respondent, at that time it recalled the three above-named employees, evidently had no other employees except Tolis, members of the Markarian family, members of the Hovizi family, and the individuals who were employed as supervisors. Respondent, through its two officers, explained that there was no work for the others, but that it has not refused to recall them. Despite Hovizi's protestations to Kantzler, Respondent has not gone out of business.

C. *The Union's Majority Status*

As noted above, at the end of the day or evening of October 26 the Union had both designation cards and deduction authorizations from 9 employees out of Respondent's 10 employees. These employees were Aaron Toland, Timothy Ginn, James Peterson, Rudy Thomas, Dale E. Bailey, Lar-

[4] All of the foregoing is from credited portions of the testimonies of Robert Williams, Edward J. Kantzler, James S. Jefferson, and Larry Gerald. Although Markarian related slightly different versions of the various conversations and what occurred when the men decided to follow Kantzler out of the shop, the variations were not extensive enough to effectively controvert the testimonies of the others.

[5] The record does not reveal the content of the signs.

[6] From credited testimonies of Williams and Kantzler.

[7] From credited testimonies of Kantzler and Hovizi.

ry Gerald, James Jefferson, Robert Williams, and Kenneth Williams. As noted, the 10th employee, Henry Tolis, evidently did not sign a card. All of these union designation cards and checkoff authorizations were signed and dated either October 25 or October 26 and were in the hands of either Kantzler or other union officials by the end of the day on October 26.

Although the cards of Toland and Ginn, which designated the Union as their bargaining representative and requested union membership are unsigned, each of these employees had also signed, on October 26, a checkoff authorization and had given the same to the Union. In additional, both Toland and Ginn testified that each had filled out the unsigned cards, had dated them the same date, and had merely overlooked placing their signatures on the cards. The designation cards of Rudy Thomas, Larry Gerald, and James Jefferson, although signed by those three employees, are undated. However, each of these employees testified without contradiction that the cards were made out and given to the Union on the same date that their dated checkoff authorizations were executed and given to the Union. In the cases of Thomas and Gerald it was October 25, and in the case of Jefferson it was October 26.

It has long been established that the failure of an employee to sign a designation card delivered to the Union, where the employee testifies that he has intended to designate the union as of the date or time that the card was given to the Union, is immaterial, and the card may be counted in computing the Union's majority status or lack thereof. Under the circumstances here, the absence of the signatures or the dates on the respective cards heretofore mentioned does not invalidate the designation of the Union as the bargaining representative of the employees named.[8]

Accordingly, I find and conclude that as of the end of the day on October 26, 1977, the Union enjoyed majority status among Respondent's employees, having received authorizations from 9 out of 10 of Respondent's employees and, therefore, has been from that date the majority representative of Respodent's employees of the purposes defined in the Act.

D. *Discussion and Concluding Findings*

Having determined that the Union is a majority representative of the employees in Respondent's shop, I further find and conclude that the appropriate unit represented by the Union, as set forth above, is all full-time production and maintenance employees and regular part-time production and maintenance employees employed by Respondent at its facility location in Detroit, Michigan, but excluding all office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act.

As noted above, Respondent contends that inasmuch as the Union, at the time it made its demand through business manager Kantzler upon Edward Markarian on October 26, did not enjoy majority status inasmuch as the designation cards and/or the deduction authorization cards had not been delivered to a union representative and were not in the Union's hands as of that time. However, as the record shows, by the end of that day, October 26, the Union did enjoy majority status.

Respondent further contends in connection therewith that Kantzler, at the time, made no attempt to evidence the Union's majority status by a show of cards or by presenting any other matter upon which Respondent could determine whether the Union represented a majority. In fact, argues Respondent, at no time during the entire course of events did any union representative make any attempt to verify the Union's claim that it was, in fact, the majority representative of Respondent's employees in the unit heretofore found appropriate. Therefore, reasons Respondent, in accordance with court precedent[9] and in light of the foregoing facts, Respondent was and is under no obligation to recognize or bargain with the Union because the Union is not the majority representative of its employees, and the Union has not taken the necessary steps to prove its majority claim.

However, Respondent's contention in the foregoing regard is not well taken. When the Union finally attained its majority status on October 26 all but one of Respondent's employees had, in fact, joined the strike. In view of this, Respondent would still have had the right (even though the Union, in fact, attained majority), to refuse to recognize the Union and to do nothing until the Union proved its majority through a Board conducted election. Respondent could have refused an offer of proof of majority through the signed designation cards, had the Union made such an offer. In this respect, Respondent's contention is legally correct.

While the thrust of the cases upon which Respondent relies[10] is that an employer who has not engaged in an unfair labor practice impairing the electoral process does not commit an unfair labor practice in violation of Section 8(a)(5) of the Act merely because he refuses to accept any proof of majority status other than the results of a Board-conducted election,[11] the converse of the foregoing principle is that an employer who *does* commit unfair labor practices impairing the electoral process may not sit back and await the results of such process and thereby preclude the finding of a violation of Section 8(a)(5) of the Act.[12]

In the case at bar, immediately after Kantzler had made his first demand for recognition on October 25 Markarian threatened the employees with discharge if they walked out. On October 27 when Hovizi distributed the paychecks to the employees on the picket line he told the employees that they were discharged. Further proof of this is the fact that the checks were marked "final," despite Respondent's present claim that the employees were not discharged.[13]

Thus, the employees were discharged for engaging in a lawful strike in support of the Union's recognitional demands, for by the time of the discharges the Union had

[8] *I. Taitel and Son*, 119 NLRB 910, 912 (957).

[9] Citing *Linden Lumber Division, Summer & Co.* v. *N.L.R.B.* 419 U.S. 301 (1974); *N.L.R.B.* v. *Gissel Packing Co.*, 395 U.S. 575 (1969).

[10] *Supra.*

[11] *Supra.*

[12] *N.L.R.B.* v. *Gissel Packing Co. supra*, at 595, 601.

[13] I do not give credence to Respondent's claim that the checks were marked "final" in error by Respondent's bookkeeper. The bookkeeper was a stockholder in Respondent's closely held, small corporate enterprise. Moreover, Hovizi, Respondent's president, who saw the checks both before and during distribution, did nothing to correct the alleged error. Nor do I credit Hovizi's version of what he told the employees as he gave them the checks.

gained majority status. I conclude, therefore, that the discharges were unlawful, discriminatory, and in violation of Section 8(a)(3) and (1) of the Act, and that such discharges go to the very heart of the Act.

One last segment of Respondent's contention remains for disposition. Respondent maintains that the Union made only one demand for recognition which did not continue, and that Respondent therefore cannot be ordered to bargain with the Union. Even assuming that under all the facts here presented the demand was not a continuing one, it was renewed in the early part of November 1977 when Kantzler and Hovizi discussed the union matter in a bar over glasses of beer. To hold that Hovizi did not know by Kantzler's actions in following his truck and by then discussing the matter in the bar that Kantzler was demanding recognition for the Union would be the height of naivete.

Accordingly, I find and conclude that whatever protection would have been afforded Respondent upon the Union's continued or renewed demand for recognition under the cases relied upon by Respondent was forfeited by Respondent when it discriminatorily discharged the same 9 out of 10 employees who designated the Union as their bargaining representative for supporting the Union's recognitional efforts. Therefore, Respondent's refusal to recognize and to bargain with the Union, even if not unlawful before the discharges, became such thereafter under the very precedents cited by Respondent. Accordingly, the refusal constituted a violation of Section 8(a)(5) and (1) of the Act.

Moreover, the strike, if not an unfair labor practice strike at its outset, was converted into an unfair labor practice strike upon the discriminatory discharge of the strikers and the unlawful refusal to bargain.

IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with the operations of Respondent herein described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

It having been found that Respondent herein has violated the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It having been found that Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging Aaron Toland, Timothy Ginn, Rudy Thomas, Dale Bailey, Larry Gerald, James Jefferson, Robert Williams, Kenneth Williams, and James Peterson, it will be ordered that each of them be reinstated to their former or equivalent positions, if they so desire, and that Respondent make them whole by paying to each of them a sum of money equal to that which each would have earned but for the discrimination visited upon them by Respondent. Backpay shall be computed with interest thereon in the manner described in *F. W. Woolworth Company*, 90 NLRB 289 (1950) and *Florida Steel Corporation*, 231 NLRB 651 (1977).[14] It having been found that the foregoing employees were unfair labor practice strikers and that Local Union 247, the Union herein, made an unconditional offer to return to work on December 7, 1977, on behalf of the above-named employees, backpay shall be computed from that day in accordance with the above-cited cases.[15]

It having been found, as set forth above, that Respondent has engaged in violation of Section 8(a)(5) and (1) of the Act and has unlawfully failed and refused to recognize and bargain with the Union, it will be ordered that Respondent cease and desist therefrom and bargain with the Union at reasonable times at the request of the said Union concerning rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

Upon the basis of the foregoing findings of fact and the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Respondent 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. By discharging its employees for supporting the Union, Respondent has discriminated against them and has therefore engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.
4. By failing and refusing to bargain in good faith with the Union as a representative of all full-time production and maintenance employees and regular part-time production and maintenance employees employed by Respondent at its facility located in Detroit, Michigan, but excluding all office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On the basis of 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:

ORDER[16]

The Respondent, Accurate Die & Manufacturing Corp., Detroit, Michigan, its officers, agents, successors, and assigns, shall:

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

[15] Although the record establishes that Aaron Toland, Dale Bailey, and Rudy Thomas have been recalled by Respondent, there is no record showing of the date or dates thereof, whether they are entitled to backpay, or whether their reinstatements were to their former or substantially equivalent positions.

[16] 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 by 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.

1. Cease and desist from:

(a) Discouraging membership of its employees in Local 247, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discharging said employees because of their support of and activities on behalf of the said Union or in any other manner discriminating against them in regard to their hire, tenure of employment, or any term or condition of employment.

(b) Refusing to bargain collectively with Local 247, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of all of Respondent's full-time production and maintenance employees and regular part-time production and maintenance employees employed by Respondent at its facility located in Detroit, Michigan, excluding all office clerical employees, professional employees, confidential employees, guards, and supervisors as defined in the Act, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the National Labor Relations Act, as amended.

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

(a) Offer immediate and full reinstatement to Aaron Toland, Timothy Ginn, Rudy Thomas, Dale Bailey, Larry Gerald, James Jefferson, Robert Williams, Kenneth Williams, and James Peterson to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges enjoyed, and make them whole for any loss of earnings which they may have suffered by reason of the discrimination against them, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Upon request, bargain collectively with Local 247, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the appropriate Union named above and embody any understanding reached in a signed collective-bargaining agreement.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and pertinent to compute the amount of backpay due in accordance with the section of this Decision entitled "The Remedy."

(d) Post at its plant in Detroit, Michigan, copies of the attached notice marked "Appendix."[17] Copies of said notice, to be furnished by the Regional Director for Region 7, after being duly signed by authorized representative of Respondent, 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.

(e) Notify the Regional Director for Region 7, in writing, within 20 days from the date of the Order, what steps have been taken to comply herewith.

[17] 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."