If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Sixth Floor, Meacham Building, 110 West Fifth Street, Fort Worth, Texas 76102, Telephone 335–4211, Extension 2145.

Watkins Furniture Company, Watkins-Pearl, Inc., Watkins-Southgate Furniture Co., Watkins-Great Northern Furniture Company, Forman Furniture Company, Watkins-Euclid Furniture Co., Inc., and Watkins-Mentor Furniture Co. ***and*** **Retail Store Employees Union Local 880, Retail Clerks International Association, AFL–CIO and the Employees Committee, Party of Interest.** *Case 8–CA–4047. July 25, 1966*

DECISION AND ORDER

On April 27, 1966, Trial Examiner Frederick U. Reel issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision, a supporting brief, and a brief in opposition to the cross-exceptions of the Charging Party; and the Charging Party filed cross-exceptions, a supporting brief, and a brief in opposition 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 powers in connection with this case to a three-member panel [Chairman McCulloch and Members Fanning and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the exceptions, cross-exceptions, briefs, and the entire record in this case, and it hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications:

We agree with the Trial Examiner that the evidence establishes that Respondent interfered with the administration of, and contributed support to the Employees' Committee in violation of Section 8(a)(2) and (1) of the Act. We do not agree, however, with the Trial Examiner's further finding that the evidence establishes domination of the Employees' Committee by Respondent.[1]

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[1] See *Irving Air Chute Company*, 149 NLRB 627, 641.

[The Board adopted the Trial Examiner's Recommended Order, with the following modifications:

[1. Delete the word "dominating" from paragraph 1(e).

[2. Delete paragraph 2(b) and substitute therefor the following paragraph 2(b):

["(b) Withdraw and withhold all recognition from the Employees' Committee, or any successor thereto, as the exclusive representative of its employees for the purpose of dealing with it concerning grievances, wages, rates of pay, hours of employment, or other conditions of employment, unless and until such organization shall have been certified by the Board as the exclusive representative of such employees."

[3. Delete the third paragraph of the notice and substitute therefor the following paragraph:

> [WE WILL withdraw and withhold all recognition from the Employees' Committee, or any successor thereto, as the exclusive representative of our employees for the purpose of dealing with it concerning grievances, wages, rates of pay, hours of employment, or other conditions of employment, unless and until such organization shall have been certified by the Board as the exclusive representative of such employees.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceding, heard before Frederick U. Reel at Cleveland, Ohio, on February 1 to 3, 1966,[1] pursuant to a charge filed the preceding October 20 and a complaint issued November 23, concerns allegations that Respondents, herein jointly referred to as the Company, countered the organizing efforts of the Charging Party, herein called the Union, by various acts of interference, restraint, and coercion, by dominating or supporting a "company union," by discriminating against employees for union membership or activity, and by refusing to bargain with the Union which represented a majority of the Company's employees. Upon the entire record,[2] including my observation of the witnesses, and after due consideration of the opening briefs filed by the parties and of Respondents' reply brief, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY AND THE LABOR ORGANIZATIONS INVOLVED

The pleadings establish, and I find, that the Company, which consists of seven affiliated Ohio corporations, each of which is engaged at a separate location in the Cleveland area in the operation of a retail furniture store, constitutes a single employer engaged in activities affecting commerce within the meaning of Section 2(6) and (7) of the Act and subject to the Board's jurisdiction under its standards. The pleadings further establish, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act. The complaint alleges and the answer denies that a group known as the Employees' Committee is also a labor organization. I find upon facts set forth in greater detail *infra* that this group is an

[1] Unless otherwise noted, all other dates herein refer to the year 1965.

[2] The transcript is hereby corrected in accordance with the stipulation of the parties. Also, pursuant to stipulation, Joint Exhibits A–1 through 11 are hereby admitted into evidence Finally, Respondents' motion of March 31, 1966, to make further corrections in the transcript is hereby granted.

"organization" or "agency" or "employee representation committee . . . in which employees participate and which exists for the purpose, in whole or in part, of dealing with [the Company] concerning grievances," and is therefore a "labor organization" within the meaning of Section 2(5).

II. THE UNFAIR LABOR PRACTICES

A. *The Union's organizational campaign*

In the late summer of 1965 the Union conducted an organizing campaign among the furniture salesmen employed by the Company at its seven stores.[3] During the course of the drive, the Union held a meeting on September 15 at the Versailles Motel, at which a number of men signed cards authorizing the Union to represent them, and at which six employees were named as "contact men" between the Union and the employees. The six employees thus designated were Harold Salavon, John Rogers, James Barry, John Litrico, George Spence, and John Mindala, one from each of the stores except the Lakeshore store. By September 17, the Union had obtained signed authorization cards from 21 of the 40 employees in the unit.[4]

One employee at the Mentor store, William Diday, received a card from Salavon but declined to sign it, although he did print his name and address on the card for the purpose of enabling the Union to communicate further with him. Some days later Store Manager Wertheim approached Diday in the store and asked if Salavon "was the one that approached you about joining the Union?" Diday replied, "I don't know anything."

On September 16, the day after the union meeting at the Versailles, Broadway Store Manager Brill told employee George Spence: "I understand you were at a meeting, a union meeting last night." Spence admitted the fact, and Brill continued that Company President Silver had told him of Spence's attendance at the meeting. Brill added that he thought it a "kind of stupid thing" for Spence to have done, and also inquired whether Spence had signed a union card, which Spence admitted. Later Brill told Spence not to worry about his job, as Brill had told Silver that Spence had not signed a card. Some days later Brill remarked to Spence that there were two "finks"[5] in the union organization.

On September 21, James Bird, credit manager at the 89th Street store, asked Rogers "how you're making out with the Union." Bird indicated that Rogers need not tell him as it was "actually none of [Bird's] business," but Rogers replied that they "had done pretty good."

B. *The discharges and transfers of September 23 and 24*

Louis Rippner, vice president of the Company, returned to his office at noon on September 22, after a week's absence. The next day a number of salesmen, including Mindala and Barry, were attending a sales meeting at the Company's main office. During the course of this meeting Rippner called Mindala and Barry, separately, into his office, and notified each that effective the following Monday they were being transferred to other stores. Rippner told Barry that "for the benefit of the Company and the members involved" Barry would be moved from the Southland to the Mentor store, a change which added 70 miles daily to Barry's travel. Rippner told Mindala that "We need a good salesman out at the Euclid store," and transferred him to that store from Southgate.

That same afternoon Rippner discharged Spence, stating that the Company was cutting the force, that Spence's sales were not good, and that it would be best for both Spence and the Company that they part. Also on that Thursday, Company President Silver discharged Rogers, stating that the latter's sales were down for the year and the Company "couldn't afford to keep [him] any longer." The following day, Rippner discharged Salavon, stating that with Barry's transfer to that store,

[3] The pleadings establish, and I find, that a unit composed of the salesmen was appropriate The parties stipulated that the unit consisted of 40 employees at the time of the Union's request to bargain The Company has collective-bargaining agreements with other unions covering the truckdrivers and the furniture refinishers

[4] The card signers included all seven of the employees at the Lorain Avenue store, five out of seven at Southgate, four out of seven at Southland, two out of four at Broadway, two out of five at Great Northern, and one out of five at Mentor

[5] Webster's New Collegiate Dictionary, 1959, defines "fink" as slang for "an informer or squealer"

Salavon as the lowest in seniority would have to go. Rippner declined Salavon's request to be transferred to another store. Finally, on Friday or Saturday, September 24 or 25, Sales Manager Hartman notified employee George Fritz of the latter's transfer from Southland to Broadway to replace Spence.

The Union filed unfair labor practice charges on September 24 alleging discrimination against Spence, Rogers, Barry, and Mindala, and on September 28 alleging discrimination against Salavon. The Union also filed petitions for certification on September 24, covering the Lorain, Southland, and Southgate stores, which were alleged as separate units On the same day the Union sent telegrams to the Company, claiming to represent the salesmen at the three stores. On Wednesday, September 29, Company Counsel Glickman advised Vice President Rippner that Union Counsel Finley had requested Glickman to prevail on the Company to reinstate the discharged employees and undo the transfers. Glickman advised Rippner to do so to avoid "bitter feeling among the Union people," and the Company on Wednesday night, September 29, decided to follow this advice. All six men were restored to their original jobs on or before October 4, and the Company paid the discharged men for the week they had missed.

The day after Salavon's discharge, when he went to his store for his paycheck, Store Manager Wertheim took him into the office and stated that he was "disappointed in" Salavon, and in "the things that transpired." Salavon replied that he had done what he thought was necessary "to get things done," to which Wertheim rejoined by asking if Salavon "thought that was the way, or that was the best way?" On Saturday, October 2, when Company President Silver saw Salavon at Silver's office, he told Salavon he was "willing to forget about this Union activity," and reemployed Salavon, telling him that he would "have a future with us if you just behave yourself." [6]

When Spence returned to work on October 4, Store Manager Brill expressed pleasure at the event, to which Spence commented that he did not know why he had to leave. Brill asked, "Did you hand out any cards?" and upon Spence's affirmative reply, continued: "That's your answer." [7]

C *The "Employees' Committee"*

Largely through the efforts of one Whitcomb, a salesman at the Mentor store, a meeting was held on Thursday or Friday, September 30 or October 1, at the Sahara Motel, attended by Rippner and Silver on behalf of the Company and by Whitcomb, Barry, Fritz, and Mindala. The management representatives stated that "they were hurt" because the employees had gone to the Union "behind their backs," and the employees responded by telling of their grievances, notably dissatisfaction with the sales manager, with certain reductions in their commissions, and with Saturday night work. The Company officials responded that they had had no idea of the dissatisfaction and "would do whatever they could to rectify it." They agreed to take steps to eliminate the contacts between the salesmen and the sales manager, stated that the pay scale and commissions would be reevaluated at the end of the year, and agreed to adjust the Saturday night problem by giving the men who had to work then a morning off.

The company representatives also stated that they would reinstate to their former positions the men just discharged or transferred. Although, according to Rippner's testimony, noted above, this decision had been reached on the preceding Wednesday, as the result of conversations initiated by union counsel, the record is clear that no such explanation was vouchsafed to the employees at the Sahara meeting. Indeed, the Union appears not to have figured in the conversation, but the men did discuss the possibility of a "guild," a "committee," or a "company union." They decided that the employee representatives would communicate with their fellows to discuss further the formation of some such organization.

On Saturday, October 2, seven employee representatives (Litrico, Perusek, and Rogers in addition to the previous four representatives) met again at the Sahara Motel, this time in the absence of management. The store managers gave these men

[6] Company President Silver did not testify Cf *N L R B v Elias Bros Big Boy, Inc*, 327 F.2d 421, 427 (C A 6). See note, 5 ALR 2d 893, 896–898, 907–908, 909–911

[7] The testimony of Spence and Salavon concerning the statements of Brill, Wertheim, and Silver is uncontradicted, and I credit it A similar statement, attributed by Mindala to Rippner and denied by the latter, would, if credited, be purely cumulative, and I therefore make no finding with respect thereto.

permission to take time off from work to attend the meeting. After some discussion the group broke up to return to their several stores to discuss with their fellow employees whether to "go along with the proposals and promises of management" and to form a committee to meet monthly with management. The salesmen in the several stores approved this course. On Sunday, October 3, the same seven employees met with Rippner and Silver in a brief session at the Sahara Motel, and the various proposals previously discussed, including the formation of a committee, were finally agreed to. Management at that meeting as at a previous meeting assured the employees there "would be no reprisals" and they "would forget that this ever transpired." The employees did not pay the room rental at the motel for any of the three meetings.

The employees in the several stores proceeded the following Monday during working hours to elect their respective representatives to the Employees' Committee. The sole meeting of the Employees' Committee with management occurred later that week Company President Silver called the committee together, and stated that he was disturbed over reports that the committee had been collecting funds from the men. The committee members explained that they wanted a "kitty" to cover possible expenses, such as hiring a lawyer or paying for room rental. Either Silver or Rippner replied that as to meeting rooms, they could use company property or send the Company the bill if they rented motel space, and that they "didn't need any legal fees or need any legal advice." Silver further stated that "He wasn't having any man collecting money for that purpose," that they were merely a grievance committee, and that if they desired to negotiate wages they needed a union. A second meeting of the Committee with management, scheduled for a few days later, was canceled by management, and no subsequent meetings have been held.

D. *The representation proceeding and the bargaining requests*

As noted above, the Union on September 24 and 28 filed with the Board unfair labor practice charges and also filed on September 24 separate petitions for certification covering three separate stores. A consolidated hearing on the representation petitions was held on October 13, in the course of which the Union took the position that each separate store constituted an appropriate unit, and the Company took the position that a single unit composed of all seven stores was the only appropriate unit.

On Friday, October 15, only 2 days after the hearing in the representation case and a week before briefs were due in that proceeding, the Union in a telegram to the Company reasserted the Union's request for recognition as representative of the salesmen in the three stores, and "alternatively" requested recognition as representative of the salesmen in all seven stores. In this telegram the Union claimed majority status in the three stores separately and also in the seven taken as a whole offered to prove its claims by submitting proof to an impartial third party, and asked for the opening of bargaining negotiations in either the single seven-store unit or in the three separate units. The following Monday, October 18, the Company replied by letter stating that "In view of [the Union's] apparent uncertainty as to what would be an appropriate bargaining unit," the Company thought "the only logical and safe course" was to have the Board determine that issue. The Company further observed that authorization cards were unreliable evidence of the employees' desires with respect to representation, and expressed "great, reasonable and justifiable doubts" as to the Union's claims of majority, noting that the Union had filed separate petitions for "only three random stores . . ." The letter concluded by advising the Union that the Company had that day filed its own representation petition with the Board, alleging that the seven stores constituted a single appropriate unit.

The next day, October 19, the Union requested permission to withdraw the representation petitions which it had filed and which had been the subject of the October 13 hearing. The Regional Director granted this request on October 22. Also on October 19 the Union offered to show its signed cards directly to the Company, but the Company declined, again stating that it regarded cards as unreliable and that it wanted a Board election On October 20, the Union filed the charge in the instant proceeding alleging a refusal to bargain in the seven-store unit Finally, on November 16, the Union asked to withdraw the unfair labor practice charges filed on September 24 and 28 (dealing with the discharges and transfers), and the Regional Director granted the withdrawal request on November 19, although he included the substance of those charges in the complaint issued on November 23.

The representation petition filed by the Company has been held in abeyance pending ultimate disposition of this proceeding.

E. *Concluding findings*

1. Violations of Section 8(a)(1), (2), and (3)

In the light of the entire record, I find the following statements constitute interference, restraint, or coercion, violative of Section 8(a)(1):

(a) Store Manager Wertheim's interrogation of Diday as to whether Salavon had approached Diday about joining the Union.

(b) Store Manager Brill's interrogation of Spence as to whether Spence had signed a union card.

(c) Brill's statements to Spence that Company President Silver knew Spence had attended a union meeting, and that Spence need not worry about his job because Brill had told Silver Spence had not signed a union card. Silver's knowledge of who attended a union meeting created an impression of surveillance. Brill's later reference to "finks" may have dispelled the impression of company-planted spies, but apart from the harm already caused by his earlier statement of Silver's knowledge, even the later remarks brought home to the employee that the Company was acquiring knowledge of internal union affairs. And the reason for acquiring such knowledge was indicated in Brill's telling Spence that the latter's job security depended on Silver's believing that Spence had not signed a union card.

(d) Company President Silver's advice to Salavon that Salavon's future with the Company depended on his "behaving himself," which—following, as it did, upon a comment that Silver would "forget about" Salavon's past union activity—can only be construed as a warning to refrain from similar activity in the future.

(e) Store Manager Brill's statement to Spence on the latter's return to work that Spence's activity in distributing union cards had caused his layoff

(f) The promise to the employees in the meetings at the Sahara Motel that the Company would ameliorate their grievances by lessening their contacts with Sales Manager Hartman, by adjusting the schedule to meet the objection to Saturday night work, and by reexamining the salary schedule at the end of the year. Granting the employees' demands with respect to Hartman and Saturday work at this time and under these circumstances was manifestly an effort to wean them away from their support of the Union *N.L.R.B.* v. *Exchange Parts Co.*, 375 U.S. 405. Indeed the Company all but admitted as much to the men, for it coupled its expressed resentment over their having gone to the Union with an inquiry into the reasons for "dissatisfaction" and a promise to rectify the matters complained of.

Insofar as the foregoing violations turn on statements of Store Managers Wertheim and Brill, the Company contends that they are not supervisors and that the Company is not legally responsible for their statements. The record establishes that they are in charge of their respective stores, and that visits from company officials are sporadic. In the nature of the employment, the salesmen require little, if any, direction from the manager. Nevertheless, I find that as the responsible head of the location, the manager occupies supervisory status. There is some evidence that they have some authority in the hiring of office personnel. Also, the record discloses that when a salesman is discharged, Rippner as a matter of course informs the store manager. When a salesman's record is poor, the store manager may "talk to [him] about it." At the representation hearing, the parties at one point stipulated that the managers and credit managers were supervisory employees. Also in that hearing both Mindala and Rippner testified that the managers attended meetings with company executives and would then relay to the employees in the stores the management policies and directives announced at these meetings. Under all the circumstances, the managers appear to be supervisory employees, and at the very least are in a position where employees could reasonably regard the statements of managers as reflecting company policy, *N.L.R.B.* v. *Solo Cup Company*, 237 F.2d 521, 523–524, (C.A. 8); *N.L.R.B.* v. *Des Moines Foods, Inc.*, 296 F.2d 285, 286–288 (C.A. 8), and cases there cited.

I further find that the Company violated Section 8(a)(2) and (1) of the Act by dominating, interfering with the administration of, and contributing support to the Employees' Committee The Company contends that the Committee was the spontaneous choice of the employees after being proposed by a group of employee lead-

ers. Even assuming that the Company played only a silent role in the creation of the Committee, however (and the record establishes that Silver and Rippner met with the employee leaders at the session which gave rise to the new organization), the Company recognized the Committee and expressed readiness to deal with it concerning grievances at a time when another labor organization was claiming representative status. Further, the Company apparently paid for the motel room on Saturday October 2, when the employee leaders met among themselves to discuss the possibility of forming the Committee, permitted the employees to attend that meeting, to solicit support for the Committee and to hold elections on company time, and expressly offered to furnish or to pay for any future meeting places the Committee might require. Finally, the Company's complete domination of the Committee was evidenced by Silver's and Rippner's calling the Committee together, inquiring into the purposes for which it had been raising money, and informing it that it would not be allowed to raise funds or to retain a lawyer. Cf. *N.L.R.B.* v. *Chardon Telephone Company*, 323 F.2d 563 (C.A. 6); *N.L.R.B.* v. *Oliver Machinery Corp.*, 210 F.2d 946 (C.A. 6).[8]

Finally, with respect to the discharges and transfers, I find that Salavon, Spence, and Rogers were discharged, and Mindala and Barry transferred, because of their leadership of the Union, but that the transfer of Fritz was in fact caused by the need to fill the vacancy left by Spence's departure. Salavon's case is substantially proved by his conversation with Silver at the time Salavon was rehired, and Spence's case derives strong support from the statement of Store Manager Brill when Spence returned. Rogers, Mindala, and Barry were the union "contact men" at their stores, as were Spence and Salavon at theirs. Company knowledge of their union activity may be found in the statements of Silver and Brill, referred to above, in Assistant Manager Bird's inquiry of Rogers, in Wertheim's interrogation of Diday anent Salavon, and in Brill's comment to Spence that there were "finks" in the organization.

The Company introduced some evidence that Spence was a poor salesman, that Rogers' sales had fallen off, and that the store in which Salavon was junior man needed strengthening at the time he was replaced with Barry, an abler man. These changes, the Company contends, were all decided on when Rippner returned from a trip, and it is mere coincidence that the union activity also occurred during his absence. The figures submitted by the Company tend to support its criticisms of Spence and Rogers. On the other hand, the Company's resentment over the union activity occurring at that time is also clear on the record; Silver and Rippner told the four employees at the first Sahara Motel meeting that they felt "hurt" because the employees had gone "behind their backs." Consideration of all the factors, including the Company's resentment of the union movement, the Company's knowledge of the identity of the union leaders, and the selection of five union contact men for discharge or transfer at the very time the union movement was gaining strength, would give rise, at the very least, to a suspicion that the Company's actions were discriminatorily motivated. When to this is added the comments of Silver and Brill on the rehiring of Salavon and Spence, the evidence goes beyond mere suspicion and preponderates in favor of a finding of illegal motivation.[9]

2. The refusal to bargain

The critical issue in this case is whether the Company should be directed to recognize and bargain with the Union; the other matters, discussed above, bear signifi-

[8] The complaint alleged that the Company was guilty of dominating, as well of unlawfully interfering with and supporting, the Committee General Counsel moved to withdraw the allegation of domination, but the Charging Party opposed that motion I denied the motion to withdraw, and adhere to that ruling, now fortified by *Leeds & Northrup Co* v *N L R B*, 357 F 2d 527 (C A. 3), decided February 3, 1966 (the same date on which I denied the motion to withdraw) The sole effect of the ruling is to require "disestablishment" of the Committee rather than merely "withholding recognition" from it, a distinction of peculiarly little significance inasmuch as the Committee appears to be defunct The question whether General Counsel has an absolute right to withdraw a complaint once the matter has gone to hearing, however, is far from insignificant

[9] The Company does not contend that the withdrawal of the charges alleging discrimination precludes consideration of this issue I note that the matter was fully litigated, and that "the entire series of events are all closely interrelated" *N L R B.* v *Pecheur Lozenge Co, Inc*, 209 F 2d 393, 401 (C A 2), cert denied 347 U S. 953

cantly upon this issue but have little independent importance, as the Employees' Committee is moribund if not defunct and the discharges and transferees have been reinstated without suffering any loss of pay.

a. *The Union's majority*

The Union obtained 21 signed cards (not counting Diday's), a majority of the 40 in the unit, authorizing the Union to act as bargaining representative. The record is devoid of evidence that the cards were obtained by any misrepresentations. Although union representatives did refer to the possibility of obtaining a Board election and indicated that the cards would be used for that purpose, they also indicated that the cards might be used to obtain recognition without an election, and at no time stated that the only purpose of the cards was to obtain an election. See *N.L.R.B.* v. *Cumberland Shoe Co.*, 351 F.2d 917, 920 (C.A. 6). Indeed, Salavon, whose card the Company challenges, expressly testified that the union agent told him the Union might "be bargaining agent without an election, based on a majority of cards." The Company also challenges the cards of Hauenstein and Vhynal, but as I read their testimony they were under no illusion that the card was solely for the purpose of holding a meeting. And Lois Adams' card is valid notwithstanding her testimony that she read it "superficially."

Rippner testified that at sometime, approximately between October 6 and 20, Spence told him that a union official had threatened Spence with physical violence if Spence revoked his union authorization. Spence denied having made such statement to Rippner, denied having received such a threat, and denied having ever indicated to the Union or any of the men working with the Union that he wanted to withdraw his authorization. I am inclined to credit Rippner's testimony as to what Spence stated, but any withdrawal of union support by Spence or anyone else after the Company's unfair labor practices would have been attributable to those unfair labor practices and therefore would not affect the Union's status as majority representative See, e g., *N.L.R.B.* v. *Stow Manufacturing Co.*, 217 F.2d 900, 905 (C.A. 2), cert. denied 348 U.S. 964, *N.L.R.B.* v. *Armco Drainage & Metal Products, Inc., Fabricating Division*, 220 F.2d 573, 577 (C.A. 6), cert. denied 350 U S 838 Since Spence's withdrawal would have been of no legal significance in this proceeding, the fact (if such it be) that the Union forcibly prevented his withdrawal is likewise of no significance to our inquiry here. The Company in its brief does not challenge the validity of Spence's card.

b. *The Company's "good-faith" doubt of majority*

Under long-settled principles, where a union obtains majority status and the employer thereupon engages in unfair labor practices tending to dissipate that majority, his refusal to recognize and bargain with the union violates Section 8(a)(5) and (1). In those circumstances he cannot be heard to say that he doubted the majority in good faith and is entitled to an election because his own unlawful conduct has rendered the election route impassable, and permits, if it does not indeed require, recourse to other means (such as authorization cards) of establishing the union's majority status. The instant case falls squarely within that settled law, particularly as several of the unfair labor practices (notably, those surrounding the recognition of the Committee and the grant of benefits to meet the employees' grievances) were palpable attempts to wean the employees away from their support of the Union. Even when the Company acted to undo and remedy some of its actions by reinstating the transferred and discharged men with backpay, the Company concealed from the employees that it had decided on this action at the urging of the Union, and created the impression that it was offering the concession to the employee representatives.

The Company points out that as late as October 13, the Union was still pressing for recognition in three separate stores, and that the Union did not concede the appropriateness of the single seven store unit or claim a majority therein until October 15. (The Union points out in its brief that as it has no representative in the Euclid store, it did not know how many salesmen were employed there until the hearing on October 13, when it learned for the first time that its 21 cards gave it a majority in the seven-store unit.) The Union's change of position as to the appropriate unit might in some circumstances give rise to a bona fide doubt as to whether it enjoyed majority status in the unit it belatedly agreed was appropriate. But on this record, as stated above, the Company's own unfair labor practices preclude it from claiming a good-faith doubt, and preclude it from insisting on an election which its own conduct would have tainted. Moreover, even if the Union had made no request

to bargain in the appropriate unit, the record establishes that the Union had a majority in the stipulated appropriate unit and that the Company by unfair labor practices sought to destroy that majority. A bargaining order would therefore be appropriate to remedy the violations found above and to restore the *status quo ante,* even if there were no violations of Section 8(a)(5). See *N.L.R.B.* v. *Delight Bakery, Inc.,* 353 F.2d 344, 346–347 (C.A. 6), and cases there cited; *Local No. 152 IBT [American Compressed Steel]* v. *N.L.R.B.,* 343 F.2d 307, 309 (C.A.D.C.), and cases there cited.[10]

CONCLUSIONS OF LAW

1. The Company by interrogating its employees as to their union activity and that of fellow employees, by stating that union activity had resulted in or would result in reprisals against employees, and by offering benefits to employees to induce them to abandon union activity engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.
2. By dominating, interfering with the administration of, and contributing support to the Employees' Committee, the Company engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(2) and (1) and 2(6) and (7) of the Act.
3. By transferring and discharging employees because of their activity in the Union the company engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(3) and (1) and 2(6) and (7) of the Act.
4. By refusing to bargain with the Union as the statutory bargaining representative of the salesmen employed at the Company's seven stores, the Company engaged in an unfair labor practice affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

THE REMEDY

I shall recommend that the Company cease and desist from its unfair labor practices, and affirmatively, that it disestablish the Employees' Committee, bargain with the Union upon its request, and post appropriate notices.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend, pursuant to Section 10(c) of the Act, issuance of the following:

ORDER

Respondent corporations, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees as to their or their fellow employees' membership in, or activities on behalf of, any labor organization.

(b) Threatening any employee with discrimination, or in any manner discriminating against any employee, because of such membership or activity.

(c) Offering benefits to employees for the purpose of inducing them to abandon support of a labor organization.

(d) Creating the impression that it is keeping union meetings under surveillance.

(e) Dominating, interfering with the administration of, or contributing support to, the Employees Committee or any successor thereto, or any other labor organization of their employees.

(f) Recognizing or negotiating with the Employees Committee or any successor thereto for the purpose of discussing grievances or other terms or conditions of employment.

(g) Refusing to bargain with Retail Store Employees Union Local 880, Retail Clerks International Association, AFL–CIO, as the exclusive bargaining representative of all furniture salesmen employed at the Respondents' stores in the Cleveland area, excluding all office clerical employees, porters, guards, professional employees, and supervisors as defined in the Act.

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

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[10] The Company emphasizes that the unfair labor practices here found antedate the Union's request for recognition in the appropriate unit But the unfair practices followed hard upon the Union's attaining majority status and tended to dissipate the Union's majority This circumstance distinguishes *Oklahoma Sheraton Corp.*, 156 NLRB 681, on which the Company relies, for in that case the union successfully conducted its organizing drive *after* the unfair labor practice, which plainly did not dissipate a majority

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

(a) Upon request, bargain collectively with the above-named Union as the exclusive bargaining representative of the employees in the above-described unit.

(b) Completely disestablish the Employees' Committee as the representative of any of the employees for the purpose of dealing with Respondents with respect to grievances or other terms or conditions of employment.

(c) Post at their respective stores in the Cleveland area copies of the attached notice marked "Appendix" [11] Copies of such notice to be furnished by the Regional Director for Region 8, after being duly signed by an authorized representative of the appropriate Respondent, shall be posted immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by each Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 8, in writing, within 20 days from the date of the receipt of this Decision what steps the Respondent have taken to comply herewith.[12]

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[11] The Regional Director shall fill in on each set of notices over the word "Employer" the name of the particular Respondent at whose store the notices are to be posted In the event that this Order is adopted by the Board, the words, "an Order" shall be substituted for "a Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing" shall be inserted immediately preceding "an Order."

[12] In the event that this Order is adopted by the Board, this provision shall be modified to read, "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondents have taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL bargain with Retail Store Employees Union, Local 880, as the representative of the salesmen employed in the affiliated Watkins stores in the Cleveland area.

All our employees have the right to join or support a labor union. WE WILL NOT in any manner interfere with their exercise of this right. Specifically, WE WILL NOT question them as to their union membership or activity, or that of fellow employees. WE WILL NOT discharge employees or transfer them to other stores or threaten to take any action against them because of their union membership or activity. WE WILL NOT grant benefits to them to induce them to abandon union membership or activity.

We have disestablished the Employees' Committee as the representative of any of our employees for the purpose of dealing with us concerning grievances or other terms or conditions of employment.

WATKINS FURNITURE COMPANY, WATKINS-PEARL, INC., WATKINS-SOUTHGATE FURNITURE CO., WATKINS-GREAT NORTHERN FURNITURE COMPANY, FORMAN FURNITURE COMPANY, WATKINS-EUCLID FURNITURE CO., INC., AND WATKINS-MENTOR FURNITURE CO.,

Employer.

Dated_____ By_____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio 44115, Telephone 621–4465.