training in engineering in junior colleges and engineering institutes. The draftsmen prepare detailed drawings of components and assemblies using layouts and instructions received from design engineers. However, it is clear that they use trigonometry, geometry, and a wide variety of technical symbols in their work, exercise discretion in drawing mating parts, and in some instances determine whether certain parts should be machined or fabricated. On the basis of the above evidence, we find that the draftsman classification should be excluded as a technical one.[12]

Accordingly, we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All office clerical and plant clerical employees of the Employer's Heavy Machine Division plant, Everett, Washington, including accountants A, accountants B, accounting clerks, senior tabulating machine operators, clerk-typists, keypunch machine operators, general clerks, switchboard operator-receptionists, coordinators, dispatchers, stenographers, receiving clerks, blueprint machine operators, and senior clerks, but excluding application engineers, contract administrators, estimators, field service representatives, buyers, buyers follow-up, outside buyers follow-up, schedulers, planners, tool designers, draftsmen, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.][13]

[12] *Litton Industries of Maryland, Incorporated*, 125 NLRB 722, 725

[13] An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days after the date of this Decision and Direction of Election The Regional Director shall make the list available to all parties to the election No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed *Excelsior Underwear Inc*, 156 NLRB 1236

J. C. Penney Co., Inc. *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 452

J. C. Penney Co., Inc. *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 452, Petitioner. *Cases 27-CA-1769, 1821, and 27-RC-2773. July 29, 1966*

DECISION AND ORDER

On March 16, 1966, Trial Examiner David Karasick issued his Decision in the above-entitled proceeding, finding that the Respond-

ent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner further found merit in the objections by the Union to the election conducted on May 5, 1965, and recommended that the election be set aside and that the petition in Case 27–RC–2773 be dismissed and that all proceedings in connection therewith be vacated. Thereafter, the Respondent filed exceptions and a supporting brief to the Decision, the General Counsel filed cross exceptions and a supporting brief as well as an answering brief to the Respondent's exceptions. Respondent thereafter filed an answering brief to the General Counsel's cross-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 [Members Fanning, Brown, 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 Trial Examiner's Decision, the exceptions, cross-exceptions, the briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board adopted the Trial Examiner's Recommended Order.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding was heard before Trial Examiner David Karasick in Denver, Colorado, on October 12 and 13, 1965, upon charges filed in Case 27–CA–1769 on February 17, 1965, and in Case 27–CA–1821 on May 10, 1965, and upon a consolidated amended complaint issued on August 3, 1965, alleging that J. C. Penney Co., Inc., herein called the Respondent, had engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, herein called the Act.

Evidence was also taken at the hearing in connection with certain objections filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 452, herein called the Union, with respect to an election conducted by agents of the Board among the Respondent's employees on May 5, 1965.

All parties were represented at the hearing and the Respondent and the General Counsel have filed briefs. Upon consideration of the entire record in the case, and from my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OPERATIONS OF THE RESPONDENT

The Respondent, a Delaware corporation with its principal office located in New York City, is engaged in the sale and distribution of merchandise through retail stores located in various States of the United States. The Respondent's warehouse, located at 195 West Nevada Place, Denver, Colorado, which supplies the Respondent's retail store in downtown Denver, is the only establishment involved

in this proceeding. The Respondent annually sells goods valued in excess of $500,000 and receives goods valued in excess of $50,000 from places located outside the State of Colorado. The Respondent admits, and I find, that it 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 ALLEGED

A. *The facts*

In November 1964, a new operations and control manager was placed in charge of the Respondent's warehouse. Among other changes which he instituted were some involving personnel. In November and early December some of the older employees who had been working in the warehouse were laid off and new employees hired. Delbert Cox, the warehouse manager, and the remaining employees in the warehouse were upset and angry at the changes which had been made. During the morning of December 18, 1964,[1] while Cox and employees Robert Lamke,[2] Reginald French, Chester Seitz, and Forest Page were on their morning coffee break in the warehouse lunchroom, the subject of joining a union was discussed. Cox said he thought it a good idea and that they needed a union or some form of protection. As a result of the discussion, it was decided that French would communicate with the Union. French did so and at noon he, Lamke, and Cox went to lunch together at the Old South Restaurant where they were met by Donald Sutton, a representative of the Union. French and Lamke each signed a union authorization card and Sutton gave 12 or 13 more such cards to Lamke. Lamke stated that additional cards would be needed. Sutton and Lamke arranged to meet at 2 o'clock at Mario's restaurant which is located a half block from the warehouse, where Sutton would deliver the additional cards. Sutton advised Lamke and French to tell the employees that Cox's involvement in the talk about the Union should not be made known to anyone else.

Upon returning from lunch, Lamke stationed himself in the lunchroom where the warehouse employees came in individually. Each was given and signed a union authorization card. At 2 o'clock, as prearranged, Lamke met Sutton at Mario's restaurant, received additional authorization cards and returned with them to the warehouse where he resumed handing out the cards to the employees in the lunchroom. While Lamke was thus engaged in the lunchroom, Cox was some 50 feet away in full view of the lunchroom door. Several of the employees asked Cox what he thought they should do and he told them that he thought they should sign a union card. A number of the employees asked Lamke what Cox thought about the Union and Lamke replied that Cox "wouldn't be letting me do this right now" if he did not approve. According to the undenied testimony of employee Frieda Ickes, Cox told her that she had better go in the lunchroom or she would be sorry. At one point, Cox noticed two unidentified men in the warehouse and, thinking that they might be officials of the Respondent, he went into the lunchroom and told Lamke to leave quickly and hide the cards.

After all the employees in the warehouse had signed union authorization cards, Lamke called the Respondent's retail store and made arrangements with five of the warehouse employees who were working that day at the store to meet after working hours at the Blue Bonnet Cafe. Cox, French, and Lamke, together with two representatives of the Union, met the employees shortly after working hours.[3] Cox advised the employees to sign union cards. He told one of the employees, according to Cox's uncontradicted testimony, that it was "the only thing to do," that she could do as she pleased but that "if anyone is going to have a job left here I feel you (sic) should sign." All five women signed union cards in Cox's presence.

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[1] References hereafter to dates in November or December are to 1964 and to dates in the months of January through May are to 1965, unless otherwise indicated.

[2] Lamke was Cox's assistant, but no contention is made that he was a supervisor and the parties stipulated that his status is not an issue in this case.

[3] The five employees were Leonora June Tolbert, Emma Ramer, Bernice Davis, Signe Johnson, and Paula Perera.

All of the 22 persons employed in the warehouse unit[4] on December 18, signed union authorization cards.[5]

On December 21, the Union sent a letter to the Respondent, in which it requestetd that it be recognized as the bargaining agent of the warehouse employees, suggested that the parties meet on December 23 and enclosed copies of the 22 signed authorization cards. The letter was received on the same day by Donald Lenehan, manager of the Respondent's downtown store, and Cox's superior, who called the zone office of the Respondent, also located in Denver, to ask for advice. The zone office referred Lenehan to Gene Rowan, the Respondent's director of personnel relations in New York City. Lenehan accordingly referred the matter to Rowan who statetd that he would like to have time to study the situation. In the meantime, on December 23, Lenehan called Charles F. Lindsay, secretary-treasurer of the Union. It was mutually agreed that Lindsay would communicate with Lenehan at the beginning of the week of December 28 regarding the Union's request that the Respondent meet and negotiate. A letter confirming their understanding was sent by Lindsay to Lenehan on that day.

On December 29, the Respondent filed a petition with the Regional Office of the Board in Denver in Case 27–RM–167 in which it alleged that the appropriate bargaining unit comprised the employees in the downtown retail store as well as the warehouse.[6] On the same day, Lenehan sent a telegram to Lindsay, stating that the Respondent doubted that the Union represented a majority of the employees in an appropriate bargaining unit and that the Respondent refused to recognize the Union unless and until it had been certified by the Board.

On January 6, the Union sent a letter to the Respondent, stating that it regarded the Respondent's refusal to recognize and bargain with it as "non meritorious"; that it was filing charges against the Respondent with the Board; and that its demand for bargaining was a continuing one and it stood ready, willing, and able to meet with the Respondent.

During the first week in January, Manager Lenehan was told by Frieda Ickes, one of the warehouse employees, that Warehouse Manager Cox had influenced the employees in signing the union authorization cards on December 18.

On January 11, Cox, with Lenehan's approval, spoke to the warehouse employees. The employees were called to the lunchroom one at a time for a private interview. In substance, a number of the employees variously testified that they had been told by Cox that he thought they had all done wrong; that he believed that Lenehan was sincere and that they ought to give him a chance and withdraw from the Union and go back to the Company; that if they did so, there might be raises in store for them; and that the employees could lose benefits, such as discounts and holidays, if they formed a union; and that the employees at the Sachs Lawler Stamp Company in Denver had formed a union and had lost all of the benefits which they had enjoyed. Cox himself admitted that he told the employees during these interviews that Lenehan had stated that he was sorry this had all come about; that there could be a loss of benefits; and that he was convinced that Lenehan would review the wage rates and would make any adjustments he felt were necessary if the employees did not go ahead with the union movement.[7]

On February 5, Lenehan received confirmation of the information he had received during the first week in January from employee Ickes regarding Cox's

[4] The Respondent, in its answer, denies that the employees in the warehouse constitute an appropriate unit but admits that the Regional Director had so found in his decision on April 16, 1965 in Case 27–RC–2773, as noted hereafter.

[5] An additional employee who began work during the first week in January 1965, signed a union card on January 19.

[6] In its petition, the Respondent alleged that the appropriate unit comprised all sales and nonselling employees, including regular full-time, regular part-time, and regular on-call employees regularly called in, but excluding store manager, assistant manager, operations and control manager, merchandise managers, department managers, personnel manager, confidential employees, office manager, management trainees, guards, watchmen, employees of leased departments, and all other supervisors as defined in the Act, as amended. Approximately 219 employees would be included in such a unit.

[7] Through an error in transcription, Cox's admission that he made such a statement regarding wage adjustments is attributed to the General Counsel on page 267, line 14, of the transcript. The General Counsel, in his brief, moves to amend the transcript to correctly show that the answer is that of Cox. Since this conforms to my recollection of the testimony and is confirmed by my notes taken during the course of the hearing and by later testimony of Cox appearing at page 269, lines 16 through 21; and page 270, line 22 through page 271, line 3, the transcript is hereby amended to correctly reflect Cox's testimony.

activities on December 18, when Cox himself notified Lenehan of the part he had played with respect to the union authorization cards. On February 8, the Union withdrew its charge in Case 27–CA–1746, which alleged that the Respondent had refused to bargain; and on February 9, the Respondent withdrew its petition in Case 27–RM–167, seeking an election.

Between February 11 and 15, 13 of the 24 persons then employed in the warehouse unit signed new union authorization cards.[8]

On February 17, the Union filed a charge in Case 17–CA–1769, alleging that the Respondent had violated Section 8(a)(1) of the Act by unlawfully interrogating its employees; by both promising benefits and threatening loss of benefits conditioned upon rejection or retention of union membership and by granting benefits to its employees. On the same date, the Union filed a petition for an election in Case 27–RC–2773. On the basis of the petition so filed by the Union, a notice of hearing was issued by the Regional Director on February 24, and a hearing held on March 18.

On April 5, the Respondent granted wage increases to all of the employees in the warehouse, with the exception of one or two persons who had been newly hired.[9] On April 16, the Regional Director issued his decision and direction of election in Case 27–RC–2773, finding that the warehouse employees constituted an appropriate unit. On May 5, an election was held which the Union lost by one vote.[10] On May 6, the Union filed objections to the election, as more fully noted hereafter. On May 10, 1965, the Union filed a charge in Case 27–CA–1821, alleging violations of Section 8(a)(1) and (5) of the Act by reason of the wage increases granted the employees and the refusal of the Respondent to bargain with the Union on and after December 21, 1964.

On August 3, 1965, the Regional Director issued his supplemental decision in the representation case, directing that a hearing be held on the objections to the election which had been filed by the Union and that such hearing and the hearing in the complaint proceedings be consolidated.

B. *Concluding findings*

1. Interference, restraint, and coercion

Cox's Statements to the Employees on January 11

I am unable to agree, as the Respondent contends in its brief, that the statements made by Cox on January 11, are not violative of the Act because they were isolated, remote in time to the holding of the election, were uttered by a "minor supervisor," [11] came shortly after Cox helped bring in the Union, and were made prior to the time a majority of the employees again signed union authorization cards on February 11. Nor can the Respondent disclaim responsibility for the statements of Cox on the ground that his utterances were not authorized. The record shows that, prior to the time the statements in question were made, Lenehan knew and approved of the conduct of Cox in speaking to the employees. Despite the fact that Lenehan denied that he had instructed Cox to make the specific statements which he did regarding loss of benefits and promises of wage increases, he obviously knew that the question of the Union would enter the discussion for he admitted that he had instructed Cox that he could tell the employees that the Respondent was not "peeved" at them because they had signed union cards and could further tell them "that it didn't cost them anything to get their job and it shouldn't cost them anything to keep it, [sic] and they did have job security, we had no plans to terminate anybody in the stockroom." Moreover, irrespective of any instructions given by Lenehan to Cox in regard to the matter, the fact remains that the statements made by Cox, as a supervisor and as an agent of the Respondent, were binding upon the latter.

The fact that Cox's statement regarding loss of employee benefits may have been made to no more than 50 percent of the employees or that his statement regarding wage adjustments may have been made to only 6 or 7 of the employees does not alter the coercive character or effect of such statements.

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[8] Ten of these cards were signed on February 11, and three on February 15

[9] The wage increases so granted were effective as of March 29 and were received by the employees on April 5

[10] Of the 22 ballots cast, 1 was challenged, 10 were cast for, and 11 against, the Union.

[11] The record shows that Cox was manager of the warehouse and took an active part in reviewing wages and recommending wage increases for the warehouse employees

2. The wage increases of April 5; Cox's statement to Miller

The General Counsel contends that the wage increases granted to virtually all of the employees in the warehouse unit on April 5, constituted unlawful interference with the election which was held on May 5. The Respondent disputes this and avers that, in granting the pay increases, it merely followed its customary practice.

Lenehan testified that he became manager of the retail store on September 10, 1964; that in about the middle of October he made a review of the employees' wages and determined that increases should be given to the employees in the retail store and the warehouse beginning in December and ending the first of February; that he granted such wage increases to the employees in the retail store and withheld them from the employees in the warehouse when he received the Union's demand for recognition on December 21; that because of unrest among the warehouse employees at their failure to receive such increases and because it did not seem that the question as to the appropriate unit would soon be decided, the Respondent granted the wage increases to the warehouse employees on April 5.

As to the unrest among the warehouse employees, Lenehan himself testified that he had been informed of such unrest by Cox in January and he at that time instructed Cox to tell the employees that the Respondent could not give them any wage increases "because of the unit question." At this time no hearing had yet been held with respect to the representation petition which had been filed by the Respondent on December 29. On the other hand, on April 5, a hearing had already been held in the representation case on March 18 and a decision in that case was then pending I find it difficult to understand why, under these circumstances, resolution as to the unit question would have seemed more remote on April 5 than it had during the first week or ten days in January.

It is true, of course, that more time had passed between January and April and that this alone might be regarded as contributing to employee unrest. However, Lenehan testified that the Respondent's normal practice was to grant wage increases to the employees at intervals of approximately 12 to 15 months. The evidence shows that the last wage increases granted the employees in the warehouse occurred on February 3, 1964, 14 months earlier. With a decision in the representation case imminent and the possibility of an election soon thereafter a matter of reasonable expectation, I find it hard to understand why the Respondent felt impelled to grant the wage increases at the time it did. As matters actually developed, had the Respondent withheld action for another month, the election would have been held and the Respondent would have granted the wage increases within the span of time it customarily followed, a result which it would seem should not have been difficult to foresee. I am not convinced that the wage increases in question were granted at the time they were for the reasons thus advanced by the Respondent. As noted above, other evidence in the record supports a contrary inference. The pay increases granted on April 5 followed the statement Cox admittedly made to the employees on January 11 that Lenehan would review the wage rates and would make any adjustments he felt were necessary if the employees did not go ahead with the union movement. In addition, Cox told warehouse employee William Miller, at the time he informed the latter that he was to receive a pay increase shortly before April 5, that he was sure that Miller saw the light on the union business and that a union was not needed.[12]

[12] Cox's statement to Miller is contained in an affidavit given by Miller to an agent of the Board on May 18, 1965, which was received in evidence as a record of past recollection over the objection of counsel for the Respondent who contended at the hearing, and asserts in his brief, that the document may be received in evidence only for impeachment purposes and therefore has no evidentiary value because Miller while on the witness stand had indicated that he did not wish to testify about the statement in question since he regarded it as having been made to him in confidence However, when Miller denied that his memory had been refreshed, after having been shown and having read the affidavit, I expressly asked him if his answer in this regard related to his prior testimony that he did not wish to violate a confidence in testifying about the statement and he replied that it did not. Under these circumstances, I do not feel that I can find to the contrary. In any event, I consider the statement in question as merely corroborative of the statement admittedly made by Cox to the employees on January 11, as above noted, and my ultimate conclusion as to the effect the wage increases had on the employees would remain the same, even if Cox's statement to Miller were to be disregarded

Upon the foregoing facts and on the record as a whole, I find that the wage increases granted by the Respondent to the warehouse employees on April 5 were reasonably calculated to, and did, interfere with the employees in the exercise of their freedom of choice in selecting or rejecting the Union as their collective-bargaining representative and that by such conduct the Respondent violated Section 8(a)(1) of the Act.[13] Cox's statement to employee William Miller, shortly before April 5, 1965, and at the time he informed the latter that he would be given a wage increase, that he was sure that Miller saw the light on the union business and that a union was not needed also violated Section 8(a)(1) of the Act.

3. The alleged refusal to bargain

a. *The appropriate unit*

I find, in accordance with the Decision and Direction of Election issued by the Regional Director on April 16, 1965, that all employees at the warehouse of the Respondent, located at 195 West Nevada Place, Denver, Colorado, but excluding office clerical employees, guards, 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.[14]

b. *The Union's majority*

Thirteen of the twenty-three employees who had signed union authorization cards on December 18, 13 again signed such cards on February 11 and 15. Nine of these cards were signed by employees who attended a union meeting on the evening of February 11 and four additional cards were signed by employees on February 15. There is no evidence that the employees who signed the authorization cards on February 11 and 15 were unlawfully influenced or coerced in any way or that their conduct in signing the cards was other than voluntary. At this time, there were 24 employees in the warehouse unit. Accordingly, I find that the Union has represented a majority of the Respondent's employees in the unit hereinabove found to be appropriate at all times since February 15, 1965.

c. *The Respondent's refusal to recognize the Union*

The General Counsel contends that the Respondent unlawfully refused to bargain. It is the General Counsel's position that Warehouse Manager Cox's participation in the organizational activities of the employees on December 18, was minimal; that he was acting in his own interest rather than as a representative of the Respondent; that the Union achieved an uncoerced majority on that date; that its demand for recognition was a valid and continuing one on and after December 21; and that the Respondent's refusal to recognize and bargain with the Union on and after December 29 was unwarranted. The Respondent asserts to the contrary that Cox's conduct on December 28 vitiated the majority which the Union had achieved both on December 18 and on February 15; that the Union's demand for recognition on December 21 was therefore invalid; that no new demand was thereafter made; and that therefore the Respondent's refusal to recognize and bargain with the Union on and after December 29 was justified.

The evidence is undisputed that both on December 18 and on February 11, a majority of the employees at the warehouse signed union authorization cards. The question remains whether such cards were valid by reason of Cox's conduct and statements on December 18, as noted above.

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[13] This finding is based, not on the ground alleged in the amended complaint that the wage increases were unlawful because they were granted unilaterally and without consultation with the Union, but rather on the theory, litigated at the hearing and argued by the General Counsel and disputed by the Respondent in their respective briefs, that such conduct on the part of the Respondent was designed to, and did in fact, influence the employees in the election.

[14] The Respondent in its answer denies that the foregoing unit is appropriate but admits that it had been so found by the Regional Director following the hearing in the representation case. It is Board policy not to permit a party in a complaint proceeding to relitigate issues which have been decided in a prior representation proceeding *Ken Lee, Inc*, 137 NLRB 1642, 1647.

There is some basis for the view that, on December 18, the employees were aware of the fact that Cox was acting in furtherance of his own economic interests, contrary to the wishes and policies of the Respondent. But on the record as a whole, I cannot agree that Cox's activities were minimal or that they can be regarded as having had no coercive effect upon the employees. His participation in the discussion with the union representatives at the Old South restaurant at noon on December 18, when French and Lamke signed union authorization cards, and his further participation later that day at the Blue Bonnet Cafe when five of the employees signed authorization cards in his presence after they had been advised to do so by him; his advice and statements to employees Santone, Crank, Ickes, and Samples concerning such cards when they asked him what they should do; and his action in openly permitting Lamke to call in the employees individually during the afternoon of December 18 for the purpose of signing such authorization cards lead to the conclusion that the Union's majority was secured with his direct and open assistance. Accordingly, I find that the union designation cards signed by the warehouse employees on December 18 did not constitute a valid showing that a majority of such employees had designated the Union to represent them at that time.[15] The Union's demand for recognition on December 21 was, therefore, not valid and the Respondent was justified in its refusal to recognize the Union on December 29.

The Respondent contends that Cox's influence had not been dissipated by the time the new union authorization cards were signed, commencing on February 11. Under the circumstances disclosed in this record, the fact that on January 11 Cox spoke to all of the warehouse employees on an individual basis for the purpose of informing them that he had experienced a change in attitude toward the Union and in an attempt to dissuade them from further supporting the Union; the fact that so far as the evidence shows the employees who signed new union authorization cards did so voluntarily and without influence or coercion from the Respondent; and the fact that the new cards were signed almost 2 months after Cox's participation in the original signings had occured, in my opinion provide a reasonable basis for concluding that the union designation cards signed on February 11 and 15 may properly be regarded as a true expression of the desires of the employees.[16]

Despite such conclusion, however, the Respondent was not guilty of a refusal to bargain thereafter since no new demand for recognition following the time it so secured a valid majority was made by the Union.[17] I do not believe that this record warrants the inference that such a demand had been made on the basis of the petition for an election filed by the Union in Case 27–RC–2773 on February 17, which explicitly referred to and relied upon the demand of December 21 and the refusal of December 29;[18] or that it may be inferred on the theory that such a demand would be futile and therefore was excused; or that such an inference may be drawn on the theory that the demand originally made on December 21 was a continuing one.

IV. THE OBJECTIONS TO THE ELECTION

On May 6, as noted above, the Union filed objections to the election which had been conducted on the prior day and which it had lost by one vote. These objections were: (1) that on or about April 7, 1965, the Respondent, unilaterally and without bargaining or consultation with the Union, had granted the warehouse employees wage increases; and (2) that the Respondent granted such wage increases in order to influence the employees in the selection or rejection of a collective-bargaining representative.

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[15] *Wells, Inc*, 68 NLRB 545; *The Wolfe Metal Products Corporation*, 119 NLRB 659, *Insular Chemical Corporation*, 128 NLRB 93 Cf. *Christina M Jacobson, doing business as Radio Station KVEC*, 93 NLRB 618; *J. A. Booker, d/b/a Atlantic Stages*, 78 NLRB 553

[16] The interval of nearly 2 months which occurred between the signing of the first union cards and the signing of the second set of such cards roughly corresponds to the 60-day posting period uniformly required by the Board where unfair labor practices have been committed and provides an interesting analogy here But irrespective of that established practice, however, I believe that the circumstances in this case indicate that this interval, together with the other factors above set forth, warrant a determination that whatever coercive effect Cox's original conduct may have had, it was neutralized by the time the second set of union authorization cards were signed

[17] *John Wafford d/b/a Wafford Cabinet Company*, 95 NLRB 1407

[18] Cf *Waukesha Lime and Stone Co., Incorporated*, 145 NLRB 973

I find that the first objection raises no substantial or material issue with respect to the results of the election since it has been found, for the reasons set forth above, that the Respondent had no obligation to recognize or bargain with the Union at the time the wage increases were granted. That being so, the Respondent was free to act unilaterally and was under no duty to bargain or consult with the Union regarding the granting of the wage increases in question.[19] With respect to the second objection, it has been found, as above set forth, that the Respondent's conduct in granting the wage increases to the warehouse employees on April 5, 1965 was reasonably calculated to, and did, influence such employees in their rejection of the Union as their collective-bargaining representative.[20] Such conduct is sufficient to vitiate the results of the election, which I will recommend be vacated as set forth hereafter.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with Respondent's operations 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.

VI. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent did not refuse to bargain with the Union on December 29 because on that date the Union did not have a valid majority; and that the Respondent did not refuse to bargain on or after February 15, when the Union had secured a valid majority, because no proper request for bargaining on or after that date had been made. It also has been found, however, that after the Union did achieve a valid majority on February 15, 1965, the Respondent engaged in unfair labor practices designed to destroy that majority. By such conduct, the Respondent has disclosed a disposition to evade its duty to bargain as the Act requires, and it therefore appropriately may be required to bargain, upon request, whether or not the Union has lost its majority, since it must be presumed that, but for the unfair labor practices so commited, such majority would have been retained.[21] It further has been found that certain objections to the election, duly filed by the Union, have merit and warrant setting the election aside. Accordingly, I shall recommend that the petition in Case 27–RC–2773 be dismissed and that all proceedings in connection therewith be vacated.[22] In addition, I shall recommend that the Respondent bargain, upon request, with the Union and, if an understanding is reached, embody such understanding in a signed agreement.[23]

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. All employees at the warehouse of the Respondent, located at 195 West Nevada Place, Denver, Colorado, but excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

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[19] This, of course, is a matter separate and apart from the question whether the act of granting the wage increases was in itself lawful.

[20] In arriving at this conclusion, I have not relied upon Cox's statements to the employees on January 11 or his statement to employee William Miller shortly before April 5 which I have found were violative of the Act, as more fully recounted above; although I have, as previously noted, considered his statement to Miller, not as an act of interference with the election, but as evidence which would throw light on the question whether the wage increases were reasonably calculated to influence the employees in such election

[21] *Western Aluminum of Oregon Incorporated, et al*, 144 NLRB 1191.

[22] *S N.C. Manufacturing Co, Inc.*, 147 NLRB 809.

[23] *Irving Air Chute Company, Inc., Marathon Division*, 149 NLRB 627.

4. The Union has been at all times since February 15, 1965, and is now, the exclusive representative of the employees in the aforesaid unit within the meaning of Section 9(a) of the Act.

5. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in these proceedings, it is recommended that the Respondent, J. C. Penney Co., Inc., Denver, Colorado, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Offering or giving wage increases for the purpose of influencing its employees to refrain from joining or assisting, to withdraw as members of, or to reject International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 452, or any other labor organization, as their collective-bargaining representative; provided, however, that nothing in this recommended order shall be construed as requiring the Respondent to vary or abandon any wage increases which it has heretofore granted its employees.

(b) Threatening its employees with loss of employment benefits if they join or assist the aforenamed Union or any other union, or engage in protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the aforenamed union, or any other labor organization, to bargain collectively through representatives of their own choosing, or 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 in Section 8(a)(3) of the Act.

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

(a) Upon request, bargain with the aforenamed union as the exclusive representative of its employees in the unit herein found appropriate, and, if an agreement is reached, embody such understanding in a signed agreement.

(b) Post at its warehouse at Denver, Colorado, copies of the attached notice,[24] marked "Appendix."[25] Copies of said notice to be furnished by the Regional Director for Region 27, shall, after being duly signed, be posted by the Respondent 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 the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 27, in writing, within 20 days of the date of the receipt of this Decision, what steps the Respondent has taken to comply herewith.[26]

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[24] Since notices are customarily framed in the language of the statute and because of their technical nature are often difficult for employees to understand, I am recommending that the notice in this case embody the simplified form which appears in the Appendix

[25] In the event that this Recommended Order is adopted by the Board, the words, "a Decision and Order" shall be substituted for the words "the 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 an Order" shall be substituted for the words "a Decision and Order."

[26] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify the said Regional Director, in writing, within 10 days from the date of this Order, what steps it has 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 NOT interfere with the rights of our employees under the law by offering or giving them wage increases for the purpose of influencing them not to join or assist, to withdraw as members of, or to reject International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 452, or any other union, as their collective bargaining representative. However, the law does not require us to withdraw any wage increases which have been granted.

WE WILL NOT threaten our employees with loss of employment benefits if they join or assist the above-named Union, or any other union.

WE WILL bargain, upon request, with the above-named Union as the exclusive representative of our employees in the following appropriate unit:

All employees employed by J. C. Penney Co., Inc., at its warehouse located at 195 West Nevada Place, Denver, Colorado, excluding office clerical employees, guards, professional employees, and supervisors as defined in the National Labor Relations Act.

WE WILL NOT violate any of the rights our employees have under the National Labor Relations Act to join, or not to join, a union of their own choosing.

J. C. PENNEY CO., INC.,
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, 609 Railway Exchange Building, 17th and Champa Streets, Denver, Colorado 80202, Telephone 297–3551.

Valley Homes, Inc. *and* Truck Drivers, Chauffeurs and Helpers Local Union No. 100, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Case 9–CA–3672. July 29, 1966*

DECISION AND ORDER

On April 20, 1966, Trial Examiner Harold X. Summers 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. He also found that Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief.

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