another, as, for example, a laborer became a storeroom assistant. Finally, at least some of the Group I employees are plant clericals such as the Board normally includes in a production and maintenance unit unless they are specifically excluded therefrom by agreement of the parties or unless they are expressly included in other units.[5] Neither of these circumstances is present here.

In light of all these factors, we find that the Group I employees cannot constitute a separate appropriate unit, and we shall dismiss the petition in Case 15–AC–9.[6]

Petition in Case 15–AC–7

The Local has petitioned to have its name substituted in the certification in place of the Association's name. The Employer alleges that the disaffiliation action was ineffective because it did not conform to the Association's constitutional requirements. We find no merit in this position.

The Association's constitution provides a method whereby it can be amended to effectuate such a change. This method requires, first, the approval of a resolution for amendment of the constitution by a 2/3 vote of the executive committee; and, second, approval by a majority of members voting after 15 days' notice of an employee-member election. The record indicates that the required notice of the resolution was given to the members to amend and that more than a majority voted to affiliate with the Local and approve the resolution.

The record further establishes that Local 428 is but a continuation of the certified Association herein. The certified union took formal steps to make certain that a majority of its membership approved of such action; and, the Association gained assurance from the Local that there would be no loss of identity of the group constituting the Association. Finally, the certified representative, in seeking recognition of this new affiliation, made it perfectly clear, despite its new affiliation that the "officers and functional leaders" would remain the same[7] and there would be no change in the day-to-day relationships with the Employer. In these circumstances, as we believe that the requested substitution would insure to employees a continuity of their present organization and representation, we shall grant the Petitioner's motion and substitute Office and Professional Employees International Union, Local 428, AFL–CIO, for the Baton Rouge Water Works Employees Association as certified representative of the employees in the unit. Such amendment of the certification is not, however, to be considered as a new certification or recertification.[8]

Petition in Case 15–RM–214

As more fully set forth above, the Employer seeks an election to determine the identity of the present bargaining representative of its production and maintenance employees, and it contends that its Group I employees are entitled to a self-determination election to indicate whether they wish to be represented in a separate unit. However, we have found that a separate unit of the Group I employees is inappropriate and that the petition of Local 428 for amendment of the certification by substitution of its name for that of the Association as successor should be granted. Accordingly, we find that no question concerning representation exists, and we shall dismiss the petition in this case.

ORDER

It is hereby ordered that the certification of representative issued to the Baton Rouge Water Works Employees Association in Case 15–RC–551 be, and it hereby is, amended by substituting the name "Office and Professional Employees International Union, Local 428, AFL–CIO," for the name of the said Association.

Further, it is hereby ordered that the petitions in Cases 15–AC–9 and 15–RM–214 be, and they hereby are, dismissed.

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[5] *Remington Rand, Division of Sperry Rand Corp.*, 150 NLRB 409; *Raybestos Manhattan Inc.*, 115 NLRB 1036, 1038.

[6] Our decision herein is not to be construed as deciding whether, if the separate unit sought could have been appropriate, the proper procedure to accomplish its severance was adopted here.

[7] In fact, all officers but the former president, who is a Group I employee and active in seeking separate representation for that group, continued to hold the same offices and to function in the same way.

[8] *Emery Industries, Inc.*, 148 NLRB 51.

S. Morena & Sons, Inc. ***and*** **Local 11, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** Case 22–CA–2844.

April 14, 1967

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND JENKINS

On December 22, 1966, Trial Examiner George A. Downing, issued his Decision in the above-entitled proceeding, finding that the Respondent 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. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision 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 powers in connection with this case to a three-member panel.

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 and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner and orders that the Respondent, S. Morena & Sons, Inc., Jersey City, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Substitute the following for paragraph 2(b) of the Trial Examiner's Recommended Order:

"(b) Offer to its striking employees upon their application on the termination or abandonment of the strike, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings, including backpay and the interest thereon computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716, which they may suffer from a date 5 days after their application for reinstatement to the date of their actual reinstatement, dismissing if necessary any persons hired as replacements for said strikers, and place upon a preferential hiring list such strikers for whom no employment is immediately available, with priority to be determined among them by such system of seniority or other nondiscriminatory practice as Respondent theretofore applied, and thereafter offer, in accordance with such list, reinstatement as positions become available."

2. Add the following as paragraph 2(c) and reletter the following paragraphs consecutively:

"(c) Notify the above-described employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces."

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

GEORGE A. DOWNING, Trial Examiner. This proceeding, brought under Section 10(b) of the National Labor Relations Act, as amended, was heard at Newark, New Jersey, on October 31 and November 1, 1966,[1] pursuant to due notice The complaint, which was issued on September 15 on a charge dated August 1, alleged in substance that Respondent engaged in unfair labor practices proscribed by Section 8(a)(1), (3), and (5) of the Act by (1) interrogating its employees and warning them of discharge in connection with their union membership and activities; (2) assigning Benny Roger Taylor to more arduous job tasks because of his union membership and activities; and (3) refusing to bargain with the (certified) Union as the collective-bargaining representative of its employees in an appropriate unit at all times on and after June 23 Respondent answered, denying the unfair labor practices as alleged.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTIONAL FINDINGS, THE LABOR ORGANIZATION INVOLVED

Respondent is a New Jersey corporation with its principal office, place of business, and a warehouse at Jersey City, where it is engaged in the purchase and sale of scrap paper and related products. I find on facts alleged in the complaint and admitted by answer[2] that Respondent is engaged in commerce within the meaning of the Act, and that the Charging Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *Introduction and Issues*

Following organizational activities among Respondent's truckdrivers, balers, and warehouse employees in May, an election was held on May 24 and was won by the Union, which was certified on June 2. A strike occurred during contract negotiations on August 1 and was still pending at the time of the hearing

The issues herein are solely factual ones concerning the complaint allegations (see Statement of the Case), denied by answer, and turn entirely on the resolution of credibility. They include also an issue whether the strike was caused and prolonged by unfair labor practices.

B. *Interrogations, Threats, and Promises*

Four employees, Thomas Stephens, Joseph Jones, James Nicholson, and Benny Taylor, testified to occasions before the election when Respondent's president, Joseph Morena, called them separately into his office and questioned them concerning their knowledge of union activities and in some cases concerning their union sentiments. Stephens was also asked if he knew who

[1] All events herein occurred in 1966

[2] I.e , the annual sale of goods valued in excess of $50,000 to concerns located in New Jersey, each of which ships annually to extrastate points products valued in excess of $50,000

started the Union,[3] and Taylor was asked to inform Morena if he heard anyone talking about the Union.

Jones testified further that Morena stated that if the Union won, which Morena doubted, he would keep the men who went with him and would let those go who went with the Union. When Jones replied that he would have to go with the majority, Morena continued that if he did so, Morena would let Jones go too and that he would not have the Union telling him his business. Nicholson testified that Morena also stated that he would not have a shop with the Union, reminded Nicholson how well Morena had treated the employees by lending them money and throwing parties, and offered Nicholson a raise of 5 cents an hour. Taylor testified that Morena also told him that those who were for Morena and against the Union would always have good jobs

Stephens, Jones, Taylor, and Marvin Henderson testified to further threats which Morena made after the Union won the election.[4] Stephens testified that he heard Morena tell Cottie (Cody) in the presence of Henderson, Roland Morgan, and himself, that "the guys" wanted a union but that no union was going to tell him what to do, that he would get a packer (a laborsaving device described as something like a garbage truck), that Morena, his brother, Cody, and Morgan would do the work, and that the rest of the employees would have to go Taylor testified that prior to the first negotiation meeting Morena stated that if the Union came in he would have to lay off some men and that he would keep those who were against the Union and guarantee them good pay.

Henderson testified that some 2 or 3 days after the first bargaining session, Morena called him into the office and stated that Morena did not want any union running his business and that, "[I]f it were not for the Union—he had to let them go because no union was coming into his place."[5] Jones testified that he heard Morena discussing the Union with Morgan and his brother some 3 weeks after the election and that Morena stated that, "[T]hey would never get a union shop there," and that, "[Y]ou can lead a horse to water but you can't make him drink."

Morena began his testimony with a flat denial that he never spoke with the five employees regarding the Union or union activities and he denied specifically all the statements which they attributed to him. On cross-examination, however, Morena, admitted that after he heard of the union activities, allegedly through Stephens, he called all his employees into the office individually, including Stephens, because he "wanted to find out why, what was going on, what was happening." Morena questioned them as to whether they were happy with their jobs and satisfied with their pay and whether they had any grievances because, he testified, "If they were unhappy I was going to try to straighten it up, to see what could be done about it." Questioned elsewhere about that testimony, Morena became evasive, stating, "Done about what?" and, "I don't know what you mean 'done about what.'" Morena also testified inconsistently that he called in *all* the employees after Stephens' alleged report of union activity, but claimed later that Stephens' report and his own questioning all occurred at the same time.

Because of the number of the incidents involved and the similarity of the statements attributed to Morena, the testimony of the General Counsel's witnesses became in effect, through cumulative weight, mutually corroborative Furthermore, not only was no direct corroboration offered of Morena,[6] but after he learned of the union activities, Morena admittedly engaged in the systematic questioning of employees to find out what was happening and what could be done.

I therefore credit the testimony of the General Counsel's witnesses, and I conclude and find that Respondent interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act by Morena's conduct in interrogating the employees concerning their union membership, sentiments, and activities, in requesting employees to inform on union activities, by stating that there would never be a union there, by threatening, if the Union won, to release employees who favored the Union, and by promising raises, good jobs to, and to retain those who sided with him.

C. *Taylor's Job Reassignment*

Benny Taylor was employed for some 6 years as a driver on Respondent's west New York City run and was normally accompanied by a helper. Respondent replaced Taylor on that run shortly after the negotiations began, assigning it to one Petro, an employee of 3 years' tenure, who had never driven the route before. Taylor rode with Petro as a helper for the first 2 weeks, showing Petro the route, and during that time he learned to operate the simple mechanism of the new packer. Taylor testified that Petro also had not previously operated the packer, that there was nothing special about it, and that it was in fact an easier job than before because the loading mechanism made it faster and easier to load. After 2 weeks Taylor was assigned to Petro's run, which was somewhat harder than his own because he did not have a helper, and in addition Taylor was required to work in the shop loading the press and unloading trucks. There was no denial of that testimony.

Morena testified that he put the packer into service some week or so before he changed Taylor's job, that Petro was more familiar with the mechanical operation, that he put them on the run together in the beginning (with Taylor as helper) so that Taylor could get a little experience and so that if one of them got sick, the other could take over. He admitted that Taylor learned to operate the mechanism before he was taken off.

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[3] Stephens denied that he volunteered to Morena information about the organizational activities and denied that he showed a union card to Morena Respondent sought obliquely to impeach that testimony by calling Morena's sister, Raffala, who testified that Stephens gave *her* a blank authorization card and told *her* that such cards were being passed around, and that she reported those facts to her brothers I find that the latter testimony did not constitute sufficient basis for impeachment, for Stephens was questioned only about his statements to Morena, not to the sister Furthermore, Raffala's testimony itself supported Stephens' denial that he informed *Morena* of the union activities

[4] Taylor served as the Union's observer at the election and Henderson was designated as alternate observer They were also employee members of the negotiating committee which began negotiations on June 23.

[5] It is difficult to interpret the latter statement literally since there was no evidence that employees had been terminated Morena's language was presumably intended to convey the kind of threat which Stephens, Jones, and Taylor testified to above

[6] Testimony was offered through certain nonstriking employees to the general effect that Morena never threatened them

Morena became quite evasive when questioned about the comparative experience of the two employees, as reflected by his following testimony:

TRIAL EXAMINER: Who was the more experienced driver, Taylor or Petro?

THE WITNESS: I had broken in Petro on this packer and he knew how to drive this packer.

TRIAL EXAMINER: That doesn't answer the question.

THE WITNESS: Petro is a better driver.

TRIAL EXAMINER: That isn't my question. Read him the question, Mr. Reporter.

(Question read.)

THE WITNESS: I would say about the same.

TRIAL EXAMINER: How long has Taylor been with you?

THE WITNESS: Six years.

TRIAL EXAMINER: How long has Petro been with you?

THE WITNESS: Three years.

Q. (By Mr. Neff): As far as you know, has Petro had any prior driving experiences before joining you.

A. Yes, sir.

TRIAL EXAMINER: And Taylor?

THE WITNESS: I didn't ask Taylor.

Furthermore, though claiming familiarity with Petro's former "record," Morena ultimately admitted that he did not ask Petro whom he worked for and that he knew of Petro's ability only from watching him drive.

Concluding Findings

Directly pertinent to the issue of Taylor's job change were Morena's earlier threats, section B, above, that he intended to let go those who supported the Union and, more specifically, that he intended to get a packer and to keep those who were against the Union. Morena was obviously aware of Taylor's prounion sentiments from his service as the Union's observer at the election and later from his service on the negotiating committee.

The substitution of Petro on Taylor's route was plainly a step toward the implementation of the earlier threats, particularly since Morena made no persuasive showing why Taylor's route was taken from him after 6 years and assigned to a driver with half his service and experience. Testimony by Morena and other witnesses for Respondent to the effect that Taylor's new job was not more arduous than the old one involved mainly a matter of semantics, for whether it was more arduous or only less desirable, a case was made out, for Taylor's testimony plainly established why he considered the new job to be less desirable, and Morena finally agreed that there was no reason why Taylor should not have his old job back if he wanted it.

I therefore conclude and find on the entire evidence that Respondent assigned Taylor to a different and less desirable job in implementation of his earlier threats, thereby discriminating against him to discourage membership in the Union.

D. *The Refusal to Bargain*

Negotiations began on June 23 and further meetings were held on June 30, July 5, 11, and 22, August 4, 16, and 24, and September 1, 6, 12, and 19. Prior to August 16 the Union was represented by either or both Leo Avnet and Thomas Lynch, secretary-treasurer and recording secretary, respectively, of the Union, and at times by a committee of employees, including Benny Taylor and Marvin Henderson. Beginning on August 16 the Union was represented by its attorney, Zachary Schneider, as sole spokesman, though there were also present at various times Avnet, Lynch, and members of the employee committee.

Respondent was represented through September 1 by its attorney, David Werther, and by Joseph Morena, and at some point in July, Arthur Fortugno, a friend of Morena's, began to attend as an adviser. Also present at times were Morena's sister and brother. Beginning with the meeting of September 6, Morena himself represented Respondent, with Fortugno in attendance and sometimes also Morena's brother.

Witnesses to the negotiations were Avnet, Lynch, and Schneider for the General Counsel, and Morena and Fortugno for Respondent. Werther was not called and it was represented that he was in Florida at the time of the hearing. Furthermore, though Morena testified that Werther made notes concerning the negotiations and concerning matters on which Morena had little or no recollection, no attempt was made to procure Werther's notes or his testimony.

It is unnecessary to review at length the course of the negotiations for I find that Morena made apparent by the end of the first meeting what he had indicated by his earlier conduct *vis-a-vis* the employees,[7] that he had no intention of reaching an agreement and that such attitude continued to the end of the negotiations when he served on Schneider a copy of his answer to the complaint herein and stated that "since we were going to trial," he was withdrawing his prior wage offers. My conclusions are based not only on Morena's prior unlawful conduct but also on the fact that I am unable to credit Morena's testimony, which was again evasive, inconsistent, and contradictory.[8]

The testimony of the General Counsel's witnesses on the other hand was based in large part on their notes, contemporaneously made during the meetings, and was both consistent and cumulative. Based on their credited testimony and without detailing fully all items of evidence indicative of bad-faith bargaining, I note below the most significant facts which establish that Morena was not bargaining in good faith.

At the first meeting Werther went through the Union's proposed contract with Morena and with one or the other indicating acceptance of nearly all of the provisions, including such important ones as union security, checkoff, seniority, arbitration, welfare, and a substantial wage

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[7] E g , his statements after the certification that there would never be a union in the shop and that, "You can lead a horse to water but you can't make him drink " Morena had also begun the implementation of his threats to get rid of the union supporters by putting the packer into operation on Taylor's route and by reassigning Taylor to other work

[8] Partial corroboration by Fortugno was directed mainly to the point (conceded by the union representatives) that the Union at no time offered a contract which did not include provisions for arbitration, seniority, checkoff, and welfare Fortugno's recollection of details and specifics, however, was admittedly poor Thus after first testifying that the Union never changed its position on checkoff, Fortugno answered that at the end he thought the Union was willing to forego that demand, but finally conceded that he did not recall specifically because, "There was so much bargaining back and forth "

increase.[9] Indeed, the prospects for reaching an immediate agreement seemed so bright that the union representatives conferred with employees during a caucus about submitting the agreement for ratification. Following the caucus, however, Morena denied that agreement was reached, claimed lack of authority to bargain on the basis of the Union's demands, and stated that he would have to consult with his brother and sister (who were equal shareholders with him in the family corporation).[10]

No substantial progress was made during the remainder of the negotiations, for Morena never agreed to any of the substantive items proposed by the Union such as seniority, checkoff, union security, arbitration, welfare, and he refused further to consider such relatively innocuous proposals as time off for jury duty, leave of absence without pay, washup time, and bereavement pay Particularly illuminating was Schneider's testimony concerning the prior benefits clause, which Morena admitted he rejected despite Werther's okay Schneider testified that Morena's objection to many of the Union's demands was that it was Respondent's practice to give the employees those things. When Schneider requested however that the practices be put in writing, Morena refused on the ground that then the men would want them and that, "Right now it's my discretion and as long as it is not in writing I can give it to them as I see fit." Morena substantially confirmed that testimony, admitting that he might have said that, "[I]f we put it in writing the men will know it's there and they will take advantage of it."

Concerning seniority, Morena also admitted that despite Werther's interpretation of the clause, he stood on his own (different) interpretation and rejected the provision.

Furthermore rejection of the Union's proposals was followed by no counterproposals except concerning wages and welfare, and that was ultimately conditioned on surrender by the Union of all other demands. Thus Schneider testified that after the Union had made various reductions in its own wage proposals, Morena offered at the September 12 meeting to give an 18-month contract on the basis of a 10-cent raise, plus 5 cents to welfare after 3 months, omitting all other proposals When Schneider pointed out that Morena was talking about a contract which would contain only two or three paragraphs, Morena agreed that was correct.

The negotiations ended on September 19 following the issuance of the complaint in the present proceeding. Schneider testified that Morena served upon him a copy of Respondent's answer to the complaint in the present proceeding, stating that, "[W]e offered you 10 cents in money and we offered you 5 cents in welfare, and now we're taking it all back and we are offering you nothing."

Thus things stood at the end as they had throughout the negotiations, with Morena making good his threat not to drink from the well of collective bargaining, and thus he maintained the position he took on September 1 (in rejecting the seniority clause and in refusing to make a counterproposal), "Everything is at my discretion, I will run it as I am running it now."

It would be difficult to imagine a more clear-cut case of a refusal to bargain in good faith than that which is shown by the present record. I conclude and find from the entire record that at all times on and after June 23, Respondent refused to bargain in good faith with the Union, thereby engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.[11]

E *The Strike and its Cause*

A strike vote was taken on July 28 or 29, and on August 1 some eight employees, including Benny Taylor, began a strike which is still pending. I conclude and find on the basis of unrefuted testimony that the strike was caused by Respondent's failure to bargain in good faith and that the strike therefore began and was prolonged as an unfair labor practice strike.

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

CONCLUSIONS OF LAW

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

2. By assigning Benny Taylor to a different and less desirable job, Respondent engaged in discrimination to discourage membership in the Union, thereby engaging in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

3. All employees employed at Respondent's Jersey City warehouse, including truckdrivers and balers, but excluding all office clerical employees, salesmen, professional employees, guards 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.

4 At all times on and after June 2, 1966, the Union has been the exclusive collective-bargaining representative of all the employees in the aforesaid unit

5. By refusing on and after June 23, 1966, to bargain with the Union, Respondent engaged in unfair labor practices proscribed by Section 8(a)(5) and (1) of the Act.

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[9] Morena testified that as he was without experience in negotiations he hired an attorney who understood what a union contract was and that he relied upon Werther's advice in noting agreement to various provisions as they were read and explained to him by Werther Despite that testimony and his claim of ignorance, Morena admitted that he later vetoed Werther's approval of provisions for arbitration, seniority, and a prior benefits clause which obligated Respondent only to maintain such benefits as were currently in effect

[10] Though the corporate bylaws provided that the board of directors (the three Morenas) should have the management and control of the business and property of the Company, they provided further that the president was the chief executive officer and that *during intervals between meetings of the board,* he had "general control and management of the business and affairs of the Company " The evidence showed further that no meetings were held of sufficient formality or importance to result in the making of minutes, though it was Morena's view that whenever he conferred with his brother and sister, a directors' meeting was being held

[11] Though Respondent sought to inject at the hearing a defense that it was somehow relieved of its duty to bargain by alleged unlawful secondary boycott activity engaged in by the Union, Schneider testified that though reference was made in the September 1 meeting to the Company's charge, it did not state that that was the basis for not trying to negotiate with the Union and that Respondent at no time threatened to break off negotiations if the Union continued its boycott activity The record indicates further that the first charge was withdrawn or settled and that a new charge, filed on the eve of the hearing, was pending investigation in the Regional Office

6. The strike by Respondent's employees which began on August 1, 1966, was caused and was prolonged by Respondent's aforesaid unfair labor practices.

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

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action of the type which is conventionally ordered in such cases as provided in the Recommended Order below, which I find to be necessary to remedy and to remove the effect of the unfair labor practices and to effectuate the policies of the Act. Because of the nature and extent of Respondent's unfair labor practices, I shall recommend a broad cease-and-desist order.

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

RECOMMENDED ORDER

S. Morena & Sons, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating coercively employees concerning their union membership, sentiments, and activities.

(b) Requesting employees to inform on union activities.

(c) Threatening its employees that if the Union wins the election to release those who favored the Union.

(d) Promising raises and good jobs to, and to retain, those employees who side with Respondent.

(e) Stating that there will never be a union at the warehouse.

(f) Discouraging membership in the Union, or in any other labor organization of its employees, by assigning them to more arduous or less desirable jobs, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(g) Refusing to bargain with the Union as the collective-bargaining representative of the employees in the appropriate unit.

(h) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist Local 11, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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 authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act

(a) Offer to Benny Taylor, upon his application, immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(b) Offer to its striking employees upon their application on the termination or abandonment of the strike, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings which they may suffer from a date 5 days after their application for reinstatement to the date of their actual reinstatement, dismissing if necessary any persons hired as replacements for said strikers, and place upon a preferential hiring list such strikers for whom no employment is immediately available, with priority to be determined among them by such system of seniority or other nondiscriminatory practice as Respondent theretofore applied, and thereafter offer, in accordance with such list, reinstatement as positions become available.

(c) Bargain collectively, upon request, with the Union concerning rates of pay, wages, hours of employment, or other conditions of employment of its employees in the appropriate unit herein found.

(d) 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 to analyze the amount of backpay which may become due under these recommendations.

(e) Post in its offices and warehouse at Jersey City, New Jersey, copies of the attached notice marked "Appendix."[12] Copies of the said notice, to be furnished by the Regional Director for Region 22, shall be posted by Respondent immediately upon receipt thereof, after being duly signed by Respondent's representative, and maintained by it for 60 consecutive days thereafter, in conspicuous places, where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

Notify the Regional Director for Region 22, in writing, within 20 days from the receipt of this Decision, what steps Respondent has taken to comply herewith [13]

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[12] 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 is 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 "

[13] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify the Regional Director for Region 22, in writing, within 10 days from the date of this Order, what steps Respondent 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 interrogate coercively our employees concerning their union membership, sentiments, and activities

WE WILL NOT request our employees to inform on union activities.

WE WILL NOT threaten our employees that if the Union wins the election we will release employees who favored the Union.

WE WILL NOT promise raises and good jobs to, or to retain, those employees who side with us against the Union

WE WILL NOT state that there will never be a union in our warehouse.

WE WILL NOT discourage membership in Local 11, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization of our employees, by reassigning them to more arduous or less desirable jobs, or in any other manner discriminate in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist said Local 11, 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.

WE WILL offer to Benny Taylor, upon his application, immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges.

WE WILL, upon application, offer to our striking employees immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing if necessary any persons whom we hired to replace them, and we will place upon a preferential hiring list such strikers for whom no employment is immediately available, with priority to be determined among them by such system of seniority or other nondiscriminatory practices as we heretofore applied, and thereafter offer, in accordance with such list, reinstatement as positions become available.

WE WILL bargain collectively, upon request, with Local 11, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of our employees in the appropriate unit concerning rates of pay, wages, hours of employment, and other conditions of employment. The bargaining unit is:

All employees employed at our Jersey City warehouse, including truckdrivers and balers, but excluding all office clerical employees, salesmen, professional employees, guards and supervisors as defined in the Act.

All of our employees are free to become or remain, or to refrain from becoming or remaining, members of the above-named or any other labor organization, except to the extent that such right may be affected by an agreement authorized in Section 8(a)(3) of the Act.

S. MORENA & SONS, INC.
(Employer)

Dated By
(Representative) (Title)

Note: We will notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

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, 614 National Newark Building, 744 Broad Street, Newark, New Jersey 07102, Telephone 645-3088.

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