

**Master Touch Dental Laboratories, Inc. and District 65, Retail, Wholesale and Department Stores Union, AFL-CIO.** Case 29-CA-570

June 19, 1967

### DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS BROWN AND JENKINS

On December 23, 1966, Trial Examiner Sidney Sherman issued his Decision in the above-entitled case, 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. He also found that Respondent had not engaged in certain other alleged unfair labor practices and recommended dismissal of these allegations of the complaint. Thereafter, the Respondent and the General Counsel filed exceptions to the Trial Examiner's Decision and supporting briefs.

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 General Counsel's and Respondent's exceptions and briefs, and the entire record in the case, and hereby adopts the findings,<sup>1</sup> conclusions, and recommendations of the Trial Examiner, as modified herein.<sup>2</sup>

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, Master Touch Dental Laboratories, Inc., Long Island City, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Add the following as paragraph 1(b), the present paragraphs 1(b), (c), and (d) being consecutively relettered:

“(b) Bargaining directly with employees in said unit who are then represented by the Union, or any other labor organization, as an exclusive collective-bargaining agent, with respect to rates of pay, or other terms or conditions of employment, in disregard of the representative status of their exclusive collective-bargaining representative.”

2. The notice attached to the Trial Examiner's

Decision is amended by adding the following paragraph immediately before the second indented paragraph of such notice:

WE WILL NOT deal directly or individually with employees in the aforesaid appropriate unit concerning wages, rates of pay, benefits, and other conditions of employment.

<sup>1</sup> In our opinion the record supports the Trial Examiner's finding that the Union had the support of a majority of the employees during the relevant 10(b) period and that the Respondent violated Section 8(a)(5) by refusing to bargain with the Union. We therefore do not rely upon his further finding that even if the Union had lost its majority the Respondent violated Section 8(a)(5) prior to the 10(b) period, because the Union's majority had been dissipated by the Respondent's unfair labor practices.

<sup>2</sup> We agree with the Trial Examiner that Respondent violated Section 8(a)(1) as well as Section 8(a)(5) during Nagy's meeting with employees on March 8, 1966, by promising to institute a profit-sharing plan if the employees improved their production. We rest that finding, however, upon the ground that Respondent by bypassing the Union and negotiating directly with employees engaged in conduct calculated to undermine the status of the Union as the employees exclusive collective-bargaining representative

### TRIAL EXAMINER'S DECISION

SIDNEY SHERMAN, Trial Examiner: The charge herein was served upon Respondent on April 25, 1966,<sup>1</sup> the complaint issued on July 20, and the case was heard on September 26 and 27. The issues litigated were alleged violations of Section 8(a)(1), (3), and (5). After the hearing briefs were filed by the Respondent and the General Counsel.

Upon the entire record,<sup>2</sup> including my observation of the witnesses, I adopt the following findings and conclusions:

#### I. RESPONDENT'S BUSINESS

Master Touch Dental Laboratories, Inc., herein called Respondent, is a corporation, and is engaged at its establishment in Long Island City, New York, in the manufacture and sale of dentures and related products. It annually ships to out-of-State points products valued in excess of \$50,000.

Respondent is engaged in commerce within the meaning of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

District 65, Retail, Wholesale and Department Stores Union, AFL-CIO, hereinafter called the Union, is a labor organization under the Act.

#### III. THE UNFAIR LABOR PRACTICES

The pleadings, as amended at the hearing, raise the following issues:

1. Whether Respondent coercively interrogated its employees about their union sentiments?
2. Whether Respondent unlawfully offered its employees inducements to abandon the Union?

<sup>1</sup> All events here occurred in 1966, unless otherwise stated.

<sup>2</sup> The transcript of testimony is hereby corrected by changing "conclusive" to "collusive" on p. 247, l 22.

3. Whether Respondent unlawfully refused to bargain with the Union and bargained directly with the employees?

4. Whether Respondent has unlawfully refused to reinstate strikers?

#### A. Sequence of Events

Respondent has for more than 20 years operated a dental laboratory and for about 14 years had contractual relations with the Union covering all its production employees. It is one of the few such firms in the New York City area that is organized. Respondent's last full-term contract expired on December 31, 1964, and, when, in the fall of 1964, it balked at negotiating a new contract, unless and until the Union succeeded in organizing at least some of Respondent's competitors, the Union agreed to accept an extension of the expiring contract until May 1, 1965, and to make a diligent effort to organize the rest of the industry. There is conflicting evidence, to be discussed below, as to whether the Union made any further bargaining overtures to Respondent after the expiration of the extension agreement and prior to March 15, when the Union established a picket line at Respondent's premises. There is no dispute that on that date the Union asked to bargain about a contract, and that Respondent refused, citing the Union's failure to organize any of Respondent's competitors.

None of Respondent's employees reported for work on March 15, and Respondent thereafter operated with a limited production force, consisting initially of its president, A. Nagy, and his brother and nephew. About May 1, Respondent recalled Manno and Winters. None of the other six employees in the bargaining unit has been recalled.

#### B. Discussion

##### 1. Interrogation

The complaint alleges unlawful interrogation in February. In support of this McLaren, the Union's shop steward at Respondent's plant, testified that at a plant meeting in February Nagy asked each of the employees whether they wanted the Union. Theodosia Hall<sup>3</sup> corroborated McLaren as to the foregoing interrogation.<sup>4</sup> Nagy, on the other hand, insisted that there was no such meeting in February and that he had never asked his employees whether they wanted the Union, because he "automatically took it for granted" that they all belonged to the Union. On the basis of demeanor and in view of the mutually corroborative nature thereof, I credit the testimony of Hall and McLaren that on that occasion Respondent interrogated its employees. I find further that, in the context of Respondent's other unfair labor practices, found below, such interrogation violated Section 8(a)(1).

Because of its relevance to another aspect of this case, there will be considered at this point conflicting testimony as to the employees' response to the foregoing interrogation. According to McLaren, he told Nagy that he

wanted the Union, and, in response to a query addressed by McLaren on that occasion to all the other employees, they declared that they still wanted union representation. Hall, on the other hand, testified that, in response to Nagy's question, all the employees disclaimed any desire for representation by the Union.

While Hall, like McLaren, was called by the General Counsel and had no apparent ulterior motive for contradicting McLaren's testimony, I am constrained to credit McLaren in view of Nagy's aforementioned admission at the hearing to the effect that he never doubted that his employees were union members. Moreover, even if one discounts such admission as an ill-advised effort to bolster Nagy's denial of interrogation, the fact remains that in his dealings with the Union after the foregoing incident Nagy admittedly did not question the Union's majority status or cite any repudiation of the Union by the employees as a reason for not negotiating a new contract, but refused to negotiate only because of the Union's failure to organize other dental laboratories.

Accordingly, I deem McLaren's recollection more reliable than Hall's and find that at the foregoing plant meeting the employees affirmed their desire for union representation.

##### 2. Offer of benefits

The complaint was amended at the hearing to allege that on March 8 Respondent promised the employees certain benefits in order to undermine the Union's majority status, thereby violating Section 8(a)(1).

McLaren testified that at a plant meeting early in March, Nagy complained of poor business and indicated that, if the employees worked harder, Respondent would grant them a profit-sharing plan.

Manno, a witness for Respondent, who is found below to be a supervisor, testified that at the foregoing meeting Nagy complained of lagging production, urged the employees to exert greater effort, and promised that, if the situation improved, "Maybe we could get together and work out something on profit sharing."

During his first appearance on the stand,<sup>5</sup> Nagy was asked the following question by the General Counsel:

Do you recall a meeting in February of 1966 when you discussed with the employees production quotas and the possibility of a profit-sharing plan being introduced?

The witness answered: "That was March 8, 1966."

And, under cross-examination by his own counsel, Nagy explained that, because of Respondent's financial straits at the time, he deemed an increase in productivity essential to Respondent's survival, and admitted that he promised the employees higher wages and fringe benefits if they would increase their output.

However, when he returned to the stand as a witness for Respondent, Nagy denied that he had discussed profit sharing on that occasion, insisting that he had merely promised the employees that, if they increased their production, Respondent would make certain improvements in the existing health insurance plan.<sup>6</sup>

<sup>3</sup> Also identified in the record as "Theodosia Williams."

<sup>4</sup> Manno at one point in his testimony also corroborated McLaren on this score, but promptly retracted his testimony, denying that the Union was discussed in any plant meeting after May 1965. In view of the foregoing self-contradiction, I attach no weight to Manno's testimony on this issue.

<sup>5</sup> He was called by the General Counsel under rule 43(b).

<sup>6</sup> According to Nagy, this would involve the addition of major medical and death benefits.

However, in his pretrial affidavit Nagy stated that at the foregoing meeting he told the employees that "advancement is based upon skill, knowledge and money and for this reason I already made an appointment with an insurance company to investigate the possibility of instituting profit sharing into the Company." When confronted with this affidavit, Nagy explained that the reference therein to his appointment to discuss profit sharing was not part of his remarks to his employees, but was merely in effect a parenthetical allusion to the fact that he had made such an appointment.

However, in view of the mutually corroborative testimony of McLaren and Manno, as well as the vacillations in Nagy's position, I credit such testimony and find that on March 8, Nagy promised the employees that, if they increased their output, Respondent would institute a profit-sharing plan.<sup>7</sup>

The General Counsel contends, *inter alia*,<sup>8</sup> that the foregoing promise violated Section 8(a)(1), because it tended to undermine the employees' adherence to the Union. There seems to be no authority on the precise question whether a promise of benefit conditioned on the exertion of greater effort by the employees violates Section 8(a)(1), and it may well be questioned whether a benefit with such a price tag would have any substantial tendency to diminish the allure of a union. However, it is difficult to distinguish this case in principle from one where an employer offers to increase the workweek, thereby holding forth the prospect of more money for more work. Such an offer has been held to violate Section 8(a)(1).<sup>9</sup>

While it may well be that Nagy's immediate purpose was not to dampen the employees' ardor for the Union, but rather to stimulate production, the test here is not the Employer's motive, but "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act."<sup>10</sup>

Here, it seems reasonable to infer that Respondent's action in holding forth the prospect of higher earnings without the intervention of a union, while at the same time, as is found below, rebuffing the Union's efforts to negotiate a new contract, tended to impress upon the employees that they did not need the Union to improve their lot. Accordingly, I find that Respondent thereby violated Section 8(a)(1).

### 3. The refusal to bargain

#### a. *The appropriate unit*

There is no dispute, and it is found, that the following unit is appropriate for collective bargaining:

All Respondent's dental laboratory employees, excluding office clericals, guards, watchmen, supervisors as defined in the Act, and all other employees.

#### b. *The Union's majority status*

I find that all times here relevant there were seven employees in the foregoing unit.<sup>11</sup> As already noted the last union contract expired on May 1, 1965, and the record shows that a majority of the employees continued to pay dues to the Union until that date. It was stipulated, however, that by August 1965, at least six of the seven employees in the unit had stopped paying dues to the Union,<sup>12</sup> and the record shows that none of these six employees attended any union meetings after May 1965. It is conceded that there was a refusal to bargain on March 15, and it is found below that there were earlier refusals in November 1965 and in February 1966. It accordingly becomes necessary to determine the Union's majority status in November 1965, and thereafter. For reasons noted above,<sup>13</sup> it is found that, whether or not McLaren was then delinquent in his dues, he was still a union adherent in and after November 1965. As to the other six employees, the General Counsel relies on a rebuttable presumption, arising from Respondent's prior contractual relations with the Union, that it continued to represent a majority of the employees thereafter,<sup>14</sup> and contends that the fact that all six employees had stopped paying dues by August 1965, or ceased to attend union meetings, did not suffice to rebut the foregoing presumption.

There is some authority in support of the General Counsel's position.<sup>15</sup> Moreover, while it is true that the Union's bylaws provided that all members who were more than 4 weeks in arrears in their dues payments would be "automatically" suspended, there is uncontradicted testimony by Union Agent Passman that this provision was not strictly enforced, and a number of employees testified that they did not receive any notice of their suspension until several months or a year after they ceased paying dues. Thus, Mrs. Hall testified that, although she stopped paying dues on May 1, 1965, she was not notified until some time after March 15, 1966, that she would be "dropped" from membership in the Union if she did not pay her dues. Manno had stopped paying dues in May 1965, but it was not until September 1966 that he received a notice of suspension from membership for dues delinquency. Moreover, the weight to be given to the foregoing dues delinquency is attenuated by the fact that, as has been found above, at the plant meeting in February

<sup>7</sup> Moreover, even if one credits Nagy's version that he merely promised improvements in the health insurance plan, if production improved, that would seem to be as much a promise of benefits as the promise of profit sharing.

<sup>8</sup> As to the General Counsel's further contention that this incident constituted direct bargaining, see below.

<sup>9</sup> *English Mica Co.*, 92 NLRB 766, *Yale Upholstering Co., Inc.*, 127 NLRB 440, 442.

<sup>10</sup> *Exchange Parts Co.*, 131 NLRB 806, 812, enforcement denied 304 F.2d 368 (C.A. 5), reversed 375 U.S. 405. *American Freightways Co.*, 124 NLRB 146.

<sup>11</sup> Manno is excluded from the unit, as I find him to be a

supervisor on the basis of his uncontradicted testimony concerning his authority to assign and direct the work of others.

<sup>12</sup> There was dispute only as to McLaren's dues status. However, as he was the union steward and attended the meeting of the Union's executive committee on February 9, at which it was agreed to strike Respondent, it is clear that he was at all times here relevant a union adherent and member in good standing, whatever the status of his dues payments.

<sup>13</sup> See fn. 12, above.

<sup>14</sup> *West Suburban Transit Lines, Inc.*, 158 NLRB 794.

<sup>15</sup> *United States Gypsum Co.*, 143 NLRB 1122, 1126; *West Suburban Transit Lines, Inc.*, *supra*.

the employees affirmed their desire for union representation.<sup>16</sup>

The General Counsel contends further that, even if it be found that a majority of the employees ceased to be union adherents after August 1965, this should be attributed to Respondent's alleged refusal to bargain with the Union prior to that date. Respondent denies that there was any such refusal.

The testimony on this point was as follows:

Passman testified that on April 9, 1965, when he was asked to negotiate a new contract to replace the one expiring on May 1, Nagy refused because of the Union's failure to organize other dental laboratories; that later in the same month Nagy refused even to extend the expiring contract; and that in May and August 1965, Nagy again rejected the Union's request for an extension agreement.

Nagy, on the other hand, denied that he was approached by the Union about a contract on any of the foregoing occasions. On the basis of demeanor, and in view of the circumstantiality of his testimony, I credit Passman. It follows that, even if it be assumed that there were defections from the Union between May and August 1965, such defections would be attributable to Respondent's foregoing refusals to bargain with the Union for a renewal or extension of the contract, which expired on May 1, 1965.<sup>17</sup>

In conclusion on this point, it is found that on and after October 25, 1965, the Union represented a majority of Respondent's employees in the unit found above to be appropriate.

#### c. The refusals

Respondent admittedly refused to bargain on March 15, citing as the only reason for such refusal the failure of the Union to organize other dental laboratories. As that is not a sufficient reason for not bargaining,<sup>18</sup> it is found that by such refusal Respondent violated Section 8(a)(5) and (1) of the Act. On the basis of Passman's credible testimony,

and despite Nagy's denial, it is also found that there were like refusals to bargain in November 1965 and in February, and that Respondent thereby additionally violated Section 8(a)(5) and (1) of the Act.

The General Counsel contends that there was a further violation of Respondent's bargaining duty in its discussion with the employees on March 8 of the institution of a profit-sharing plan. It has already been found that at the March 8 plant meeting Respondent promised to adopt such a plan if production improved. Moreover, Nagy testified that on that occasion, after holding forth the prospect of profit sharing if output increased, he asked each employee if he was willing to work harder, and each answered in the affirmative. In view of this, it is difficult to see how the foregoing could fail to constitute direct negotiation by Respondent with the employees in derogation of its duty to bargain with the Union about any changes in terms of employment. It is accordingly found that Respondent thereby further violated Section 8(a)(5) and (1).

#### 4. The refusal to reinstate

On the basis of Passman's uncontradicted testimony, I find that the Union established the picket line at Respondent's premises on March 15, because of Respondent's refusal to bargain, and that Respondent's employees were therefore unfair labor practice strikers on and after March 15.

The complaint, as amended at the hearing, alleged that Respondent violated Section 8(a)(3) and (1) of the Act by rejecting applications for reinstatement by Winters on March 17, Figueredo, on March 18, Larry Williams on March 31, and Hall on April 2.<sup>19</sup> In its answer, Respondent did not controvert the foregoing allegation.<sup>20</sup> However, at the hearing Respondent amended its answer to deny the foregoing allegation, and Nagy disputed that Winters or Figueredo had applied for reinstatement, and the General Counsel offered no evidence that Larry Williams had

<sup>16</sup> The General Counsel cites also, as proof of continued adherence to the Union, the fact that none of the employees reported for work after the Union established a picket line at Respondent's premises. However, even if one disregards evidence of alleged coercion of the employees to respect the picket line, there is no proof that a majority of Respondent's employees actively picketed and the General Counsel has proved at best that a majority of such employees voluntarily respected the picket line as a matter of principle and not necessarily because they desired union representation. Accordingly, I do not regard the picketing and the resulting abstention of Respondent's employees from work as in itself proof of the Union's majority status. By the same token, I do not regard the rather equivocal testimony of the employees concerning their reasons for respecting the picket line as establishing that a majority of the employees did not on March 15 desire to be represented by a Union.

<sup>17</sup> The question may arise whether the General Counsel is entitled to rely on the evidence of a refusal to bargain before October 25, 1965 (the cutoff date under Section 10(b)) to prove the Union's majority status. While it is well settled that evidence as to prelimitations events may be used for background purposes, it has been held that this rule does not license the General Counsel to prove that strikers are unfair labor practice strikers, by showing that the respondent employer committed unfair labor practices outside the limitations period. *Greenville Cotton Oil Co.*, 92 NLRB 1033. See *Local Lodge No. 1424 IAM [Byran Mfg. Co.] v. N.L.R.B.*, 362 U.S. 411. However, in the *Greenville Cotton* case

the burden was on the General Counsel to show that the strikers were unfair labor practice strikers and thus, entitled to reinstatement. Here, it is established that a majority of Respondent's employees were union adherents on May 1, 1965, and, in view of this, as well as the parties' prior contractual relations, there was a rebuttable presumption that such majority status continued. *West Suburban Transit Lines, Inc.*, *supra*, 9 *Wigmore, Evidence*, §2530 (3d ed 1946), *N.L.R.B. v. National Motor Bearing Company*, 105 F.2d 652, 660 (C.A. 9). To rebut this presumption, Respondent has offered evidence that the employees failed to keep up their dues payments after August 1965. While Section 10(b) does not bar Respondent from offering such a defense, it would be anomalous to hold that the General Counsel may not meet such defense by showing the reason for such dues delinquency.

<sup>18</sup> See *United Mine Workers v. Pennington*, 381 U.S. 657, and cases there cited.

<sup>19</sup> The complaint also alleged a refusal to reinstate Manno on March 16. However, in view of the evidence as to Manno's supervisory status, this allegation was withdrawn at the hearing.

<sup>20</sup> Moreover, the answer asserts that after March 15, Respondent "dismissed the employees from its employ," and at the hearing Nagy admitted that he "discharged" the employees after March 15, but insisted that this was a collusive action, effected solely for the purpose of enabling them to qualify for unemployment compensation, and the General Counsel does not allege such action as a violation of the Act. Accordingly, I do not deem such "discharge" to be a factor in this case.

applied.<sup>21</sup> As to Hall, there was no dispute that about April 1, she applied to Nagy for part-time work, and that he rejected her request, and it is agreed that Winters was ultimately rehired about May 1.<sup>22</sup>

Respondent contends that Hall's request, being limited to part-time work, was not a proper request for reinstatement to her former job. While the record is not clear on this point, the inference is warranted that all Respondent's production employees, including Hall, had worked only on a full-time basis before the strike. It has been held that a request by a striker, who formerly worked on the day shift, for reinstatement to a job on the night shift was not a proper request for reinstatement to the employee's former position.<sup>23</sup> Absent any other guidance on this point in Board decisions, it is found that Hall's request for part-time work was not an adequate application for reinstatement to her former position, and it will be recommended that the allegation as to her be dismissed.

Conflicting evidence was presented with regard to the applications of Winters and Figueredo. Nagy's denial of any application by them was impeached at the hearing by his pretrial affidavit, in which he related that Winters applied about March 17, and Nagy promised to contact him, and that Figueredo applied about March 18 or 19 but was told that the foregoing merely reflected his construction of the purpose of telephone calls made to him by the employees during the strike, in the course of which they inquired generally about the situation in the plant, but did not expressly ask to be rehired. Moreover, both Winters and Figueredo denied at the hearing that they had ever asked to be reinstated.<sup>24</sup> However, the veracity of Figueredo's denial was impeached by his pretrial affidavit,<sup>25</sup> and he finally admitted at the hearing that he asked his brother-in-law to call Respondent on his behalf and request his reinstatement, and that Nagy told his brother-in-law that there was no work available. Nagy confirmed that he was called by Figueredo's brother-in-law.<sup>26</sup>

It is clear, in any event, that, as Nagy admitted, he received telephone calls from Winters and from Figueredo (or his brother-in-law), which Nagy construed as requests for reinstatement of the two employees, and that, as his pretrial affidavit shows, he indicated that he was not in a position to reinstate either of the employees at that time. In the case of Figueredo, the record shows that he in fact desired reinstatement at the time of the foregoing telephone call, and, even if he (or his brother-in-law) failed to articulate therein an artistic request for reinstatement, it sufficed that Nagy understood that this was the purpose of the call. As for Winters, however, there is no evidence that he in fact desired reinstatement on March 17, or that Nagy was correct in construing any inquiry he may have made about the situation in the plant or any expression of regret by him<sup>27</sup> as a request for reinstatement. Accordingly, I find that there was a proper request by

Figueredo (or by his brother-in-law on his behalf) on or about March 18, but not by Winters.

It is clear, moreover, that, although none of the employees was recalled until about May 1, there was work available for Figueredo on and after the date of his foregoing application; for, Nagy admitted that after March 15, he turned away orders for work which would have required the services of two employees.

It is accordingly found that, by refusing to rehire Figueredo on or about March 18, Respondent violated Section 8(a)(3) and (1) of the Act, but that no such violation has been proved with regard to Winters, Hall, or Larry Williams.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

#### V. THE REMEDY

It having been found that the Respondent violated Section 8(a)(1), (3), and (5) of the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the Respondent refused to bargain in good faith with the Union, which represented a majority of the employees in an appropriate unit. Accordingly, I shall recommend that the Respondent be ordered to bargain, upon request, in good faith with the Union as the exclusive representative of the employees in the appropriate unit.

Having also found that the Respondent, on or about March 18, unlawfully refused reinstatement to Figueredo, I shall recommend that Respondent be required to offer him reinstatement to his former or substantially equivalent position without impairment of seniority or other rights and privileges. I shall also recommend that Respondent be required to make him whole for any loss of earnings suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of such discrimination to the date of a valid offer of reinstatement, less his net earnings during such period. Backpay shall be computed in accordance with the formula stated in *F. W. Woolworth Co.*, 90 NLRB 289; interest shall be added to backpay at the rate of 6 percent per annum. *Isis Plumbing & Heating Co.*, 138 NLRB 716.

In view of the Respondent's unfair labor practices, particularly the discriminatory conduct found above, there

<sup>21</sup> The General Counsel indicated at the hearing that he did not desire any remedy for Larry Williams, but only a violation finding. However, absent any record support therefor, no such finding is warranted.

<sup>22</sup> Manno was also rehired about the same time.

<sup>23</sup> *The Electric Auto-Lite Company*, 80 NLRB 1601, 1607.

<sup>24</sup> While admitting that he did call Nagy during the strike, Winters insisted that he merely told Nagy that he was "sorry about the whole thing."

<sup>25</sup> He recited therein that on March 17 or 18, he called Nagy and asked to be taken back but that Nagy refused to do so.

<sup>26</sup> He denied only that he spoke directly to the brother-in-law, asserting that the call was taken by another and a message relayed to Nagy. While Figueredo's testimony as to what Nagy told the brother-in-law was obviously hearsay, it was not objected to.

<sup>27</sup> See fn. 24 above.

exists a threat of future violations, which warrants a broad cease-and-desist order.

#### CONCLUSIONS OF LAW

1. All Respondent's dental laboratory employees, excluding office clericals, guards, watchmen, supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

2. At all times material the Union has been and still is the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9(a) of the Act.

3. By refusing since November 1966, to bargain with the Union as the exclusive representative of its employees in an appropriate unit, and by bargaining directly with its employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

4. By interrogation of employees about their union sentiments, and by offering them benefits, Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, and has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. Respondent has violated Section 8(a)(3) and (1) of the Act by its refusal to reinstate Louis Figueredo.

#### RECOMMENDED ORDER

Upon the entire record in the case, and the foregoing findings of fact and conclusions of law, it is recommended that Respondent, Master Touch Dental Laboratories, Inc., of Long Island City, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain concerning rates of pay, wages, hours of employment, or other conditions of employment with District 65, Retail, Wholesale and Department Stores Union, AFL-CIO, as the exclusive representative of all its dental laboratory employees, excluding office clericals, guards, watchmen, supervisors as defined in the Act, and all other employees.

(b) Discouraging membership in District 65, Retail, Wholesale and Department Stores Union, AFL-CIO, or in any other labor organization, by discriminating against employees in regard to their hire or tenure of employment.

(c) Interfering with the exercise by its employees of their rights under Section 7 of the Act by coercively interrogating them about their union sentiments or by promising them benefits.

(d) 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 the above-named Union, or any other labor organization, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that

such right may be affected by the provisos to Section 8(a)(3) of the Act.

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

(a) Upon request, bargain with District 65, Retail, Wholesale and Department Stores Union, AFL-CIO, as the exclusive representative of all employees of the Respondent in the aforesaid unit with respect to rates of pay, wages, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer Louis Figueredo immediate reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and notify him if he is 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, as amended, after discharge from the Armed Forces.

(c) Make whole the said employee in the manner set forth in the section of the Trial Examiner's decision entitled "The Remedy," for any loss of pay he may have suffered by reason of the Respondent's discrimination against him.

(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 due under the terms of this Order.

(e) Post at its establishment in Long Island City, New York, copies of the attached notice marked "Appendix."<sup>28</sup> Copies of said notice, to be furnished by the Regional Director for Region 29, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.<sup>29</sup>

IT IS FURTHER ORDERED that the complaint be dismissed as to those allegations with respect to which no violation has been found.

#### APPENDIX

##### NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations 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, upon request, with District 65, Retail, Wholesale and Department Stores Union,

<sup>28</sup> 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."

<sup>29</sup> In the event that this Recommended 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 Respondent has taken to comply herewith."

AFL-CIO, as the exclusive representative of all employees in the bargaining unit described below in respect to rates of pay, wages, hours of employment, or other conditions of employment, and, if an understanding is reached, embody it in a signed agreement. The bargaining unit is:

All our dental laboratory employees, excluding office clericals, watchmen, supervisors as defined in the Act, and all other employees.

WE WILL NOT discourage membership in District 65, Retail, Wholesale and Department Stores Union, AFL-CIO, or in any other labor organization, by discriminating against employees in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT coercively interrogate our employees about their union sentiments or make them promises of benefits that will tend to diminish their desire for union representation.

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 District 65, Retail, Wholesale and Department Stores Union, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities, except to the extent that such right may be affected by the provisos to Section 8(a)(3) of the Act.

WE WILL offer to Louis Figueredo immediate reinstatement to his former or substantially equivalent position, and WE WILL make him whole for any loss of pay suffered by reason of our past refusal to reinstate him.

All of our employees are free to become, remain, or refrain from becoming or remaining, members of District 65, Retail, Wholesale and Department Stores Union, AFL-CIO, or any other labor organization.

MASTER TOUCH DENTAL  
LABORATORIES, 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, 16 Court Street, Fourth Floor, Brooklyn, New York 11201, Telephone 596-5386.