Excelsior Laundry *and* Communications Workers of America, AFL–CIO. Case 28–CA–1519

September 18, 1967

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND ZAGORIA

On July 14, 1967, Trial Examiner Allen Sinsheimer, Jr., 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 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 adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, Excelsior Laundry, Albuquerque, New Mexico, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.[1]

[1] Delete from paragraph 2(b) of the Trial Examiner's Recommended Order that part thereof which reads "to be furnished" and substitute therefor "on forms provided . "

The telephone number for Region 28, appearing at the bottom of the notice attached to the Trial Examiner's Decision, is amended to read Telephone 247-0311, Extension 2538

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

ALLEN SINSHEIMER, JR., Trial Examiner: This case is before me for decision without hearing on the basis of a stipulated record in lieu of hearing.

On May 16, 1967, all parties entered into a document entitled "Stipulation in Lieu of Hearing" which provided that: (1) hearing before a Trial Examiner was waived; (2) the entire record was stipulated to and consisted of the formal Board exhibits and attached joint exhibits all submitted therewith; (3) the matter was being submitted to a Trial Examiner for decision in accordance with Section 102.45 of the Board's Rules and Regulations, Series 8, as amended, and that proceedings thereafter were to be in accord with said Rules and Regulations; and (4) the parties reserved the right to file briefs with the Trial Examiner and waived oral argument.

The complaint issued April 6, 1967, based on a charge filed April 3, 1967, alleged that Respondent violated Section 8(a)(1) and (5) of the Act.

Both the General Counsel and Respondent filed briefs. Based upon the aforesaid record and consideration of the briefs, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent, a New Mexico corporation, is engaged in Albuquerque, New Mexico, in the business of providing laundry and drycleaning services. During the 12-month period prior to April 6, 1967, it purchased and received directly from outside New Mexico goods, supplies, and materials valued in excess of $50,000; and during the same period it sold goods and services, the gross value of which exceeded $500,000. Respondent admits and I find that it is engaged in commerce or in operations affecting commerce within the meaning of the National Labor Relations Act, as amended (herein called the Act).

II. THE LABOR ORGANIZATION INVOLVED

Communications Workers of America, AFL–CIO (herein called the Union), is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Case Proceeding*

On October 21, 1965, the Union filed a petition for a representation election. Thereafter, on November 15, 1965, the Respondent and the Union entered into a Stipulation for Certification Upon Consent Election agreement providing for an election to be held on December 2, 1965, in the following agreed-upon unit:

> All routemen and production and maintenance employees employed at the employer's main plant and branch plants; excluding all clerical employees, professional employees, guards, watchmen, and supervisors as defined in the Act.[1]

At the election held on December 2, 1965, a majority of the valid votes counted plus challenged ballots was not cast for the Union.[2] On December 7, 1965, the Union filed timely Objections to Conduct Affecting the Results of the Election. The Regional Director for Region 28 caused an investigation of the objections to be conducted, and on December 23, 1965, issued his "Report and Recommendations on Objections to Conduct Affecting the Results of the Election." Therein he recommended that the election be set aside and a new election be directed. Thereafter Respondent filed timely and detailed "Exceptions to the Regional Director's Report and

[1] The foregoing unit (modified only by adding the word "office" before the word "clerical") was alleged in the complaint as an appropriate unit for the purposes of collective bargaining and Respondent, in its answer, admitted the appropriateness of said unit.

[2] Of 153 valid ballots 67 were for the Union, and 86 against the Union There was also one void ballot

Recommendations on Objections to Conduct Alleged to Affect the Results of the Election." On March 4, 1966, after considering said exceptions, the Board rendered a "Decision, Order and Direction of Second Election" in which it ordered that the election of December 2, 1965, be set aside and directed that a second election be conducted "among the employees in the unit found appropriate[3] at such time as the Regional Director deems appropriate."[4]

On March 18, 1966, the second election was held. Results of this balloting reflected that the challenged ballots were sufficient in number to affect the results of the election.[5] Respondent filed timely objections to conduct affecting the results of said second election. Thereupon on May 12, 1966, the Regional Director, after causing an investigation to be made of the challenges and Respondent's aforesaid objections issued his "Report and Recommendations on Objections to Conduct Affecting the Results of the Election" and on challenged ballots. He recommended that Respondent's objections be overruled in their entirety and that a hearing be held on the challenges to the ballots of 12 voters.[6]

The Regional Director in his report recommending a hearing as to the aforesaid 12 challenged ballots stated (as indicated) that with respect to 11 thereof the evidence adduced during the investigation was contradictory as to each one's possession and exercise "of supervisory authority" or "of indicia of supervisory authority."

Respondent filed exceptions to said report and recommendations. The Board, on July 21, 1966, issued a "Supplemental Decision and Order Directing Hearing" in which it ordered that the Employer's objections be overruled in their entirety and that a hearing be held for the purpose of receiving evidence to resolve the issues raised with respect to the aforesaid 12 challenged ballots.

Thereafter, pursuant to due notice, a hearing was held before a Hearing Officer who, on September 30, 1966, issued "Hearing Officer's Report on Challenged Ballots with Findings and Recommendations." Respondent filed exceptions to said Hearing Officer's report and to his recommendations.[7]

On January 25, 1967, the Board issued an "Order Directing Regional Director to Open and Count Challenged Ballots." In said Order the Board adopted the recommendations of the Hearing Officer to which no exceptions had been filed and accordingly sustained the challenges to the ballots of three persons and overruled the challenges to the ballots of the four persons as recommended by the Hearing Officer together with the challenged ballot of one other person, Vangie Segura (Nee Gilliam)[8] who had been challenged but by stipulation had subsequently been agreed to be eligible. It deferred action on the challenges to the ballots of the five persons with respect to whom the Respondent had filed exceptions. The Board accordingly directed that the ballots of the 5 persons aforesaid as to whom challenges had been overruled (out of a total of 13 challenges), should be open and counted. The Board further ordered that thereafter there should be prepared and served upon the parties a revised tally of ballots including the count of the aforesaid challenged ballots which it directed be opened and counted.

A revised tally of ballots was issued on January 31, 1967, which reflected that the remaining undetermined challenged ballots were sufficient to affect the results of the election.[9] On March 15, 1967, the Board issued a "Second Supplemental Decision and Certification of Representatives." In its decision it determined that of the remaining five challenged ballots as to which it had previously deferred ruling and which were sufficient to affect the results of the election, four of the challenges should be sustained (and that it was unnecessary to rule on the remaining challenge). In so doing the Board said it was unnecessary "to pass on the hearing officer's findings with respect to their possession and exercise of supervisory authority."

The Hearing Officer had found that one Henry Benton regularly exercised supervisory authority and was a supervisor as defined in the Act. He further stated that assuming *arguendo* that Benton did not responsibly exercise supervisory authority he would find him to be a supervisor since the record was clear he was in training for a supervisory position and "in accordance with established Board precedent [citing cases relating to exclusion of trainees for supervisory positions] he should be excluded from the unit as a supervisor." In the case of Clarke Goodman the Hearing Officer said: "Because Goodman was undergoing training as a supervisor and because he apparently exercised supervisory authority I find he was a supervisor." (Citing same cases as above.) With respect to the other two persons, Kennedy and Vanderventer, he found they "were in training to become supervisors and as trainees they were supervisors " (Citing same cases as above:) The Board based its decision on the ground that it was conceded and found that the four employees were supervisor-trainees, that the stipulated unit did *not* specifically include or exclude supervisor-trainees and that the record contains no evidence as to the intent of the parties with respect to them. The Board said that in such circumstances it construes the agreement of the parties to be in accord with established Board unit placement policy and that it was "well-established Board policy to exclude employees who are in training to become supervisors." The Board found that there were a total of 155 valid votes plus 1 challenged ballot and that the revised tally of ballots showed 79 votes cast for petitioner. The Board said that it accordingly received a majority and that the remaining challenge could not affect the results. The Board thereupon certified the petitioner

[3] Which is the same as the stipulated unit set forth *supra* as modified by adding the word "office" before the word "clerical "

[4] The Board in setting the election aside relied on objection 1 summarized by the Regional Director as follows

Agents, officers and representatives of the Employer harassed employees by soliciting them to sign a form repudiating the Union

[5] Valid votes counted plus challenged ballots totaled 163 Of these 78 were for the Union, 72 were against the Union, and 13 were challenged

[6] In his report the Regional Director stated that of the 13 challenged ballots, 11 were challenged by the Union "on the grounds that each possesses and exercises supervisory authority within the meaning of the Act and that they therefore are ineligible " The ballot of Henry Livingston was challenged by the Board agent because his name did not appear on the furnished eligibility list. The ballot of Vangie Segura (Nee Gilliam) was challenged by the Board agent because she identified herself by her married name which did not appear on the furnished list, instead of her maiden name which did The parties stipulated that her ballot could be opened and counted which was subsequently done when certain other of the challenged ballots were later ordered opened and counted by the Board (See *infra*)

[7] The Hearing Officer had recommended that the challenges to eight ballots be sustained and the challenges to four ballots be overruled. The Respondent took exceptions to the Hearing Officer's report only insofar as he found that five specified persons of those challenged "were supervisors" and recommended that the challenges to their ballots be sustained.

[8] See fn 6, *supra*

[9] This revised tally showed 79 votes for the Union, 76 votes against the Union, and 5 undetermined challenged ballots

as "the representative of the employees in the appropriate unit."[10]

B. *The Unfair Labor Practices, the Refusal To Bargain*

Following the certification, the Union sent a letter to the Respondent dated March 24, 1967, which was evidently received by Respondent on that date. It requested that Respondent meet and confer with it "for the purpose of negotiating an agreement covering wages, hours and other conditions of employment." By letter of the same date Respondent advised that it did not recognize the Union "as the bargaining representative of its employees and will not enter into collective negotiations with this Union at this time." It stated that its refusal to bargain was based on two reasons (1) that in its judgment the Board erred in its decision of March 4, 1966, in sustaining the Union's objections to the conduct of the first election setting it aside and ordering the second election, and (2) that the Board erred in its "Decision and Certification of Representative" dated March 15, 1967, in which it sustained challenges to four specified ballots and declined to rule on one ballot The Respondent concluded: "The sole purpose of our refusal to bargain with your union at this time is to obtain a judicial review of the Board's decisions and orders as provided by law."[11]

Argument

The General Counsel's contention is "that in the absence of newly discovered or previously unavailable evidence, the Board will not permit litigation in a complaint case of issues which were decided or could have been litigated in a prior related representation proceeding," and that in the instant case there is no such contention. He argues that all of Respondent's contentions in the representation matter have been considered and ruled on by the Board and that the determination of the Board of the representative status of the Union is the law of the case and binding on the Trial Examiner. He further contends that accordingly the Trial Examiner on the instant record before him "must find that the Respondent has violated Section 8(a)(5) by its admitted refusal to bargain with the duly certified representative of the employees in the appropriate unit."

The General Counsel requests first that Respondent be directed to bargain upon request with the Union and embody in a signed agreement any understanding reached. In addition he states that since this case simply involves "a technical refusal to bargain in order to obtain a court review of the Board's determination in the representation case" that he requests the Trial Examiner to issue "a recommended order that the Respondent make unit employees whole for wages and benefits they might have received but for the Respondent's refusal to bargain." The General Counsel refers to certain recent decisions of Trial Examiners where similar remedies have been recommended.[12] The General Counsel further requests that the remedy provide that the certification period be extended to begin on the date the Respondent commences to bargain in good faith with the Union as the recognized bargaining representative (citing authority).

The Respondent's position is essentially as follows:

First it admits that it has refused to bargain with the Union for the asserted reason that "the Union never has been selected as the representative of a majority of the employees in the stipulated unit and that the Board's Certification of the Union as the representative of Employer-Respondent's employees in the stipulated unit is therefore invalid."

Respondent asserts that the Board's certification is invalid on two grounds: (1) that the Board erred in the Decision of March 4, 1966, in sustaining the Union's objections to the conduct of the first election, in setting it aside on the ground that the Employer-Respondent had coerced employees by soliciting them to sign a form repudiating the Union, and in ordering a second election; (2) that the Board erred in its "Second Supplemental Decision and Certification" issued March 15, 1967, in sustaining challenges to the ballots of four persons on the ground they were "supervisor-trainees" and in declining to rule on a challenge to another ballot.

Respondent acknowledges awareness of the rule that in the absence of newly discovered or of previously unavailable evidence the Board will not permit litigation in a complaint case of issues which were decided or could have been litigated in a prior representation case.[13]

However it argues that where the disputed matter involves a legal, as distinguished from a mere policy, issue the Board will reconsider such underlying legal premise if it believes the earlier resolution was incorrect; citing *American Broadcasting Co.*, 134 NLRB 1458. This is the only case[14] referred to by Respondent where the Board did engage in such reexamination of issues reached in the related representation case in contrast to the numerous cases cited by both Respondent and the General Counsel where such was not done.[15] The Board therein indicated its reluctance to do so and pointed out the particular significance of supervening Supreme Court holdings as a basis for its reconsideration. Further it should be noted that the action of reconsideration even under these circumstances was that of the Board itself and not of a Trial Examiner.[16]

Respondent, relying on the language of the Board decision in *American Broadcasting Co., supra,* that "where the disputed matter involves a legal, as distinguished from a mere policy, issue we will reconsider such underlying legal premise if we believe our earlier resolution to be incorrect, particularly in view of supervening Supreme Court holdings," argues that both points raised by it in-

[10] The complaint alleges and the Respondent admits that the Board issued such certification of representative

[11] As previously set forth, the Respondent in its answer admits that the Board certified the Union as exclusive collective-bargaining representative in an appropriate unit on March 15 but asserts that such certification was not lawful and that the Union did not become the exclusive bargaining representative in the unit set forth Further, in its answer, the Respondent asserts as separate defenses essentially the same contentions raised in its letter to the effect that the action of the Board in setting aside the first election and ordering a second election "was wrongful, arbitrary and contrary to law," and as a separate second defense that the Board erred in its determinations "on the challenged ballots of four employees in said second election ." and "in not ruling on the challenged ballot of" a fifth employee, and that the Board "acted wrongfully, arbitrarily and contrary to law in connection with such challenged ballots "

[12] See *Ex-Cell-O Corp* , Case 25-CA-2377, TXD-80-67, and *Zinke's Foods*, Case 30-CA-372, TXD-662-66

[13] See cases cited fn 19 & 20, *infra*

[14] For another case involving both a statutory issue and an intervening Supreme Court case, where first the Trial Examiner and later the Board reconsidered a legal issue, see *International Telephone and Telegraph*, 159 NLRB 1757

[15] Among such see fn 19, *infra*

[16] I have noted above in fn 14, *supra*, the *International Telephone and Telegraph* case where under the special factual and legal situation therein both the Trial Examiner and the Board reconsidered a legal issue

volve legal as distinguished from factual or policy rules. It further contends with regard to its second contention—that the Board erred in its ruling on certain challenged ballots—that the first opportunity to contest the issues on the basis decided by the Board is herein. Its position is that the only issue raised with regard to these challenged ballots prior to the Board's final determination was whether the challenged persons actually possessed and exercised supervisory authority. It contends this was the issue framed in the hearing on challenged ballots and in the Hearing Officer's report and the Employer-Respondent's exceptions thereto. Respondent argues it was never afforded an opportunity to argue the legal merits of the Board's decision to rest its final determination regarding these challenges on Board policy with respect to exclusion of supervisory-trainees from a unit. Respondent further states its legal argument as to this is subject to consideration by the Trial Examiner since the issue was not and could not have been litigated in the representation proceeding.[17]

As to Respondent's contentions with respect to the Board's sustaining the Union's objections to the conduct of the first election, setting it aside and ordering another election, I conclude that the issues raised by Respondent were litigated before, considered and determined by the Board in the representation case. For reasons more fully set forth, *infra,* I further conclude that nothing submitted herein would warrant any reexamination thereof by me.

With respect to the challenged ballots, I note first the Hearing Officer (as previously set forth) in his report did indicate an alternative ground for his recommendation, citing cases in which the Board had excluded supervisor-trainees from bargaining units.[18] Second, it is neither unique nor improper for the Board or a court to rest a decision on grounds not specifically urged or argued but which manifestly are present, involved and form a proper basis for the decision. Third, there is no indication in the record herein of any request by Respondent in the representation case proceedings for reconsideration by the Board of its decision and certification. Fourth, and finally, I do not consider that there has been presented any legal issue that would warrant a reexamination of the issue or issues decided by the Board such as in the *International Telephone and Telegraph* case, *supra,* nor has anything been presented to indicate that the Board upon reexamination of the legal issue or issues would change the resolution thereof it made in the representation case.[19]

In conclusion, subject only to the sole exceptions noted aforesaid, no matter that was resolved or litigated in a representation case may properly be litigated again in a subsequent complaint case. It is established Board policy, in the absence of newly discovered or previously unavailable evidence, not herein involved, not to permit litigation in a complaint case of issues which were or could have been litigated in a prior related representation proceeding.[20]

The Respondent may, of course, in exceptions to this Decision request the Board to reconsider the determinations made in the representation case and in the event of an unfavorable final order by the Board the Respondent may request review thereof in an appropriate court of appeals. At this stage of the proceedings, however, absent newly discovered evidence, the Board's disposition of the representation matter is binding on the Trial Examiner.[21]

The refusal to bargain with the certified Union, as previously set forth in the correspondence and the answer, is clearly admitted and established. Accordingly, I find that the Respondent has violated Section 8(a)(1) and (5) by refusing to bargain with the Union as the certified representative of its employees in an appropriate unit.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relation 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

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. With respect to the request of the General Counsel that I recommend the Respondent make unit employees whole for wages and benefits they might have received but for the Respondent's refusal to bargain, I shall decline to do so. I am familiar with the Trial Examiner's opinions referred to by the General Counsel, *supra,* with which I do not concur. Rather than attempt herein to effectuate in detail my reasons therefor, first I consider that there are involved herein both legal and policy questions which would appear to call for the initial consideration of the Board. Second, I particularly rely in so declining on the recent Board decision in *Monroe Auto Equipment Company,* 164 NLRB 1051, where the Trial Examiner discussed such a proposed remedy at length but the Board in a footnote stated, "We deem it inappropriate in this case to depart from our existing policy with respect to remedial orders in cases involving violations of Section 8(a)(5) and therefore deny the said request." As for the request that the certification period be extended to begin on the day the Respondent commences to bargain in good faith with the Union as the recognized bargaining representative, the Board has found such to be appropriate in *Mar-Jac Poultry Company, Inc.,* 136 NLRB 785, and see also *Commerce Company d/b/a Lamar Hotel,* 140 NLRB 226, 229, enfd. 328 F.2d 600 (C.A. 5), and *Burnett Construction Company,* 149 NLRB 1419, 1421, enfd. 350 F.2d 57 (C.A. 10). I shall accordingly recommend that such be done.

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

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[17] Respondent cited court cases purportedly *contra* to the Board's determination

[18] He referred specifically to *Cherokee Textile Mills,* 117 NLRB 350, 351, *The Yale and Towne Manufacturing Company,* 135 NLRB 926, 928

[19] Cf *Memphis Moldings, Inc.,* 146 NLRB 265, 268, fn 4 (TXD)

[20] *Pittsburgh Plate Glass Company* v *N L R B.,* 313 U S 146, 162, *Collins and Aikman Corp.,* 160 NLRB 1750, *Krieger-Ragsdale & Company, Inc.,* 159 NLRB 490, *The Puritan Sportswear Corp.,* 162 NLRB 13, *Metropolitan Life Insurance Company,* 163 NLRB 579 *Follett Corporation,* 164 NLRB 378, *Howell Refining Company,* 164 NLRB 512

[21] In addition to cases cited in fn 19, *supra,* see also *Douglas County Electric Membership Corporation,* 148 NLRB 559, 567, *Air Control Products of St Petersburg, Inc.,* 139 NLRB 413

CONCLUSIONS OF LAW

1. Excelsior Laundry, a corporation, Albuquerque, New Mexico, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Communications Workers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. All routemen and production and maintenance employees employed at the Respondent's main plant and branch plants, excluding all office clerical employees, professional employees, guards, watchmen 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. On or about March 15, 1967, the Board certified the Union as the exclusive collective-bargaining representative of the employees in said unit.
5. Since on or about March 24, 1967, and continuing to date the Union has requested the Respondent to bargain collectively with respect to rates of pay, wages, and hours of employment, working conditions and other terms and conditions of employment with the Union as the exclusive collective-bargaining representative of all the employees in the aforesaid unit, but the Respondent then refused and continues to refuse to do so.
6. By refusing on March 24, 1967, and thereafter to recognize and bargain with the Union, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

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

ORDER

A. For the purpose of determining the effective period of duration of the certification, the initial year of certification shall be deemed to begin on the day the Respondent, Excelsior Laundry, Albuquerque, New Mexico, commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit.[22]

B. Excelsior Laundry, Albuquerque, New Mexico, its officers, agents, successors, and assigns, shall:

1. Cease and desist from.

(a) Refusing to bargain collectively with Communications Workers of America, AFL–CIO, as the exclusive collective-bargaining representative of the employees in the following appropriate bargaining unit:

All routemen and production and maintenance employees employed at the Respondent's main plant and branch plants, excluding all office clerical employees, professional employees, guards, watchmen and supervisors as defined in the Act.

(b) Interfering with the efforts of said Union to negotiate for or represent the employees in said appropriate unit as the exclusive collective-bargaining representative.

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

(a) Upon request, bargain collectively with Communications Workers of America, AFL–CIO, as the exclusive representative of the employees in the appropriate unit with respect to rates of pay, wages, hours of work, and other terms and conditions of employment, and embody in a signed agreement any understanding reached.

(b) Post at all its Albuquerque, New Mexico, plants copies of the attached notice marked "Appendix."[23] Copies of said notice, to be furnished by the Regional Director for Region 28, after being duly signed by an authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 28, in writing, within 20 days from the receipt of this Recommended Order what steps have been taken to comply herewith.[24]

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[22] The purpose of this provision, as set forth in the section of this Decision entitled "The Remedy," is to insure that the employees in the appropriate unit will be accorded the statutorily prescribed services of their selected bargaining agent for the period provided by law See case cited in "The Remedy," *supra*

[23] 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 "

[24] 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 28, 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 refuse to bargain collectively with Communications Workers of America, AFL–CIO, as the exclusive bargaining representative of the following employees:

All routemen and production and maintenance employees employed at the Respondent's main plant and branch plants, excluding all office clerical employees, professional employees, guards, watchmen and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights under the Act.

WE WILL bargain collectively with the Union as the exclusive representative of the employees in the bargaining unit, and if an understanding is reached we will sign a contract with the Union.

EXCELSIOR LAUNDRY
(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, 500 Gold Avenue, S.W., Room 7011, 7th Floor, Albuquerque, New Mexico 87101, Telephone 247–2583.