

Lloyd McKee Motors, Inc. *and* International Association of Machinists and Aerospace Workers, AFL-CIO. Case 28-CA-1395

April 11, 1968

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS JENKINS AND ZAGORIA

On May 25, 1967, Trial Examiner James T. Barker issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a brief in support of its exceptions. The General Counsel filed a brief in support of the Trial Examiner's Decision.

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, briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only to the extent consistent with the Decision herein.

The complaint alleged, and the Trial Examiner found, that Respondent violated Section 8(a)(5) and (1) of the Act by notifying the Union on June 2, 1966, that because of its doubt as to the Union's current majority status it would no longer recognize the Union as the representative of the unit employees, and thereafter by refusing to meet with the Union for purposes of continuing negotiations until the Union reestablished its majority status. We find, contrary to the Trial Examiner, that the Respondent did have a good-faith doubt that the Union had retained its majority status by June 2, 1966, and that its refusal to bargain was not, therefore, unlawful.

The record shows that the Union was certified on May 18, 1965, for a unit composed essentially of

Respondent's repair and service employees. The parties engaged in negotiations until January 1966, when the parties reached agreement on all terms of the contract except the apprentice program, but the Union and the Respondent postponed reducing these terms to a binding agreement until the apprentice program was agreed to. Thereafter, the parties met several times to discuss the apprentice program. The Respondent insisted on the 4-year Chrysler Apprentice program while the Union insisted on the 3-year National Automobile Dealers Association Apprentice program. Each of these negotiating sessions included the active participation of the Federal Mediation and Conciliation Service. At the meeting of April 14, 1966, between the parties, the record indicates the Union was to supply certain additional data to the mediator who was to study both plans and make a recommendation to the parties. However, Respondent did not receive any communication from either the Union or the mediator until May 25, when the mediator called Poole, Respondent's attorney, regarding another meeting to discuss the apprentice program. Poole declined another meeting, stating that Respondent had doubts as to the Union's majority status. This position was conveyed by the mediator to Jones, the Union's representative. When Jones called Poole, Poole questioned Jones regarding the Union's majority status, asking Jones directly if the Union still represented a majority of the employees. Jones answered that this was immaterial since the Union was certified.¹ Poole then advised Jones that if he would not answer the question, he was going to have to deny recognition. Jones made no response.

The Board has frequently stated the applicable rule: That after the certification is 1 year old, an employer can refuse to bargain with the union on the ground that it doubts the union's majority, provided that this doubt is a good-faith doubt predicated on objective considerations that established reasonable grounds for believing that the union has lost its majority status since its certification.²

In the instant case, Respondent had engaged in protracted bargaining for a 5-month period over the single issue of the apprentice program followed by absolutely no communication from the Union or the mediator during the final 6 weeks. There had been several changes in the makeup of the union negotiating committee and what appeared to Respondent to be a loss of majority on the part of the Union. The Union failed to fill the post of

¹ The certification year expired on May 18, 1966. Jones called Poole on June 1, and finally reached him on June 2.

² *Celanese Corporation of America*, 95 NLRB 664; *Laystrom Manufactur-*

ing Co., 151 NLRB 1482, 1484, enforcement denied on other grounds 359 F.2d 799 (C.A. 7), *U.S. Gypsum Co.*, 157 NLRB 652

steward, and there had been a considerable turnover of employees within the unit. In addition, McKee had asked the supervisors to make an "assessment" of the Union's strength, and, thereafter, McKee received various "opinion" reports from the supervisors which were to the effect that the Union had lost its majority status. Finally, on May 21, McKee asked Cook, the Union's vice president and chief employee negotiator, if he had heard from Jones, and Cook replied that he had not seen Jones since the meeting of April 14.³

While these factors may not, in and of themselves, establish as a fact a loss of majority, we are of the opinion that taken in their totality they present an objective basis which could furnish reasonable grounds for Respondent to believe in good faith that the Union had lost its majority status. We are further persuaded of Respondent's good-faith doubt by its conduct throughout the entire bargaining period, particularly the fact that there is nothing in the record that would tend to indicate or suggest in any way that Respondent during this period had an intention or predisposition not to reach a final agreement with the certified representative of its employees.

Since we are satisfied that the record supports the conclusion that Respondent had a reasonable basis for a good-faith doubt as to the Union's majority status on June 2, 1966, we find that Respondent did not violate Section 8(a)(5) or (1) of the Act when, on June 2, 1966, it refused to bargain with the Union. Accordingly, we shall dismiss the complaint.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

³ Cook testified that although he did so advise McKee, actually, his not seeing Jones was not true. Cook explained that he had been seeing Jones regularly, but that he did not feel it was any of McKee's business as to his relationship with Jones.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JAMES T. BARKER, Trial Examiner: Upon a charge filed on July 5, 1966, by International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter called International, the Regional Director of the National Labor Relations Board for Region 28 on December 6, 1966, issued a complaint and notice of hearing alleging a violation of

Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, hereinafter called the Act.

Pursuant to notice, a hearing was held before me at Albuquerque, New Mexico, on February 8, 1967. All parties were represented at the hearing and were afforded full opportunity to be heard, to introduce relevant evidence, to present oral argument, and to file briefs with me. The Respondent presented oral argument and, on March 16, the General Counsel and Respondent filed briefs with me.

Upon consideration of the entire record and the briefs of the parties, and upon my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a New Mexico corporation with its principal office and place of business at Albuquerque, New Mexico, where at all times material herein, it has been engaged in the business of selling and servicing new and used automobiles and the selling of automobile parts and accessories.

During the 12-month period immediately preceding the issuance of the complaint herein, Respondent, in the course and conduct of its business operations, purchased, transferred, and had delivered to its place of business in Albuquerque, New Mexico, automobiles, auto parts, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported to said place of business directly to States of the United States other than the State of New Mexico. During the same 12-month period, Respondent sold automobiles and performed services valued in an amount exceeding \$500,000.

Upon these admitted facts, I find that Respondent has been at all times material herein an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

International Association of Machinists and Aerospace Workers, AFL-CIO, and International Association of Machinists Local Lodge No. 1635, AFL-CIO, hereinafter called the Union, are admitted to be labor organizations within the meaning of Section 2(5) of the Act, and I so find.

III. THE UNFAIR LABOR PRACTICES

A. *The Issue*

The sole issue posed in this proceeding is whether commencing on or about June 1, 1966, and at all times thereafter, Respondent, in bad

faith, failed and refused to recognize and bargain collectively with the Union as the exclusive bargaining representative of its employees.

B. *Pertinent Facts*

1. The 1965 certification

Pursuant to a Board election conducted on April 15, 1965, in Case 28-RC-1313, the Union was certified by the Board as the collective-bargaining representative of Respondent's employees in the following described collective-bargaining unit:

All mechanics, their helpers and apprentices, body and fender men, painters, lubrication men, shag boys, service writers, washers, polishers, new- and used-car get-ready men, tire changers, used-parts shipping clerks, parts men and parts chasers; excluding all other employees, guards, watchmen and supervisors as defined in the Act.

In the election, of approximately 37 eligible voters, 25 cast ballots for the Union and 11 cast ballots against the Union. Two ballots were challenged.

2. The collective-bargaining meetings

Following the May 18, 1965, certification of the Union, the parties engaged in a series of collective-bargaining negotiations, but were unable to agree upon the terms of a collective-bargaining contract.

The parties stipulated that pursuant to the certification, collective-bargaining meetings commenced on June 11, 1965, and that between June 11, 1965, and December 31, 1965, approximately 16 collective-bargaining meetings were held. Additionally, the parties stipulated that eight meetings were held between January 1, 1966, and April 14, 1966.

The Union was represented in the negotiations by James Jones, Grand Lodge representative of the International, and by two bargaining committee members drawn from the membership of the Local. At all pertinent times, a designated alternate stood ready to substitute as a bargaining committee member. While, over the course of the bargaining, the composition of the Union's bargaining committee underwent some change—save for Jones and Pearl Cook, president of the Local, who participated throughout the negotiations—at all meetings, in addition to Jones, the Union was represented by two committee members.¹

The services of Federal Mediator Ferguson were first invoked by the parties in August 1965, and his participation became more frequent commencing in January 1966.

At a collective-bargaining meeting between the parties on January 6, an agreement was discussed

which later in the day was submitted by the Union to its membership. The membership voted its acceptance of the agreement. However, at a negotiating meeting the following day, the negotiators were unable to agree to the terms of an apprenticeship program. Thereafter, the discussion of the negotiators centered around the so-called Chrysler agreement, providing for a 4-year apprenticeship program and the National Automobile Dealers Association apprenticeship provision providing for a 3-year apprenticeship program.

The parties met jointly with Federal Mediator Ferguson on April 14, and the apprenticeship program was discussed. James Jones, Grand Lodge representative of the International, who represented the Union in the negotiations with the Respondent, testified credibly that at the conclusion of the April 14 meeting, Federal Mediator Ferguson advised the parties that he would study both the Chrysler agreement and the National Automobile Dealers Association agreement and make recommendations to the parties concerning the apprenticeship program contained in these agreements. Jones testified that it was his understanding that Ferguson was to call the next meeting when he had completed his study of the program. Lloyd McKee, who participated in the collective-bargaining negotiations on behalf of Respondent, testified that at the conclusion of the April 14 meeting, Jones agreed to obtain certain material relating to the apprenticeship program and to subsequently contact Respondent to arrange for a further collective-bargaining meeting. Respondent's attorney, Robert Poole, who attended the April 14 meeting testified that it was his "understanding" that the next meeting was to be set up "through the auspices" of Mediator Ferguson, but at the request of the Union when its representatives had gathered certain pertinent information.

3. Withdrawal of recognition considered

Prior to the expiration of the certification year, President McKee consulted his attorney, Robert Poole, concerning his obligation, on behalf of Respondent, to continue recognition of the Union. He was advised by Poole that he was legally obliged to continue recognition during the certification year. However, during the period that followed, prior to the expiration of the certification year, Poole and McKee discussed the Union's majority status on several occasions. Toward the end of May, Poole instructed McKee to illicit from his supervisors their individual opinions as to the extent of union support among the employees in the unit. Reports were received and they indicated union strength on an order approximating 20 to 25 per-

¹ The foregoing is predicated upon the credited testimony of James Jones and Pearl Cook. I do not credit the testimony of Lloyd McKee to the effect that in the course of collective-bargaining meetings held in 1966, the membership of the committee eroded from a committee of three to participa-

tion of only one member. This testimony, imprecise as to chronology and identity of individuals, may not be credited over the more specific and informative testimony of Jones and Cook.

cent of the then existing work force which, on June 2, numbered 44 unit employees.² Further, at this point in time, pursuant to Poole's request, a resume was prepared of the number of employees in the unit who had been employed by Respondent at the time of the certification. The resume revealed that only 14 employees were so employed.

In advising McKee in late May as to Respondent's responsibilities with respect to continued recognition of the Union, Poole was cognizant of the fact that the parties had last met in a collective-bargaining session on April 14. As the certification year had by then expired, and a 6-week period had elapsed without word from the Union, Poole testified he concluded that the Union was "backing away" from bargaining. Further, Poole gave weight to information revealing that on only one occasion following the certification of the Union had the Union presented a grievance or lodged a complaint on behalf of an employee. Poole also considered the fact that this grievance had not been processed to completion because of a disagreement between the union steward and the union vice president, Pearl Cook. Further, Poole testified he gave weight to information given President McKee by Pearl Cook to the effect that Cook had not been in touch with the Union's Grand Lodge representative, James Jones, for a period of weeks.

In this connection, on May 21, McKee conversed with Pearl Cook, the vice president of the Union and a member of the negotiating committee. McKee initiated the conversation by observing the Company had received a number of customer service complaints and observed that there was a need to commence a training program which had been the subject of previous discussions with the Union. Cook's response was noncommittal and McKee asked if he had spoken with James Jones concerning the training program. Cook answered that he had not seen Jones since the April 14 meeting. The conversation terminated on this note.³

4. Respondent declines recognition

The Respondent's decision to further continued recognition of the Union was articulated through counsel on May 25 and June 2, respectively.

On May 25, Federal Mediator Ferguson contacted Poole by telephone and inquired whether, in

Poole's opinion, the parties could meet further concerning the apprenticeship plan which had been the subject of discussion when the parties last met on April 14. Poole answered that such a meeting would not be worthwhile because he did not believe the Union had a majority. He further observed that the Company had not heard from the Union and was curious whether the Union was still claiming to represent the majority, and desired further meetings. Ferguson suggested that Poole should get in touch with James Jones, the union representative.

Jones credibly testified that Ferguson had contacted him by telephone on May 31, and had informed him that he had completed his study of the Chrysler apprenticeship program and that of the National Automobile Dealers Association. Jones testified that Ferguson recommended that the Union accept the Chrysler program. When Jones inquired why Ferguson did not call a joint meeting of the Company and the Union, Ferguson informed him that the Company was questioning the Union's majority.

The second conversation transpired on June 2 when Jones and Poole conversed by telephone. Jones had initiated the call on June 1. Poole was unavailable but returned the call on June 2. Jones informed Poole that Ferguson had advised him to call Poole. Jones continued, informing Poole that the "Chrysler version" of the apprenticeship program was acceptable to the Union. Poole answered that assuming this to be so, this left unresolved the application of an apprenticeship program to the painters, parts countermen, and service writers. Poole observed that this was equally "as big a problem" to the Company. Jones answered that he thought that this could be worked out. Thereupon, Poole said that he did not think the Union represented the majority of employees in the unit and asked Jones directly if the Union did. Jones declined to answer and Poole repeated the question. Jones answered that this was immaterial because the Union had been certified. Poole informed Jones that he did not understand and added that if Jones would not answer whether or not the Union represented the majority, he was "going to have to deny recognition." He further demanded that the Union make a written demand for recognition. Further, during the conversation, in explana-

² The foregoing is predicated upon the testimony of Robert Poole, as supported by that of Lloyd McKee. The Respondent called no supervisory agents in support of the testimony of Poole or McKee, and otherwise introduced no documentary support to substantiate the estimate concerning the extent of union following among unit employees

³ Cook testified that McKee approached him and asked him if there was "anything about the Union deal" that he should know. According to Cook, he answered, "Not that I know of." McKee then asked him if he had heard from Jones. Cook testified that he then informed McKee that he had not heard from Jones "for some time." According to Cook, this was not true, but Cook explained that he gave this untruthful answer to McKee because he felt that his own personal dealings "were his own business" and not that of McKee.

As between the testimony of McKee and Cook on this matter, I credit

McKee. Not only is his explanation of the conversation plausible and believable—a quality not present in Cook's version—but I am convinced that in his testimony, Cook was strongly prone to inaccuracy as evidenced by his testimony concerning an alleged conversation with McKee occurring at approximately the same point in time wherein McKee assertedly approached him and inquired how he could get rid of the Union. According to Cook, he answered that it would be necessary to have the Union decertified. McKee denies having had this conversation and I credit him. Not only was his denial convincing, but I find it singularly implausible that McKee would have approached an officer and principal bargaining representative of the Union with so blatant an inquiry. Especially is this so as I find that at this time McKee was receiving legal counsel from his labor relations attorney.

tion of the Company's refusal to recognize the Union, Poole recounted the conversation that McKee had had with Cook concerning the length of time that had elapsed since he had last seen Jones; he asserted that there had been considerable turnover in personnel since the Union was certified and that only 14 of the original unit employees remained; that the job steward had left the employ of Respondent and that no replacement had been appointed; and that only one of the employee bargaining committee of three remained on the committee. Poole added that while there were other reasons for refusing recognition, these would suffice to convey Respondent's position. Jones answered, "Bob, we will take it from there."⁴

Conclusions

The alleged refusal of Respondent to accord the Union recognition and to bargain collectively with it after June 1, 1966, arises in a context free of accompanying unfair labor practices. The refusal was first articulated to a representative of the Union on June 2, some 2 weeks after the expiration of the initial certification year, during which the parties had engaged in a series of approximately 25 collective-bargaining meetings without success in consummating an agreement. However, this refusal to continue recognition and bargaining was but the fruition of a predisposition which had its genesis several months earlier with the resignation of several unit mechanics, and was fortified by events which witnessed the resignation of the union steward whose position was not filled; unproductive bargaining efforts marked by ambivalence of position on the part of the union negotiators; diminished zeal on the part of the Union as evidenced by the failure of bargaining committee members to participate in bargaining meetings; and the failure of the Union to pursue bargaining as revealed by the lapse of a 6-week period during which the Union's principal negotiator retired from

⁴ The foregoing is based upon the credited testimony of Robert Poole. Poole testified that contemporaneously to conversing with Jones on June 2 he made a note to the file regarding the content of the conversation. He further testified that his testimony at the hearing concerning this conversation with Jones was based, in part, upon that memorandum to the file. I have considered, in addition to the testimony of Poole at the hearing, a letter furnished to the Board during the investigatory phases of this proceeding wherein Poole again advanced as a prime predicate for his recollection the memorandum to the file written contemporaneously with the conversation. In the main, his testimony of record finds support in this letter. However, on direct examination, Poole testified that he informed Jones that the reason for denying recognition to the Union was the apparent disinterest of the employees in the Union. The letter does not contain any reference to this reason as having been advanced during the telephone conversation with Jones. Although the letter contains a statement to the effect that there remained other reasons for not recognizing the Union, the letter purports to be exhaustive of the reasons articulated to Jones in the explanation of the Respondent's declination of recognition. Accordingly, I conclude Poole is inaccurate in his recollection that during the conversation with Jones he mentioned the employee disinterest as a ground for denying recognition.

On the other hand, I am convinced Jones is mistaken in his testimony that during the conversation Poole stated in answer to Jones' own state-

the scene and made no effort to pursue negotiations. These were interpreted by Respondent as indicia of lagging union interest, and gave rise to a supervisory assessment, undertaken at the request of management, reporting little union strength among the employees. This latter evaluation was, in turn, measured against a 62 percent turnover of unit employees which had transpired in the period subsequent to the May 1965 certification. Upon these evaluations, and upon advice of counsel, Respondent declined further recognition of the Union.

Respondent introduced no supporting evidence amplifying the oral testimony of Respondent's president concerning the supervisory assessments of union strength. No employer petition to test the Union's strength was filed; nor did any employee file a decertification petition.

The predicate rule applicable to this case is stated by the Board in *Celanese Corporation of America*, 95 NLRB 664, 672:

... after the first year of the certification has elapsed, though the certification still creates a presumption as to the fact of majority status by the union, the presumption is at that point *rebuttable* even in the absence of unusual circumstances. Competent evidence may be introduced to demonstrate that, in fact, the union did not represent a majority of the employees at the time of the alleged refusal to bargain. A direct corollary of this proposition is that after the certificate is a year old, as in the case where there is no certificate, the employer can, without violating the Act, refuse to bargain with a union on the ground that it doubts the union's majority, *provided* that the doubt is in *good faith*.

In a subsequent application of the *Celanese* doctrine, the Board in *Laystrom Manufacturing Co.*, 151 NLRB 1482, 1484,⁵ stated:

A showing of such doubt, however, requires more than an employer's mere assertion of it and more than proof of the employer's subjec-

ment of willingness to accept the Chrysler plan, that he, Poole, had not spoken with McKee recently and that the Union should make a written demand for recognition. Jones further testified that Poole did not ask him whether the Union represented the majority and did not request an explanation of these reasons. Jones' testimony to the effect that the subject of the Union's majority was not broached because Ferguson had already apprised him that the Company was questioning the Union's majority is plausible only if Jones' further testimony is credible insofar as it attributes to Poole the sentiment disclaiming awareness of the current company position of the apprenticeship issue and demanding a written request for recognition. In such an event, it is feasible that the conversation would not have proceeded to the point suggested by Poole's testimony. However, in light of the uncontroverted predicate for Poole's testimony which finds support in its general essentials from the documentary evidence of record, I credit Poole. Moreover, as I find it unlikely that Poole would tersely disclaim awareness of the Company's bargaining position and abruptly terminate the conversation by making a bare demand for written recognition, I shall reject the testimony of Jones in this respect.

⁵ Enforcement denied *N.L.R.B. v. Laystrom Manufacturing Co.*, 359 F.2d 799 (C.A. 7). However, that the Board continues to adhere to the *Laystrom* doctrine is revealed by its recent decisions in *Palmer Asbestos Rubber Corp.*, 160 NLRB 723; *U. S. Gypsum Co.*, 157 NLRB 652, *M. F. A. Oil Company*, 162 NLRB 1071.

tive frame of mind. The assertion must be supported by objective considerations. The applicable test, as defined in the *Celanese* case, is whether or not the objective facts furnish a "reasonable basis" for the asserted doubt, or, put another way, whether or not there are "some reasonable grounds for believing the Union has lost its majority status since its certification."

In support of its refusal to continue recognition of the Union, Respondent relies upon three bases, turnover among the employee complement; its subjective interpretation of the significance of the Union's bargaining conduct; and supervisory assessment of employee union sentiment.

Initially, it is to be observed that the Board in *Laystom Manufacturing Co.*, *supra*, held that:

Employee turnover standing alone does not provide a reasonable basis or belief that the Union had lost its majority since the prior election. The Board has long held that new employees will be presumed to support a union in the same ratio as those whom they have replaced.

As the General Counsel correctly points out, there is no objective evidence of record from which it may be concluded that replacement employees were individually or as a group disinterested in or hostile to union representation, or that the Respondent replaced union adherents with employees of opposite persuasion.⁶ Thus, the presumption alluded to in *Laystom*, for decisional purposes, must be indulged, and the trier of the fact must look to other evidence of record in gauging the extent of employee disaffection from or rejection of the Union as a collective-bargaining representative.

Construing the evidence most favorably to the Respondent, it may hardly be concluded that union ambivalence and lack of zeal at the bargaining table on the part of the union negotiators may be equated with a loss of constituent following. While laggard and inept representation may serve as the precursor of membership defection, there is no showing on this record that during the period of the certification year the Union's performance was so passive, perfunctory, intermittent, or ineffectual as to reasonably conduce to this result. Indeed, to the contrary, during the 10 months preceding April 14, the Union had met in 25 collective-bargaining sessions with the Company, and the parties' negotiations had produced a tentative collective-bargaining agreement which proved acceptable to the union membership.

Moreover, contrary to Respondent, there is no showing that the Union had not been effectively representing employees' sentiment at the bargaining table or that the employees had raised any question concerning the quality of representation they were obtaining from the Union. On the other

hand, the hiatus in bargaining that transpired after April 14 may arguably be interpreted as an indication of decelerated interest on the part of the Union; but it does not perforce reveal an erosion of membership or employee allegiance. However, this latter evidence loses its significance even as a barometer of official union interest when account is taken of the further evidence revealing that the bargaining impasse was wholly or substantially effected to serve the mediatory purposes of Federal Mediator Ferguson whose services the parties had invoked.

The failure of the Union to fill the vacant post of job steward and the failure, for a 6-week period, of James Jones, the Union's Grand Lodge representative and principal negotiator, to contact Respondent or otherwise reassert his interest in bargaining are similarly explainable and lacking in dispositive force in that, while the evidence may indicate a lack of aggressive propensity on the part of union officialdom, it does not reveal or prove an erosion of the Union's support.

In view thereof, it becomes incumbent, therefore, to examine whether the supervisory survey of union support instigated at the behest of management was of such a character as to have accorded Respondent reasonable grounds for believing the Union had lost its majority status. Little insight is given as to the precise nature of the survey conducted. That the reports emanating from supervision to management were predicated on supervisory opinion garnered and formulated through their day-to-day contact with rank-and-file employees is fairly discernible on the record. That no poll of individual employee sentiment was conducted is similarly discernible. Thus, it must be concluded that the reports rendered by supervision to management consisted of distillations of employee sentiment articulated through informal conversations in which supervisory personnel participated, or of summaries of sentiment extracted from conversations of rank-and-file employees which supervisors overheard.

To the extent that the report encompassed the former, they were perforce distorted by inhibitions springing from the normal trepidation which rank-and-file employees would manifest against the consequences of candid disclosure; and to the extent they involve the latter, they were fragmentary and inconclusive. The melding of two frailties could produce only distortion. In neither case is it reasonable to assume that responsible management intending in good faith to engage in the serious business of collective-bargaining negotiations would give reliance and credence to reports deriving from foundations so unreliable.

A careful analysis of the evidence of record convinces me that, in the main, Respondent relied, in reaching a decision to deny further recognition to the Union, upon subjective factors which were

⁶ Cf. *Frito-Lay, Inc.*, 151 NLRB 28; *Hayworth Roll and Panel Company*, 130 NLRB 604.

susceptible of varying interpretations and not necessarily supportable of the interpretation given them by Respondent; and that the *objective* factors including employee turnover which Respondent assertedly relied upon were of so fragile a foundation and documentation as to foreclose the existence of a reasonably grounded basis for doubting the Union's continued majority status.

Quite applicable to the facts of this case is the Board's observation in *E. A. Laboratories, Inc.*, 80 NLRB 625, 683:

A good faith doubt . . . must be based on something more than a mere desire to put a union to a contest of strength in the hope that it may somehow lose. Where the union is admittedly the choice of the employees before the question is raised, there must be some evidence of disaffection brought to the employer's attention before the asserted doubt can be characterized as bona fide.

The evidence of record convices me that Respondent had nothing more than an esoteric feeling that the Union could no longer command the majority of its employees; a feeling which, perhaps, because of a pervading fear of the inaccuracies of its impulses, the Respondent was not moved to substantiate through resort to the processes of the Board's election machinery. In the circumstances of this case, particularly in the absence of objective indicia upon which the Respondent could reasonably rely in guiding it in its determination to withhold recognition to the Union, I find that Respondent did not entertain a good-faith doubt of the Union's majority, but acted in bad faith. Consequently, I further find that by declining to further recognize and continue collective bargaining with the Union on and after June 2, the Respondent engaged in unlawful conduct violative of Section 8(a)(1) and (5) of the Act.

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

Having found that Respondent refused to bargain in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that

it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent refused to bargain collectively with the Union as the exclusive collective-bargaining representative of its employees in an appropriate collective-bargaining unit, I shall recommend that Respondent, upon request, bargain collectively with the Union as the duly designated collective-bargaining representative of its employees and, if an understanding is reached, embody such understanding in a signed agreement.

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

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Association of Machinists and Aerospace Workers, AFL-CIO, and International Association of Machinists, Local Lodge No. 1635, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. International Association of Machinists, Local Lodge No. 1635, AFL-CIO, has been, and now is, the exclusive collective-bargaining representative of a majority of Respondent's employees in a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. The following described collective-bargaining unit is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All mechanics, their helpers and apprentices, body and fendermen, painters, lubrication men, shag boys, service writers, washers, polishers, new- and used-car get-ready men, tire changers, used-parts shipping clerks, parts men and parts chasers; excluding all other employees, guards, watchmen and supervisors as defined in the Act.

5. By refusing, on and after June 2, 1966, to bargain collectively with International Association of Machinists, Local Lodge No. 1635, AFL-CIO, as the exclusive collective-bargaining representative of all its employees in an appropriate collective-bargaining unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

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

[Recommended Order omitted from publication.]