

The William J Burns International Detective Agency, Inc and International Union, United Plant Guard Workers of America and its Amalgamated Local Union No 162 and American Federation of Guards, Local 1 Case 31-CA-776

May 7, 1970

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING,
BROWN AND JENKINS

On June 4, 1968 Trial Examiner E Don Wilson 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. He also found that the Respondent had not engaged in certain other unfair labor practices. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief, and the Charging Party (herein referred to as the Union) and General Counsel filed briefs in support of the Trial Examiner's Decision.

On January 31, 1969, the National Labor Relations Board, having determined that the instant case raised issues of substantial importance in the administration of the National Labor Relations Act, as amended, ordered that this case be consolidated with three others¹ for the purpose of oral argument before the Board on March 12, 1969. The parties were given permission to file further briefs. Subsequently, on February 19, 1969, the Board extended the date of the oral argument to April 23, 1969.

The Board also invited certain interested parties to file briefs *amici curiae* and to participate in oral argument. Briefs were filed by The Chamber of Commerce of the United States, American Federation of Labor and Congress of Industrial Organizations, International Union, United Automobile, Aerospace and Agricultural Implement Workers, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and the National Federation of Independent Unions. The Chamber of Commerce of the United States, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and the National Federation of Independent Unions did not choose to participate in the argument. The National Association of Manufacturers declined to either file a brief or participate in the argument.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, the oral arguments, Respondent's motions to reopen the record and the General

Counsel's and Charging Party's opposition thereto, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

Briefly, the facts show that Wackenhut performed plant protection services for Lockheed Aircraft Service Company Ontario International Airport, Ontario, California. On March 8, 1967,² the Union was certified as exclusive bargaining representative for all of Wackenhut's full time and regular part time plant protection employees. On April 29, 1967, Wackenhut and the Union entered into a collective-bargaining agreement effective until April 28, 1970.

Pursuant to its agreement with Wackenhut, Lockheed let the service contract out for bids. On May 15, at a prebid conference attended by several general service contractors including the Respondent, Burns, Lockheed advised the prospective bidders that Wackenhut's guards were represented by the Union which had a recent Board certification, and that there was in existence a labor contract between Wackenhut and the Union covering these employees. On May 31, Wackenhut was informed by Lockheed that Respondent would perform the guard services as of July 1.

Prior to its July 1 takeover, Respondent interviewed guards for employment who were at that time employed by Wackenhut. As more fully described by the Trial Examiner, the Respondent assisted the American Federation of Guards in the solicitation of employees Elmer Reitzel, Thomas Ware, Charles Blankemeier, Harris Camp, Stanley Gamewski and Walter Drake. On June 29, Respondent recognized the American Federation of Guards as bargaining representative.

On July 1, when Respondent officially began the guard service duties theretofore performed by Wackenhut, some 27 guards formerly working at Lockheed in the employ of Wackenhut began work as guard employees of Respondent. In addition, 15 employees of Respondent were transferred from other jobs and began work at Lockheed. Thus in assuming guard functions at Lockheed, a majority of Respondent's work force was made up of ex Wackenhut employees and the nature of the business remained the same.

On July 12, the Union, by letter, made a demand upon Respondent that it recognize the Union as bargaining representative and honor the Union's collective bargaining agreement with Wackenhut. By letter dated July 24, the Respondent declined recognition. Unfair labor practice charges were then filed which resulted in the issuance of the complaint in the instant proceeding.

The Trial Examiner concluded that Respondent violated Section 8(a)(2) and (1) of the National Labor Relations Act, as amended, by assisting the American Federation of Guards in organizing employees and by recognizing the American Federation of Guards when it did not represent an uncoerced majority of Respondent's employees. In addition, the Trial Examiner found that Respondent was a successor employer to Wackenhut.

¹ *Travelodge Corp et al* 182 NLRB 52; *Hackney Iron & Steel Co* 182 NLRB 53; and *Kota Division of Dura Corporation* 182 NLRB 51.

Hereinafter all dates refer to 1967 unless otherwise stated.

and that it violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union as the bargaining representative of its employees. We agree with these findings of the Trial Examiner.

We also agree with the Trial Examiner that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to abide by the 1967 contract between Wackenhut and the Union. However, in view of the significance of the issue presented, we believe it is necessary to explicate fully our reasons for doing so.

The Supreme Court's Decision in *John Wiley & Sons v. Livingston*³ altered the perspective in which a successor employer's obligations to honor the provisions of a collective-bargaining agreement negotiated by his predecessor must be viewed. There, the predecessor employer was absorbed by merger into a larger acquiring company (Wiley). Some of the predecessor's employees were represented by a union, and the collective-bargaining contract, which did not contain a successors clause, was not scheduled to expire until over a year after the merger took place. Pursuant to an arbitration clause in the contract, the union brought suit to compel Wiley to arbitrate its claim that certain contract rights had survived the merger. The Court held that even though the predecessor had disappeared as a result of the merger, all rights of the employees covered by the preexisting collective-bargaining agreement did not terminate. The Court determined that under the circumstances presented Wiley was bound to arbitrate its obligations under the preexisting collective-bargaining agreement.

In reaching its conclusion, the Court specifically rejected the contention that Wiley could not be required to arbitrate under the preexisting collective-bargaining agreement because it was not a party to that agreement and had not consented to be bound by it. The Court stated at 376 U.S. 543, 550:

While the principles of law governing ordinary contracts would not bind to a contract an unconsenting successor to a contracting party [footnote omitted], a collective bargaining agreement is not an ordinary contract . . . [I]t is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate . . . The collective agreement covers the whole employment relationship. It calls into being a new common law—the common law of a particular industry or of a particular plant. [Citation omitted] Central to the peculiar status and functions of a collective bargaining agreement is the fact dictated both by circumstance . . . and by the requirements of the National Labor Relations Act, that it is not in any real sense the simple product of a consensual relationship.

As the foregoing indicates, the Supreme Court refused to rely upon common law contract doctrine in determining the nature of a purchasing employer's obligation to arbitrate matters arising under a contract it had not signed. Rather, the Court construed the contract in the context of a national labor policy which accords a central role to arbitration as "the substitute for industri-

al strife" and as "part and parcel of collective bargaining itself" and found the necessary contractual foundation for the duty to arbitrate in the contract negotiated by Wiley's predecessor:

Therefore, although the duty to arbitrate, as we have said . . . must be founded on a contract, the impressive policy considerations favoring arbitration are not wholly overborne by the fact that Wiley did not sign the contract being construed. This case cannot readily be assimilated to the category of those in which there is no contract whatever, or none which is reasonably related to the party sought to be obligated. There was a contract, and Interscience, Wiley's predecessor, was party to it. We thus find Wiley's obligation to arbitrate this dispute in the Interscience contract construed in the context of a national labor policy. (376 U.S. 550).

The concept of substantial continuity in the employing industry enunciated as a necessary condition for the survival of the duty to arbitrate when the ownership of a business changes hands is at the heart of our determination that a purchasing employer is a successor employer within the meaning of the Act. In essence, the finding of successorship involves a judgment that the employing industry has remained essentially the same despite the change in ownership.⁴ A normal consequence of such finding is that the successor employer is obligated to recognize and bargain with the union duly selected by the employees—albeit prior to the change in ownership—as their collective-bargaining representative. This consequence of successorship is rooted, *inter alia*, in the fact that

[i]t is the employing industry that is sought to be regulated and brought within the corrective and remedial provisions of the Act in the interest of industrial peace. . . .⁵

as well as in the fact that, having chosen a bargaining representative,

[t]here is no reason to believe that the employees will change their attitudes merely because the identity of their employer has changed.⁶

Binding the successor employer to his predecessor's bargaining obligation furthers the policy of protecting the employees' exercise of the right to engage in collective bargaining through representatives of their own choosing. Requiring the successor employer to negotiate proposed changes in existing terms and conditions of employment with the employees' bargaining representative promotes stability in the employing enterprise's labor relations and furthers the interests of industrial peace. The obligation to bargain imposed on a successor employer includes the negative injunction to refrain from unilaterally changing wages and other benefits established by a prior collective-bargaining agreement even though that agreement has expired.⁷ In this respect,

⁴ See, e.g., *Cruse Motors, Inc.*, 105 NLRB 242, 247

⁵ *Kiddie Kover Co v N L R B.*, 105 F.2d 179, 188 (C.A. 6)

⁶ *N L R B v Albert Armato*, 199 F.2d 800, 803 (C.A. 7)

⁷ *Harold W. Hinson, d/b/a Hen House Market No. 3*, 175 NLRB

the successor employer's obligations are the same as those imposed upon employers generally during the period between collective-bargaining agreements.⁸

The question before us thus narrows to whether the national labor policy embodied in the Act requires the successor employer to take over and honor a collective-bargaining agreement negotiated on behalf of the employing enterprise by the predecessor. We hold that, absent unusual circumstances, the Act imposes such an obligation.

The history of the collective bargaining process demonstrates that its object has long been an agreement between employer and employees as to wages, hours and working conditions evidenced by a signed contract or statement in writing, which serves both as recognition of the union with which the agreement has been reached and as a permanent memorial of its terms . . . [t]he signed agreement has been regarded as the effective instrument of stabilizing labor relations and preventing, through collective bargaining, strikes and industrial strife. (*Heinz Co. v. N.L.R.B.*, 311 U.S. 514).

In enacting the 1947 amendments to the Act, Congress added Section 8(d) in which it defined in some detail the duty to bargain collectively, including within that definition a specific ratification of the holding in the *Heinz* case.

Section 8(d) also defined the duty to bargain as meaning that, "where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce . . . no party to such contract shall terminate or modify such contract," unless it serves prescribed notices on the other party, and maintains its contract in effect for 60 days therefrom, even though that period may extend beyond the contract's natural termination or expiration date. Section 8(d) also provides that a party to a collective-bargaining agreement has the right to refrain from discussing modifications which are to take effect prior to the period fixed by the contract itself for reopening negotiations. Section 8(d) thus clearly demonstrates Congress' recognition of the paramount role in maintaining industrial peace played by parties' adherence to existing collective-bargaining agreements.

The impressive policy considerations favoring the maintenance and adherence to existing collective-bargaining agreements are not wholly overborne by the fact that Burns has not signed the contract here in issue. Nor can a holding that Burns is obligated to honor and adhere to the express terms of the contract readily be equated with compelling Burns to agree to a bargaining proposal or make a concession it is unwilling to make.⁹ Indisputably, there is a contract. That contract covers the employees of the employing industry which

Burns took over; it was negotiated on behalf of the employing enterprise by Wackenhut, Burns predecessor. That contract is reasonably related to Burns through its takeover of Wackenhut's Lockheed service functions and its hiring of Wackenhut employees. We find, therefore, that Burns is bound to that contract as if it were a signatory thereto, and that its failure to maintain the contract in effect is violative of Sections 8(d) and 8(a)(5) of the Act.¹⁰

In the normal case, we perceive no real inequity in requiring a "successor employer" to take over his predecessor's collective-bargaining agreement, for he stands in the shoes of his predecessor. He can make whatever adjustments the acceptance of such obligation may dictate in his negotiations concerning the takeover of the business. Normally, employees cannot make a comparable adjustment. Their basic security is the collective-bargaining agreement negotiated on their behalf. In the instant case this is certainly so. They work in an industry in which the identity of their employer is subject to annual bidding for the right to perform the services they are engaged in furnishing. The contract involved herein was negotiated for a term of 3 years, but had been in existence for only 2 months at the time of Burns' takeover. Burns had knowledge of the agreement when it bid for the Lockheed service contract. It hired employees on whose behalf the agreement was negotiated. Accordingly, in order to fully protect the employees' exercise of the right to bargain collectively and to promote the maintenance of stable bargaining relationships and concomitantly industrial peace in this industry, we conclude that Respondent Burns must be held bound to its predecessor's contract.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that the Respondent, The William J. Burns International Detective Agency, Inc., Ontario, California, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, with the qualification described below.¹¹

MEMBER JENKINS, dissenting:

My partial dissent is as follows:

There is no requirement in the Act that a successor employer be bound by the collective-bargaining agreement in effect when the business is transferred. Whether to require the successor to be bound is therefore a matter of judgment or interpretation of the national labor policy. In the absence of a clear statutory command or binding judicial precedent, I would not impose the existing agreement on either the union or the employer.

No. 100, enfd., 428 F.2d 133 (C.A. 8, 1970). *Overnite Transportation Co.*, 157 NLRB 1153, enfd. 375 F.2d 765 (C.A. 4), cert. denied 389 U.S. 838.

⁸ *Bethlehem Steel Company (Shipbuilding Division) v. N.L.R.B.* 320 F.2d 615 (C.A. 3).

⁹ Sec. 8(d) provides that performance of the mutual obligation to bargain does not compel either party to agree to a proposal or require the making of a concession.

¹⁰ *C & S Industries, Inc.*, 158 NLRB 454, *N.L.R.B. v. Huttig Sash & Door Co.*, 377 F.2d 964 (C.A. 8), enfd. 154 NLRB 811. See also *Oilfield Maintenance Co., Inc., etc.*, 142 NLRB 1384.

¹¹ Substitute "Judgment" for "Decree" wherever it occurs in fn. 6 of the Trial Examiner's Recommended Order.

Where the enterprise is marginal or faltering, the new management may have to rearrange the terms and conditions of employment if the business and the jobs are to survive. The union also may, as in the companion case of *Kota Division of Dura Corporation*, 182 NLRB No 51, want the opportunity to alter employment conditions in the light of the new economic circumstances and relations brought into the situation by the new employer. In such cases, our goal should be to permit the parties flexibility in working out their new arrangements if either desires to do so, rather than to impose the existing agreement when one side may be seriously dissatisfied with it. The new employer is not a party to the agreement, and the union did not join in shaping and executing it with his circumstances in mind. Thus, to impose the agreement on the new relation may in many cases prove a source of friction and disruption, rather than the stability for which my colleagues hope.

Section 8(d) of the Act, in requiring "parties" to adhere to their agreements and give notice of termination well in advance, hardly supports the conclusion that the successor is bound by the agreement, for that section refers only to a "party" to the contract, the successor is not a party, and the issue before us is whether he should be treated as if he were a party.

Unlike my colleagues, who rely principally on *John Wiley and Sons v Livingston* to require that the existing agreement must continue in effect beyond the transfer of the business, I see little in that case to support that conclusion. The employees' rights at issue there were of a very narrow range, such as seniority, vacation pay, pension contributions, and severance pay, rights which were fixed or already accrued by being, at least in part, earned through past performance of work, or "vested" as the Court referred to them. The Court held only that the arbitration clause in the old agreement survived the merger as an available method of resolving issues concerning these "vested" rights. This hardly amounts to a holding that the entire old agreement must be imposed on the new employment relation. Indeed, the Court's approval of arbitration and its inherent flexibility and adjustment to unforeseen circumstances might indicate that the old agreement should not be so imposed.

Accordingly, I would not hold that Burns is bound by the agreement between its predecessor Wackenhut, and Lockheed

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

E DON WILSON, Trial Examiner. The original charge was filed on July 24, 1967, by International Union, United Plant Guard Workers of America and its Amalgamated Local Union, No 162, herein the Union, and an amended charge was filed on August 1, 1967. Upon the charge as amended, the General Counsel of the National Labor Relations Board, herein the Board, issued a complaint and notice of hearing dated October 25, 1967, alleging that The William J Burns International

Detective Agency, Inc, herein Respondent, had violated Section 8(a)(1), (2), (3), and (5) of the National Labor Relations Act, herein the Act.

Pursuant to due notice, a hearing in this matter was held before me in Los Angeles, California, on December 19 and 20, 1967. All parties but the party in interest fully participated. Briefs for the General Counsel, Respondent, and Charging Party have been received and considered.

Upon the entire record¹ in the case and from my observation of the witnesses, I make the following

FINDINGS OF FACT

I RESPONDENT'S BUSINESS

At all material times, Respondent has been a New York corporation with offices in various parts of the United States, including an office at Los Angeles, California, where it is engaged in providing protective, guard, and detective services to business firms throughout the United States.

In the course and conduct of its business operations, Respondent's Los Angeles office has an annual volume of business in excess of \$500,000, and annually performs services valued in excess of \$50,000 for firms outside the State of California, and annually performs services valued in excess of \$50,000 for firms in the Los Angeles area, each of which ships products valued in excess of \$50,000 directly outside the State of California.

The Wackenhut Corporation, herein Wackenhut, is a Florida corporation engaged in plant protection and security services for firms located throughout the United States. In the course and conduct of its business operations, Wackenhut has an annual gross volume of business in excess of \$500,000, and it annually performs services valued in excess of \$50,000 outside Florida.

Respondent and Wackenhut, each, is and at all material times has been, an employer engaged in commerce within the meaning of the Act.

II THE LABOR ORGANIZATIONS

The Union and American Federation of Guards, Local 1, herein AFG, are labor organizations within the meaning of the Act.

III THE UNFAIR LABOR PRACTICES

A *The Issues*

The issues include the following

- (1) Is Respondent a successor to Wackenhut,
- (2) Is a unit limited to employees of Respondent at Lockheed appropriate,
- (3) Has Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union and

¹ The motion to correct the transcript is granted as is the motion to admit Resp Exh 5 into evidence.

by refusing to give effect to a contract between Wackenhut and the Union;

(4) Has Respondent violated Section 8(a)(2) and (1) of the Act by recognizing AFG as the bargaining representative of Respondent's employees at Lockheed and by requiring membership in or an application for membership in AFG as a condition of employment at Lockheed;

(5) Did Respondent violate Section 8(a)(1) and (2) of the Act by promising and giving an employee a promotion and a raise because he assisted the AFG; and

(6) Did Respondent violate Section 8(a)(2) and (1) of the Act by assisting AFG in organizing Respondent's employees and by recognizing AFG when AFG did not represent an uncoerced majority of Respondent's employees?

B. Respondent, Wackenhut and the Appropriate Unit

At least beginning February 28, 1967,² Wackenhut performed plant protection services for Lockheed Aircraft Service Company, herein Lockheed, at Ontario International Airport. On this date, a majority of the employees in the following unit selected the Union as their bargaining representative in a Board election. The unit is:

All full-time and regular part-time employees of Wackenhut performing plant protection duties as determined in Section 9(b)(3) of the Act at Lockheed, Ontario International Airport; excluding office clerical employees, professional employees, supervisors, and all other employees as defined in the Act.

On March 8, the Regional Director certified the Union as the exclusive bargaining representative of the employees in the above unit.

On April 29, Wackenhut entered into a collective-bargaining contract with the Union to be effective until April 28, 1970. It contained a legal union security provision.

As provided by the agreement between Lockheed and Wackenhut, Lockheed let the service contract out for bids. On May 15, Lockheed advised Respondent that Wackenhut's guards were represented by the Union which had a contract after Board certification. On May 31, Wackenhut was told by Lockheed that Respondent would perform the guard services as of July 1. Wackenhut ceased performing the guard services and Respondent began performing the guard services for Lockheed. On July 1, Respondent's employees included 27 guards formerly employed by Wackenhut and 15 transferred employees of Respondent.

C. Respondent Assists the AFG

1. Reitzel

Elmer H. Reitzel was formerly an employee of Wackenhut. He was "Chairman of the Board" of the Wackenhut employees. About June 2, Major George Goddard, a supervisor of Respondent, interviewed Reitzel and gave him a job application. A few days later, Reitzel spoke to Mr. New, Respondent's operations manager, and a supervisor, about the job. New told Reitzel to see Jack Foley, an organizer for the AFG. Foley was seated from 15 to 30 feet away from New, in the same room. Foley gave Reitzel an AFG authorization card to sign and said employees had to belong to the AFG to work for Respondent, but Reitzel did not then sign it. Foley said Respondent couldn't live with the Union's contract. Reitzel asked for a copy of the AFG contract but did not get one. Foley told Reitzel that as steward he would like to have him get the employees to sign authorization cards for the AFG. Reitzel said he'd talk to the employees. Reitzel left and then called a representative of the Union in Detroit. Reitzel told the representative Respondent and AFG wanted the employees to sign authorization cards to keep their jobs. The representative said it was all right if it meant their jobs. Foley mailed pledge cards to Reitzel. About 2 days later, Foley came to Reitzel and spoke to him about the cards. I have carefully studied Reitzel's testimony and find it is confused as to dates. I am convinced that Reitzel just did not remember when Goddard told Reitzel Respondent was considering promoting him to sergeant. Foley asked Reitzel if he had gotten the authorization cards, which Foley had given him, signed. Reitzel said he was working on them. In the latter part of June, Goddard phoned Reitzel and asked him to bring the signed pledge cards to Respondent's office. Reitzel failed to do so. About 10 o'clock that evening, Captain Kretzlow, a supervisor, came to Reitzel's home and asked for the signed AFG cards and Reitzel explained that he didn't have them with him. The next morning at work, Goddard came to Reitzel and picked up the AFG cards.³

When Respondent took over Wackenhut's operations, Reitzel was promoted from guard to sergeant with a raise from \$1.75 to \$1.95 an hour with no additional obligations. There is insufficient probative evidence that Reitzel was promised the promotion or was promoted to sergeant in violation of Section 8(a)(1) or (2) of the Act. Reitzel's recollection of when he was told he would be promoted to sergeant is too confused to permit a finding.

Respondent violated Section 8(a)(2) and (1) of the Act by New's direction to Reitzel to see Foley who as part of the hiring procedure told Reitzel he had to sign an AFG pledge card to work for Respondent and asked him to get other employees to sign for the AFG. Respondent similarly violated the Act by Goddard's request of Reitzel that he bring the signed AFG

² Hereinafter all dates refer to 1967 unless otherwise stated

³ The record makes clear there were about 18

cards to Respondent's office and by Kretzlow's asking for the cards and by Goddard picking them up from Reitzel at work

2. Thomas C. Ware

Ware was employed by Wackenhut as a guard. In early June, he went to Respondent's office with a filled out application for employment by Respondent. He gave his application to New. He told New he would like to know about pay and about hospitalization and other details. New directed him to Foley for answers. He saw Foley in the same room. Foley gave him no answers. Foley repeatedly pushed an AFG authorization card in front of Ware and told him the Union was out and that he had to sign the AFG card or not work for Respondent. Ware said that "in California" he had 30 days to make up his mind.

I find Respondent violated Section 8(a)(2) and (1) of the Act by New's assisting Foley in his solicitation of Ware for the AFG.

3. Charles A. Blankemeier

On June 28, Blankemeier received an application for employment. The next day he returned the application when he went to Respondent's office to pick up a uniform. He saw Goddard and Kretzlow and asked for his uniform. As he was preparing to leave with his new uniform, Goddard told him he had to sign an AFG authorization slip before he could have Respondent's uniform. He signed the AFG slip with Foley's name on it and left with the uniform.

I find Respondent violated Section 8(a)(2) and (1) of the Act by conditioning his receipt of Respondent's uniform, necessary for work with Respondent, on his signing an AFG authorization card.

4. Harris K. Camp

About June 10, Camp went to Respondent's office for an application. He saw Goddard. Goddard told him to go into the next room. Camp did so and found Foley to be the only one there. Foley told him Respondent now had the contract and if Camp wanted to work for Respondent he would have to sign the AFG card. Foley handed him a card and Camp said he would think it over. He left and again saw Goddard who gave him a work application. The next day Camp brought this application back to Goddard. He was measured for Respondent's uniform. A couple of weeks later, on June 30, he went in to pick up his uniform and on top of it was an AFG union slip that was supposed to be signed by him. In the presence of Goddard, Kretzlow gave him the AFG slip to sign. He said it had to be signed. It was in with the paperwork for the clothing.

I find Respondent, through Goddard and Kretzlow, assisted the AFG in signing up Camp in violation of Section 8(a)(2) and (1) of the Act

5. Stanley L. Ganiewski

Ganiewski was a Wackenhut guard who went to Respondent's office for employment about June 10. He saw Goddard and asked where the applications were. Goddard pointed to a room. Ganiewski went there and found Foley there alone. Foley told him he'd have to join the AFG to work for Respondent. Foley spoke at length about the AFG and its contract. He asked Ganiewski to sign an AFG authorization card. The latter said he'd think about it and left.

I find Respondent, through Goddard, assisted the AFG in its solicitation of Ganiewski through Foley, in violation of Section 8(a)(2) and (1) of the Act.

6. Walter Drake

In the latter part of June, Drake went to Respondent's office and talked to Goddard and some captain. The captain brought to him an authorization card of the AFG and said he would have to sign it before he could go to work. He said it was for "their union." Drake said he had 30 days to sign the card. They said he would have to sign it before he could go to work. Later that day, Goddard told him he had 30 days to sign but Respondent would like to have the AFG authorization signed before he went to work. Drake signed the card.

Respondent, through Goddard and the captain, assisted the AFG in its organizing activities in connection with Drake and thereby violated Section 8(a)(2) and (1) of the Act.

C. Respondent is a Successor to Wackenhut and Obligated to Bargain With the Union

When Respondent began its operations at Lockheed during the certification year, and during the contract term, it performed the same operations at Lockheed as had Wackenhut. It had in its employ a majority of Wackenhut's former employees. There has been a substantial continuity of Wackenhut's business operations by Respondent. At least substantially the same business facilities have been used. The working conditions are substantially the same. The services provided are substantially the same. Respondent's taking over Wackenhut's operations at Lockheed constituted no change in the "employing industry forming the appropriate bargaining unit for which the Union had been certified." *Maintenance, Incorporated*, 148 NLRB 1299. As in *Maintenance*, "Respondent commenced the performance of substantially the identical operations that had theretofore been performed by [Wackenhut], servicing the same facilities for the same customers in substantially the same manner and at the same work site, and utilizing for that purpose a former [Wackenhut] work force to perform the same functions and exercise the same skills."

Respondent had the duty to honor its employees' choice of a bargaining representative, the Union. This was a public obligation not arising from private contract.

The Union "was entitled to statutory recognition at the time Respondent took over" *Maintenance, Incorporated, supra*.

It is clear "that Respondent assumed the obligation the Act imposes upon an employer to recognize and deal with its employees' majority representative when it selected as its work force the employees of the previous employer to perform the same tasks at the same place as they had in the past. These employees had already expressed their choice of bargaining representative, and continued to constitute an appropriate bargaining unit. As the certification year had not yet expired at the time the Union sought recognition and bargaining,⁴ the presumption of the Union's continuing majority status applied and was not then vulnerable to attack." *Maintenance, Incorporated, supra*. Respondent was obligated to recognize and bargain with the Union as the statutory representative of its employees in an appropriate unit. Respondent violated Section 8(a)(5) and (1) of the Act by refusing to comply with the Union's July 12 demand for bargaining. It has been found that Respondent knew, when it bid for the Lockheed contract, that the Union was the certified bargaining representative.

Respondent challenges the appropriateness of the bargaining unit as applied to Wackenhut and as applied to Respondent. While a broader unit might have been appropriate, I find a unit of guards limited to a single facility is an appropriate unit. Here the certification was pursuant to a consent election agreement. There is no evidence that the Regional Director was arbitrary or capricious. A mere change of employers does not destroy the certification.

D. Respondent Violated Section 8(a)(2) and (1) By Recognizing the AFG

As has heretofore been found, the AFG did not represent an uncoerced majority of Respondent's employees on or before July 1, when Respondent recognized the AFG. Consequently, Respondent assisted AFG in violation of Section 8(a)(2) and (1) of the Act when it recognized the AFG as bargaining representative.

E. Respondent Violated Section 8(a)(5) and (1) of the Act By not Honoring and Assuming and Doing Business Under the Contract Between the Union and Respondent's Predecessor, Wackenhut

On April 29, the Union and Wackenhut entered into a collective-bargaining agreement covering Wackenhut's Lockheed employees, the contract to be effective until 1970.

While *Wiley v. Livingston*, 376 U.S. 543, dealt specifically only with the obligation of a successor employer to arbitrate under a contract with a union, the decision made clear that the rights of employees under a collective-bargaining agreement are not automatically terminated by the fact that one employer succeeds to the rights of another employer. The Court was concerned with

whether, as here, the business remains the same. The Court recognized that employees do not ordinarily take part in negotiations, leading to changes in corporate ownership. The well being of employees is at best incidental to the negotiations. The Court held, "The objectives of national labor policy, reflected in established principles of federal law, require that the rightful prerogative of owners independently to rearrange their businesses and even eliminate themselves as employers be balanced by some protection to the employees from a sudden change in the employment relationship." The Court emphasized that a collective-bargaining agreement is not an ordinary contract.

The Union persuasively argues that in an industry of the nature here involved where the employer may be changed from year to year, the union contract should follow the unit rather than the employer. The employees may select a union which obtains a contract for their benefit and find the employer changes. If the new employer may ignore the contract, all negotiations for peaceful contractual relations come to naught. Here, if Respondent does not assume and honor the contract, economic stability is destroyed. To leave Respondent free to bargain from scratch and ignore the common law of the employing industry is to leave an industry such as this to contracts of no substance or meaning.

The *Wiley* reasoning has been applied in a situation very similar to the instant case. *Wackenhut Corporation v. International Union, United Plant Guard Workers of America*, 332 F.2d 954 (C.A. 9). There the court found that where, as here, there is a "substantial similarity of operation and continuity of identity of the business enterprise before and after the change in ownership," the successor employer is bound by the entire contract of the predecessor.

I find that Respondent, by refusing to honor the contract between Wackenhut and the Union, refused to bargain in violation of Section 8(a)(5) and (1) of the Act since on or about July 24.⁵

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES

The activities of Respondent set forth in section III, above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States, leading to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

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

1. Respondent and Wackenhut are employers engaged in commerce within the meaning of the Act.
2. AFG and the Union are labor organizations within the meaning of the Act.

⁴ July 12

⁵ Cf. *Michaud Bus Lines, Inc.*, 171 NLRB No. 21

3. All full-time and regular part-time employees of Respondent performing plant protection duties as determined in Section 9(b)(3) of the Act at Lockheed, Ontario International Airport; excluding office clerical employees, professional employees, supervisors, and all other employees 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. By failing and refusing on July 24, and thereafter, to recognize and bargain with the Union as the exclusive bargaining representative of Respondent's employees in the above-described appropriate unit and by failing to honor and adopt and enforce the existing contract between Wackenhut and the Union, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

5. By assisting AFG in obtaining representation among its employees and by recognizing AFG as the exclusive bargaining representative of its employees at a time when AFG did not represent an uncoerced majority of Respondent's employees, Respondent engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.

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

THE REMEDY

Having found that Respondent has engaged in unfair labor practices violative of Section 8(a)(1), (2), and (5) 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.

I shall recommend that Respondent be ordered to withdraw and withhold recognition from AFG unless and until that union is certified, in order to enable its employees to exercise their statutory rights free from the unfair labor practices engaged in by Respondent.

It has been found that Union is the certified bargaining representative of Respondent's employees in an appropriate unit and requested recognition and bargaining, the same being unlawfully refused, I shall recommend that Respondent bargain, upon request, with the Union and, if any understanding is reached, embody such understanding in a signed agreement. It has further been found that there is in existence a contract between Respondent, as successor to Wackenhut, and the Union. I shall recommend that Respondent honor, adopt, and enforce that contract. I shall also recommend that Respondent give retroactive effect to all the clauses of the contract and make employees whole, with 6 percent interest, for any losses suffered by reason of Respondent's refusal to adopt, honor, and enforce the agreement.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record herein, it is recommended that Respondent, its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively, upon request, with the Union as the exclusive bargaining representative of its employees in the above-described unit.

(b) Refusing to adopt, honor, and enforce its contract with the Union, as successor of Wackenhut.

(c) Assisting or recognizing AFG as the representative of its employees for the purposes of collective bargaining, unless and until said labor organization shall have been certified as the exclusive bargaining representative of said employees in an appropriate unit.

(d) Interfering with representation of its employees through labor organizations of their own choosing.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to join or assist the Union or otherwise engage in activities protected by the Act.

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

(a) Withdraw and withhold recognition from AFG until or unless it is certified as bargaining representative of Respondent's employees in an appropriate unit.

(b) Bargain collectively, upon request, with the Union and, if any understanding is reached, embody such understanding in a signed agreement.

(c) Honor, adopt, and enforce the contract between Respondent, as successor to Wackenhut, and the Union and give retroactive effect to all the clauses of said contract and, with interest of 6 percent, make whole its employees for any losses suffered by reason of Respondent's refusal to honor, adopt, and enforce said contract.

(d) Post at its Lockheed, Ontario, California, operations copies of the notice attached hereto as "Appendix."⁶ Copies of said notice, to be furnished by the Regional Director for Region 31, shall after being signed by Respondent's authorized representative, be posted by it immediately upon receipt thereof and be maintained by it for a period of 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(e) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps Respondent has taken to comply herewith.⁷

⁶ In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "A Decision and Order."

⁷ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read "Notify the said Regional

