

World Carpets of New York, Inc., and Local 918, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Independent. Case 29-CA-582

January 26, 1971

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING,
BROWN, AND JENKINS

On March 27, 1967, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, and ordered the Respondent to take certain affirmative action, including an order to recognize and bargain with the Charging Union.¹

On November 8, 1968, the Court of Appeals for the Second Circuit remanded the case to the Board² for the purpose of taking evidence on the question of whether alleged strike misconduct by the Union was such as to disqualify the Union from the benefit of a bargaining order under the criteria outlined in its *United Mineral* decision.³

In its initial decision the Board found that Respondent violated Section 8(a)(1) by: (1) threatening to close down or move its warehouse in reprisal for its employees' union activities; and (2) promising wage increases to induce employees to abandon their support of the Union. The Board also found that at the time of its original bargaining request the Union represented a majority of the Employer's employees in an appropriate unit and was entitled to recognition as their exclusive bargaining agent; and that the Employer unlawfully refused to recognize and bargain with the Union which represented the majority of its warehouse employees in violation of Section 8(a)(5) of the Act. The Board issued a bargaining order.

The Trial Examiner, on December 3, 1969, issued his Supplemental Decision pursuant to the Board's remand order, dated March 11, 1969, wherein he found that the Respondent violated Section 8(a)(1) and (5) of the Act. However, he also found and concluded, *inter alia*, that the Union engaged in various acts of misconduct during its strike against Respondent which precluded his recommending a bargaining order. We do not agree.⁴

Upon review of the entire record and the evidence adduced at the supplementary hearing, we conclude, contrary to the Trial Examiner, that the proved misconduct and violence by the Union were not of such a nature to compel us to deny to the Union a remedial order requiring the Respondent to bargain with the Union. We have carefully evaluated all the evidence, excluding that which, as the General Counsel contends, was patently inadmissible as hearsay and we are persuaded that even applying the criteria set forth by the court in *United Mineral, supra*, the misconduct of the Union in the instant case was not of such an extreme nature as to require our withholding a bargaining order.⁵

The incidents that occurred on the picket line during the strike, as described by Respondent's witnesses who were either, with one exception, officers, supervisors, or former supervisors do not appear to be of such grave character as to warrant the conclusion of the Trial Examiner. It is clear from the record that at the beginning of the strike on May 2 the union officials and the picketing employees did engage in name calling directed for the most part at company officials, supervisors, and alleged employee replacements who were performing the struck work in Respondent's plant. However, in view of the fact that the strike was vigorously contested by both sides, it is not unusual that such recriminations took place.

While there was testimony by Respondent's witnesses that at several times the picketing employees were allegedly carrying sticks resembling mop handles and what appeared to be a small bat, it is clear that such instruments, while intimidating, were never used in an assault.⁶ In fact Respondent's witnesses

scope of our order of remand which was confined solely to the taking of evidence as to the Union's alleged misconduct. In our previous decision we found that the Respondent's violations of Section 8(a)(1) were so serious as to demonstrate a rejection of the collective-bargaining principle. The Trial Examiner, under the erroneous theory that he was bound by the court's dictum in its decision remanding our previous decision, proceeded to overrule our previous finding and found that these same 8(a)(1) violations were minor violations which would not preclude the holding of a free and fair election. In the circumstances, we find that the Trial Examiner's findings were in error. Accordingly, these findings are rejected. Likewise, in our previous decision we found that Respondent violated Section 8(a)(5) of the Act by its refusal to bargain with the Union. The Trial Examiner, again exceeding the scope of our remand order, recommended contrary to our previous decision. The Trial Examiner based his recommendations in this respect in part on the Supreme Court's decision in *Gissel Packing Company*, 395 U.S. 575. We reject this recommendation of the Trial Examiner and for the reasons set forth in the text hereof reaffirm our previous order issued in this proceeding.

⁵ The Board has held that a union's misconduct may be of such an extreme nature as to require the withholding of a bargaining order. See *Laura Modes Company*, 144 NLRB 1592. The facts in the instant case are clearly distinguishable. Indeed, the court in remanding this case stated that "the violence here does not seem to have been so extreme as in *United Mineral* . . ." 403 F.2d 408, 412. Although respectfully disagreeing with the court's test set forth in *United Mineral*, we apply that standard herein as the law of this case.

⁶ The Trial Examiner in his decision refers to the instruments carried by the pickets as all being "baseball bats." This is not strictly in accord with the record. Edrington, a nonstriking employee who was allegedly threatened, testified that he wasn't sure what one picket was holding over him, something

¹ *World Carpets of New York, Inc.*, 163 NLRB 597.

² *N.L.R.B. v. World Carpets of New York, Inc.*, 403 F.2d 408.

³ *N.L.R.B. v. United Mineral & Chemical Corporation*, 391 F.2d 829, 838-841.

⁴ The Trial Examiner in his Supplemental Decision clearly exceeded the

testified that they never saw a physical assault on any one, aside from a couple of minor shoving incidents, discussed *infra*. There were a few incidents where pickets attempted to prevent ingress and egress of trucks at the Respondent's plant. These were not vigorous and were quickly thwarted by an ever present police officer on duty at the Respondent's plant site.

The Trial Examiner describes several incidents where Respondent's officials were allegedly chased in their cars by union officials. While we do not discredit the fact that the warehouse manager, Charles P. Alvin, was chased in his car, we cannot accept the fact that speeds of up to 80 miles an hour were attained at times through city streets. Nor can we fully accept Respondent witness Dow's description of the harrowing details that occurred when he was chased by a union official and a picket. Edrington, a nonstriking employee who was in Dow's car at the alleged time of the chase, testified that on one day of the strike while he was in Dow's car Dow stated they were being followed. However, Edrington did not describe any of the harrowing and dramatic details of the alleged chase, as did Dow. Dow also testified that employee Edrington did not come to work on one day of the strike because Edrington feared harm to himself and his family from union officials and pickets who were parked on the street in which he lived. Edrington testified he never saw any union officials or pickets at or near his home but had been told by Dow that they were there. Edrington, who had expressed a desire to join the picket line and was dissuaded from doing so by Dow because they needed Edrington at the plant as he was the only forklift operator, appears to have worked all through the strike and he never came to harm.

There were two shoving incidents during the strike, but in no sense of the word could they be deemed to constitute any significant "physical violence" though technically a tort. One of these instances occurred shortly after the strike began, when Gerbino, an alleged strike replacement, was accosted by a union official who called Gerbino a scab and strikebreaker and started pushing him against the warehouse wall. Dow again appeared on the scene with an office employee and yelled at the union official to leave Gerbino alone as he was an employee of Respondent. The union official then walked away. It appears that at Dow's insistence and prodding Gerbino was induced to file a "personal violence" charge with the county attorney, with Dow signing a statement as a witness. How-

that "looked like a bat . . . I wasn't sure . . ." Another witness for Respondent described the alleged instruments carried by the pickets, in one instance, as what appeared to be long mop sticks and a small baseball bat. It would appear that what the pickets carried were the type of wooden sticks to which strike posters were attached.

ever, when the union official appeared in court some time later for trial, no representative of Respondent appeared. Gerbino, who was no longer employed by Respondent, did appear and refused to prosecute, and the charge was dropped. Another alleged "assault" took place when a union official walked up to the driver of an incoming truck, opened the truck door, and took hold of the driver's left arm and shoulder, apparently speaking to the driver at the time, "You can't go in there. This place is on strike." After this event, the driver of the truck drove off.

The record establishes that from the afternoon of the first day of the strike a city police officer was on duty at the plant site at all times. This, in our opinion, would clearly indicate that whatever actions that were taken by the union officials and pickets were in a minor key, for they did not result in any arrests by the police for acts of violence by the picket line participants.

This misconduct of the Union is certainly less grave than that of the Respondent. Thus, the Respondent adamantly refused to recognize the Union when faced with conclusive evidence of the Union's majority, a majority which, so the court stated, was demonstrated both at the time of the Union's demand for recognition and immediately thereafter by the fact that four of the five employees in the appropriate unit joined the Union's picket line. Further, the Respondent, through its violations of Section 8(a)(1), effectively destroyed the Union's majority in this small unit by inducing employees to return to work through offers of pay increases and by threats to move or close its plant.

It is well settled that "threats of retaliatory action" by an employer for the sole purpose of warding off unionization of its employees, such as the threat of the Respondent to move or close down its plant, are so conclusively coercive as to warrant the issuance of a bargaining order even in the absence of a 8(a)(5) violation.⁷ In addition, Respondent's unlawful conduct in derogation of its employees' Section 7 rights was clearly a contributing cause of the strike, and the continuance of that unlawful conduct destroyed the strike's effectiveness.

Accordingly, the Board, pursuant to the remand, having considered the entire record herein hereby, concludes and finds that the coercive effects of Respondent's unfair labor practices cannot be eliminated by traditional remedies, and that they were of such a nature as to make a fair election doubtful, if not impossible. In these circumstances we reaffirm our previous order issued in this proceeding. Further, we also reaffirm in all other respects our previous findings and conclusions made in this case.

⁷*N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby reaffirms its Order previously issued herein and orders that the Respondent, World Carpets of New York, Inc., Garden City, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Board's previous Decision.

CHAIRMAN MILLER, dissenting:

The Trial Examiner, who saw the witnesses and heard the evidence, found:

The evidence presented at the trial on remand confirmed the Court's expectation that the violence was not so extreme as in the *United Mineral* case. However, the violence which did occur was obviously the result of a campaign, planned by the union officials, to force the cessation of the business by threats and intimidation. Union officials themselves, singly or together, participated in the assaults on one employee and two drivers, in the attempt to force off the highway a car driven by a supervisor who was driving two employees to their homes, and in repeated chases of supervisors' cars. Furthermore, the threats to knock out the manager's teeth, to harm employees and a supervisor and his family, to strike an employee with baseball bats, and to "take care of" a driver and his truck, as well as part or all the blocking of the entrances, were committed by, or done in the presence of, one or more of the union officials. The damages to the supervisor's car and tires occurred after a union official had threatened to "get" the car. I therefore disagree with the General Counsel's contention that the evidence shows mere "sporadic, picket line flashes over a two week period."

. . . I find that in balancing the Company's and Union's misconduct, the aforementioned strike misconduct is the graver, and that the Union is therefore disqualified from receiving relief for the Company's refusal to bargain.

Unlike my colleagues, I would accept the Trial Examiner's view of the evidence, as well as its legal effect.

Furthermore, while it is true that the Trial Examiner exceeded the scope of our remand to him, it is also true that the court's remand to us requires that we consider the appropriateness of a bargaining order here in the total context of the facts and the law. The Trial Examiner has ably and succinctly performed such an evaluation:

About 7 months after the Court's remand, and about 3 months after the issuance of the Board's order reopening the record, the United States

Supreme Court on June 16, 1969, issued its opinion in *N.L.R.B. v. Gissel Packing Company*, 395 U.S. 575, in which it laid down certain guidelines relative to the propriety of bargaining orders to remedy violations of the Act. Since then, the Board has decided on its own motion, in *G. P. D., Inc.*, 179 NLRB No. 31 (in which there also had been a court remand preceding *Gissel*), "to reconsider the bargaining order in the light of *Gissel*." In anticipation that the Board will also decide to reconsider the present case in light of *Gissel*. I have considered the effect of the Supreme Court's opinion and recommend that the refusal-to-bargain allegation in the complaint be dismissed for an additional reason.

In the Second Circuit's opinion in this case, the court ruled (403 F.2d at 412) that even if the Board on remand should find the facts concerning strike misconduct to be "in a sense favorable to the General Counsel, it should not proceed immediately to the issuance of a bargaining order." The court indicated that the Board should consider various factors, including the fact that the only alleged misconduct on the part of the Company (besides the refusal to bargain) was the foreman's Section 8(a)(1) action which, the court ruled, "has surely spent its force." Being bound by this ruling, as the "law of the case," I find that the Company's minor Section 8(a)(1) violations would not preclude the holding of a free and fair election, and that therefore, under the *Gissel* decision, a bargaining order is not warranted.

I shall therefore recommend that the Board issue an order which omits the requirement that the Company bargain with the Union on request. I am willing to adopt the Trial Examiner's foregoing analysis as my own and to accept his recommendation in full.

The *Gissel* remedy is a useful and appropriate tool for effectuating the policies of the Act in proper cases. But in inappropriate cases, as I believe this one to be, it comes uncomfortably close to being that kind of vindication of private rights according to a rigid scheme of remedies which the Supreme Court eschewed in *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 194, as noted by the court here in its opinion remanding this case to us.

The order recommended by the Trial Examiner in his Supplemental Decision is the order which, in my opinion, is appropriate under all the facts and circumstances here present.

SUPPLEMENTAL TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Trial Examiner: Pursuant to a re-

mand by the United States Court of Appeals for the Second Circuit, *N.L.R.B. v. World Carpets of New York, Inc.*, 403 F.2d 408, and an order of the the Board dated March 11, 1969, reopening the record "for the purpose of receiving evidence on the question of the alleged misconduct of the Union while maintaining a picket line pursuant to a strike against Respondent," a further trial of the case was held at Brooklyn, New York, on August 18 and September 3, 1969. The primary issues now presented are (a) whether the strike misconduct (evidence of which was previously excluded) was of sufficient gravity to warrant withholding the remedial bargaining order, and (b) whether, in any event, the Company should be ordered at this time to bargain with the Union.¹

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the brief filed by the General Counsel, I make the following:

SUPPLEMENTAL FINDINGS OF FACT

A. *The Remand*

The events date back to May 2, 1966. The Company then refused the Union's recognition demand, and the Union called a strike which was joined by four of the Company's five bargaining unit employees. On May 27, 1967, the Board issued its Decision and Order, finding that the Company unlawfully refused to bargain on and after May 2, 1966, and violated Section 8(a)(1) on May 18 and 19, 1966, when its foreman induced the two remaining strikers to abandon the strike by promising them a wage increase and threatening to close down the warehouse before letting in the Union.

On November 8, 1968, the court vacated the Board's Order, ruling that the Trial Examiner erred by rejecting the Company's offer to prove strike misconduct disqualifying the Union from relief. The court noted that the Board's Decision in *United Mineral & Chemical Corp.*, 155 NLRB 1390 (1965), on which the Trial Examiner relied (to find that the union misconduct, which the Company proposed to show, "would not have been of such gravity as to warrant withholding of a remedial order") had subsequently been reversed by the court in *N.L.R.B. v. United Mineral & Chemical Corp.*, 391 F.2d 829, 838-841 (C.A. 2). "Although the violence here does not seem to have been so extreme as in *United Mineral*, the employer was entitled to develop the facts and have the Board apply the criteria outlined in our decision." 403 F.2d at 412.

B. *Strike Misconduct*

The picketing began on the afternoon of May 2, 1969, and lasted about 3 weeks. It was led by Union Representative George Paliotta, who was present each day except when he was arrested one afternoon on a charge of "physical violence" and held overnight in jail before being released on bond. (The criminal charge was later dismissed when the complaining witness, a strike replacement, refused to testify.)

Credited testimony shows that soon after the picketing began, Paliotta and striking employees engaged in a campaign of threats and intimidation to force the cessation of business at the carpet warehouse.

On the first afternoon, May 2, Paliotta shouted into the warehouse that they had "better wise up in there because no

business is going to go on here." As Assistant Foreman Wendell W. Dow was returning from lunch, Paliotta warned him that "if I didn't join the picket line, I'd be kicked out of my job," and "We'll get you tonight We'll take care of you one way or the other." About three or four times, Paliotta warned Sales Supervisor Harold Traister (who worked at the warehouse during the strike) that he could get hurt. On one occasion, Paliotta asked him if he had a family, and when Traister did not answer, Paliotta said, "Well, we have ways of finding out," and warned that his family also could get hurt, "that things have a way of happening." On another occasion, when Union President Jack Fecter was present, Paliotta warned (in Traister's words). "If I have a family, my family can get hurt, we have ways of finding out where you live. That I should stay out of World Carpet until this thing was over."

One evening in the first week of the strike, Union President Fecter chased Warehouse Manager Charles P. Alvin's car, going as fast as 80 miles an hour at times. As Alvin was leaving work, the union president had told him, "I'm Fecter. I'm going to knock your teeth out." About the second day of the strike, one of the union representatives raised his fist at Alvin and warned, "Alvin, we are going to take care of you."

On two occasions, Union Representative Paliotta and another picket followed Dow's car at high speeds as Dow was leaving work. The first time, Dow was transporting a nonstriker and a strike replacement to their homes. While the two unit employees were in the car, Paliotta "tried to force us off the highway." Dow credibly testified how he took evasive actions, "zigzagging" from one street to another until he was finally successful in outrunning Paliotta.

Both the nonstriker, Robert Edrington, and strike replacement Arthur Berbino were personally subjected to intimidation at the warehouse. On the second day of the strike, Edrington went outside to bring in a delivery of twine. Two of the pickets (in the presence of Union President Fecter and Union Representative Joseph Barresi) took baseball bats from a car, stood over Edrington with the bats raised in a menacing manner, and threatened to do something to him with them. He went back inside the warehouse, without the twine. (Later that week Edrington stayed away from work after telling Dow, who had been taking him to and from work, that he and his family were afraid. When Edrington was called as a witness, he appeared to be quite nervous and unable to recall but very little of what had happened.) Gerbino, one of the three strike replacements, was the employee who filed the "physical violence" charge against Union Representative Paliotta. The incident occurred several days after the strike began. As Gerbino was returning from lunch, Paliotta walked up, called Gerbino a scab, and started pushing him against the warehouse wall, while stating, "I'll take care of you." Assistant Foreman Dow and an office employee came to Gerbino's rescue, and Paliotta released him.

In order to prevent trucks from entering the warehouse during the strike, Union Representative Paliotta and other pickets repeatedly blocked the entrances, standing in the way of the trucks, and moving only if the trucks forced their way through. One driver left when Paliotta opened the truck door as the driver was backing into the warehouse, grasped the driver's arm or shoulder, and told him, "You can't go in there. This place is on strike." The driver was too frightened to make the pickup. A day or two later, when another driver from the same company (a retail carpeting chain) returned for a pickup, Paliotta told the driver, "If you come in that warehouse, we'll fix you and your truck." This driver also left. Still later, the customer's assistant manager re-

¹ Local 18, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is the successor to Allied Trades Union, Local No. 18, National Federation of Independent Unions

turned in an unmarked truck. As he got out of the truck to go inside the warehouse, Paliotta jumped in front of him, tried (unsuccessfully) to shove him away from the door, and threatened to "take care of him" and to "take care of that truck." On another occasion, when the Company rented a truck and had it driven to the warehouse, pickets attempted to block the entrance. Two of the pickets were holding sticks and one was holding a baseball bat. The police were repeatedly called.

About 3 or 4 days after the strike began, Assistant Foreman Dow found that his car, parked outside the warehouse, had been damaged. There was a dent in one of the doors, a scratch the entire length of the car, and two flat tires (punctured by a sharp object, like an ice pick). Paliotta had threatened to "get" Dow's car.

The General Counsel's witnesses, who denied most of the testimony on which the above findings are based, did not impress me favorably. On the other hand, the Company's witnesses appeared to be endeavoring to give factual accounts of what had occurred (over 3 years earlier).

C. Law of the Case

In *N.L.R.B. v. United Mineral & Chemical Corp.*, *supra*, 391 F.2d at 840, the Second Circuit observed that "In dealing with Board orders requiring an employer to reinstate unfair labor practice strikers guilty of misconduct, the courts have held that the Board must 'balance the severity of the employer's unfair labor practices which provoked the industrial disturbance against whatever employee misconduct may have occurred in the course of the strike.'" However, on the next page of its opinion, the court stated that it was "not at all convinced" that the standards for "balancing" should be the same in a bargaining situation as in a reinstatement situation:

In the reinstatement cases balancing is highly appropriate since the employee must either be rehired or not be; in the bargaining situation there is usually a third solution, to wit, an election, certainly the preferred way of testing employee sentiment, and consequently less need for condoning serious breaches of the peace. It is exceedingly hard to believe that Congress meant to authorize the Board to require bargaining with a union having a bare card-count majority which has attempted to increase this or to enforce its claim to representation by hitting other employees or the employer on the head . . . The only cases where arguably a union's resort to serious violence to enforce its demands might be disregarded would be when the employer's conduct has rendered a fair election impossible.

Under the court's remand, these criteria outlined by the court in the *United Mineral* decision, as well as other rulings made by the court in the opinion it rendered in the present case, are the "law of the case."

The evidence presented at the trial on remand confirmed the court's expectation that the violence was not so extreme as in the *United Mineral* case. However, the violence which did occur was obviously the result of a campaign, planned by the union officials, to force the cessation of the business by threats and intimidation. Union officials themselves, singly or together, participated in the assaults on one employee and two drivers, in the attempt to force off the highway a car driven by a supervisor who was driving two employees to their homes, and in repeated chases of supervisors' cars. Furthermore, the threats to knock out the manager's teeth, to harm employees and a supervisor and his family, to strike

an employee with baseball bats, and to "take care of" a driver and his truck, as well as part or all the blocking of the entrances, were committed by, or done in the presence of, one or more of the union officials. The damages to the supervisor's car and tires occurred after a union official had threatened to "get" the car. I therefore disagree with the General Counsel's contention that the evidence shows mere "sporadic, picket line flashes over a two week period."

On the other side of the scales were (1) the Company's refusal to recognize the Union's majority, both before and after four of the five unit employees joined the picketing, and (2) the foreman's conduct, in telling two remaining strikers near the end of the strike that they would be given a wage increase for abandoning the strike and that the warehouse would be closed down before the Company would let in the Union. In its opinion (p.411, fn. 2), the court described the Section 8(a)(1) promise and threat as being "acts of a minor supervisor," and concluded that they "are hardly serious enough to support a finding that Respondent had earlier refused to bargain with the Union on request in order to gain time to undermine the Union by lawful means." The court further ruled (p. 412) that the foreman's conduct, the "one action by the employer that is even contended to have violated §8(a)(1) . . . has surely spent its force." This ruling also being the law of the case, I find that in balancing the Company's and Union's misconduct, the aforementioned strike misconduct is the graver, and that the Union is therefore disqualified from receiving relief for the Company's refusal to bargain.

D. Application of Gissel Decision

About 7 months after the court's remand, and about 3 months after the issuance of the Board's Order reopening the record, the United States Supreme Court on June 16, 1969, issued its opinion in *N.L.R.B. v. Gissel Packing Company*, 395 U.S. 575, in which it laid down certain guidelines relative to the propriety of bargaining orders to remedy violations of the Act. Since then, the Board has decided on its own motion, in *G.P.D., Inc.*, 179 NLRB No. 31 (in which there also had been a court remand preceding *Gissel*), "to reconsider the bargaining order in the light of *Gissel*." In anticipation that the Board will also decide to reconsider the present case in light of *Gissel*, I had considered the effect of the Supreme Court's opinion and recommend that the refusal-to-bargain allegation in the complaint be dismissed for an additional reason.

In the Second Circuit's opinion in this case, the court ruled (403 F.2d at 412) that even if the Board on remand should find the facts concerning strike misconduct to be "in a sense favorable to the General Counsel, it should not proceed immediately to the issuance of a bargaining order." The court indicated that the Board should consider various factors, including the fact that the only alleged misconduct on the part of the Company (besides the refusal to bargain) was the foreman's 8(a)(1) action which, the court ruled, "has surely spent its force." Being bound by this ruling, as the "law of the case," I find that the Company's minor 8(a)(1) violations would not preclude the holding of a free and fair election, and that therefore, under the *Gissel* decision, a bargaining order is not warranted.

I shall therefore recommend that the Board issue an order which omits the requirement that the Company bargain with the Union on request.

CONCLUSIONS OF LAW

1. By a minor supervisor near the end of the strike, making a promise and threat to two remaining strikers, the Company engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. The Union's strike misconduct disqualifies the Union from receiving relief for the Company's refusal to bargain.

3. Under the law of the case, a bargaining order is now warranted.

THE REMEDY

Having found that the Respondent has committed certain unfair labor practices, I shall recommend that it be ordered to cease and desist from such conduct and from any like or related invasion of its employees' Section 7 rights, and to take affirmative action, which I find necessary to remedy and to remove the effect of the unfair labor practices and to effectuate the policies of the Act.

[Recommended Order omitted from publication.]