Wantagh Auto Sales, Inc. *and* Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) AFL-CIO. Local 259, Case 29-CA-1062

June 27, 1969

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

On January 27, 1969, Trial Examiner William Seagle issued his Decision in the above-entitled case, finding that Respondent had not engaged in certain unfair labor practices as alleged in the complaint and recommending that the Board dismiss the complaint in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a supporting brief, and Respondent filed a brief in opposition to the General Counsel exceptions.

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 and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

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

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

WILLIAM SEAGLE, Trial Examiner: Upon a charge filed by the union[1] on August 7, 1967; a complaint issued on September 28, 1967, by the Regional Director of Region 29 of the Board, in which violations of Section 8(a)(1), (3), and (5) of the Act were alleged, and the answer of the Respondent, in which the commission of any unfair labor practices was denied, I heard this case at Brooklyn, New York, on October 14 and 15, 1968.

Subsequent to the hearing, counsel for the General Counsel and for the Respondent filed briefs with me.

Upon the record so made and, in view of my observation of the demeanor of the witnesses, I hereby make the following findings of fact:

I. THE RESPONDENT

The Respondent, Wantagh Auto Sales, Inc., hereinafter referred to as Wantagh, is a New York corporation which at all material times has maintained its principal office and place of business at 3614 Sunrise Highway in the Village of Wantagh, County of Nassau, State of New York, where it has been engaged in the retail sale and distribution of new and used automobiles and of automobile parts and related products.

During the past year, which is representative of its annual operations, the Respondent, in the course and conduct of its retail operations, derived gross revenues therefrom in excess of $500,000.

During the same representative period, the Respondent, in the course and conduct of its business, purchased and caused to be transported and delivered to its Wantagh place of business, new automobiles, automobile 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 and delivered to its place of business in interstate commerce directly from states of the United States other than the State in which it is located.

II. THE LABOR ORGANIZATION INVOLVED

Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), hereinafter referred to as Local 259, is a labor organization within the meaning of Section 2(5) of the Act. On July 17, 1967, Local 259 was certified as the collective-bargaining representative of the Respondent's service department employees, and has continued to act in this capacity.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Factual Findings*

The three principal figures in the present case are Hyman Isaacs, Robert Green, and Fred Velez. Isaacs is a labor relations consultant who has had wide experience in negotiating collective-bargaining agreements for automobile dealers. These included both individual dealers and a multiemployer group known as the Automobile Dealers Industrial Relations Association of New York, Inc. (hereinafter referred to as the IRA). Velez is the business agent of Local 259, and he had been in contract negotiations with Isaacs some ten or twelve times before he had been retained as a labor relations consultant by Robert Green, the president of Wantagh. Velez had called strikes over the terms of the IRA contract in 1959, 1961, and 1963, and he had also struck an individual automobile dealer, Babylon Ford, in 1966.

The advent of Local 259 and its certification had been preceded by a period of turbulence in the labor relations of Wantagh. Its service shop employees had been represented for a number of years prior to 1967 by a Teamsters Local. In March 1967, however, the employees went on strike, and one of them, John T. Cornelius, filed a petition for decertification. Local 259 intervened in the decertification proceeding, the ultimate result of which was its certification. Robert Green, the owner of Wantagh apparently harbored some ill will towards Cornelius

[1] The Union has requested, however, that the initials AFL-CIO be deleted in all matters pending before the Board.

because of the role he had played in launching the decertification proceeding.

After the certification of Local 259, Wantagh entered into negotiations with the union for a contract. The first negotiating session occurred on July 21, 1967 in Isaacs' office in New York City. For the Respondent there were present Isaacs and Green,[2] and for the Union Velez, Cornelius, and Eugene Saboda, the last two-named constituting employee representatives.[3] Velez presented Isaacs and Green with a proposed form of contract, which was modeled on the IRA contract but contained an even higher wage scale. There was a discussion of the various provisions of the contract that covered noneconomic items, and agreement was reached on some of them, such as a provision for a union shop and for a union hiring hall. But Isaacs characterized the union's wage proposals as "ridiculous." He pointed out that Wantagh was only a "country store" — this was a favorite expression of Isaacs — and that other suburban dealers, such as Babylon Ford and Patchogue Ford, did not conform to the association wage scale, and were in fact a year or two behind it. Being in disagreement, the parties agreed to meet again on July 26.

The second meeting, with the same parties in attendance, took place as scheduled in Isaacs' office on July 26. At this meeting, the parties agreed, basically, on the noneconomic items of the union's proposed contract but failed to agree on the wage scale. Isaacs proposed a wage scale that in effect would keep the Wantagh employees 2 years behind the IRA contract scale but this was not acceptable to the union negotiators. Velez intimated the possibility of a strike, to which Isaacs responded: "Well, you can be my guest" (another favorite expression of Isaacs), "You can strike right now." When Velez replied that they would strike when they were ready, Isaacs also declared that he would not allow Velez to take him into "announcement time," by which Isaacs meant that he would not allow Velez to drag out the negotiations until the next year's models would be out on September 14.

Before the meeting of July 26 broke up, another meeting was scheduled for 3 p.m. the next day in Isaacs' office in New York City. But Velez returned about an hour later and arranged to meet with Isaacs and Green for an off-the-record discussion at which Cornelius and Saboda would not be present. In this off-the-record meeting the parties "wrapped up" the remaining noneconomic items, and Velez told Isaacs that he thought that he could sell his wage proposals but that he would meet with the employees that night and call Isaacs the next morning. Velez duly called Isaacs the next morning and told him it was a deal but they would have to "wrap it up." Velez also suggested that since he had other negotiations that day in Long Island the meeting scheduled for later that same afternoon in Isaacs' office in New York City be shifted to the Wantagh agency. As this would require that Isaacs rearrange his schedule, he would not agree immediately to the suggested change in the place of the meeting but asked Velez to call him about noon. When Velez did so, Isaacs agreed to meet at Wantagh but also engaged in some jockeying for position. He asked Velez to put the wage offer on the table as his own and he would accept it. But Velez suggested just the opposite — that Isaacs put the wage offer on the table and *he* would accept it. Isaacs said he would have to think about that. When Isaacs and Velez got to Wantagh's about 3 o'clock that same afternoon for the formal, scheduled meeting, Cornelius and Saboda were not there. Apparently, nobody had bothered to inform them about the change in the place of meeting. After a delay of about three-quarters of an hour, they arrived, however, and the meeting was held.

Isaacs proceeded to put what he called his "final" offer on the table at this meeting of July 27, after engaging in some facesaving by explaining that time was short. Velez, as well as the two members of the employee committee, namely Cornelius and Saboda, told Isaacs it was a deal but that they would "have to take it out to the people." Isaacs remarked that he understood that but, apparently, he regarded approval by the unit employees as a foregone conclusion, for he took out a pad, and started to reduce the terms of the offer to writing. It happened just then to be coffee break time for the shop employees, and Velez, Cornelius and Saboda went out to them, and put Isaacs' offer to them. However, the employees rejected the offer, and the union negotiators returned to the meeting room to break the tidings to Isaacs and Green.

When they heard what had happened, Isaacs and Green were furious. Isaacs in his anger accused Velez of tricking him and doublecrossing him. Green screamed at Isaacs, and threw his papers into a drawer of his desk. He declared that they had made their final offer and that the negotiations were at an impasse, and, when Velez voiced a suspicion that Green intended to lock the employees out, Isaacs declared that *he* would be the one who would decide that.

The next day, which was July 28, Green called a meeting of the shop employees at about noon. Isaacs was then on the premises, having arrived about an hour earlier. At the meeting, Green informed the employees that they had "reneged" on his offer, and, since he could not tolerate this, he would have to close the doors of the shop. He made good the threat by doing so immediately. Thus the employees were locked out.

There was a meeting on August 15 in the offices of the New York State Mediation Board. The mediator met separately with the parties on each side but neither side would change its position. Consequently, the mediator did not bring the parties together for a face-to-face meeting.

On August 25, the respondent sent each of the 15 unit employees whose names are included in paragraph 14 of the complaint[4] the following identical letter:

> It has come to my attention through various sources that certain facts relative to the present lock-out have been distorted. The sole purpose of this letter, which is going to all service department employees, is to set things straight.
>
> 1. My reason for closing the service department is strictly this: I entered into the recent negotiations in good faith with your committee (as in all previous contracts) and made offers based on economic and competitive considerations. As a result of these negotiations we had an off-the-record talk which resulted in an agreement which was, and is, a better deal than that of Babylon Ford (without their 17 day strike). I then made this an official offer which your

[2] Allen Isaacs, a son of Hyman Isaacs, was also present but only in the role of amanuensis

[3] Saboda is, however, no longer employed by Wantagh.

[4] These 15 employees are Emory Alexander, Raymond S Barrett, Harry C. Betz, John J. Cornelius, Ralph Cutillo, Harold J. Eager, Frank Hardt, Robert W Hock, Theodore F Howell, John R Kilkenny, Martin W. Kral, Robert F. Leonard, Willie R Reid, Eugene Saboda, and James M. Spencel

committee accepted officially.

While this agreement was being written up *your committee reneged.*

Since this offer was made by me in good faith and constituted my final offer in an effort to conclude this matter and since this was then welched on, I was left with no alternative but to close down the service department. This was the only way I could show my convictions and to demonstrate to certain individuals that I am neither stupid nor crazy and would not tolerate their trickery.

2. It is also stated that I refuse to negotiate with you that your committee waited five hours for me at a meeting which I failed to attend. The truth is the New York State Board of Mediation called a meeting to ascertain the facts. My presence was not required as my representative, Mr. Isaacs was there with *full authority from me* to negotiate, sign a contract or anything else necessary.

The further truth is that the proposal made by your committee to Mr. Friedman, the State Mediator were so utterly absurb [sic] that there was nothing to talk about.

I am ready to talk any time, any place but I am not ready to exceed the limits of good business by giving more than many economic factors allow me to. Before entering into negotiations I made many comparative studies and careful calculations and came to a decision based on good business sense — not emotion or what I feel.

In spite of what you are being told about me I am still the same person with whom most of you have enjoyed a pretty good relationship for a good many years. Despite what you have been told I by no means derive any pleasure or satisfaction out of seeing you on the street because of a misguided few who, I believe, are misleading you.

It is for your benefit and mine that each of you take a good look at this thing—*think for yourself*—make a proper evaluation on a proper basis what is means to *you.*

For many of you these negotiations will bring no further gain. For others, consider what you have been offered and what you will settle for and what the net gain will be. Against this calculate what your lost wages amount to so far and how much more you will lose in the coming months of strike. Balancing the gain against the loss can you ever make up your loss?

If you decide that you can gain then you are doing the right thing. Study this carefully and realistically, without emotion, and come to a decision by yourself and for yourself.

That is what I have done. That is what I believe you should do.

Under date of October 12, the Respondent sent identical letters to each of the service shop employees. The letter read as follows:

Please be advised that the service shop at Wantagh Auto Sales, Inc., will reopen for business on Monday, October 16, 1967. Accordingly you are requested to return to work at 8 a.m. on Monday, October 16, 1967.

Some of you may be under the impression that you will receive wages for the period the shop has been closed. The Company feels that despite what you have been told it has absolutely no legal liability in this matter.

Further, if you fail to report to work at 8 a.m. Monday, October 16, 1967, there can be no question that from that day forward the company will owe you no wages.

Ultimately, the Respondent reached agreement with Local 259 on the terms of a collective-bargaining agreement. The agreement is dated November 27, 1967, was to go into effect on December 1, 1967, and to continue in effect until its expiration date, which is June 1, 1971.

B. *Concluding Findings*

The testimony of all the witnesses is extremely variant as to what was said by the parties at the negotiating sessions. I have resolved the conflicts in their testimony on the basis of inherent probability, reasoning from their admissions. The powers of recollection of Cornelius, Saboda, and Velez struck me, moreover, as none too gone when it came to remembering the details of the negotiations. Isaacs was certainly much better at that than Velez, Cornelius, or Saboda but I credit the testimony of no witness in its entirety. Isaacs, for example gave contradictory testimony on the subject of his authority to act for Green. As a further example, I reject the testimony of Green in which he sought to insinuate that when Velez, Cornelius, and Saboda left the office where the negotiations had taken place on July 27 they never actually consulted with the service shop employees. On the other hand, I reject the testimony of Velez, Cornelius, and Saboda that Velez asked Isaacs and Green for another meeting on July 27 even as the latter were screaming and threatening to lock out the employees. I also reject the testimony of Cornelius that while he was on the picket line after the lockout he attempted to interest Green in another meeting although he was barely on speaking terms with the latter. Counsel for the General Counsel seeks to discredit some of the testimony of Isaacs and Green, relating to their fears of a strike before announcement time, on the ground that these fears are not reflected in their prehearing affidavits. But mere omissions from affidavits can hardly ever be conclusive; their affidavits dealt, primarily with the details of the negotiations on various provisions of the proposed contract. Somewhat inconsistently counsel for the General Counsel accepts the testimony of Saboda that Velez asked for another meeting after the threat of a lockout, although Saboda made no mention of such a request in *his* prehearing affidavit.

The principal question presented in the present case is whether the lockout of the Respondent's employees on July 28 was unlawful. The answer to this question is presently governed by *The American Ship Building Company,* 380 U.S. 300, as construed by the Board in *The Evening News Association,* 166 NLRB No. 6, and *Darling and Company,* 171 NLRB No. 95. In the *Evening News* case, a majority of the Board refused to confine *American Ship* to its precise facts but accepted the Court's general reasoning in that case. The majority of the Board held, therefore, that the court had "obliterated, as a matter of law, the line previously drawn by the Board between offensive and defensive lockouts," and that the Board could no longer conclude that "a lockout is unlawful solely because it is not defensive in nature." The test of the lawfulness of a lockout would henceforth be, as the court had stated, whether, assuming no motive to discourage union activity or to evade bargaining exists, the lockout "is inherently so prejudicial to union interest and

so devoid of significant economic justification" that no evidence of intent was necessary. In *Darling* the Board majority went a step further and applied the tests of the legality of a lockout laid down in *American Ship* to a lockout that had occurred prior to impasse. As the Board said:

> While we recognize that the Court's holding was limited to a situation involving a lockout after an impasse in bargaining, we do not find that the absence of an impasse renders the test *per se* inapplicable. The Court indicated that a careful evaluation of all the surrounding circumstances must be made to determine whether there was unlawful motivation in the lockout. The absence of an impasse is one of the surrounding circumstances, but it does not necessarily require a conclusion that the lockout was unlawful, on that ground alone. While a finding of an impasse in negotiations may be a factor supporting a determination that a particular lockout is lawful, the absence of an impasse does not of itself make a lockout unlawful any more than the mere existence of an impasse automatically renders a lockout lawful.

In *Delhi-Taylor Refining Division, Hess Oil and Chemical Corporation,* 167 NLRB No. 8, the Board also upheld an offensive lockout which, it said, cannot be deemed unlawful simply because it was offensive, rather than defensive, despite the fact that the employer had unlawfully insisted on the exclusion of certain categories of employees from the bargaining unit.

It is clear from the court's and the Board decision what factors in the case of a lockout are not to be deemed controlling. It is not so clear however, what factors are to be deemed controlling. The tests of the illegality of a lockout that is offensive in nature seem to possess more than the usual degree of imprecision that characterizes most legal tests. These tests would seem to be particularly difficult to apply in the rather confusing circumstances of the present case.

I can hardly say on the basis of the record evidence that Wantagh as a firm or Green as an individual was an antiunion employer. While there was some turbulence in the history of the respondent's labor relations, the record does not indicate the causes for this state of affairs, nor does it indicate whose fault it was. It does show at least, however, that Green was accustomed to bargain with labor unions. Concededly, Green, through Isaacs, bargained in good faith with the representatives of Local 259 at least down to the meeting of July 27.

While the absence of an impasse in negotiations is no longer decisive in determining the legality of an offensive lockout, the position of the employer is weaker if it can be said that an impasse in bargaining has not been reached. The Board recently laid down the tests for determining the existence of an impasse in *Taft Broadcasting Company,* 163 NLRB No. 55. "The bargaining history" declared the Board, "the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporanious understanding of the parties as to the state of negotiations, are all relevant factors to be considered in deciding whether an impasse in bargaining existed." But it is apparent that these tests are no more precise than the tests of the legality of a lockout itself. Indeed, the Board also declared in the *Taft Broadcasting* case that the application of the tests was "a matter of judgment."

Counsel for the General Counsel seeks to establish that no impasse had been reached in the negotiations prior to the lockout in two ways. Firstly, in the "statement of facts" made in his brief he seeks to minimize the importance of the meeting of July 21. About all he says about this meeting is that "after a brief discussion of the demands, the parties agreed to meet again on July 26, 1967." Actually, there was detailed bargaining at the July 21 session about all the provisions of the contract. The contrary impression is based on the testimony of Velez, Cornelius, and Saboda but this results from the vagueness of their recollections rather than from the perfunctory nature of the negotiations.

Secondly, in his argument counsel for the General Counsel proceeds on the assumption that there were only three negotiating sessions in all. Actually, there were four such sessions. Counsel for the General Counsel chooses to disregard the off-the-record meeting between Velez and Isaacs and Green on July 27 before the full-dress meeting later that same day, at which virtually all the outstanding issues were settled. He also disregards the informal contacts between Velez and Isaacs during the whole period of the negotiations. It is true, of course, that even four meetings do not constitute a large number of meetings but they appear to have been lengthy ones, and in any event, the number of meetings necessary in any given case, must depend on the complexity of the issues and the magnitude of the enterprise. Here the negotiators were dealing for the employees in a small bargaining unit consisting of no more than 15 members, and were not engaged, moreover in bargaining from scratch, but in adopting an association contract to their own needs. In such circumstances, an impasse could readily develop in four meetings, and, in fact, it did materialize. It is established by the testimony of the General Counsel's own witnesses that in the full-dress meeting the afternoon of July 27 Isaacs made it perfectly clear that he was making a final offer, and that the union negotiators understood perfectly that the negotiators had reached an impasse.

Actually, counsel for the General Counsel seems to be none too sure of his ground in contending that an impasse in the negotiations had occurred. He seeks to buttress his case by contending also that Velez made a request for further bargaining after Green and Isaacs had flown into a rage upon the rejection of their offer, and that this request imposed a further duty on them to resume bargaining, so that adjustments could be made that might satisfy the unit employees. Unfortunately for this phase of the argument of counsel for the General Counsel I have been unable to credit the testimony on which it rests, and I cannot assume, therefore, that a request for the continuation of bargaining was made even while Green and Isaacs were raging at the rejection of their final offer. What Velez feared at this point was a lockout and he expressed his fear. In the context of that situation, it is hardly to be expected that he would immediately press for the resumption of bargaining. If his request was then ignored, it would be reasonable to suppose that he would subsequently make his request in writing. Certainly this is something that would normally be expected from an experienced union business agent. As for Cornelius' alleged approaches, to Green on the picket line, even if I could believe that they actually took place, I could not regard them as sufficiently clear and unambiguous to constitute a request to resume bargaining. Since the Respondent did not ignore subsequent requests to resume bargaining, such as they request that must have led to the New York State Mediation Board meeting, or the request that led ultimately to the making of the collective-bargaining agreement, it is hard to believe that a

request was made by the union contemporaneously with the threat of the lockout.

The rejection of the contentions that there was no impasse in the negotiations and that the union made a request to resume bargaining after a threat of lockout was made leaves counsel for the General Counsel only with the general argument that the Respondent's conduct was so devoid of any economic justification that it must be concluded that its sole motive was to discourage union activity and to evade bargaining. But this argument, too, is based on the factual assumptions that the union never threatened to strike and that there was no reasonable expectation that there would be a strike at announcement time. Again, however, I cannot accept these assumptions. Although it may be that neither the strike threat nor its timing was quite calculated to create the dismay that is attributed to it by counsel for the Respondent. There was a certain element of jocosity in Isaacs' reaction to the strike threat — this is apparent from his be my guest remark — and announcement time, while in the offing, was still about 6 weeks away. While it undoubtedly was a cloud on the horizon, the rain was not about to fall. In any event, I cannot conclude that there was a total lack of economic justification.

It is true that Isaacs and Green seem to have been in a great state of emotional upset on the days that they made their decision to lock out the employees. In their anger and frustration they came to believe that they had been tricked by Velez and that he had not even submitted their offer to the employees. But I cannot say that they did not entertain these beliefs in good faith.

Counsel for the General Counsel expresses his belief that Isaacs and Green locked out the employees only to punish them. This seems to me to be somewhat beside the point. In the case of every offensive lockout there is probably an element of punishment, although the employer's anger is usually not openly manifested. The real question whether there was any economic justification for the lockout remains. This is not to be decided in terms of whether the employer makes it plain that he has lost his temper. It seems to me that the lockout did serve to improve the Respondent's bargaining position, and to a ward off a strike that might otherwise have occurred. It seems to me therefore not to have been unlawful under the precedents now applicable.

It is also the position of counsel for the General Counsel that the respondent's letter of August 25, 1967, constituted "a clear attempt" to bargain directly and individually with unit employees in violation of Section 8(a)(1) and (5) of the Act. Indeed he regards the letter as "a blatant appeal to unit employees to abandon their collective bargaining representative." To me this would seem an indulgence in hyperbole even if I were to assume that the respondent had engaged in an unlawful lockout of its employees. It seems to me that in writing the letter Green was only seeking to justify himself — to inform the employees of the status of the negotiations and to state his own position. I can find nothing in the letter that can reasonably be construed as an appeal to the employees to "abandon" their bargaining representative. Green declared himself to be "ready to talk any time, any place . . . ." He did not exclude the union. While there are cases in which employers have been held to have violated Section 8(a)(5) of the Act by communicating with employees during collective-bargaining negotiations, such violations have been found only when the employer's language was itself coercive, or could reasonably be construed as coercive in the context of other unfair labor practices of the employer. The letter in the present case would seem to be governed by the principles laid down by the Board in *Proctor & Gamble Mfg. Co.*, 160 NLRB 334, 340, where the Board declared: "As a matter of settled law, Section 8(a)(5) does not, on a *per se* basis, preclude an employer from communicating, in noncoercive terms, with employees during collective bargaining negotiations. The fact that an employer chooses to inform employees of the status of negotiations, or of proposals previously made to the union, or of its version of a breakdown in negotiations will not alone establish a failure to bargain in good faith."

CONCLUSIONS OF LAW

1. The Respondent, Wantagh Auto Sales, Inc., is an employer engaged in commerce, or in an industry affecting commerce, within the meaning of Section 2(6) and (7) of the Act.
2. Local 259, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), is a labor organization within the meaning of Section 2(5) of the Act.
3. All service department employees including automobile mechanics, car polishers, used car lot men and parts department employees of the respondent employed at its Wantagh place of business, exclusive of all salesmen, service salesmen, office clericals, watchmen, guards and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. On or about July 26, 1967, a majority of the employees of the Respondent in the above described unit, by a secret ballot election conducted under the supervision of the Regional Director for Region 29, of the National Labor Relations Board, designated and selected the union as their representative for the purpose of collective bargaining with the Respondent, and on July 17, 1967, the said Regional Director certified the union as the exclusive collective-bargaining representative of the employees in the said unit, and at all times since the said date, the union, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in the said unit for the purpose of collective bargaining.
5. By locking out its employees from July 28 to October 16, 1967; by suspending collective-bargaining negotiations with the union during the said period, and by communicating directly with its employees on August 25, 1967, about the course of the bargaining, the Respondent did not engage in any unfair labor practice affecting commerce within the meaning of Section 8(a)(1), (3), or (5) of the Act.

RECOMMENDED ORDER

In view of my findings of fact and conclusions of law, I recommend that the Board enter an order dismissing the complaint.