

**Aero-Motive Manufacturing Company and District Lodge No. 117 of the International Association of Machinists and Aerospace Workers, AFL-CIO.**  
Case 7-CA-8775

March 9, 1972

**DECISION AND ORDER**

BY CHAIRMAN MILLER AND MEMBERS FANNING,  
JENKINS, AND KENNEDY

Upon a charge duly filed on June 14, 1971, by District Lodge No. 117 of the International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a Complaint and Notice of Hearing on July 22, 1971, against Aero-Motive Manufacturing Company, hereinafter called Respondent. The complaint alleged that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, by unilaterally granting, after the conclusion of the strike, a bonus only to nonstriking employees without first bargaining with the Union, and by refusing to provide, upon request, the Union with information regarding this action. On July 27, 1971, Respondent filed an answer denying the commission of any unfair labor practices.

On October 4, 1971, the parties executed a stipulation of facts, by which the parties waived a hearing before a Trial Examiner and the issuance of a Trial Examiner's Decision and recommended Order, and agreed to submit the case to the Board for findings of fact, conclusions of law, and an order, based upon a record consisting of the stipulation of facts and exhibits, together with the charge, complaint, and the answer. On October 6, the Regional Director for Region 7 referred the stipulation to the Board for decision.

On October 13, 1971, the Board approved the stipulation of the parties and ordered the case transferred to the Board, granting permission for the filing of briefs. Thereafter, both the General Counsel and the Respondent filed briefs.

Upon the basis of the stipulation, the briefs, and the entire record in this case, the Board makes the following:

**FINDINGS OF FACT**

**I. JURISDICTION**

Aero-Motive Manufacturing Company is, and has been at all times material herein, a Michigan corporation, and maintains its office and place of business in Kalamazoo, Michigan. Respondent is engaged in the manufacture, sale, and distribution of industrial reels

and related products. In the course and conduct of its business operations, Respondent during the 1970 calendar year, a representative period, sold products valued in excess of \$50,000 to, and received goods valued in excess of \$50,000 directly from, points outside the State of Michigan.

The Respondent admitted, and we find, that Aero-Motive Manufacturing Company is, and at all times material herein has been, an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

The Respondent admitted, and we find, that District Lodge No. 117 of the International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. Facts**

At all times since June 24, 1970, and continuing to date, the Union has been the representative for the purposes of collective bargaining of the following appropriate unit of employees:

All production and maintenance employees, including shipping and receiving employees, truck drivers, and quality control inspectors employed by Aero-Motive Manufacturing Company, excluding office clerical employees, professional and technical employees, guards and supervisors as defined in the Act.

On Monday, September 28, 1970,<sup>1</sup> picketing commenced at the one and only drive and entranceway to the premises of Respondent's plant. Respondent operated one shift during the strike with picketing taking place prior and after completion of the shift. During the course of the strike until about mid-November, some automobiles and other vehicles of both strikers and nonstrikers were damaged, as were the homes of certain nonstrikers. In addition, the gate of Respondent at the area where the picketing occurred was damaged.<sup>2</sup> As a result, certain court proceedings were instituted by the Respondent which culminated in the issuance of a restraining order on October 1 and a preliminary injunction on November 6.

Following the execution of a new collective-bargaining agreement on December 17, the strikers began returning to work. On December 18, Respondent granted and distributed checks in the amount of \$100 to all

<sup>1</sup> Hereinafter, all dates refer to 1970 unless otherwise noted.

<sup>2</sup> It is not stipulated or agreed that the Union or its pickets, or Respondent or its agents were responsible for these acts.

employees who had crossed the picket line during the strike as compensation for risking their "health, property, and peace of mind." The record discloses that 40 unit employees, 43 office employees, and 24 supervisors received the bonus. It is clear that although Respondent decided upon the bonus during the strike, no employees were informed of it until the bonus was actually granted on December 18, the day after the strike ended. In addition, it is equally clear that Respondent took this action unilaterally, without any discussion with the Union.

Pursuant to a provision in the contract, the Union, on December 22, requested a special meeting with representatives of the Respondent. At the meeting, which was held on December 30, the union representative asked for information with respect to the payment of the bonus, but the Respondent's representative did not provide the requested information. In response to a question from Respondent, the Union representative stated that he was contemplating the filing of unfair labor practice charges. No discussions were held between the Respondent and the Union subsequent to that meeting with regard to the bonus until after the unfair labor practice charges were filed.

#### B. Contentions of the Parties

The General Counsel contends that the payment of the bonus is an encroachment on the employees' right to strike and is therefore violative of Section 8(a)(1) of the Act; that by granting this bonus unilaterally, Respondent violated Section 8(a)(5) and (1); that it also violated Section 8(a)(5) and (1) by refusing to provide the Union with information concerning the bonus payments. Respondent argues that inasmuch as the bonus was not granted until after the strike ended and no employee knew about the bonus until it was actually paid, Respondent did not interfere with the employees' right to strike, and the Board cannot consider, in this case, what possible effects, if any, the bonus could have on employees' rights in the future. Respondent further contends that since the union representative did not request that collective bargaining take place regarding the bonus prior to the filing of the charge, the bonus did not violate Section 8(a)(5). Finally, Respondent states that it did not possess the requested information on December 30 and that since the Union did not repeat its request, Respondent cannot be held to have refused to provide the information in violation of Section 8(a)(5).

#### C. Analysis and Conclusions

Congress has declared that it shall be a violation of Section 8(a)(1) of the Act for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." It has long been recognized that one of the rights guaranteed by Section 7 is the right to strike. Thus, various actions by employers which interfere with this right, such as depriving strikers of benefits which have been granted to nonstrikers,<sup>3</sup> or making threats or promises of benefit to induce employees to abandon a strike,<sup>4</sup> are violative of the Act. As the Supreme Court has said, "This repeated solicitude for the right to strike is predicated upon the conclusion that a strike when legitimately employed is an economic weapon which in great measure implements and supports the principles of the collective bargaining system."<sup>5</sup> Whether employer conduct unlawfully interferes with any Section 7 right and is therefore violative of Section 8(a)(1) is determined by "whether the employer engaged in conduct which, it may reasonably be said, *tends to interfere with the free exercise* of employee rights under the act."<sup>6</sup> (Emphasis supplied.)

Thus the issue posed here is whether the payment of a special cash bonus to employees who chose to refrain from protected, concerted activity (plus the nonpayment of such a bonus to employees who had persisted in engaging in the protected strike activity) *tends to interfere with the free exercise* of the statutory right of the employees of this plant to engage in strike action.

While the precise issue may be somewhat novel,<sup>7</sup> the governing principles seem to us to be well-established. It is by now axiomatic that employers violate our Act if they grant special benefits to employees who refrain from engaging in concerted activity and who deny such benefits to those who choose to engage in such activity. Respondent urges as its principal defense to the application of this basic principle that there was no illegal interference here because the bonus was not granted until after the strike had ended. While it is true that the absence of an advance announcement or payment necessarily means that the bonus was not used as an

<sup>3</sup> *N.L.R.B. v. Erie Resistor Corp.*, 373 U.S. 221; *N.L.R.B. v. Great Dane Trailers, Inc.*, 388 U.S. 26.

<sup>4</sup> *Continental Motors, Inc.*, 145 NLRB 1075.

<sup>5</sup> *Erie*, *supra* at 223-224.

<sup>6</sup> *N.L.R.B. v. Illinois Tool Works*, 153 F.2d 811, 814 (C.A. 7) enfg. 61 NLRB 1129.

<sup>7</sup> Respondent cites *Association of Motion Picture Producers, Inc.*, 79 NLRB 466, and *Columbia Pictures Corporation*, 82 NLRB 568, both involving the same circumstances, as having presented the same issue and as precedent for its position here. We have reviewed the facts of those cases, and do not find them parallel to those here. There bonus was related to a strike settlement agreement, and also was, in part, to compensate employees for having worked outside their normal jurisdiction. There is, however, some language in those cases which is susceptible to the interpretation that bonuses not announced prior to the end of the strike cannot form a basis for an 8(a)(1) finding. To the extent that the decisions in those cases carry that implication, they are hereby overruled.

inducement to refrain from concerted activity at the time the strike was in progress, we cannot put on blinders and fail to look at the impact of the payment on employees at the time it was made and for the future. Once granted, the former strikers were plainly disadvantaged with respect to the nonstrikers and it was equally plain that the distinction was drawn solely on the basis of who engaged in protected, concerted activity and who did not. This not only created a divisive wedge in the work force, but also clearly demonstrated for the future the special rewards which lie in store for employees who choose to refrain from protected strike activity.

Respondent also contends that the purpose of the payments, and its motive in making them, was simply to compensate the nonstrikers for the special risks which were involved in view of the violence which took place during the strike. But, as Respondent points out in support of its first argument, the payments here were neither announced nor made during the strike, nor were they offered as an inducement to encourage employees to run whatever risks may have been created by the violence which accompanied the strike.

If, then, the employees came to work and were willing to do so for no more than their regular wages, what business justification is left for the granting of special rewards, after the strike is over, to nonstrikers? We perceive none.

However the Respondent may have characterized the payments, we believe that the principal impact of the payments will be to discourage employees from engaging in protected activity in the future. And we think this is true even if Respondent's heart was pure. Thus even if Respondent's officers and agents who decided upon the bonus payments acted solely out of a desire to provide additional compensation to employees whom Respondent believed to have risked personal harm, our decision herein would be no different. We are concerned not with the subjective motivation of Respondent but with the objective impact of its action.

The reward here was not made to employees who had encountered violence in contradistinction to employees who had not encountered such violence. Greater payments were not made to employees who had run more risks than others. Rather, the only visible line drawn between employees who received the payment and employees who did not receive the payment was the line between the strikers and nonstrikers. Whatever Respondent's motives may have been, therefore, it seems to us that the impact on employees is plain for all to see—that nonstrikers did, and presumably will in the future, receive special benefits which strikers will not receive. Employer actions which have this impact are violative of Section 8(a)(1).

We turn now to the question of whether Respondent's unilateral action in granting the bonus also violated Section 8(a)(5). Normally, making unilateral changes in wage payments violates an employer's obligation to bargain. But we are here dealing with a payment which was illegal. Is it true, then, that there was nothing which could have been lawfully bargained about? We think not.

Not altogether infrequently, both in commercial negotiations and in labor negotiations, one party may propose to do something which he believes to be lawful, but which is not. Often the raising of the subject and the discussion of possible or probable illegality will dissuade the proposing party from pursuing his proposal further. Or, on occasion, such discussion may lead the parties to an alternative proposal which may not run afoul of legal prohibitions.

So here, had Respondent known, *before* it decided on the payments, of the Union's view that they contravened our Act, and, further, that the Union intended to pursue the matter before this agency, mayhap Respondent would have taken second thought and all of these proceedings might have been avoided. But once the course was set, and the payments made, it was not easy for Respondent to reverse itself, and this litigation almost inevitably followed.

We are therefore of the view that the *raison d'etre* of requiring bargaining in advance of changes in wages has at least as much application to proposed illegal changes as to legal ones. And so we find Respondent's unilateral action in paying the bonus to have been a violation of Section 8(a)(5) and (1) of the Act.

There remains the further question of whether Respondent also committed an 8(a)(1) and 8(a)(5) violation by refusing to supply the Union with requested information regarding the payment of the bonus. The stipulation of facts indicates that only one request was made for information with respect to the payment of the bonus. This request was refused and thereafter the Union filed the charges with respect to the payment of the bonus which gave rise to these proceedings. We are unimpressed with Respondent's contention that we should not find a violation because the request was not repeated. If the Union was entitled to the information at the time it made the request, then Respondent was obligated to furnish it and there is no obligation of the Union to repeat such a request any given number of times. Rather the obligation is on Respondent to furnish as promptly as practical any information properly requested by the exclusive bargaining agent.

A somewhat novel question is presented again, however, by the fact that we have held that the payments were illegal. Respondent, however, at all times has taken the position that it was legally entitled to make the payment. Since this was its position, albeit an erroneous one, it had the duty of discussing its position

with the union, and, in order to make such discussion meaningful, to provide the exclusive agent of its employees with full information pertaining thereto. This would at least have enabled the bargaining agent to determine whether there were any legal or permissible bargainable areas, and particularly to determine what areas of remedy might be fruitful to explore with Respondent in an effort to avoid litigation. Voluntary settlements arrived at in such a manner through collective bargaining are surely to be encouraged, and are a vital part of collective bargaining, as that term is used in our statute. We therefore hold that the refusal to furnish the requested data was violative of Section 8(a)(5) and (1) of the Act.

#### REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, we shall order it to cease and desist therefrom in the future.

With respect to the Section 8(a)(5) violation with respect to the refusal to furnish information concerning the bonus payment, we are limiting our Order to one requiring Respondent to cease and desist from like conduct in the future, since with respect to the instant bonus the matter is now moot. Full information about the bonus will be required to be provided to our compliance officers in order to effectuate the remedy hereinafter provided.

Having found the payment of the bonus to violate Section 8(a)(1) we return now to the question of providing an effective remedy for this violation. Rescission would appear to be inappropriate and impractical and would, we believe, create greater discord among the employees than currently exists as a result of Respondent's illegal action. The only practical method, therefore, of restoring the statutorily required equality of treatment as between employees who engaged in concerted activity and those who refrained therefrom is to require the payment of an equivalent amount to the employees who did engage in the concerted activity and who were denied the payment. We shall therefore require Respondent to pay all employees who were employed at the conclusion of the strike or who were recalled to work within 30 days thereafter and who did not receive the bonus payment the sum of \$100 each plus interest at 6 percent per annum computed from the date on which the bonus payments were made to the nonstrikers, and computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Aero-Motive Manufacturing Company, Kalamazoo, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Granting special bonuses in compensation to employees who refrain from lawful strike activity, or in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

(b) Refusing to recognize and bargain collectively with District Lodge No. 117 of the International Association of Machinists and Aerospace Workers, AFL-CIO, in good faith; unilaterally modifying the existing collective-bargaining agreement with said Union or refusing to provide information relevant to the payment of bonuses to employees in the bargaining unit.

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

(a) Pay \$100 (plus interest at 6 percent from the date \$100 bonuses were paid to nonstrikers) to each of the employees who engaged in the 1970 strike against Respondent, who did not receive the \$100 bonus paid that date to other employees, and who were recalled to work within 30 days after December 17, 1970.

(b) Post at its plant at Kalamazoo, Michigan, copies of the attached notice marked "Appendix."<sup>8</sup> Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

MEMBER KENNEDY, dissenting:

This case has been submitted directly to the Board upon an agreed statement of facts. Briefly they are:

When Respondent and the Union were unable to agree on the terms of a collective-bargaining contract the Union struck. Not all the unit employees joined the

<sup>8</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

strike. The strike lasted from September 28, 1970, to December 17, 1970, when a new collective-bargaining agreement was signed. The striking employees began returning to work on December 21, 1970. During the period of the strike and the picketing by the Union considerable damage was done to property of nonstriking employees. Thus approximately 15 automobiles owned by nonstrikers sustained damage in the form of scratches or dents while making passage through the picket line; approximately 20 cars belonging to nonstrikers sustained tire damage caused by the presence of nails or other sharp objects on the roadway near the entrance to Respondent's plant property;<sup>9</sup> a nonstriker had the windshield of his car smashed while making entrance through the picket line; an employee's trailer parked on Respondent's premises was slightly damaged by fire; a nonstriker had paint thrown on his car and house; another had the windows of a store belonging to him smashed; several nonstrikers had the windows in their homes broken. Nonstrikers were also harassed by telephone calls.

During the strike Respondent's top management officials discussed with counsel the possibility of making some "award or compensation" to personnel who were "risking their health, property, and peace of mind" by reporting for work. It was decided that a bonus would be appropriate. However, the fact that a bonus was being considered was not communicated to employees in order not to have it construed as an inducement to abandon the strike. The day the new contract was signed bonus checks for \$100 were ordered and were distributed the following day to all nonstriking employees, including supervisors, office employees, and unit production employees. The distribution was a complete surprise to all employees except top management. The \$100 figure was not of special significance; it was not correlated to any property loss figure attributable to the strike; it was merely what management deemed appropriate. The bonus payment was also unprecedented.

The General Counsel contends that Respondent should have bargained with the Union about the grant of the \$100 bonus to nonstriking unit employees and that its failure to do so violated Section 8(a)(5) of the Act. He further contends that the same conduct independently violated Section 8(a)(1) of the Act. My colleagues agree with the contentions of the General Counsel and have made findings in accordance therewith. As a remedy, they have not only prescribed the usual cease-and-desist order, but they also require Respondent to reward the strikers with the same \$100 bonus payment which it made to nonstrikers in ap-

preciation of their loyalty in having worked under difficult conditions during the strike.

An employer is required to bargain with a union only with respect to wages, hours, or other terms and conditions of employment. Not all forms of monetary payment to employees are mandatory subjects of bargaining.<sup>10</sup> For example, if an employer should decide to make a gift of \$100 to each of his employees in celebration of his daughter's marriage, I do not think my colleagues would say that the employer violated Section 8(a)(5) by not bargaining with the union before making his decision. The Board and the courts have also made a distinction between a money payment, such a Christmas bonus, which because of duration and regularity has come to be considered part of the wage structure,<sup>11</sup> and a gift.<sup>12</sup> As stated by the court in the *Wonder State Manufacturing Company* case (344 F.2d at 213):

The rule is that gifts *per se*—payments which do not constitute compensation for services—are not terms and conditions of employment, and an employer can make or decline to make such payments as he pleases, but if the gifts or bonuses are so tied to the remuneration which employees received for their work that they were in fact a part of it, they are in reality wages and within the statute.

In *Wonder State*, the court found that a Christmas bonus which the employer unilaterally discontinued was not a mandatory subject of bargaining because previous bonus payments had been made intermittently, there was no uniformity in or basis for the amount of the bonus, the bonus was not tied to the remuneration received by the employees, and whether a bonus was paid depended on the financial condition of the employer. It seems clear to me that the bonus which Respondent paid to nonstriking employees can in no sense be considered wages but was literally and in fact a one-time gift made in appreciation of employees having reported for work under harassing and perilous conditions. Respondent was therefore not required to bargain with the Union before deciding on or distributing the \$100 bonus payment to employees.<sup>13</sup>

<sup>10</sup> See *Seattle First National Bank v N.L.R.B.*, 444 F.2d 30, 32 (C.A. 9) "Only as to those matters enumerated in Section 8(d) of the Act is there a mandatory obligation to bargain under Section 8(a)(5). And, as to those matters specified in Section 8(d), the phrase 'terms and conditions of employment' is to be interpreted in a limited sense which does not include every issue that might be of interest to unions or employers. . . . A mere remote, indirect or incidental impact is not sufficient. In order for a matter to be subject to mandatory collective bargaining it must *materially* or *significantly* affect the terms or conditions of employment." (Citations omitted.)

<sup>11</sup> *Beacon Journal Publishing Co. v N.L.R.B.*, 401 F.2d 366 (C.A. 6), enfg in relevant part 164 NLRB 734, *General Telephone Co. of Florida v N.L.R.B.*, 337 F.2d 452 (C.A. 5), enfg as modified 144 NLRB 311

<sup>12</sup> *Wonder State Manufacturing Company v N.L.R.B.*, 344 F.2d 210 (C.A. 8), enfg in part and setting aside in part 147 NLRB 179

<sup>13</sup> *Id.*

<sup>9</sup> Respondent reimbursed the nonstriking employees for the costs of this tire damage

The majority's conclusion to the contrary appears to me to be erroneous.

There is another reason why I would not find a violation of Section 8(a)(5) here. The Board ought not to expend its energies in making futile determinations. How can a union which has called and led a strike be expected to bargain for a gift to employees who crossed the union's picket line to go to work? Such a requirement is no more realistic than a requirement that an employer bargain with a striking union about the employer's decision to hire striker replacement<sup>14</sup> or to subcontract work<sup>15</sup> as a means of continuing to operate during a strike.

Although the grant of a gift is not in my opinion a mandatory subject of collective bargaining, it may under appropriate circumstances violate other sections of the Act. In this case, the General Counsel alleges, and my colleagues have found, that Respondent did independently thereby violate Section 8(a)(1). It is significant that the General Counsel does not allege a violation of Section 8(a)(3). To do so he would have had to establish an intent to encourage or discourage union membership. The record is devoid of evidence to support such a finding under either of the standards set forth in *Great Dane Trailers*.<sup>16</sup> The majority therefore resorts to the argument that the grant of the bonus was unlawful under Section 8(a)(1) because it "tends to interfere with the free exercise" by employees of the right to strike. I shall assume for the purpose of argument that an employer's small gift of appreciation, at the close of a strike, to employees who had crossed a picket line to report for work and hazarded property and other damage did not service a "legitimate business end"<sup>17</sup> so as to excuse otherwise unlawful conduct.

Respondent carefully refrained from announcing or granting the bonus until the strike had been settled and a new collective-bargaining contract signed. Therefore the grant could not have interfered with any employee's desire to continue with the strike which ended on December 17. The possible impact of the bonus payment was therefore limited to alleged discouragement of participation in future strikes. But how real or substantial is this possibility? In trying to answer this question, we must assume that we are dealing with real people in a real environment and not with disembodied humans in a laboratory vacuum. When the bonus payment was made the parties had just signed a new collective-bargaining contract to be effective for a 3-year term. The lesson which an employee might reasonably draw from the fact of the gift was that if a strike occurred again, if it lasted for several months, and if there

was extensive damage to the property of employees who chose not to strike, Respondent might grant those employees who did work a bonus payment of approximately \$100 over and above their usual wages. Would such a possibility tend to discourage employees from striking? It seems to me that any tendency in that direction is so slight as to be *de minimis* and not to justify a finding of an 8(a)(1) violation.<sup>18</sup>

The majority decision also finds that Respondent violated Section 8(a)(5) by refusing to furnish the Union with information as to the names of employees who received the bonus. The only evidence as to Respondent's alleged refusal is the following statement in the stipulation:

[R]epresentatives of Respondent and the Union met on December 30, 1970. During the course of which meeting Union Representative Eifler asked for information with respect to the payment of a \$100 bonus to employees who crossed the picket line during the strike. Respondent's representative, Mr. Nasser, did not provide the requested information at that meeting. In respect to a question from Mr. Nasser, Mr. Eifler stated that he was contemplating the filing of unfair labor practice charges.

I do not think that this statement is sufficient to support a finding that Respondent *refused* to furnish the requested information. The statement is just as susceptible of the interpretation, as urged by Respondent, that Respondent's representative did not have the list with him and therefore was not then in a position to comply with the request.

Where lawful and unlawful inferences from given facts are equally reasonable, the Board ought not to assume illegality.<sup>19</sup> A list of the names of employees who received bonus payments is actually attached to the stipulation submitted to the Board. This casts doubt upon the majority's finding that Respondent "refused" to furnish this information. In any event it shows that no order requiring Respondent to furnish such list of names is necessary.

<sup>14</sup> In *Columbia Pictures Corporation*, 82 NLRB 568, the complaint alleged that Respondent violated Section 8(a)(1) by the payment of bonuses to those employees who passed the picket line or performed the work of the strikers. In refusing to find a violation under the circumstances of the case, the Trial Examiner commented (82 NLRB at 636):

[C]rucial to a finding that the Board's complaint in this respect has been sustained is some element of proof that workers were promised or told that for their conduct in passing through the picket lines or performing the work of strikers, they would receive in addition to their fixed compensation, an additional bonus and that the bonus became an inducement to the workers to help break the strike.

The Board adopted the Trial Examiner's dismissal of this 8(a)(1) allegation. See also *Association of Motion Picture Producers, Inc.*, 79 NLRB 466, 496-500.

<sup>19</sup> Cf. *N.L.R.B. v. News Syndicate Company, Inc.*, 365 U.S. 695, 699.

<sup>14</sup> See *N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U.S. 333.

<sup>15</sup> *Hawaii Meat Co., Ltd. v. N.L.R.B.*, 321 F.2d 397 (C.A. 9), setting aside 139 NLRB 966.

<sup>16</sup> *N.L.R.B. v. Great Dane Trailers, Inc.*, 388 U.S. 26, 33-34.

<sup>17</sup> *N.L.R.B. v. Brown, et al. d/b/a Brown Food Stores*, 380 U.S. 278, 286.

For the foregoing reasons, I dissent from the majority's decision. I would dismiss the complaint in its entirety.

### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

We hereby notify our employees that:

WE WILL NOT grant special bonuses or compensation to employees who refrain from lawful strike activity, or in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to strike or any other rights guaranteed to them in Section 7 of the Act.

WE WILL NOT refuse to recognize and bargain collectively with District Lodge No. 117 of the International Association of Machinists and Aerospace Workers, AFL-CIO, in good faith.

WE WILL NOT unilaterally modify the existing collective-bargaining agreement with the Union.

WE WILL NOT refuse to provide information relevant to the payment of any bonuses to employees in the bargaining unit.

WE WILL pay \$100, plus interest, to each of the employees who engaged in the 1970 strike against us, who did not receive the \$100 bonus paid on December 18, 1970, to other employees, and who were recalled to work within 30 days from the conclusion of the 1970 strike.

WE WILL, upon request, recognize and bargain collectively with District Lodge No. 117 of the

International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. The bargaining unit is:

All production and maintenance employees, including shipping and receiving employees, truckdrivers, and quality control inspectors employed by Aero-Motive Manufacturing Company, excluding office clerical employees, professional and technical employees, guards and supervisors as defined in the Act.

AERO-MOTIVE  
MANUFACTURING  
COMPANY  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 313-226-3200.