Fred Tuch Buick *and* American Federation of Professional Salesmen. Cases 13–10211, 13–CA–10361, and 13–CA–10732

October 20, 1972

DECISION AND ORDER

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

On April 28, 1971, Administrative Law Judge [1] Thomas F. Maher issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a brief in support thereof and the General Counsel filed an answering brief in support of the Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the Trial Examiner's Decision in light of the exceptions and briefs and has decided to affirm the Trial Examiner's rulings,[2] findings,[3] and conclusions, as modified herein, and to adopt his recommended Order.[4]

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 Respondent, Fred Tuch Buick, its partners, officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's recommended Order.

[1] The title of "Trial Examiner" was changed to "Administrative Law Judge" effective August 19, 1972.

[2] We find no merit in Respondent's argument that the General Counsel proceeded improperly in issuing the complaint herein and should, instead, have sought enforcement and contempt proceedings based on the Board's order to bargain issued on March 25, 1969, pursuant to stipulation of the parties in Cases 13–CA–8096 and 13–CA–8676 A contract was entered thereafter which expired June 14, 1970, and the conduct in issue in the instant proceeding occurred at and following the expiration of that contract The cases relied on by the Respondent are inapposite.

[3] The Respondent has excepted to certain credibility findings made by the Trial Examiner. It is the Board's established policy not to overrule a Trial Examiner's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions were incorrect. *Standard Dry Wall Products, Inc*, 91 NLRB 544, enfd 188 F 2d 362 (C.A. 3). We have carefully examined the record and find no basis for reversing his findings.

We note that the Trial Examiner incorrectly stated that (1) a meeting of the parties took place June 16, 1970, whereas the record shows it occurred on June 26, and (2) employee James filed a decertification petition on June 29, 1971, which was filed by employee James Mack. However, these inadvertent errors are not significant and do not affect our conclusions herein.

[4] We adopt the Trial Examiner's Decision in its entirety, but find in addition, as argued by the General Counsel, that the Respondent violated Sec 8(a)(5) and (1) of the Act by failing to meet and bargain collectively with the Union for a reasonable period of time following the settlement agreement in Cases 13–CA–10211 and 13–CA–10361, approved by the Regional Director on April 8, 1971. Since a reasonable period had not elapsed, the Respondent was not entitled to question the Union's continued majority status (cf *N L R B* v *Warren Company, Inc.*, 350 U S. 107) and could not rely on the filing of the decertification petition on June 29, 1971, even if it might have done so in other circumstances Cf *Telautograph Corporation*, 199 NLRB 117 Accordingly, the Regional Director properly set aside the settlement agreement Member Jenkins adheres to his dissent in *Telautograph*.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

THOMAS F. MAHER, Trial Examiner: Upon charges filed on November 12, 1970, and February 3 and July 6, 1971, by American Federation of Professional Salesmen, Charging Party herein, against Fred Tuch Buick, Respondent herein, the Acting Regional Director for Region 13 of the National Labor Relations Board, herein called the Board, issued a complaint on behalf of the General Counsel of the Board on October 7, 1971, alleging violations of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (29 U.S.C. Sec. 151, *et seq.*), herein called the Act. In its duly filed Answer Respondent, while admitting certain allegations of the complaint, denied the commission of any unfair labor practice.

Pursuant to notice a trial was held before me in Chicago, Illinois, where all parties were present, represented by counsel, and afforded a full opportunity to present evidence, cross-examine witnesses, present oral argument, and file briefs with me. Briefs were filed in behalf of the Respondent and General Counsel on February 17, 1972.

Upon consideration of the entire record, including the briefs filed with me, and specifically upon my observation of each witness appearing before me,[1] I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I THE NATURE OF RESPONDENT'S BUSINESS

Fred Tuch Buick, Respondent herein, is a partnership consisting of Fred Tuch, Sr., Fred Tuch, Jr., and Martin C. Tuch, with its principal office and place of business in Chicago, Illinois, where it is engaged in the retail sale and distribution of automobiles, trucks, and related products.

During the year 1970 Respondent, in the course and conduct of its business operations, sold and distributed automobiles, trucks, and related products valued in excess of $500,000, of which products valued in excess of $100,000 were received at its Illinois place of business directly from locations outside the State of Illinois. Upon the foregoing agreed facts I conclude and find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II THE LABOR ORGANIZATION INVOLVED

It is admitted, the Board has independently found,[2] and I accordingly conclude and find that American Federa-

[1] *Bishop and Malco, Inc*, 159 NLRB 1159, 1161.

[2] Cases 13–CA–8096 and 13–CA–8676, decided March 25, 1969

tion of Professional Salesmen, Charging Party herein, and its predecessor and affiliate, International Vehicle Salesmen's Union of America (Independent), are labor organizations within the meaning of Section 2(5).

III THE UNFAIR LABOR PRACTICES

A. *The Facts*

A bargaining relationship between Respondent and the Union formally commenced with the Board's June 22, 1967, certification of the Union's predecessor and affiliate, International Vehicle Salesmen's Union of America (Independent), in the following unit of employees found to be appropriate for the purposes of collective bargaining:

> All automobile salesmen employed by the Employer at its facility located at 1441 East 75th Street, Chicago, Illinois, excluding office and plant clericals, automobile mechanics, parts department employees, employees who are members of other labor organizations, professional employees, guards and supervisors as defined in the Act.

Thereafter, following the entry of a Board order dated March 25, 1969, pursuant to stipulations in Cases 13–CA–8096 and 13–CA–8676, the parties engaged in negotiations which concluded in the execution of a collective agreement effective June 15, 1969, to June 14, 1970, on which date it expired. Prior to the expiration of the agreement and pursuant to its terms the Union, on April 11, 1970, wrote Respondent requesting that negotiations for a new contract be commenced. Receiving no reply the Union again, on May 8, requested a meeting. A copy of these requests were sent to the Employers Association of Greater Chicago whose officer, C. Daniel Burns, had previously, on April 22, 1969, been designated as Respondent's representative.

Bargaining began on June 3, 1970, in the offices of the Employers Association with the Union represented by its secretary-treasurer, Merlin Griffith, and by John Baldwin, its executive vice president, and Respondent by Fred Tuch, Jr., and C. David Burns and Lee Burks, both of the Association. The expired contract was discussed, article by article, with agreement as to some items and disagreement as to others, and as to certain other items no response was made by the Employer.

At a second meeting of the parties on June 16 the same individuals represented the Respondent and Griffith was accompanied by Richard Daley, the Union's sergeant-at-arms. At this meeting the Union protested Respondent's abandonment of stock bonus payments, an incentive paid salesmen for selling yearend models already in stock during the closeout period, as new year cars were about to become available. The Union also requested and was refused a union shop and checkoff of dues. Burns, in behalf of Respondent, asked the Union if it would accept an extension of the old contract for another year and Griffith told him they would let him know. At the close of the meeting Griffith asked the Respondent to consider a means of improving salesmen's income.

At the third meeting, on August 25, Tuch and Lee Burks represented the Respondent, and Griffith, Daley, and Baldwin the Union. The Union again requested and was refused the union shop and dues checkoff. They then asked Tuch about the pay increase brought up at the last meeting, to which Tuch replied that he had a bonus plan in mind and was working on it, but had "never got down to brass tacks on it."[3]

At the September 30, 1970, meeting the Union again asked for and was refused a union shop and dues checkoff. Griffith then asked Tuch if he had arrived at anything definite on the pay matter previously discussed. Tuch replied that he had a bonus plan in mind which provided, on an annual basis, that when a salesman had sold 120 cars he would receive a bonus of $5 for each car he thereafter sold, and on selling a total of 140 cars he would then receive $10 per car, the full bonus to be paid at the end of the year. Whereupon Griffith and Daley, the union representatives, caucused. Upon the resumption of the meeting following the caucus Griffith announced that they would accept Respondent's bonus proposal and the old contract previously proposed by Burns in Respondent's behalf. Speaking in behalf of Respondent, Lee Burks stated that the Union had no proposal to accept. When Griffith reminded him that the Respondent had "put it on the table and we bought it," Burks, according to Griffith's uncontradicted testimony, went on to say that

> he realized he had to bargain with us on this phase and had to meet with us and had to go through all the motions with us . . . .
>
> He said he had to meet with us in good faith, but he did not have to agree to anything.

The foregoing findings, based on Griffith's credited testimony and collaborated by Union Sergeant-at-Arms Daley, are disputed by Tuch and Lee Burks. Thus Burks, without ever denying the statement attributed to him and quoted above, testified that at this September 30 meeting Tuch talked about some possibilities but that a proposal was never made: "He said he had been thinking about a bonus plan. And he indicated a few examples of the kind of bonus plan which might be adopted or presented." The "examples" which Burks cited in his testimony were the same $5 and $10 bonuses per car that Griffith quoted in his testimony. When asked if these so-called examples were actually a combined figure, Burks' reply and explanation suggests a degree of obfuscation, thus:

> I think it or, you know, it was the, he was saying what do you think about this, what if, you know, this is the kind of thing I have been thinking about. He was illustrating.

Tuch was equally confusing in his explanation of what transpired in his bargaining over the bonus, thus:

> During that session Mr. Griffith brought up the possibility of a bonus. And I said "Yes, there is a possibility. " And I said "First of all what did you have in mind?" And Merlin said "Well, why don't you start. What did you have in mind?"
>
> So at that time I gave my ideas, how you can work a bonus plan, whether it would be monthly, yearly, the number of units involved, and then you would have to

[3] The foregoing findings are based on the uncontradicted testimony of Merlin Griffith

go on a dollar basis, once they hit their quota then go above it.

And that is what we decided at that meeting, discussed, the various types and the monies that could be involved.

When asked to explain Respondent's reaction to Griffith's acceptance of all of this as a *bona fide* proposal Tuch stated:

At that time we told them it was not a proposal. It was an example of the type of plans that we could effect, but it was not a proposal.

Upon evaluation of all the testimony bearing upon the nature of the bonus discussion at the September 30 meeting it is apparent to me that both union representatives, Griffith and Daley, understood Tuch to have proposed a bonus plan which they promptly accepted together with the old contract previously proposed. And it is equally apparent that Respondent's witnesses then wished it to be understood that this was not a proposal, both Tuch and Burks referring to the discussion variously as "examples," as presenting their ideas, illustrations, "a fishing for some kind of way" to resolve the situation.

I am not convinced by Respondent's witnesses that they had not made a bonus proposal. Two items of testimony persuade me to this conclusion: First, Tuch, under persistent cross-examination, conceded that the bonus plan had come up at earlier meetings. Second, Burks failed to deny the statement attributed to him that he was determined to bargain without reaching an agreement *(supra).* In this state of the record, and independently upon my consideration of the witness' confusing description of the bonus discussions, I credit Griffith's testimony, corroborated by Daley, that a proposal including a bonus was made and was accepted. No one denies that Griffith did accept this proposal nor is it denied that Respondent's representatives refused to consider the acceptance. Indeed they refused it by rejecting the fact that a proposal had been made in the first instance.

Before the close of the September 30 meeting and after Burks had disavowed Tuch's proposal there was further discussion concerning the mechanics of drafting a contract. Griffith, repeating his willingness to accept the bonus proposal and the old contract, withdrew his demand for a union shop and dues checkoff, stating that with the bonus plan he felt the Union was getting a good contract. Burks rejected the suggestion that he draft a contract because he felt they had not reached an agreement. On this note the meeting ended with Burks' insistence, over the Union's objection, that they not meet again until the General Motors strike then in progress had been settled. Griffith sought a meeting on October 16 and received no reply from Burks. There were no further meetings until January 29, 1971.[4]

On November 4, 1970, during the period which intervened between the September 30 bargaining session described above and the next meeting to be held on January 29, 1971, James J. Mack, an employee of Respondent, filed with the Regional Director a petition for a decertification election, alleging that a substantial number of employees have asserted that the Union is no longer their representative.[5] On April 7, 1971, the Regional Director notified employee Mack that his petition had been fully considered and investigated but because it had been found that the employer was then under an obligation to bargain the petition was untimely and was for that reason dismissed. No appeal was taken from this determination.

Meanwhile the next meeting of the parties occurred on January 29, 1971. At this time Respondent's representatives asserted that it had a good-faith doubt as to whether or not the Union represented a majority of its employees. They stated that they were aware that the question was then before the Regional Director, stating their understanding that their employees had been in contact with the Board, and referred specifically to employee Mack's decertification petition. They further stated that they were appearing at this session only as a matter of record and to state their good-faith doubt. Accordingly, Respondent's representatives refused thereafter to reply to the Union's request for a continuation of bargaining and specifically to its request for a written submission of the bonus plan which had been the subject of the previous (September 30) meeting.

The next meeting was held on May 3 as a consequence of a series of events culminating in Board action and detailed hereafter *(infra).* At this meeting the Union asked for specified information from Respondent. Respondent's representatives explained that the requested information was not then available due to the illness of the secretary responsible for obtaining it. The Union then requested that the bonus plan which had been previously discussed be put into written form. Before the meeting adjourned Respondent's representatives assured the Union that the requested information would be sent them as soon as it could be obtained.

Following a considerable correspondence seeking a suitable date the parties met next on June 24, and Griffith opened by protesting that the information promised them earlier had not been received. Respondent's representatives explained that the illness of the girl responsible for compiling it had prevented them from sending the material, but that they did have it in their possession and they gave it to Griffith. Whereupon Griffith presented to Lee Burks a signed letter addressed to Respondent, dated June 24, 1971, which read as follows:

Please be advised that the American Federation of Professional Salesmen wishes to accept your last contract proposal which I understood to be a renewal of the previous contract between the American Federation of Prof. Salesmen and Fred Tuch Buick, with a bonus plan of your choosing.

Very truly yours,
/s/ Merlin W. Griffith
Merline W. Griffith, Secy-Treas.

Burks, upon reading the letter, reiterated what he had told Griffith at the September 30 meeting; namely, that they were not obligated to reach agreement, only to meet, confer, and bargain in good faith. Griffith, however, was insistent upon a "contract ready to sign," claiming that they had already reached an agreement. Burks repeated that while he had to meet he did not have to present a contract to sign.

[4] The foregoing findings dealing with what traspired following the acceptance of the Respondent's proposal is the corroborating and undenied testimony of Griffith and Daley.

[5] Case 13-RD-796

At this juncture Tuch stated that he could not give his answer then but would have to confer with his father, Fred Tuch, Sr., the partner in whose name the dealership had been established. He promised a reply by July 9. He also agreed to furnish Griffith with a list of those salesmen's names and addresses which Griffith had not already received. This list was finally transmitted to Griffith on August 6.

Contemporaneous with the foregoing, all based on the credited testimony of Merlin Griffith, procedural activity was occurring which substantially affected the overall scene. Thus on February 3, 1971, while the employees' petition for decertification *(supra)* was still pending before the Regional Director, the Union filed its second charge (Case 13–CA–10361) in the instant proceeding. On March 1 the Union wrote Respondent requesting a bargaining meeting. Burks, on behalf of Respondent, replied on March 8, as follows:

> Receipt of your letter dated March 1, 1971 and received March 4, 1971, is acknowledged.
>
> On January 29, 1971, the date of our last meeting, the Company indicated that it had a good faith doubt as to whether or not the American Federation of Professional Salesmen represented a majority of the employees at Fred Tuch Buick.
>
> Since that date circumstances surrounding and/or responsible for that good faith doubt have not changed.
>
> Consequently, the Company still has a good faith doubt as to whether or not the American Federation of Professional Salesmen represents a majority of the employees at Fred Tuch Buick.

Thereafter on April 7, as previously noted, the Regional Director dismissed the employees' decertification petition in Case 13–RD–796. On the following day a settlement agreement was executed by the parties to the instant complaint proceedings, Cases 13–CA–10211 and 13–CA–10361. This required Respondent to meet and bargain collectively with the Union and provided for the posting of a notice. As a consequence the Union requested bargaining in a letter to Respondent dated April 19, and a meeting was arranged for and held on May 3, as reported earlier herein. The Union again requested a meeting by letter dated May 17. After an exchange of correspondence seeking to fix upon a suitable date, the June 24 meeting, previously reported, was held. On June 29, employee James filed his second petition for a decertification election in Case 13–RD–817; and on July 6 the Union filed a third charge in the instant proceeding (Case 13–CA–10732) alleging a further refusal to bargain and a failure to comply with the terms of the April 8 settlement agreement.

The foregoing is the procedural picture as the Union awaited Tuch's answer to a request for a written contract, promised by him by July 9. Following an exchange of correspondence and a telegram from Griffith, Respondent, under the signature of Fred Tuch, Jr., wrote the Union on August 5, making reference to the two pending matters before the Board, and the new charge and the new decertification petition *(supra)*, stated that Respondent "must delay any decision on your latest contract proposal until these two items . . . have been settled." He went on to state that

> These items now before the Board have caused a good faith doubt regarding your union representing a majority of our salesmen. We further feel that to enter into any agreement at the present time would not be in the best interests of our employees if they do not wish your representation.

The decertification petition was dismissed by the Acting Regional Director on October 5, 1971, for the stated reason, as in the case of the earlier petition *(supra)*, that the evidence resulting from an investigation of the matter "shows that the Employer is under a duty to bargain with the Union." Thereafter, on October 7, 1971, the complaint in this matter was issued. Therein the Acting Regional Director set aside the April 8 settlement agreement. On November 6 and again on November 15, 1971, the Union wrote to the Employers Association concerning the preparation of a contract embodying the terms of the contract proposal the Union had accepted. It has received replies to neither letter.

Respondent's Contentions

It is Respondent's basic contention that when it was obligated to do so it did in fact bargain with the Union; and that when, in point of time, it had determined that the Union did not represent its employees it then had no obligation to bargain further.

Thus, as the basis for the numerous occasions upon which it questioned the Union's majority status both by correspondence and at the meetings, Respondent claims that (a) 2-1/2 years had passed since the Union's original certification, (b) of all its current salesmen only two were employed at the time of the certification and only one of them was known to be a member of the Union, (c) as Fred Tuch, Jr., credibly testified, conversations among his salesmen, as he overheard them, clearly indicated that they did not consider the Union to be their representative, (d) on two occasions his employees had sought to have the Union decertified by official Board process, (e) at no meeting since June 3, 1970, had a salesman appeared at a bargaining session, (f) the Union had made no effort to substantiate its majority claim when requested, and (g) at the bargaining sessions Griffith, for the Union, consistently refused to name one salesman whom the Union represented.

B. *Analysis and Conclusions*

"After the certification year has run, an Employer may lawfully withdraw recognition from an incumbent union because of an asserted doubt of the union's continued majority if its assertion of doubt is raised in a context free of unfair labor practices and is supported by a showing of objective considerations providing reasonable grounds for a belief that a majority of the employees no longer desire union representation."[6] The validity of Respondent's claim that it was not obliged to bargain with the Union must be resolved within the framework of this principle. Specifically, it must establish that (1) its doubt was not "raised in a context of unfair labor practices," and (2) there is a showing of objective considerations supporting its asserted doubt of

[6] *Southern Wipers, Inc*, 192 NLRB No. 135; *Viking Lithographers, Inc.*, 184 NLRB No 16. See also *Nu-Southern Dyeing and Finishing, Inc*, 179 NLRB 573, *Celanese Corporation of America*, 95 NLRB 664, 672.

majority status. This is the Respondent's burden to establish,[7] and it remains to be determined upon the findings made herein whether Respondent has sustained its burden as to each criterion.

In both *Southern Wipers* and *Viking Lithographers* the Board has viewed as relevant objective considerations such factors as heavy turnover and employee expression of dissatisfaction or disillusionment with the union. Both of these factors, by Tuch's testimony, were present here as was the fact that two decertification petitions had been filed. To counterbalance these considerations, however, there were other elements in the cited cases which do not appear here. Thus, in both cases there were prolonged lapses in communication between the union and the employer. This was certainly not the case here. On the contrary the record shows a constant barrage of correspondence between the parties whenever extended adjournments of meetings occurred. Similarly, in *Southern Wipers* the union appeared to have become inactive. And in *Viking Lithographers* the union's attitude was one of capitulation in bargaining and a reluctance to present a final offer. Neither can be matched with *this* Union's continuous vigorous bargaining efforts. So, by comparison, it would seem that "objective considerations providing reasonable grounds for a belief that the employees no longer desire union representation" may have materialized here, but only to a superficial extent. Actually all that emerged from Tuch's unrebutted statement was that he had overheard some indications of employee dissatisfaction. This, plus knowledge of the two decertification petitions is scant and tenuous evidence of disaffection; Tuch's testimony being unsuporrted, the petitions being essentially a request for a vote, not a final tally.

All that remains then is the employee turnover, which in *Southern Wipers,* when considered *with* appearances of inactivity and dissatisfaction, was deemed sufficient to establish valid doubt of majority status. However, in the absence of more cogent evidence bearing upon the "disaffection" aspects here I am not disposed to rely on turnover alone to justify Respondent's alleged doubt. Accordingly, I would find that Respondent has not established to my satisfaction a showing of objective considerations which would provide reasonable grounds to believe that its employees had forsaken their bargaining representative.

In any event, an evaluation of such objective considerations, even if I found them to be present, must be made in a "context free of unfair labor practices." This cannot be done.

It is true, of course, that a number of incidents were alleged in General Counsel's brief and throughout the hearing as unlawful refusals to bargain which did not occur until *after* Respondent had first expressed, on January 29, 1971, its doubt of the Union's majority status. Had there been present the objective considerations to support the Respondent's refusal to bargain then no amount of such conduct as was alleged could constitute unlawful refusals to bargain, for the simple reason that no *obligation* to bargain actually existed. But, having concluded that Respondent has failed to establish that it was relieved of its bargaining obligation by objective considerations, the bargaining conduct *during* this period becomes as relevant as is the conduct *before* the majority doubt was expressed. Nevertheless, it is Respondent's conduct *before* it asserted its doubt of majority status that is the significant determinant here, because it exposes the context of all which follows.[8]

Upon the credible, undenied testimony of Union Secretary-Treasurer Griffith it has been found that Lee Burks, Respondent's representative, stated at the September 30, 1970, bargaining sessions that while he realized that Respondent had to meet and bargain with the Union it did not have to agree to anything. This statement, it will be recalled *(supra),* occurred when Respondent made what I have found to be a solid proposal of an incentive bonus which the Union promptly accepted, together with the expired contract, and which Respondent Representatives Burks and Tuchs then promptly disavowed.

Section 8(d) of the Act includes among the elements of good-faith bargaining required of representatives of parties to negotiations "the execution of a written contract incorporating any agreement reached if requested by any party." In contemplation of this statutory mandate the refusal to incorporate into a written agreement the terms of a bargain orally reached has consistently been proscribed by the Board[9] and the courts.[10] Respondent's refusal at the September 30, 1970, meeting and thereafter to reduce to writing the terms of the old contract and the bonus proposals which were presented to the Union and which the Union had accepted represents just such a breach of good faith as has been traditionally proscribed. Indeed, in *Tanner Motor Livery Ltd.,* 160 NLRB 1669, the Board considered a situation strikingly similar to the case at bar where it was found that the employer had, as here, effectively entered into an agreement to writing, and had attempted to repudiate it. This conduct the Board found to constitute an unlawful agreement to bargain. I see no distinction between that case and the instant one. Accordingly, upon consideration of all the foregoing I conclude and find that by its refusal to reduce the accepted proposals to writing and by thereafter attempting to repudiate and disavow them Respondent thereby violated Section 8(a)(5) of the Act.

Incorporated into this incident of refusal to reduce the contract to writing was still another manifestation of Respondent's bad faith. Thus Burks informed Griffith at the September 30, 1970, meeting (as he reiterated at the meeting of June 24, 1971) that although Respondent was obliged to meet and bargain with the Union it was not obliged to sign anything. Citation of authority is quite unnecessary to establish that such an expressed attitude by a party to a collective-bargaining negotiation flies in the face of the basic concepts of good-faith collective bargaining required by the statutory framework as well as by the specific language of Section 8(d) quoted above. I therefore conclude and find that Respondent has thereby additionally violated Section 8(a)(5) of the Act and has interfered with,

[7] *Nu-Southern Dyeing and Finishing, Inc, supra*

[8] See *Southern Wipers, Inc, supra, Viking Lithographers, Inc, supra.*

[9] *Truck Drivers Local Union No 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Relay Transport, Inc),* 195 NLRB No 115, *Nickey Chevrolet Sales, Inc,* 180 NLRB 1079, 1088; *Dairy Farmers Transfer,* 158 NLRB 78, 91, *Colony Furniture Company,* 144 NLRB 1582 Cf *North Country Motors, Ltd,* 146 NLRB 671

[10] *H J Heinz Co.* v. *N.L.R.B,* 311 U.S. 514, 523–526, *N.L.R.B* v. *Huttig Sash & Door Co,* 362 F.2d 217 (C.A. 4).

restrained, and coerced its employees in violation of Section 8(a)(1).

The foregoing conclusions that Respondent had, on and after September 30, 1970, unlawfully refused to bargain in the manner described, establishes for the purpose of evaluating Respondent's subsequent actions, a context that is *not* free of unfair labor practices. Such being the case I conclude and find that Respondent could not thereafter avail itself of the privilege of claiming a good-faith doubt as to the Union's majority status.[11] On the contrary, as the Regional Director has ruled collaterally on two separate occasions,[12] the Respondent is under a continuing obligation to bargain with the Union. As Respondent has persisted in its refusal to bargain, as required, relying upon a defense to which it is not entitled, such a refusal constitutes but a further manifestation of its bad faith. I accordingly conclude and find that, by refusing to meet and bargain with the Union, and by the interposition of a claim that the Union does not represent its employees. Respondent has thereby further violated Section 8(a)(5) and (1), and I so conclude and find.

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce.

V THE REMEDY

I have found that Respondent has refused to bargain with the established representative of its employees in a bargaining unit found to be appropriate by failing and refusing to meet with it for the stated reason that it has a doubt that it represents a majority of Respondent's employees, and by failing and refusing to reduce to writing an agreement reached with the representative. I shall recommend that Respondent cease and desist from such conduct. Affirmatively I shall recommend that Respondent resume collective bargaining with the Union concerning hours, wages, and other terms and conditions of employment and that if agreement is reached that it embody such agreement in writing. I shall also recommend that it post appropriate notice of its compliance with this Order.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act I hereby issue the following recommended:

ORDER [13]

Respondent Fred Tuch Buick, its partners, officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) Refusing to bargain with American Federation of Professional Salesmen as the exclusive representative of employees in the following unit found to be appropriate for the purposes of collective bargaining:

All automobile salesmen employed by the Employer at its facility located at 1401 East 75th Street, Chicago, Illinois, excluding office and plant clericals, automobile mechanics, parts department employees, employees who are members of other labor organizations, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing its employees, or unlawfully discriminating against them in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which it is deemed will effectuate the policies of the Act:

(a) Upon request resume collective bargaining with the aforesaid Union concerning hours, wages, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Chicago, Illinois, facility copies of the attached notice marked "Appendix."[14] Copies of said notice, on forms provided by the Regional Director for Region 13, shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director, in writing, within 20 days from the receipt of the Trial Examiner's Decision, what steps have been taken to comply herewith.[15]

---

[11] *Southern Wipers, Inc.,; Viking Lithographers, Inc., supra*

[12] The dismissals of Cases 13–RD–796 and 13–RD–317

[13] In the event no exceptions are filed as provided by Sec 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided in Sec 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes

[14] In the event that the Board's 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"

[15] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read. "Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith"

APPENDIX

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

WE WILL bargain with American Federation of Professional Salesmen as the exclusive bargaining representative of all our employees in the following bargaining unit:

All automobile salesmen employed by the Employer at its facility located at 1401 East 75th Street, Chica-

go, Illinois, excluding office and plant clericals, automobile mechanics, parts department employees, employees who are members of other labor organizations, professional employees, guards and supervisors as defined in the Act.

WE WILL, if an understanding is reached with the above-named Union, embody such understanding in a signed agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce any of you or unlawfully discriminate against you in the exercise of your rights guaranteed by the National Labor Relations Act.

All of you, our employees, are free to remain, or become, or to withdraw from, or to refrain from becoming members of American Federation of Professional Salesmen, or any other labor organization.

FRED TUCH BUICK
(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, Everett McKinley Dirksen Building, Room 881, 219 South Dearborn Street, Chicago, Illinois 60604, Telephone 312–353–7575.