

Altamil Corporation, Aluminum Forge Division and United Automobile, Aerospace and Agricultural Implement Workers of America, Local 509. Case 21-CA-14107

January 11, 1977

DECISION AND ORDER

BY MEMBERS FANNING, PENELLO, AND
WALTHER

On September 13, 1976, Administrative Law Judge James T. Rasbury issued the attached Decision in this proceeding. Thereafter, the General Counsel and the Charging Party filed exceptions and supporting briefs.

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 attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

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 Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

¹ The General Counsel and Charging Party contend that the Respondent insisted to impasse on an unlawful condition precedent—that Eugene Leonard, the Union's chief negotiator, not be the service representative for Respondent's employees. Although there is some confusion in the record, a preponderance of the testimony demonstrates that Moss, the Respondent's negotiator, sought to make it clear the Company was reserving the right to deny Leonard, or any other union representative, access to the company premises in keeping with the full meaning and intent of the agreed-upon "Representation" clause. While Moss at one time did apparently have some objection to Leonard serving as the representative, his objection never became a condition precedent to negotiating the "Representation" clause and impasse was never reached as Leonard specifically stated that he would not be the service representative, and the parties then agreed to the "Representation" clause.

DECISION

STATEMENT OF THE CASE

JAMES T. RASBURY, Administrative Law Judge: This matter was heard by me in Santa Ana, California, on May

¹ Most of the relevant and significant dates occurring in this matter happened in the year 1975 and unless otherwise indicated, all dates hereinafter shall refer to the year 1975.

² It is interesting to note that the only charge filed in this case deals with the issue of refusal to sign a negotiated collective-bargaining agreement. There was nothing in the original charge relating to surface bargaining. I

27 and 28, 1976.¹ On October 28 a charge was filed by an attorney representing the Charging Party alleging violations on the part of the Altamil Corporation (herein Respondent) of Section 8(a)(1) and (5) of the Act by refusing to execute and implement a negotiated collective-bargaining agreement and that such conduct was for the purpose of discouraging membership in and support for the Union, thus violating Section 8(a)(3) of the Act. On December 17 the Regional Director issued a complaint alleging the Respondent had refused to bargain in good faith since October 27 by engaging and continuing to engage in dilatory and evasive tactics and surface and bad-faith bargaining. On the same day, December 17, the Regional Director advised the Charging Party, with a carbon copy to the Respondent, that he was refusing to issue a complaint on that portion of the charge dealing with the allegation that the Employer had refused to execute an agreed-upon collective-bargaining contract, because the investigative evidence failed to establish that a mutual agreement had been reached by the parties.² On February 16, 1976, the Charging Party's appeal to the General Counsel for failure to issue a complaint on the theory that the Respondent had failed to sign an agreed-upon contract was dismissed by the appeals section of the General Counsel's office. (See Resp. Exhs. 1(a) and 1(b).)

All parties were afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Based upon the entire record, including the briefs filed on behalf of the General Counsel and the Respondent, and upon my observation of the demeanor of the witnesses, I hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation engaged in the business of manufacturing and selling aluminum products from its Santa Ana, California, plant. During the past calendar year, Respondent has in the normal course and conduct of its business operations shipped and sold goods valued in excess of \$50,000 directly to customers located outside the State of California. On the basis of this admitted jurisdictional data, I find the Respondent to be an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 509 and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) herein called the Union, are labor organizations within the meaning of Section 2(5) of the Act.

have not regarded this as a fatal defect inasmuch as the Board and courts have held that additional allegations of violations of the Act may be set forth in the complaint provided the added alleged violations grew out of the investigation of the basic incident set forth in the charge. *Fant Milling Company*, 360 U.S. 301 (1959); *Kohler Company*, 220 F.2d 3 (C.A. 7, 1955).

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

On October 11, 1974, a majority of the employees of Respondent by a secret ballot election conducted under the supervision of the Regional Director for Region 21 of the National Labor Relations Board designated and selected the Union as their representative for the purpose of collective bargaining and on February 27, the Board certified the Union as the exclusive collective-bargaining representative by virtue of Section 9(a) of the Act for all of the Respondent's employees in the following appropriate bargaining unit:

All production and maintenance employees, press shop employees, die shop employees, quality control employees, secondary or repair employees, shipping and receiving employees, warehouse employees, maintenance department employees, and leadmen employed by Respondent at its facilities located at 502, 516, and 528 East Alton Street, Santa Ana, California; excluding all other employees, production control employees, office clerical employees, professional employees, engineering department employees, guards, and supervisors as defined in the Act.

B. *The Early Negotiating Sessions*

Prior to the filing of the instant charge in this case, representatives of the Respondent and the Union met and engaged in bargaining on 20 separate occasions. The dates of these meetings were as follows: April 9, 18, 25; May 6, 15, 23; June 5, 13, 20, 26; July 8, 17, 22, 24, 29; August 6, 13; September 16, October 8 and 27. The October 27 meeting might very well be disregarded because at this session there was nothing much accomplished, except the Union's insistence to the Respondent that a contract had been negotiated and they were there to sign the completed agreement.³ It is necessary to go back to the October 8 meeting to ascertain just what had been accomplished up to that point in order to evaluate the Respondent's conduct after that date. However, in order to determine whether or not Respondent has engaged in evasive, dilatory tactics indicative of surface bargaining in order to avoid reaching agreement on a completed contract, we must consider the total conduct of both parties from the beginning. Bargaining is a two-way street.

While the evidence indicates that the parties were in agreement on some 24 separate contract articles, the discussion on October 8 was concerned with the important subjects of union security, check off (the manner in which dues would be collected), wages, sick leave and bereavement leave. In addition, it is clear from the evidence that the parties had not yet agreed on an effective date of the contract, and there was a serious dispute, or difference of minds, regarding the length of the contract and a contract article titled "Assignment of Overtime."

It should be noted that Attorney Moss was the exclusive representative for the Respondent at all negotiating ses-

sions and with one exception, the September 16 meeting, Eugene Leonard was the exclusive spokesman for the Union after May 15. These two individuals were the only witnesses to testify and, while I believe each endeavored to relate truthful facts to the best of his ability, I am of the opinion that where there is a serious conflict Moss' testimony is the more accurate of the two. The following testimony by Moss, regarding the wind-up of the October 8 negotiating session, is rather revealing:

When we finished this Gene [Leonard] said, "Well, are you prepared to change your position on anything?"

I said, "No."

He said, "All right, then I want to go caucus with my people and see where we stand on these items."

I guess they caucused, oh, about 30 minutes and then we resumed the negotiations.

Gene said that they were not willing to accept the company's proposals and that since certain of the proposals had been made solely for the purpose of reaching agreement that day, he was now withdrawing them from the table and now reinstituting other proposals and he stated that for the purpose of — he then stated he now wanted a complete union shop.

I told him, "No, that is not acceptable."

He then said he wanted a full 7 and a half percent as of the effective date and an additional 2 and a half percent thereafter and we then got into a discussion concerning another matter, that is the increase that the company had given and I said, obviously, we are not communicating with each other and he said no. Then we had some discussion and he said, when we finished with it, he said, "All right, you understand what I mean, Herb, we want a full 7 and a half percent as of October 1 and all other benefits to be effective that date and another 2 and a half percent six months thereafter."

I said, "That is not acceptable."

He said, "Well, that's what we want."

I said, "I hear what you want. That is not acceptable."

He also said that he was now reinstituting his demand concerning the wage spreads and was reinstituting the demand concerning the original demand, for sick leave and the original demand for bereavement.

I also indicated my position was the same with respect to those and I said, "Have you anything further?"

He said, "No."

I said, "I don't have anything further."

He said, "Where do we go from here?"

I said to him, "I don't know. I guess this is where I stand."

He said, "I guess I will have to go back to my membership, report to them where we stand in the negotiations and then let them see what they want to do," and he said that he was going to seek strike authorization, would that make any difference.

I said, "No, you do whatever you have to do and I will do whatever I have to do."

³ As earlier indicated, this was the thrust of the Union's charge initially but both the Regional Director's office and the appeals section of the

General Counsel found that the parties had not completed a mutually agreeable contract.

This, then was the status of the negotiations as the meeting of October 8 concluded. As earlier indicated herein, the meeting of October 27 amounted to nothing more than a confrontation between the two parties because the Union felt a contract had been concluded and they wanted to sign it. Also, as earlier indicated herein, both the Regional Director of Region 21 and the Appeals Section of the General Counsel's office in Washington, D.C., agreed that a contract had not been concluded, and thus Respondent was not in violation of the Act. The complaint alleges only that the Respondent has engaged in dilatory and evasive tactics since on or about October 27. We must turn our attention, then, to what has transpired between the parties since that date.

C. The Conduct of Respondent Since October 27

There have been four meetings between the parties. These were held on: November 18, 24; December 18; and February 6, 1976.

On November 13, Moss sent a letter to Eugene Leonard which appears in the record as General Counsel's Exhibit 10, and contained the following language:

Gentlemen:

I have been informed by the NLRB that no merit was found to your charge that my client, Aluminum Forge, refused to execute an agreed upon contract. At our last meeting the union refused to engage in any negotiations but insisted that it would only sign a contract. In light of the findings of the regional office, it would appear that you are under a continuing obligation to negotiate with the company. The company hereby requests that you resume the negotiations which the union terminated. If you wish to meet again for the purpose of concluding a contract, I am available for an immediate negotiations sessions [sic].

Unless I hear from you within five (5) days, I shall assume the union is continuing to refuse to negotiate.

Yours very truly,

On November 14, Moss sent a letter to the union negotiator containing the following language:

Gentlemen:

At our last meeting, I mentioned that because the union was dropping its check-off demand, I intended to submit a proposal restricting the collection of union dues on company premises. Because the union refused to participate in negotiations, I never had the opportunity to present my written proposals. Although I had the written proposals with me, I did not present them because the union refused to negotiate or consider anything other than the execution of a collective bargaining agreement.

I am herewith enclosing the proposals which I would have presented if afforded the opportunity to do so at the October 27 meeting. The company also reserves the

right to submit additional and further proposals if the union elects to resume negotiations.

Yours very truly,

Attached to the above-quoted letter were two enclosures. One of these clauses dealt with the Union's right of access to the plant for purposes of grievance or complaint investigation, and the other dealt with the limitation of dues collection to nonworking time on the company premises. The enclosures appear in the record as General Counsel's Exhibits 12 and 13. A meeting was arranged for November 18 and these two exhibits are marked with the initials TOK (tentatively okay) with the date of November 18, 1975. Leonard testified that the two clauses were agreed to at the November 18 meeting.

Also at the November 18 meeting, there was discussion of the article titled "Assignment of Overtime" which proposal, as presented to the Union on November 18, 1975, appears in the record as General Counsel's Exhibit 15. There was also a proposal presented by the Company regarding effective date and term which reflected that the effective date would be as of the date executed by the parties, and to remain in full force and effect until June 30, 1976. Apparently, there was also agreement between the parties that, in the event a contract was executed, the Union would withdraw any pending charges against the Respondent (see G.C. Exh 17).

At the next negotiating session on November 24, the parties discussed what appears to be a paragraph in an article relating to the amount of wages to be paid an employee participating in the adjustment of a grievance. The Charging Party contended that agreement had been reached sometime as early as June or July that the Company would pay for an employee's lost time. However, this was disputed by the Respondent and there was no written evidence introduced indicating that the matter had previously been concluded. There is also a contention by the Charging Party that at either the negotiating meeting of November 18 or 24 the Respondent insisted that Leonard not be the service representative for the Union in the administration of the contract. It was also at the November 24 meeting that the Respondent explained that with regard to the "Assignment of Overtime" article, that it would like to change the word "beyond" in the last paragraph, lettered "F," to "before and after." It was also in the November 24 negotiating session that Respondent raised a question regarding the interpretation of the word "displacement" in the article entitled "Work Assignments."

Leonard testified that Moss had explained to him, "that he [Moss] had reviewed the language with the corporation attorney, and that the corporation attorney had went over the language with him and had suggested to him that, in some form, that language ought to be corrected, or changed, or eliminated, or whatever."

On December 16, Moss wrote the following letter to Eugene Leonard which appears in the exhibit file as General Counsel's Exhibit 19:

Gentlemen

On Thursday, December 11, 1975, I telephoned the union and left word for either Mr. Leonard, Laster, or Cervantes to telephone me. Mr. Cervantes returned my call. I explained to him that I was leaving on a two week

vacation beginning Saturday, December 20, and if the union wished to sign a contract before that time I was prepared to meet with its representatives at once. I outlined the following proposal to Cervantes:

1. Term of contract — January 1, 1976, through December 31, 1976.
2. Union would accept company proposal on payment of employee time in grievance procedure.
3. Union would accept last company proposal on assignment of overtime except paragraph C would be changed from 2, 3, 4, and 5 times to 3, 4, 5, and 6 times.
4. The parties should attempt to define the precise application of the term "displacement."

I informed Cervantes that I was prepared to meet and negotiate with respect to the above offer but stressed that time was of the essence. After briefly discussing the above terms, Cervantes stated that he would have to discuss my proposal with the other union agents. Either he or someone else would call me back later that day or at the latest the next day.

Having received no response from the union, I telephoned on Monday, December 15 and spoke with Bob Laster. I explained to him that I had made a proposal which could wrap up negotiations. Laster stated that Leonard was in charge of negotiations. Laster said he would contact Leonard and have Leonard telephone me.

As of 5:00 p.m. today, no representative of the union has called me back and, therefore, I assume the union is not interested in resuming negotiations or signing a contract at this time. I am still available to meet on Thursday, December 18 if the union wishes to negotiate.

Yours very truly,

At the December 18 negotiating session, the parties reached agreement regarding the term "displacement" in the "Work Assignment" article, and agreed on the time to be paid an employee participating in the grievance procedure. With only the effective date, the term, and the "Assignment of Overtime" article as unresolved issues, the Employer offered a 1-year contract beginning January 1, 1976, through December 31, 1976, and, when that was found objectionable, Respondent offered to sign a contract effective December 19 for a 1-year period, but without the agreed-upon holiday pay for December 24 and December 31.⁴ When this was objected to by the Union, the Company offered to sign a 1-year contract effective December 19 with December 24 being a paid holiday, and December 31 being either a nonpaid holiday, or a working day on which the employees would receive regular pay, whichever the employees preferred. When it was suggested that with a 1-year contract beginning December 19 it might be possible for the Respondent to avoid payment of the Christmas and New Year's Eve holidays in 1976, the Respondent again offered to further compromise by having the contract run from December 19, 1975, through December 31, 1976, which would insure the paid holidays for the year 1976.

⁴ A portion of General Counsel's argument is that Respondent reneged on a 1-year agreement.

Leonard's refusal to accept the last proposal was explained by Moss as follows:

Leonard said: "Well, my relationship with the Company's employees, this membership, is somewhat strained. It ain't the best, and if I have got to go back and tell them the Union agrees that we weren't going to get New Year's Eve and Christmas Eve as paid holidays, my relationship with the members is just going to be that much worse."

On December 19 (see G.C. Exh. 20), Moss wrote to Leonard enclosing copies of the work assignment and grievance procedure articles which had been agreed to on December 18, which letter had the following closing paragraph:

This means the only remaining items on which there is still disagreement are: (1) effective date — term, and (2) assignment of overtime.

On January 13, 1976, Eugene Leonard wrote the following letter to the Respondent's representative, Mr. Moss:

Dear Herb:

After reviewing the contents of your letter of December 19, 1975, I would like to advise you that the language accurately reflects the tentative Agreements on the Grievance Procedure and Work Assignment articles that were reached during our meeting on December 18, 1975.

However, I wish to disagree with your list of "remaining items." The Union's position remains the same as taken earlier:

- (1) The membership ratified the Company's last proposal of October 8, 1975, and it is that language that should be part of the parties Agreement.
- (2) That the effective date of the Agreement should have been no later than December 19, 1975, and the termination date be one (1) year from that date.

However, in an attempt to settle this matter with you once and for all, the Union would like to make the following proposal:

- (1) The parties sign the Agreement (including your proposal of October 8, 1975 on Assignment of Overtime) with an effective date to be concurrent with the receipt of this letter, and to remain effective as here after discussed.
- (2) The parties sign a special agreement, agreeing to submit the question of the effective date to final and binding arbitration.
- (3) The parties would use basically the same Arbitration Procedure as was agreed upon in negotiations.
- (4) The issue to be submitted would be as follows:

Should the effective date of the parties Agreement be December 19, 1975, and expire one (1) year from that date, or should it be the date of the actual signing with a termination date of a year later.

Please advise me at the earliest possible date, as to your position concerning the above.

Very truly yours,

Moss responded to Leonard's letter on January 16, 1976, in which he indicated that he was unwilling to submit the remaining items to arbitration, but that he was willing to meet and negotiate on the items remaining (G.C. Exh. 22).

Apparently Leonard never received Moss' letter of January 16, and on January 26, 1976, Leonard again wrote to Moss enclosing a copy of his January 13 letter (G.C. Exh. 23).

Moss again responded to Leonard on January 28, enclosing a copy of his January 16 letter, but, more importantly, offering to meet and negotiate the following week if Leonard wished to set up a meeting (G.C. Exh. 24).

This was followed by a further letter from Leonard generally denying that he had been unavailable, but, more importantly, arranging for a meeting on February 6.

At the meeting on February 6, starting with fresh copy the parties agreed to and initialed 29 separate articles, and an agreement that after executing a signed contract, the Union would withdraw the unfair labor practice charges pending with the Board (see G.C. Exh. 26). These agreed-upon articles do not include effective date, term or an article captioned "Assignment of Overtime."

Analysis

As I understand the General Counsel's evidence and arguments as submitted in his brief, the thrust of the case to support surface bargaining by the Respondent centers in three areas of conduct after October 28: (1) Respondent retracted from an agreement to execute a contract for a 1-year period; (2) Respondent sought to prevent Leonard from being the service representative for Respondent's employees; (3) changing and making more onerous certain provisions of the "Assignment of Overtime" article than that which had previously been agreed to.

While the surface-bargaining type cases are perhaps the most difficult for the General Counsel to prove, because of the extreme difficulty of recapitulating what transpired in a series of meetings over an extended period of time, nevertheless, the law requires that the General Counsel prove his case by a preponderance of the evidence and for that reason, I feel compelled to recommend a dismissal of the complaint in this instance.

With regard to the contract duration, the evidence indicating that Respondent had ever agreed to a 1-year

contract consisted only of Leonard's recollection of events that transpired at a time when he was not the primary negotiator.⁵

On the other hand, while there was written evidence offered to show that Respondent sought a contract of approximately 7 months' duration as late as November 18, nevertheless, there was undisputed testimony that in the meeting of February 6 the Respondent made two or three different offers regarding suggested compromises on the effective date and the duration of the contract. There is insufficient proof, in my opinion, to show that the Respondent withdrew or substantially retracted its position regarding effective date or duration after the October 28 meetings from commitments that had been made prior to that time; nor were the offers which it made so ridiculous or absurd as to indicate that it was seeking to avoid reaching agreement on a contract.

The General Counsel accurately cites what I believe to be Board law when he argues that it is an unfair labor practice for one party to insist to the point of impasse that the other party agree to language regarding a nonmandatory subject of bargaining.⁶ Additionally, insisting to impasse on an unlawful condition precedent is bad-faith bargaining.⁷ Nevertheless, I am not convinced from all of the testimony that Moss sought to have the Union agree that Leonard would *not be* the service representative, but rather Moss sought at all times to make it quite clear that the Company was reserving the right to deny him, or any other union representative, access to the company premises in keeping with the full meaning and intent of the agreed-upon contract clause entitled "Representation." (See G.C. Exhs. 26 and 12.)

The remaining article which General Counsel contends Respondent sought to retreat from or make sufficiently more harsh as to tend to prevent agreement relates to the "Assignment of Overtime." A retracing of the negotiations regarding this article indicates that there were many proposals placed on the table but never any complete agreement, as reflected by Respondent's Exhibits 2, 4, 5, 6, and 7 and General Counsel's Exhibits 4, 5, and 15. There is nothing in the record to indicate that there was ever any agreement on the complete article and the thrust of the General Counsel's argument is that the minor changes in this particular article were tending to prevent the parties from reaching an agreement. I am unable to agree that the changes sought were so regressive as to be indicative of efforts by the Respondent to prevent agreement, or that the Respondent exhibited a totally uncompromising attitude regarding the parties' differences in this article. Certainly the word "beyond" as used in the article is a weasel word needing clarification.⁸

Section 8(d) of the Act sets forth the obligation of the parties to bargain in good faith.⁹ The duty to bargain in good faith is an "obligation . . . to participate actively in

cases arise from ridiculous situations), suppose an employee worked the 7 a.m. to 3 p.m. shift in a continuous three-shift operation, and after going home was called and asked to come back in at 12 midnight. Would he be working "beyond" his shift or "before" his shift? Seeking the answer to such a simple illustration is often made more complicated by contracts that spell out the workday which may or may not correspond to the calendar day

⁹ The relevant portion of Sec. 8(d) reads as follows. "For the purposes of

⁵ According to the testimony of Mr. Leonard, Paul Bluto was the Union's spokesman on the date this agreement was supposed to have been made but Mr. Bluto did not testify.

⁶ *North Central Illinois Laborers' District Council (The Associated General Contractors of Illinois)*, 212 NLRB 11 (1974).

⁷ *Moore of Bedford, Incorporated*, 187 NLRB 721 (1971).

⁸ As a ridiculous illustration (but most contract disputes and arbitration

the deliberations so as to indicate a present intention to find a basis for agreement”¹⁰ This implies both “an open mind and a sincere desire to reach an agreement”¹¹ as well as “a sincere effort . . . to reach a common ground.”¹² The presence or absence of intent “must be discerned from the record.”¹³ Except in the cases where the conduct fails to meet the minimum obligation imposed by law or constitutes an outright refusal to bargain,¹⁴ all the relevant facts of a case are studied in determining whether the employer or union is bargaining in good or bad faith, *i.e.*, the “totality of conduct” is the standard through which the “quality” of negotiations is tested.¹⁵ (The language just set forth has been drawn from *The Developing Labor Law*, edited by Charles J. Morris and published by the Bureau of National Affairs in 1971, because it succinctly states all of the applicable and relevant factors in resolving the question of good-faith bargaining.)

Having carefully reviewed the “totality of conduct” of the representatives of the Employer and the Union in this matter, I find it most unfortunate and disconcerting that the employees have been deprived of a collective-bargaining contract since their selection of a collective-bargaining agent in October 1974, but I am unable to place that blame solely at the feet of the Respondent. Respondent has unquestionably bargained toughly and it may be a bitter pill to swallow, but the evidence fails to exhibit a desire on

this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.”

¹⁰ *N.L.R.B. v. Montgomery Ward & Co.*, 133 F.2d 676, 686 (C.A. 9, 1943).

¹¹ *Id.* at 686. *N.L.R.B. v. Truitt Mfg. Co.*, 351 U.S. 149 (1956)

¹² *N.L.R.B. v. Herman Sausage Co.*, 275 F.2d 229 (C.A. 5, 1960)

¹³ *General Electric Co.*, 150 NLRB 192, 194 (1964).

the part of Respondent to delay, evade, procrastinate, or postpone its bargaining obligation. I shall recommend dismissal of the complaint in its entirety with the admonition that the principals return to the bargaining table and conclude an agreement.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 509 and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), are, and each of them is, labor organizations within the meaning of Section 2(5) of the Act.

3. The General Counsel has failed to prove by a preponderance of the evidence that the allegations set forth in the complaint are meritorious and worthy of being sustained.

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

ORDER¹⁶

The complaint is hereby dismissed in its entirety.

¹⁴ With the important caveat that “intent” may not even be an issue if the outward conduct amounts to a *de facto* refusal to bargain. *N.L.R.B. v. Benne Katz, etc., d/b/a Wilhamsburg Steel Products Co.*, 369 U.S. 736 (1962).

¹⁵ The “totality of conduct” doctrine, generally, stems from *N.L.R.B. v. Virginia Electric and Power Company*, 314 U.S. 469 (1941).

¹⁶ 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, 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.