Allen W. Bird II, Receiver for Caravelle Boat Company, a Corporation, and Caravelle Boat Company *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local Union No. 1000. Case 26–CA–5617

January 24, 1977

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS JENKINS AND WALTHER

Upon a charge duly filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local Union No. 1000, on June 5, 1975, as amended on July 21, 1975, and October 2, 1975, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 26, issued a complaint on July 22, 1975, as amended on October 10, 1975, against Allen W. Bird II, Receiver for Caravelle Boat Company, a Corporation, and Caravelle Boat Company, hereinafter referred to jointly as Respondents, and individually as Respondent Bird and Respondent Caravelle. Such complaint alleges that Respondents have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended. The Respondent filed an answer on July 31, 1975, as amended on October 17, 1975, denying the commission of unfair labor practices.

On February 9, 1976, the parties executed a stipulation of facts, waived a hearing before an Administrative Law Judge and the issuance of an Administrative Law Judge's Decision, and submitted the case to the National Labor Relations Board for findings of fact, conclusions of law, and an order based upon a record consisting of the charges, the complaint and notice of hearing, amended complaint and notice of hearing, answer and amended answer to the complaint, and the stipulation of facts.

On March 24, 1976, the Board rejected the stipulation of the parties and remanded the proceedings to the Regional Director for appropriate action. Thereafter, on April 12, 1976, the General Counsel filed a motion to reopen and reconsider and a supplemental stipulation of facts entered into by the parties on April 9, 1976.

On May 21, 1976, the Board granted the General Counsel's motion, approved the stipulation and supplemental stipulation of facts, ordered that the proceedings be transferred to the Board, and granted permission and time for the filing of briefs. Thereafter, the General Counsel and Respondents filed 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.

Upon the basis of the original and supplemental stipulations, the briefs, and the entire record in this proceeding, the Board makes the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent Caravelle is an Arkansas corporation engaged in the manufacture of pleasure boats. During the past 12 months, Respondent Caravelle sold and shipped products valued in excess of $50,000 to, and purchased and received products valued in excess of $50,000 directly from, points outside the State of Arkansas.

The parties stipulated and we find that Respondent Caravelle is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We also find that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated and we find that International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local Union No. 1000 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 September 28, 1968, 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 truckdrivers, employed at Caravelle Boat Company's Jacksonville, Arkansas, location, excluding office clerical employees, professional employees, salesmen, guards, and supervisors as defined in the Act.

On July 21, 1975, all production ceased at Respondent Caravelle's Jacksonville, Arkansas, facility. On September 23, 1975, a petition for voluntary bankruptcy was filed by Respondent Caravelle in the United States District Court for the Eastern District of Arkansas, Western Division. On September 23 and October 21, 1975, Respondent Bird was appointed receiver and trustee in bankruptcy, respectively. Since September 23, 1975, Respondent Bird has

exercised control over the assets of Respondent Caravelle. On October 27, 1975, the principal assets were sold to Marquis Boats, Inc.

Prior to the expiration of the most recent collective-bargaining agreement, on November 1, 1974, Respondent Caravelle advised the Union by letter dated August 30, 1974, that "it is terminating, at its expiration date, November 1, 1974, the collective bargaining agreement dated February 10, 1972." By letter also dated August 30, 1974, the Union notified Respondent Caravelle of its intent to "modify and amend our collective bargaining agreement for the purpose of negotiating proposed changes such as wages, hours of work, and other conditions of employment." In its letter, the Union advised that it would be in touch at a later date in order to work out a mutually satisfactory time to begin contract negotiations.

Thereafter, the parties entered into contract negotiations on October 10, 1974. Other negotiating sessions were held on October 17, 25, and 30; November 1, 8, 12, 18, 21, and 25; and December 2, 6 and 10, 1974, and January 3, 1975. Unable to agree to the terms of a collective-bargaining agreement, Respondent Caravelle, by letter at the January 3, 1975, meeting, notified the Union that it was "giving consideration to discontinuing its woodshop, canvas, upholstery and tooling operations at Jacksonville." It further advised that, if there should be a discontinuance of an operation or department, it was considering permitting affected employees to move, on the basis of seniority, to another classification in which the particular employee had previously proven himself qualified. In addition, the Company was considering giving employees, laid off as a result of any discontinuance, preferential hiring over applicants not currently working for Caravelle or not holding seniority. The letter invited the Union to discuss any aspect of the matter. During this January 3 meeting, the Union protested implementation of a wage increase and an incentive pay plan without further bargaining. The Union also requested the details of the incentive plan.[1]

Respondent Caravelle, by letter dated January 14, 1975, notified the Union of its intention to phase out the woodshop, upholstery, and canvas operations at Jacksonville and restated its position regarding the employees' right to move into other job classifications and employees' rights regarding preferential hiring. On January 31, 1975, Respondent Caravelle moved its woodshop and upholstery operations from its Jacksonville, Arkansas, facility to its subsidiary's facility in Conway, Arkansas. This resulted in the layoff of various employees.[2]

On or about the dates set out hereinafter, Respondent Caravelle made the following changes in the terms and conditions of employment of its employees without prior notice to, or bargaining with, the Union:

(a) Prior to January 3, 1975, Respondent Caravelle recalled employees according to seniority. Such recall was accomplished by certified letter to the employee in question, with a copy to the Union. After January 3, 1975, recalls were based on seniority, work performance, and past attendance records rather than seniority alone; and, after March 6, 1975, employees were notified of their recall by telephone without notice to the Union.

(b) During the week of March 17, 1975, Respondent Caravelle's supervisors announced to employees that it would no longer grant a paid holiday on March 28, 1975, Good Friday, as theretofore. Employees were required to work on March 28, 1975, and were paid at their regular rate of pay rather than as called for in the collective-bargaining agreement.

(c) On May 21, 1975, Respondent Caravelle posted a notice at its Jacksonville, Arkansas, facility notifying its employees that May 26, 1975, Memorial Day, would be a scheduled workday. Memorial Day had previously been a paid holiday pursuant to the recently expired collective-bargaining agreement. Employees were required to work on May 26, 1975, at their regular rate of pay rather than as called for in the collective-bargaining agreement.

(d) Prior to May 19, 1975, Respondent Caravelle's Conway facility closed and all work previously performed at Conway was transferred to the Jacksonville facility. On May 19, 1975, Respondent Caravelle transferred eight employees from the wood and upholstery shops at its subsidiary's Conway facility to the wood and upholstery shops at its Jacksonville facility. Employees on layoff from the Jacksonville wood and upholstery shops were not recalled.

(e) As of January 20, 1975, the rate of pay for Respondent Caravelle's employees in its woodshop was $2.99 per hour and for employees in its upholstery and canvas shops was $2.84 per hour. Employees transferred from the Conway facility to the Jacksonville wood and upholstery shops on May 19, 1975, retained the $3.06 per hour rate of pay they had received at Conway. On May 26, 1975, the one employee recalled from layoff to Respondent Cara-

[1] Respondent Caravelle had notified the Union by letter dated December 16, 1974, that it was contemplating implementation of wage proposals and an incentive pay plan made during previous negotiating sessions By letter dated January 14, 1975, Respondent Caravelle furnished the Union the information it requested regarding the incentive pay plan and informed it of its intent to implement the wage proposals and incentive pay plan On January 19, 1975, Respondent Caravelle implemented the wage increase and incentive pay plan General Counsel does not allege, nor does he contend, the implementation of the incentive pay plan violated the Act

[2] General Counsel does not contend that the move of the operation is violative of the Act

velle's woodshop was raised from the old rate of $2 per hour to $3.06 per hour. On May 26, 1975, Respondent Caravelle increased the rate of pay of all employees in its canvas shop from the old rate of $2.84 per hour to $3.06 per hour in order to equalize their rate of pay with that received by employees in the wood and upholstery shops.

(f) On June 18, 1975, Respondent Caravelle laid off five employees and recalled them on June 23, 1975. No advance notice was given to the Union, as has been the practice theretofore, regarding this layoff other than posting a list of the laid-off employees on the bulletin board. The layoffs were not made in accordance with past practice, i.e., by seniority.

Following the January 3, 1975, negotiating session, no request for further negotiations was made by either party until May 19, 1975.[3]

Negotiations resumed on May 28, 1975. At this meeting, the Union requested that employees transferred to Respondent Caravelle's Jacksonville facility from the subsidiary's Conway facility be removed and employees then on layoff at the Jacksonville facility be recalled. Respondent Caravelle took this request under consideration and on June 3, 1975, advised the Union that it would not meet this request.

On June 30, 1975, at the request of the Union, the parties met for negotiations. At this meeting, Respondent Caravelle made various contract proposals which were rejected by the Union. There have been no further collective-bargaining sessions since that date.

No proposals of any type were made by Respondent Caravelle to the Union during negotiating sessions concerning the unilateral changes in working conditions set forth in paragraphs (a) through (f) above.

The Union learned of the changes set forth in paragraphs (a) through (f) shortly after the dates on which the changes took place. The Union made no protest over these changes other than at the negotiating session on May 28, 1975, when it requested that the employees transferred to Respondent Caravelle's Jacksonville facility from its subsidiary's Conway facility be removed and employees on layoff at Jacksonville be recalled.

B. *Contentions of the Parties*

The General Counsel contends that by unilaterally changing the method of recalling employees, eliminating two paid holidays (Good Friday and Memorial Day), transferring employees from its subsidiary's Conway facility without recalling laid-off unit employees, granting a pay increase to employees in its canvas, wood, and upholstery shops and laying off employees without notice to, and consultation with, the Union, Respondent Caravelle violated Section 8(a)(5) of the Act. Respondents argue that an impasse had been reached in bargaining, therefore, Respondent Caravelle was free to make unilateral changes as to wages, hours, and working conditions. They further contend that the Union waived its right to bargain about the unilateral changes by its failure to protest or request bargaining, despite knowledge of the unilateral changes. In addition, Respondents argue that because of the inaction of the Union between January 3 and May 19, 1975, they had reasonable ground to believe that the Union had abandoned its representation of the unit.

C. *Analysis and Conclusions*

The parties hereto have stipulated that the actions of Respondent Caravelle were unilaterally taken and "without prior notice to or bargaining with the Union." It is axiomatic that unilaterally changing the method of recalling employees is violative of the Act.[4] So, too, is the elimination of paid holidays,[5] transferring employees without recalling those on layoff,[6] granting a pay increase to employees,[7] and laying off employees without notice to the Union.[8] Respondent Caravelle defends its actions by asserting that the parties bargained to impasse, thus freeing it to make any unilateral changes.

The general criteria for determining impasse are set forth in *Taft Broadcasting Co., WDAF AM–FM TV,* 163 NLRB 475, 478 (1967), enfd. 395 F.2d 622 (C.A.D.C., 1968), where the Board held:

> An employer violates his duty to bargain if, when negotiations are sought or are in progress, he unilaterally institutes changes in existing terms and conditions of employment. On the other hand, after bargaining to an impasse, that is, after good-faith negotiations have exhausted the prospects of concluding an agreement, an employer does not violate the Act by making unilateral changes that are reasonably comprehended within his pre-impasse proposals.
>
> Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of

[3] The only contact between the parties from January 3 to May 19, 1975, were various letters, copies of layoff notices, copies of warnings to employees, and letters offering recall to certain employees

[4] *Hamilton Electronics Company,* 203 NLRB 206 (1973)

[5] *Newberry Equipment Company, Inc*, 157 NLRB 1527, 1528 (1966)

[6] See, e g, *Weltronic Company,* 173 NLRB 235 (1968), *The University of Chicago,* 210 NLRB 190 (1974).

[7] *Everbrite Electric Signs, Inc*, 222 NLRB 679 (1976), *Massey-Ferguson, Inc*, 184 NLRB 640 (1970)

[8] *Shamrock Dairy, Inc, Shamrock Dairy of Phoenix, Inc, and Shamrock Milk Transport Co*, 124 NLRB 494, 498 (1959)

the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

The parties stipulated the dates of each bargaining sessions, however, the stipulation includes none of the factors enumerated in *Taft Broadcasting Co., supra.* Indeed, the parties do not stipulate as the substance of any of the negotiating sessions, the importance of any issue or issues, or the understanding of the parties as to the state of the negotiations.

The number of bargaining sessions, a hiatus, and failure to reach agreement, without more, do not indicate that an impasse has been reached. Moreover, assuming *arguendo* the existence of an impasse, it is well established that an employer can only make unilateral changes in working conditions consistent with its rejected offer to a union after bargaining has reached an impasse. *Royal Himmel Distilling Company,* 203 NLRB 370, fn. 3 (1973). It is clear that the changes made by Respondent Caravelle had never been bargained about with the Union. The parties stipulated that "no proposals of any type were made by Respondent Caravelle to the Union during the negotiating sessions between such parties concerning the unilateral changes in wages and working conditions . . . ." Accordingly, we find Respondent's defense of the existence of an impasse without merit.

Respondent Caravelle also argues that even if no impasse existed its actions would not be violative of the Act because the Union failed to protest its actions or request bargaining, thereby waiving its right to complain. The Union learned of Respondent Caravelle's unilateral changes shortly after they took place. However, the Union did not protest these changes other than at the negotiating session on May 28, 1975, when it requested that employees transferred from the Conway facility be removed and employees on layoff at Jacksonville be recalled.[9] Thereafter, on June 5, 1975, the Union filed the instant charge, as amended on July 21 and October 2, 1975.

The Board and the courts have repeatedly held that a waiver of bargaining rights by a union will not be lightly inferred and must be clearly and unequivocally conveyed.[10] Here, the record does not establish either a waiver or acquiesence by the Union. Silence does not constitute a clear and unequivocal manifestation of the Union's intention to waive its right to complain about such action. *J. H. Bonck Company, Inc.,* 170 NLRB 1471, 1479 (1968); *Bierl Supply Company,* 179 NLRB 741 (1969). Indeed, with respect to Respondent's transfer of employees from its Conway facility without recalling laid-off unit employees, the Union did protest this action at the negotiating session of May 28, 1975. Furthermore, when the Union became aware of the contemplated changes, the decision to make them had already been reached and, in some cases, the changes had already been implemented. Any protest by the Union would therefore have been futile. See, e.g., *Insulating Fabricators, Inc., Southern Division,* 144 NLRB 1325, 1332 (1963). And, finally, the original charge in this proceeding was filed very shortly after most of the changes occurred. Under these circumstances, the inaction by the Union cannot be construed as a waiver of its statutory right of prior consultation with respect to changes in wages and working conditions. The cases cited by our dissenting colleagues in support of his contrary conclusion are, in our opinion, distinguishable on their facts.

Lastly, Respondent argues that it had reasonable grounds to believe that the Union had abandoned its representation of the unit because of the hiatus in bargaining between January 3 and May 19, 1975, a period of approximately 4 months. Before January 3, 1975, meetings were held over a period of 3 months on the following dates: October 10, 17, 25, and 30, 1974; November 1, 8, 12, 18, 21, and 25, 1974; December 2, 6, and 10, 1974; and January 3, 1975.

On May 19, 1975, the Union requested resumption of negotiating. Thereafter, a negotiating session was held on May 28, 1975. The parties met again and negotiated on June 30, 1975. There have been no sessions since that date.

Since 1968, the Union has been the collective-bargaining representative for Respondent Caravelle's Jacksonville employees and has negotiated successive collective-bargaining contracts. Between October 1974 and January 3, 1975, the Union had participated in 14 bargaining sessions with Respondent Caravelle. Furthermore, Respondent had corresponded with the Union on matters of union concern at least until March 6, 1975. It is unreasonable to infer in view of the above facts that because of the 4-month hiatus in bargaining between January 3 and May 19, 1975, the Union had abandoned its representative status. Moreover, that Respondent Caravelle did not contemporaneously construe the hiatus as having this effect is evidenced by the fact that, upon receiving the Union's May 19 request for resumption of bargain-

[9] There was a further negotiating session held on June 30, 1975 The parties stipulated that at this meeting Respondent Caravelle made various contract proposals which were rejected by the Union There is no indication of the subject matter of these proposals

[10] *The Timken Roller Bearing Co.* v *N.L.R.B,* 325 F.2d 746, 751 (C.A. 6, 1963), cert. denied 376 U S 971 (1964); *Tide Water Associated Oil Company,* 85 NLRB 1096, 1098 (1949); cf. *American Buslines, Inc,* 164 NLRB 1055 (1967), *Kroehler Mfg Co,* 222 NLRB 1269 (1976)

ing, Respondent Caravelle resumed negotiating sessions with the Union on May 28 and June 30, 1975. Cf *King Radio Corporation,* 208 NLRB 578, 579 (1974); *Harpeth Steel, Inc.,* 208 NLRB 545, 546 (1974).

Inasmuch as we have rejected Respondents' defenses, we find that by unilaterally changing the method of recalling employees, eliminating two paid holidays, transferring employees without recalling those on layoff, granting pay increases to employees, and laying off employees without notice to the Union, Respondents violated Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The acts of the Respondents set forth above, occurring in connection with its operations as described in section I, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. REMEDY

Having found that the Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that they cease and desist therefrom, and take certain affirmative action.

CONCLUSIONS OF LAW

1. Respondent Caravelle is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local Union No. 1000 is a labor organization within the meaning of Section 2(5) of the Act.
3. All production and maintenance employees, including truckdrivers, employed by Respondent Caravelle at Caravelle Boat Company's Jacksonville, Arkansas, location, excluding office clerical employees, professional employees, salesmen, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. Since September 27, 1968, the above-named labor organization has been, and now is, the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. By refusing on or about January 3, 1975, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of the Respondent in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Allen W. Bird II, Receiver for Caravelle Boat Company, a Corporation and Caravelle Boat Company, Jacksonville, Arkansas, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local Union No. 1000 as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees, including truckdrivers, employed at Caravelle Boat Company's Jacksonville, Arkansas, location, excluding office clerical employees, professional employees, salesmen, guards, and supervisors as defined in the Act.

(b) Unilaterally changing the method of recalling laid-off employees without prior notice to, and consultation with, the Union.

(c) Unilaterally suspending Good Friday and Memorial Day as paid holidays without prior notice to, and consultation with, the Union.

(d) Unilaterally transferring employees from its Conway, Arkansas, location without recalling laid-off unit employees who had previously performed such work, without prior notice to, and consultation with, the Union.

(e) Unilaterally granting wage increases to its employees in its canvas, wood, and upholstery shops, without prior notice to, and consultation with, the Union.

(f) Unilaterally laying off employees without prior notice to, and consultation with, the Union.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights protected under Section 7 of the Act.

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

(a) Upon request, bargain collectively with the Union as the exclusive bargaining representative of the Respondent Caravelle's employees in the appropriate unit with respect to wages, hours, and other terms and conditions of employment.

(b) Make the employees whole for any loss of earnings they may have suffered by reason of Respondent Caravelle's unilateral change in the method of recalling laid-off employees, by paying to each a sum of money equal to the amount they would have earned from the date they would have been recalled, less their earnings during said period, to be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(c) Make employees whole for any loss of earnings they may have suffered by reason of Respondent Caravelle's unilateral action in suspending two paid holidays, Good Friday and Memorial Day, it had previously granted, with interest at the rate of 6 percent per annum. *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(d) Make whole any employees or former employees for any loss of pay or other benefits suffered by them by reason of the transfer of employees from Respondent Caravelle's Conway, Arkansas, facility without recalling employees who had previously performed such work at its Jacksonville, Arkansas, facility, with interest. *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Mail a copy of the attached notice marked "Appendix"[11] to all individuals employed by Respondent Caravelle at its Jacksonville, Arkansas, facility from January 1, 1975, to July 21, 1975. Copies of said notice, on forms provided by the Regional Director for Region 26, after being duly signed by Respondent's representative, shall be mailed by the receiver in bankruptcy for Respondent Caravelle to such former employees immediately upon receipt thereof.

(g) Notify the Regional Director for Region 26, in writing, within 20 days from the date of this Order, what steps the Respondents have taken to comply herewith.

MEMBER WALTHER, dissenting in part:

Contrary to my colleagues, I would find that the Union waived its right to bargain regarding the following unilateral changes: (a) altering the method of recalling employees; (b) eliminating March 28, 1975, Good Friday, as a paid holiday; and (c) eliminationg May 26, 1975, Memorial Day, as a paid holiday.

With respect to the change in the method of recalling employees, by letter dated January 14, 1975, Respondent Caravelle notified the Union of its intent to phase out the woodshop, upholstery, and canvas operations at Jacksonville. In its letter, Respondent Caravelle stated that if there should be a discontinuance of an operation or department it was considering permitting affected employees to move, on the basis of seniority, to another classification in which the particular employee had previously proven himself qualified. In addition, employees laid off as a result of any discontinuance, would be given preferential hiring over applicants not currently working for Caravelle or not holding seniority. On January 31, 1975, Respondent Caravelle moved its woodshop and upholstery operations from its Jacksonville facility to its subsidiary's facility in Conway. Employees were laid off.

Prior to January 3, 1975, employees were recalled according to seniority. Employee recalls were effected by a certified letter to the employee with a copy to the Union. After January 3, 1975, recalls were based on seniority, work performance, and past attendance records.[12] After March 6, 1975, the Union ceased to receive copies of the recall notices. Employees were notified of their recall by telephone.

During the week of March 17, 1975, Respondent Caravelle's supervisors announced to employees that it would no longer grant a paid holiday on Good Friday, March 28, 1975. The Union learned of the change shortly after it took place. There are approximately 11 days between the date of notification to employees of the elimination of the holiday and March 28, 1975. The Union did not lodge any protest within that 11-day period nor did it lodge any protest or request bargaining at any time thereafter. While the timespan is different as to Memorial Day, May 26, 1975, Respondent Caravelle posted a notice on May 21, 1975, that Memorial Day would be a scheduled workday. Here, there were approximately 5 days between the announcement and the holiday

[11] 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 read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[12] The Union was furnished with copies of eight letters dated February 26, 1975, one letter dated March 5, 1975, and three letters dated March 6, 1975, notifying employees of their recall

within which the Union could have lodged a protest. Again, no such protest occurred, nor did the Union thereafter protest or request bargaining.

The above-described unilateral changes occurred after 14 bargaining sessions, but before the final two sessions on May 28 and June 30, 1975. At either of the last two sessions, the Union could have protested these unilateral acts. However, it did not do so. It is clear that the method of recalling employees had come to the attention of the Union after the recall process started. Indeed, the parties stipulated that after January 3, 1975, Respondent Caravelle recalled employees based on a method not in accordance with employees' seniority. The Union even received copies of recall notices in February and March 1975. Moreover, it was approximately 6 months after Respondent Caravelle changed its method of recall and approximately 3 months after the Union ceased to receive copies of the notices of recall that it filed unfair labor practice charges. Although the original unfair labor practice charge alleged a general refusal to bargain, the specific allegation with respect to changing the method of recalling employees was not included until the first amended charge of July 21, 1975. Similarly, the elimination of the two paid holidays came to the Union's attention shortly after the change took place, i.e., in March and May 1975. Here, too, this specific allegation was not included until the first amended charge. Despite this, the Union made no request to bargain over the matter nor did it protest Respondent Caravelle's actions. In these circumstances, I would find that by failing to protest or request bargaining the Union effectively waived its right to assert that Respondents' conduct constitutes unilateral action violative of Section 8(a)(5) of the Act. *Motoresearch Company and Kems Corporation,* 138 NLRB 1490, 1492–93 (1962); *Justesen's Food Stores, Inc., Justesen's Rosedale, Inc., and R. J. Agerton,* 160 NLRB 687, 688, fn. 2 (1966); *Hartmann Luggage Company,* 173 NLRB 1254 (1968); and *Coppus Engineering Corporation,* 195 NLRB 595, 596 (1972).

APPENDIX

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

WE WILL NOT refuse to bargain collectively concerning wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local Union No. 1000.

WE WILL NOT unilaterally change the method of recalling laid-off employees without prior notice to, and consultation with, the Union.

WE WILL NOT unilaterally suspend Good Friday and Memorial Day as paid holidays previously granted employees without prior notice to, and consultation with, the Union.

WE WILL NOT unilaterally transfer employees without recalling laid-off unit employees who had previously performed such work, without prior notice to, and consultation with, the Union.

WE WILL NOT unilaterally grant wage increases to employees in the canvas, wood, and upholstery shops, without prior notice to, and consultation with, the Union.

WE WILL NOT unilaterally lay off employees without prior notice to, and consultation with, the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights protected under Section 7 of the Act.

WE WILL, upon request, bargain with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local Union No. 1000 as the exclusive representative of all 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 truckdrivers, employed at Caravelle Boat Company's Jacksonville, Arkansas, location, excluding office clerical employees, professional employees, salesmen, guards, and supervisors as defined in the Act.

WE WILL pay employees for any loss of earnings due to our failure to recall them according to seniority.

WE WILL pay employees for any loss of earnings due to our unilateral suspension of Good Friday and Memorial Day, as paid holidays.

WE WILL pay employees for any loss of earnings due to our failure to recall them when we transferred employees from our Conway, Arkansas, facility to perform work they had previously performed.

ALLEN W. BIRD II

CARAVELLE BOAT COMPANY