Alwin Manufacturing Company, Inc. *and* United Steelworkers of America, AFL–CIO. Case 30–CA–11899

July 28, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

On April 27, 1994, Administrative Law Judge Richard A. Scully issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions[1] and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Alwin Manufacturing Company, Inc., Green Bay, Wisconsin, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] Exceptions were filed only in regard to the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) by unilaterally imposing minimum production standards and by disciplining employees who failed to meet those standards.

Gerald McKinney, Esq., for the General Counsel.
Donald F. Woodcock, Esq., of Cleveland, Ohio, and *Ronald T. Pfeifer, Esq.*, of Green Bay, Wisconsin, for the Respondent.
Donald Schmitt, of Manitowoc, Wisconsin, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge. On a charge filed by United Steelworkers of America, AFL–CIO (the Union) on October 8, 1992, and an amended charge filed on October 26, 1992, the Regional Director for Region 30, of the National Labor Relations Board (the Board), issued a complaint on October 30, 1992, alleging that Alwin Manufacturing Company, Inc. (the Respondent) committed certain violations of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The Respondent filed a timely answer denying that it had committed any violation of the Act.

A hearing was held in Green Bay, Wisconsin, beginning on January 19, 1993, at which all parties were given a full opportunity to participate, to examine and cross-examine witnesses, and to present other evidence and argument. In its answer to the complaint in this matter, the Respondent raised the defense that the collective-bargaining agreement contained a grievance-arbitration procedure, that the alleged violations were the subjects of grievances filed by the Union, and that there should be deferral to the parties' agreed-upon method of resolving disputes under existing Board policies. The Respondent made no formal motion to defer at or prior to commencement of the hearing. Due to a schedule conflict, the hearing was adjourned at the end of the second day, to be resumed on February 1, 1993. In the interim, counsel for the General Counsel filed a motion to dismiss the complaint and defer these matters to the parties' contractual grievance-arbitration procedure. The Respondent opposed the motion. In an order dated January 28, 1993, I found that deferral was appropriate under the criteria established by the Board in *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *United Technologies Corp.*, 268 NLRB 557 (1984), and dismissed the complaint subject to reinstatement should, inter alia, the disputes not be resolved or submitted to arbitration with reasonable promptness. The Respondent filed a request for review of the order with the Board and also submitted a letter from its counsel in which it withdrew its deferral defense and stated that it had determined that it would not promptly submit these matters to arbitration. This was followed by a motion by the General Counsel to reinstate the complaint, reopen the record, and conclude the hearing, which was granted in an order dated February 25, 1993. The Board returned the Respondent's request for review to it as moot and the hearing was resumed and concluded on March 29, 1993.[1] Briefs submitted on behalf of the General Counsel and the Respondent have been given due consideration. On the entire record and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

At all times material, the Respondent was a corporation with an office and place of business in Green Bay, Wisconsin, engaged in the manufacture and nonretail sale of paper towel dispensers and related products. During the calendar year ended December 31, 1991, the Respondent sold and shipped from its Green Bay facility goods valued in excess of $50,000 directly to points outside the State of Wisconsin. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that at all times material the Union was a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Vacation Issue*

Since the early 1960s, the Union has been the excusive collective-bargaining representative of the Respondent's employees in a unit consisting of:

[1] As the deferral defense is no longer being raised by the Respondent, deferral is not warranted. *NCR Corp.*, 271 NLRB 1212, 1213 fn. 7 (1984).

> All production and maintenance employees of the employer at the employer's plant in the greater Green Bay area, Green Bay, Wisconsin, exclusive of office, clerical employees, guards, professional, and supervisors as defined in the Act.

Since that time, the parties have been signatories to a series of collective-bargaining agreements, the most recent of which covers the period from March 1, 1991, through March 1, 1994.

The complaint alleges that the Respondent failed to continue in effect the terms of the collective-bargaining agreement by unilaterally abandoning the vacation scheduling provisions contained therein and by issuing a new procedure which involved permitting the taking of vacation at the Respondent's option and without regard to seniority. The pertinent sections of the agreement state:

> VII. VACATIONS
>
> . . . .
>
> 6. An employee, providing the efficiency of the plant is not impaired, shall be entitled to select his vacation in order of seniority, provided, however, that with reference to the third, fourth, fifth, and sixth weeks of vacation, the third, fourth, fifth, and sixth weeks shall be taken at a time mutually agreeable between the employee and management.
>
> 7. Employees may take vacation by the day if so desired, provided the Company is so notified within two (2) hours of the start of the employees shift.

The evidence establishes that the language of paragraph 6 of article VII has been the same at least as far back as the contract which took effect on March 1, 1985. This was also true of paragraph 7, except that prior to the agreement which took effect on March 1, 1991, employees could take vacation by the day, provided the Company was notified on or before the vacation day, instead of within 2 hours of the start of the shift.

Donald Schmitt is a staff representative for the Union and has had responsibility for contract negotiations and adminstration with respect to the employees in the bargaining unit at the Respondent's plant since about 1978. Schmitt testified that prior to 1991 employees could take a day of vacation by calling in at anytime prior to the end of their shift on that day. During the contract negotiations that year, the company's spokesman complained that employees were abusing vacation by the day by not calling in until near the end of the shift and that the Company had to know early in the day who would be at work in order to plan production. The Company submitted a proposal which would have revised paragraph 7 to read:

> 7. Employees may take vacation by the day at a mutually agreed upon date providing they request the vacation day at least one day in advance of the requested date.

The Union rejected this proposal and offered its own, which resulted in the parties agreeing to the above-quoted language providing that an employee taking vacation by the day had to call in within 2 hours of the start of the shift. Schmitt testified that before 1991 the practice had always been that any employee could take an available day of vacation simply by calling in and requesting it before the end of his shift on that day, that the Company's permission was not needed, and that it could not deny the request. The only change in this practice after 1991 was that the time for requesting the vacation day was limited to within 2 hours of the start of the shift on that day. At no time had there been a limit on the number of employees who could take vacation by the day on a given day.

During a regularly scheduled monthly grievance meeting on June 22, 1992,[2] the Respondent's director of manufacturing, Glenn Thiede, told the Union's committee that the Company had a problem with vacations and that it needed to be able to control the number of people taking vacation at the same time. There was some discussion about this which included concern about how limiting the number of employees who could be off might impact on those who had made vacation plans involving financial commitments. Committee member John Tilly testified that, after speaking with Schmitt, he put in writing what he thought would be acceptable, presented it to Thiede the following day, and told him that any change in vacation policy would have to incorporate such language[3] and be approved by a vote of the membership. The company representatives asked to meet with the committee on June 25 and presented them with a memorandum from Thiede to employees which stated:

> Each week we will post the number of employees that may be granted time off for vacation on any given day from each department which will not impair plant efficiency.
>
> Vacation requests received more than three weeks before the anticipated vacation will be granted on a first come first serve basis according to the current published vacation schedule.
>
> Any requests for vacation inside the three week notification period, will be granted as specified in the contract for any remaining openings.
>
> Vacations will be granted until the vacation schedule is filled. Once filled, no written requests or call-ins will be accepted.

After reviewing the memorandum, the committee members said they could not go along with it. On the following day, June 26, another meeting was held and the committee was shown another memorandum, dated June 25, which provided:

> Each week we will post the number of employees that may be granted time off for vacation on any given day from each department which will not impair plant efficiency.
>
> Vacation requests received more than three weeks before the anticipated vacation, provided a financial commitment has been made to purchase airline tickets or hold a cottage, etc., will be granted on a first come first serve basis according to the current published vacation schedule. Any requests for vacation inside the

[2] All dates are in 1992 unless otherwise indicated.

[3] Tilly's language concerned (a) vacation requests by less senior employees with plans for vacation during July and August involving financial commitments and (b) excluding requests for vacation involving union activity from any limitation.

three week notification period, will be granted as specified in the contract for any remaining openings.

Vacations will be granted until the vacation schedule is filled. Once filled, no written requests or call-ins for vacation will be accepted.

Local Union President Charles Peters, who was present, testified that the committee read the memorandum and informed the company representatives that they could not agree to it. This memorandum was posted at the plant and the policy and procedures stated there were put into effect with the Company, thereafter, posting a series of memos indicating the maximum number of employees who could be granted vacation time off each week in each department.

The effect of the policy stated in the memorandum was to limit the number of employees who could take vacation on a given day. It also effectively abrogated the provision in section 6 of the contract that employees were entitled to select vacation in order of seniority since, if a less senior employee requested vacation 3 weeks in advance and met the financial commitment requirement of the new policy, that employee would be entitled to the vacation rather than a more senior employee who requested vacation after the vacation scheduled was filled. It also meant that, if a department's vacation schedule was filled, a less senior employee in another department where the schedule had openings could take vacation while a more senior employee in the first department could not.

Counsel for the General Counsel contends that the Respondent has violated Section 8(a)(5) and (1) of the Act by unilaterally abandoning the provisions of the collective-bargaining agreement concerning taking vacation by the day and selection of vacation according to seniority. The Respondent contends that this is simply a matter of differing interpretations of the contract by it and the Union and that the Board should not undertake to determine which interpretation is correct. It also contends that there has been no unilateral change because its actions involve a reasonable interpretation of the contract and did not cause the unit employees to suffer any significant detriment inasmuch as all employees continue to receive all the vacation days they are entitled to under the contract.

Analysis and Conclusions

There appears to be no real dispute but that the Respondent's actions concerning vacation policy were taken as a result of what it perceived to be a need to control the scheduling of vacation to assure that a work force adequate to meet its production requirements would be on the job every day. Thiede gave credible testimony that on the previous Good Friday so many employees took a day of their vacation that he had to shut down an assembly line and the paint line because he did not have enough people on the job. There also appears to be no question but that the Union never agreed to any change in the contract. Although the evidence shows that the Respondent attempted to get the Union to concur in its new policy concerning taking vacation, at no time did the Union ever agree to it. However, as noted above, the Respondent's position is not that the Union agreed to a change, but that there was no unilateral change because its actions were based on a reasonable interpretation of the language of the contract.

Unlike the cases relied on by the Respondent in its brief, the present case does not involve choosing between two equally plausible interpretations of the subject contract provisions before there can be a determination that a change has been made.[4] The provisions in question are of long standing, there is a significant history of past practice under those provisions, and they have been the subject of negotiations between the parties as recently as 1991. The evidence establishes that there had never been any limit placed on the number of employees who could take vacation by the day under article VII, paragraph 7, before June 25. While Thiede testified that this lack of limitation made it impossible to assure that he would have an adequate work force, the evidence shows the same issue had been raised by the Respondent during the 1991 contract negotiations. Then, according to the credible testimony of Schmitt, the Respondent's representative stated that the Company had to know who was going to be at work in order to plan production and it made a proposal to change paragraph 7 to limit employees' taking of vacation by the day to a mutually agreed-upon date. That proposal, which would have given the Respondent a say in when and if vacation by the day could be taken, was rejected by the Union. In June 1992, the Respondent again attempted to get the Union to agree to a modification of the contract provisions concerning vacation and again was unsuccessful. I find that the evidence establishes that the Respondent made unilateral changes in the unit employees' working conditions, effective June 25, by limiting the number who could take vacation on any given day and by implementing a procedure for selecting vacation whereby employees were no longer assured of being able to select vacation in order of seniority. In both instances, the Respondent's actions changed the existing vacation policy and effected a unilateral, midterm change in the provisions of the collective-bargaining agreement in violation of Sections 8(d) and 8(a)(5) and (1) of the Act. See *NLRB v. Katz*, 369 U.S. 736 (1962); *Papercraft Corp*., 212 NLRB 240, 241 (1974).

B. *The Temporary Employees' Wages Issue*

The complaint alleges that on and after August 31 the Respondent violated Sections 8(d) and 8(a)(5) and (1) by failing to pay certain unit employees the wage rate specified in the collective-bargaining agreement during the first 30 days that they performed work for it.

The credible testimony of Thiede establishes that during August and September one of the Company's principal customers, Scott Paper Company, increased its orders and requested that deliveries be moved up. As a result, production demands increased during those months to the point that there was a temporary need for additional production employees. Thiede informed the Company's director of human resources and labor relations, Gordon Church, of the problem and Church undertook to provide workers to meet this bubble in the production schedule.

Church testified that he was able to hire four college students and six former company employees on a temporary basis. When he was unable to get enough workers to meet

[4] Also unlike those cases there is also no readily available forum for resolving the parties' conflicting contractual claims given that the Respondent has declined to proceed to arbitration on these issues and has requested a resolution by the Board.

the demand, he contacted Personnel Connection, a temporary agency, and contracted with it to provide the necessary help. When it became apparent that some of these workers would be needed longer than the 30 days originally anticipated, he arranged with the agency to hire some of their workers as employees of the Respondent, after paying it a fee for the right to do so. Those Personnel Connection workers that were hired as company employees after 30 days on the job were paid the 30-day rate provided in the collective-bargaining agreement, they were covered by the health and life insurance provisions on the date they went on the Company's payroll or within a week of that date, and immediately upon going on the payroll the Company began deducting union dues and remitting them to the Union.[5] There was a total of 79 Personnel Connection workers who worked for the Respondent; 19 were subsequently hired by it and 14 are still employed. Church testified that during the time that the Personnel Connection workers were on the job no regular company employees were on layoff and that all were fully employed and were working a reasonable amount of overtime. He testified that the Union was informed of the plan to contract for the temporary workers and, later, that some of those workers would be put on the Company's payroll and paid according to the contract, but there is no evidence that the Union ever agreed to this. The Respondent paid Personnel Connection $10.50 per hour for each temporary worker and the workers were paid $7.50 per hour. When the Union learned that these workers were being paid less than the $10.10-per-hour starting rate specified in the collective-bargaining agreement, it filed a grievance.

The evidence establishes that in 1987, when the Respondent had previously proposed to hire some college students to work on a temporary basis during the summer at a wage rate lower than that specified in the contract, the Union objected and that ever since when students have been hired for summer work they have been paid according to the contract and have joined the Union after 30 days on the job.

Analysis and Conclusions

Counsel for the General Counsel contends that the temporary employees were members of the bargaining unit and entitled to be paid according to the collective-bargaining agreement's wage rate provisions during their first 30 days on the job. He argues that they were performing bargaining unit work during this period and that by its actions in paying them the 30-day wage rate, providing them with insurance coverage, and deducting union dues from their wages beginning on their 31st day of work for it, the Respondent treated them as its own employees from the start. There is no allegation in the complaint that the Respondent violated the collective-bargaining agreement or the Act by contracting with Personnel Connection for temporary help.

I find that the evidence fails to establish that the temporary workers were employees of the Respondent during the first 30 days that they performed work for it and, thus, entitled to be compensated in accordance with the collective-bargaining agreement. On the contrary, the evidence fails to establish that they were employees of anyone other than Personnel Connection with whom the Respondent had contracted for their services and by whom their wages were paid. The General Counsel has cited no authority for the proposition that because the Respondent paid the relatively few temporaries it subsequently hired at the 30-day wage rate and made them immediately eligible for insurance benefits instead of waiting 30 days after their hire, this relates back and makes all the temporaries, employees of the Respondent. From all that appears, Personnel Connection, which is not a party to this proceeding, had no relationship with the Union and was under no obligation to pay its employees in accordance with the collective-bargaining agreement between the Respondent and the Union. I shall recommend that this allegation be dismissed.

C. *The Minimum Production Standards Issue*

Schmitt's uncontradicted testimony establishes that during contract negotiations in 1985, the Respondent's spokesman stated that the Company was experiencing problems with low productivity by some employees and submitted a proposal for consideration by the Union, which read as follows:

> The Company and the Union recognize as essential to their mutual welfare the maintenance of a fair competitive position based on efficient methods. Both agree to cooperate in suggesting, installing and practicing methods conducive to maximum productivity for all employes consistent with the safety and health of the employe. Any employe setting or maintaining production limits on work or suggesting that others do so shall be considered to be in violation of this agreement.

The Union submitted a counterproposal and the parties agreed to a memorandum of understanding on March 7, 1985, which has remained in effect to the present, and states:

> Recognizing that the welfare of it's members and the opportunities to earn a living depend upon the success and prosperity of the Company, the Union hereby pledges itself and all its members, the employees of the Company, that they will perform their work effectively and efficiently to the best of their ability, consistent with the safety and health of the employee. Any employee attempting to control or limit production or suggesting that others do so, shall be in violation of this agreement.

This memorandum of understanding is at the heart of the issue concerning production standards.

Thiede testified that when he began working for the Respondent in March he spent 3 weeks on the shop floor to observe and become acclimated to the company's products and methods of operations. After observing poor productivity, employees taking excessive breaks, walking the aisles, and sitting at their work stations with their feet up and their arms folded, he concluded that the employees' work effort was deplorable and something had to be done to get control of the business. He began a study to determine what was an attainable level of production on various jobs which included videotaping certain jobs. He used the information he obtained to arrive at a reasonable expectation of what level of produc-

[5] On November 11, the Respondent sent the Union a memorandum referring to the temporary employees it had put on its payroll after 30 days on the job. It stated that union dues and initiation fees had erroneously been collected from them during their first 30 days of employment and that they would be reimbursed.

tion could be obtained on an hourly basis. He also made use of input from a sheltered workshop and a consulting firm in making his computations and determinations as to what reasonable production levels on various production line functions. According to Thiede, the resulting minimum production standards was his means of defining for the employees what a fair day's work for a fair day's pay is.

On September 21, at a regularly scheduled grievance meeting, Thiede informed the union committee that, beginning on September 22, certain jobs would have minimum production requirements and that employees who did not perform to the expected level would be subject to disciplinary action. On September 22, Thiede informed the employees on four types of jobs (drive roller, lever, linkage, and lever knob) what the minimum production requirements per hour for their functions were, that they would have that day to get acclimated to them, and that if they did not meet them beginning the following day, they were subject to discipline. On September 23, employee Peter Filipiak, a drive roller assembler, failed to meet the 180-units-per-hour minimum assigned to that job and was given a verbal warning. On September 24, Filipiak failed to meet the minimum standard and was given a written warning. On September 28, he failed again and was given a 3-day suspension. When he returned to work on October 2, he failed to meet the minimum standard and was terminated. Other employees who failed to meet the minimum standards assigned to their jobs were subjected to similar disciplinary action.[6]

The complaint alleges that the minimum production standards, enforceable by disciplinary action, instituted by the Respondent, were mandatory subjects of bargaining and that they were instituted without first giving the Union notice and the opportunity to bargain over them in violation of Sections 8(d) and 8(a)(5) and (1). The Respondent contends that this issue also involves only a dispute over contract interpretation that the Board should not address and that the implementation of these standards was consistent with and in accordance with the 1985 memorandum of understanding between the Respondent and the Union.

Analysis and Conclusions

As in the case of the change in vacation policy, it appears that the Respondent has done by unilateral action something that it was previously unsuccessful in doing through negotiations with the Union. In 1985, it attempted to remedy concerns about low productivity by making a proposal which would have authorized installing and practicing methods conducive to maximum productivity for all employees. The Union rejected that proposal and the parties eventually agreed to the memorandum of understanding in which the Union and employees pledged that they will perform their work effectively and efficiently to the best of their ability. At no time before or since the memorandum of understanding were there in place any clearly articulated or precise numerical standards of minimum expected production output which employees were required to meet or be subject to disciplinary action. That is what the Respondent presented to the Union on September 22. These minimum production standards were not merely a refinement or more vigorous enforcement of existing standards, but represented a radical departure from past practice. The Respondent's action is similar to that taken by the employer in *Tenneco Chemicals*, 249 NLRB 1176 (1980). There, concern over low productivity led the employer to institute precise measures for determining the adequacy of employees' performance on five specific tasks and exposed those who failed to attain the prescribed minimums to disciplinary action. The Board found the institution of these minimum production standards to be a mandatory subject of bargaining and that unilateral implementation by the employer violated Section 8(a)(5) and (1).

There is no evidence that the Union was given notice or the opportunity to bargain over these minimum production standards or waived its rights to bargain over them. The Respondent apparently contends that the fact that in 1991 it attempted to discipline two of the same employees, who were terminated in 1992, for low productivity without the Union filing unfair labor practice charges is proof that it was acting pursuant to the memorandum of understanding and the imposition of the new minimum production standards was a similar means of assuring that employees did not withhold reasonable work effort. The evidence shows that the Union filed grievances over the disciplinary warnings given to employees Filipiak and Basinski for low production and withholding work effort because the production of each was allegedly less than the average of other employees performing the same work and in one's case less than his own previous production. The Company denied the grievances and they were to be taken to arbitration, but on the day before the scheduled arbitration hearing the Company agreed to withdraw the warnings. The Respondent also points to the fact that at a grievance meeting in July, Thiede raised concerns about productivity by telling Schmitt that there were employees who were not giving a fair day's work for a fair day's pay and Schmitt responded that if certain people were not performing Thiede should deal with it, but should do so in the right way. Neither of these incidents proves that the Union agreed with the Respondent's claim that it could set precise numerical minimum production rates or that it waived its rights to bargain over their imposition. There is a substantial difference between attempting to discipline an employee for low production based on the production of other similarly situated employees or his own previous production and imposing precise minimum hourly production rates which have been unilaterally determined by the employer and which all employees must meet or be subject to disciplinary action. There is nothing to suggest that by telling Thiede he should deal with productivity problems the right way, Schmitt was telling him that the Union was amenable to the imposition of minimum production standards.

It is clear that when the Respondent informed the Union on September 22 that new minimum production standards with specific numerical hourly minimums for four of the jobs would go into effect the next day, it was a fait accompli about which there was no opportunity to bargain. By unilaterally imposing these minimum production standards, it violated Section 8(a)(5) and (1) of the Act. *Tenneco Chemicals*,

[6] Evidence introduced by the Respondent shows that employees Delmarcelle, Mahlik, Basinski, Plog, and Pallock received similar warnings, a suspension, and were ultimately discharged and that employees named Hudson, Strebiow, Mier, and Dekeyser received warnings and were suspended. Other evidence shows employees Peterson, Tenor, and Belleau received warnings.

supra; *Kal-Equip Co.*, 237 NLRB 1234 (1978); *Alfred M. Lewis, Inc.*, 229 NLRB 757 (1977).

Finally, the Respondent contends that even if the production standards were unlawfully instituted, no relief from the Board is appropriate because the employees involved would have been disciplined anyway for their deliberate refusal to exert a reasonable work effort. It contends that the testimony of Thiede establishes that he observed the disciplined employees deliberately withholding work effort, warned them and gave them an opportunity to improve their productivity, and took disciplinary action only after their failure to do so. It further contends that there is no evidence that its actions in disciplining these employees were not justified. The Respondent's argument is directed to the appropriate remedy rather than to the issue of whether a unilateral change in working conditions has occurred. Regardless of the disciplinary action taken by the Respondent based on the new minimum production standards, the fact remains that the unilateral imposition of those standards violated the Act. As for the individuals who were disciplined as a result, I find that the general testimony of Thiede as to his observations following their imposition is insufficient to establish that any employee would have been given the same discipline even in the absence of the new minimum standards. There is nothing in the record to establish that the disciplinary action taken against any of the employees following the imposition of the minimum production standards was based on Thiede's observations or that they were given any consideration. On the contrary, the Company's documents in the record memorializing the disciplinary actions taken uniformly refer to the fact that the actions were solely based on the various employees' failure to meet the minimum production requirement on the jobs to which they were assigned. Consequently, I find there is no basis on which to conclude that the same action would have been taken against any of the employees even if the minimum production standards had not been instituted.

CONCLUSIONS OF LAW

1. The Respondent, Alwin Manufacturing Company, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is the exclusive collective-bargaining representative of employees in the following appropriate unit:

> All production and maintenance employees of the employer at the employer's plant in the greater Green Bay area, Green Bay Wisconsin, exclusive of office, clerical employees, guards, professional, and supervisors as defined in the Act.

The Respondent refused to bargain in violation of Section 8(a)(5) and (1) and Section 8(d) of the Act by making unilateral midterm changes in the vacation provisions of the collective-bargaining agreement.

5. The Respondent refused to bargain in violation of Section 8(a)(5) and (1) of the Act by instituting minimum production standards for certain jobs performed by bargaining unit employees without prior notice to and bargaining with the Union and by taking disciplinary action against unit employees for their failure to work in accordance with these unilaterally instituted minimum production standards.

6. The above unfair labor practices were unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

7. The Respondent did not engage in any unfair labor practices alleged in the complaint which are not specifically found.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by unilaterally making midterm changes in the vacation provisions of the collective-bargaining agreement and by unilaterally instituting minimum production standards for certain bargaining unit jobs, I shall recommend that it be ordered to restore the status quo ante by rescinding the changes in vacation policy and by withdrawing the minimum production standards, and by rescinding all disciplinary actions resulting from the employees' failure to meet the unlawfully instituted minimum production standards, offering all employees discharged and/or suspended as a result of such disciplinary action immediate and full reinstatement to their former positions or, if they no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and by making whole those employees who were so discharged or suspended for any loss of earnings or benefits suffered as a result, plus interest. Backpay shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, Alwin Manufacturing Company, Inc., Green Bay, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Making unilateral midterm changes in the provisions of the collective-bargaining agreement.

(b) Unilaterally instituting and thereafter enforcing, by disciplinary action, minimum production standards for jobs of bargaining unit employees without prior notice to and bargaining with the Union.

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

2. Take the following affirmative action necessary to effectuate the policies of the Act.

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Rescind and withdraw the unilateral changes in the vacation provisions of the collective-bargaining agreement put into effect on or about June 1992.

(b) Rescind and withdraw the minimum production standards unilaterally instituted on or about September 22, 1992.

(c) Expunge from its records all references to disciplinary warnings, suspensions, or discharges of unit employees imposed for failure to meet the minimum production standards, notify all affected employees in writing that this is being done, and that they will not be used against them in any way.

(d) Offer to all employees, who were suspended and/or discharged as a result of failure to meet the minimum production standards, immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of wages or benefits suffered as a result, plus interest. Backpay and interest shall be computed in the manner described in the remedy section of this decision.

(e) Preserve and, on 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) On request, bargain with the Union concerning all proposed changes in terms and conditions of employment of the employees in the appropriate unit.

(g) Post at its facility at Green Bay, Wisconsin, copies of the attached notice marked Appendix.[8] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[8] If 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.''

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT make unilateral midterm changes in the provisions of the collective-bargaining agreement.

WE WILL NOT unilaterally institute minimum production standards for jobs performed by employees in the bargaining unit.

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

WE WILL rescind and withdraw unilateral midterm changes made to the vacation provisions of the collective-bargaining agreement and the unilaterally instituted minimum production standards for jobs performed by employees in the bargaining unit.

WE WILL notify and, on request, bargain with the Union concerning any proposed changes in the terms and conditions of employment of employees in the bargaining unit.

WE WILL offer all employees, who were suspended and/or discharged for failure to meet the minimum production standards, immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, plus interest.

WE WILL notify employees in writing that we have removed from our files all references to any warnings, suspensions, or discharges resulting from failure to meet the minimum production standards and that they will not be used against them in any way.

ALWIN MANUFACTURING COMPANY, INC.